

# Chisholm School District School Board Meeting Agenda

Monday, November 28, 2022 at 5:00 PM  
Regular Meeting  
Chisholm School Board Room

## I. Determination of Quorum and Call to Order

### II. Public Comment:

**Description:** Welcome to this meeting of the Board of Education Independent School District #695, Chisholm School District. We are extremely pleased that you have shown an interest in school district affairs by attending this meeting. The Board of Education allows public participation at its meeting, but at the same time has the responsibility for conducting its business in an orderly fashion. We will provide the audience with an opportunity to request to speak. We request that before you speak to announce your name. Each speaker will be allowed five minutes unless the time limit is waived by a majority of the board members present. At a public meeting of the board, no person shall orally initiate charges or complaints against individual employees of the district or challenge instructional materials used in the district. All such charges, if presented to the board directly, shall be referred to the Superintendent for investigation and report. We would also like to remind the public that the school board is not allowed to comment on your concerns. If there are no questions, we will open the public comment section of the board meeting.

## III. Recognition of Guests and Visitors

A. Mike Jugovich, St. Louis County Covid relief funds. \$750,000.00

## IV. Approve Agenda

## V. Reports

## VI. Consent Agenda

A. Minutes of the November 14, 2022, Regular meeting. 3  
Minutes of the November 17, 2022, Special meeting.  
Approve the transfer of Crystal Flack to Job #210 One-to-One  
Paraprofessional, High School, effective November 21, 2022.

### Attachments:

SBM 11/14/2022 3  
Special Board Meeting 11/17/2022 7  
Hire C. Flack 8

## VII. Action Agenda

A. Motion to approve Policy #534 as presented. 9

### Attachments:

B. Motion to approve the contracts with Ingensa with the Superintendent and board chair as authorized signatories.	11
<b>Attachments:</b>	
B144-1993 - Amendment - Working Draft - InGensa_77620556(3)	11
B201-2017 - Architect_s Services - Working Draft - InGensa_77620545(3)	16
B102-2017 - Architect Agreement - Working Draft - InGensa_77620531(3)	28
Redlined InGensa B102	37
Redlined InGensa B201	48
Redlined InGensa B144	62
VIII. Discussion	
IX. Information	
A. Enrollment numbers	
B. MSBA Recognition	
X. Adjourn	

November 14, 2022

The Regular Meeting of the School Board, Independent School District No. 695, was called to order at 5:03 P.M. on November 14, 2022, in the Elementary Board Room. Members present: Directors Sauter, Rice, Corradi Simon, Casey, Lappi, Chair Rahja and Superintendent Norman.

**Public Comment: None**

**Recognition of Guests and Visitors:**

APPROVE AGENDA

Moved by Director Sauter supported by Director Lappi to approve the October 24, 2022, agenda with the following changes. Personnel, add item J, Items D and G adjust hire dates from November 14 to November 17, 2022. Business, add item Q. Motion carried unanimously.

REPORTS

Superintendent Norman: Referendum results, thank you to the residents of Chisholm for their support, WBWF meeting will be scheduled at 4:30 PM on November 28, 2022. Boilers were down due to a power surge. Up and running now. The .5 cents per ton bill.

Business Manager Kaczor: Election update, Talked to Mike Hoheisel about adjusting the Levy due to the referendum, Audit, Federal Funds, Spending some Essar Funds, Special Ed.

Travis Vake: Cross County 7<sup>th</sup> grade runner placed 76 place, 11<sup>th</sup> grader swimmer made it to state in the 50-yard freestyle, New hires and coaches, Collaborating with Hibbing in Robotics, Football helmets need to be purchased for next season, Social Media is doing great.

Mike Fredeen: Explained the need to purchase a Kobata Tractor with 72-inch deck and the other options.

APPROVE CONSENT AGENDA

Moved by Director Casey supported by Director Rice and approved unanimously to approve the Consent Agenda which consists of the Minutes from the October 24, 2022, Regular Meeting. Payrolls for the month of October 2002, in the amount of \$636,903.47. Accounts payable for the month of October in the amount of \$441, 230.65.

**Personnel:**

APPROVE MOU BETWEEN ISD #695, CHISHOLM PUBLIC SCHOOLS AND EDUCATION MINNESOTA CHISHOLM CONCERNING THE DUTIES, RESPONSIBILITIES, AND PAYMENT FOR THE POSITION OF ATHLETIC DIRECTOR

Moved by Director Lappi supported by Director Sauter to approve the MOU between ISD #695, Chisholm Public Schools and Education Minnesota Chisholm concerning the duties, responsibilities, and payment for the position of Activities Director. Motion carried unanimously.

HIRE DEBORAH SAARI-CHAMPION

Moved by Director Corradi Simon supported by Director Lappi to approve the hiring of Deborah Saari-Champion to Job #202 Paraprofessional, Chisholm Elementary, effective November 2, 2022. Motion carried unanimously. Time of hire: 5:33 PM

HIRE RYAN BENNETT

Moved by Director Sauter supported by Director Corradi Simon to approve the hiring of Ryan Bennett to Job #202 Paraprofessional, Vaughan Steffensrud, effective November 10, 2022. Motion carried unanimously. Time of hire: 5:34 PM

HIRE PAMELA PIOSKE

Moved by Director Lappi supported by Director Casey to approve the hiring of Pamela Pioske to Job #204 Technology Support Specialist, Chisholm Public Schools, effective November 17, 2022. Motion carried unanimously. Time of hire: 5:35 PM

APPROVE THE ONE-YEAR PROFESSIONAL LEAVE OF ABSENCE FOR RAMONA HELMER

Moved by Director Casey, supported by Director Sauter to approve Ramona Helmer's one-year professional leave of absence request beginning November 18, 2022. Motion carried unanimously.

HIRE LORI OZZELLO

Moved by Director Corradi Simon, supported by Director Lappi to approve the hiring of Lori Ozzello to Job #202 Paraprofessional, Vaughan Steffensrud, effective November 21, 2022. Motion carried unanimously. Time of hire: 5:36 PM

HIRE HANNAH BARNEY

Moved by Director Corradi Simon, supported by Director Rice to approve the hiring of Hannah Barney to Job #209, Activities and Community Education Assistant, Chisholm Public Schools, effective November 17, 2022. Motion carried unanimously. Time of hire: 5:37 PM

HIRE AMBER TOOLE

Moved by Director Lappi, supported by Director Rice to approve the hiring of Amber Toole to Job #202 Paraprofessional, Chisholm Elementary, effective November 21, 2022. Motion carried unanimously. Time of hire: 5:38 PM

HIRE JOEL MCDONALD

Moved by Director Corradi Simon, supported by Chair Rahja to approve the hiring of Joel McDonald to Job #208 Level II Assistant Boys Basketball Coach, effective November 7, 2022. Motion carried unanimously.

HIRE BRADY BOEHM

Moved by Director Rice, supported by Chair Rahja to approve the hiring of Brady Boehm to Job #211 Level I Boys' Swimming Coach, effective November 14, 2022. Motion carried unanimously.

**Administrative Business:**ADOPT RESOLUTION CANVASSING THE RETURN OF VOTES FOR THE NOVEMBER 8, 2022, SCHOOL DISTRICT GENERAL ELECTION

Moved by Director Corradi Simon, supported by Director Lappi to adopt a Resolution Canvassing the Return of Votes for the November 8, 2022, School District General Election. Being a resolution, a roll call vote was taken and carried as follows:

For: Director Sauter, Rice, Corradi Simon, Lappi, Casey and Chair Rahja

Against: None

Absent: None

ADOPT RESOLUTION CANVASSING THE RETURN OF VOTES FOR THE NOVEMBER 8, 2022, SCHOOL DISTRICT SPECIAL ELECTION

Moved by Director Rice, supported by Director Lappi to adopt a Resolution Canvassing the Return of Votes for the November 8, 2022, School District Special Election. Being a resolution, a roll call vote was taken and carried as follows:

For: Director Sauter, Rice, Corradi Simon, Lappi, and Chair Rahja

Against: None

Abstain: Casey

ADOPT RESOLUTION AUTHORIZING ISSUANCE OF CERTIFICATES OF ELECTION AND DIRECTING SCHOOL DISTRICT CLERK TO PERFORM OTHER ELECTION RELATED DUTIES

Moved by Director Casey, supported by Director Lappi to adopt a Resolution Authorizing Issuance of Certificates of Election and Directing School District Clerk to Perform other Election Related Duties. Being a resolution, a roll call vote was taken and carried as follows:

For: Director Sauter, Rice Corradi Simon, Lappi, Casey and Chair Rahja.

Against: None

ADOPT RESOLUTION AUTHORIZING ISSUANCE OF CERTIFICATES OF ELECTION AND DIRECTING SCHOOL DISTRICT CLERK TO PERFORM OTHER ELECTION RELATED DUTIES

Moved by Director Casey, supported by Director Lappi to adopt a Resolution Authorizing Issuance of Certificates of Election and Directing School District Clerk to Perform other Election Related Duties. Being a resolution, a roll call votes was taken and carried as follows:

For: Director Sauter, Rice, Corradi Simon, Lappi and Chair Rahja

Against: None

Abstain: Director Casey

ADOPT RESOLUTION

Moved by Director Corradi Simon, supported by Director Lappi to adopt the resolution to accept donations. Being a resolution, a roll call vote was taken and carried as follows:

For: Director Sauter, Rice, Corradi Simon, Lappi, Casey and Chair Rahja

Against: None

APPROVE THE INCREASE IN THE CO-OP FOR BOYS AND GIRLS HOCKEY TO INCLUDE VICTORY CHRISTIAN ACADEMY

Moved by Director Casey, supported by Director Corradi Simon to approve the increase in the Co-op for Boys and Girls Hockey to include Victory Christian Academy. Motion carried unanimously.

APPROVE POLICY #155 OUTSIDE AGENCIES SUPPORTING SCHOOLS

Moved by Director Sauter, supported by Director Rice to approve Policy #155 Outside Agencies Supported Schools. Motion carried unanimously.

APPROVE POLICY #211 CRIMINAL OR CIVIL ACTION AGAINST SCHOOL DISTRICT, SCHOOL BOARD MEMBER, EMPLOYEE, OR STUDENT

Moved by Director Sauter, supported by Director Rice to approve Policy #211 Criminal or Civil Action Against School District, School Board Member, Employee or Student. Motion carried unanimously.

APPROVE POLICY #212 SCHOOL BOARD MEMBER DEVELOPMENT

Moved by Director Sauter, supported by Director Rice to approve Policy #212 School Board Member Development. Motion carried unanimously.

APPROVE POLICY #213 SCHOOL BOARD COMMITTEES

Moved by Director Sauter, supported by Director Rice to approve Policy #213 School Board Committees. Motion carried unanimously.

APPROVE POLICY #214 OUT-OF-STATE TRAVEL BY SCHOOL BOARD MEMBERS

Moved by Director Sauter, supported by Director Rice to approve Policy #214 Out-Of-State Travel by School Board Members. Motion carried unanimously.

APPROVE POLICY #301 SCHOOL DISTRICT ADMINISTRATION

Moved by Director Sauter, supported by Director Rice to approve Policy #301 School District Administration. Motion carried unanimously.

APPROVE POLICY #302 SUPERINTENDENT

Moved by Director Sauter, supported by Director Rice to approve Policy #302 Superintendent. Motion carried unanimously.

APPROVE POLICY #303 SUPERINTENDENT SELECTION

Moved by Director Sauter, supported by Director Rice to approve Policy #303 Superintendent Selection. Motion carried unanimously.

APPROVE POLICY #304 SUPERINTENDENT CONTRACT, DUTIES, AND EVALUATION

Moved by Director Sauter, supported by Director Rice to approve Policy #304 Superintendent Contract, Duties, and Evaluation. Motion carried unanimously.

APPROVE POLICY #305 IMPLEMENTATION

Moved by Director Sauter, supported by Director Rice to approve Policy #305 Implementation. Motion carried unanimously.

APPROVE POLICY #306 ADMINISTRATOR CODE OF ETHICS

Moved by Director Sauter, supported by Director Rice to approve Policy #306 Administrator Code of Ethics. Motion carried unanimously.

APPROVE PURCHASE OF A KABOTA TRACTOR WITH MOWER DECK IN THE AMOUNT OF \$31, 618.00

Moved by Director Lappi, supported by Director Casey to approve the purchase of a Kabota Tractor with Mower Deck in the amount of \$31,618.00. Motion carried unanimously.

**Discussion:** - Chair Rahja asked the Board to vote for the Northeast Service Coop election.

**Information:** -Resignation from Laura Rock, Paraprofessional, Vaughan Steffensrud, effective September 30, 2022.  
Resignation from Don Quirk, Head Boys' Swimming Coach, effective November 4, 2022.  
-Enrollment Numbers

ADJOURN

Moved by Director Sauter, supported by Director Rice to adjourn the meeting at 6:02 P.M. Motion carried unanimously.

---

Danielle Randa Sauter, clerk

DRS/lea

November 17, 2022

The Special Meeting of the School Board, Independent School District No. 695, was called to order at 4:00 P.M. on November 17, 2022, in the Elementary Board Room. Members present: Directors Sauter, Rice, Corradi Simon, Casey, Lappi, Chair Rahja and Superintendent Norman.

**Recognition of Guests and Visitors:** Luke Pfothenhauer addressed the board regarding the fee schedule.

APPROVE AGENDA

Moved by Director Lappi supported by Director Rice to approve the November 17, 2022, agenda. Motion carried unanimously.

**Administrative Business:**

APPROVE PROFESSIONAL FEES AS PRESENTED BY INGENSA PENDING LEGAL REVIEW

A motion was made by Director Casey, supported by Director Corradi Simon to table the motion to approve professional fees as presented by InGensa pending legal contract. A roll call vote was taken and carried as follows:

For: Director Casey and Corradi Simon  
Against: Director Sauter, Rice, Lappi and Chair Rahja  
Abstain: None

APPROVE PROFESSIONAL FEES AS PRESENTED BY INGENSA PENDING LEGAL REVIEW

Moved by Director Rice, supported by Chair Rahja to approve professional fees as presented by InGensa pending legal contract. A roll call vote was taken and carried as follows:

For: Director Sauter, Rice, Lappi and Chair Rahja  
Against: Director Corradi Simon and Casey  
Abstain: None

ADJOURN

Moved by Director Lappi, supported by Director Sauter to adjourn the meeting at 4:51 P.M. Supported by Director Sauter, Rice, Lappi, Corradi Simon and Chair Rahja. Against Director Casey.

---

Danielle Randa Sauter, clerk

## Recommendation to Hire

**Position: Job #210 One-to-One Para HS**

**Posting duration: Posted-11/7/2022 - 11/14/2022**

**Advertising Location: email**

**Number of Qualified: 1**

**Licensed Applications: 1**

**Interview committee Names: Mark Morrison-Teresa Allen**

**Recommended for hire: Crystal Flack**

**Supervisor: Mark Morrison**

## **534 SCHOOL MEALS POLICY**

Chisholm Public Schools Independent School District No. 695

Board Policy 534

Series: 500-Student

Subject: 534 School Meals Policy

Adopted/Revised: August 8, 2022

### **I. PURPOSE**

The purpose of this policy is to ensure that students receive healthy and nutritious meals through the school district's nutrition program and that school district employees, families, and students have a shared understanding of expectations regarding meal charges. The policy of the school district is to provide meals to students in a respectful manner and to maintain the dignity of students by prohibiting lunch shaming or otherwise ostracizing the student. The policy seeks to allow students to receive the nutrition they need to stay focused during the school day and minimize identification of students with insufficient funds to pay for school meals as well as to maintain the financial integrity of the school nutrition program.

### **II. PAYMENT OF MEALS**

- A. All meal purchases are to be prepaid before meal service begins. Families may add money to their School Meal Accounts in a number of convenient ways including Online payments, payments mailed to the Food and Nutrition office, and payments delivered to the school office or cafeteria. A student who does not have sufficient funds will not be allowed to charge meals or a la carte items until additional money is deposited in the student's account.
- B. If the school district receives school lunch aid under Minnesota Statutes section 124D.111, it must make lunch available without charge to all participating students who qualify for free or reduced-price meals regardless of account balance.
- C. A student with an outstanding meal charge debt will be allowed to purchase a meal if the student pays for the meal when it is received.
- D. A student who has been determined to be eligible for free and reduced-price lunch always must be served a reimbursable meal even if the student has an outstanding debt.
- E. Once a meal has been placed on a student's tray or otherwise served to a student, the meal may not be subsequently withdrawn from the student by the cashier or other school official, whether or not the student has an outstanding meals balance.
- F. ~~The school district may provide an alternate meal that meets federal and state requirements to a student who does not have sufficient funds in the student's account or cannot pay cash for a meal. The school district will accommodate special dietary needs with respect to alternate meals. The cost of the alternative meal Elementary Breakfast \$2.25, Elementary Lunch, \$2.80, Secondary Breakfast \$2.35 and Secondary Lunch \$2.90 will be charged to the student's account or otherwise charged to the student.~~
- G. When a student has a negative account balance, the student will not be allowed to charge a snack item.
- H. If a parent or guardian chooses to send in one payment that is to be divided between sibling accounts, the parent or guardian must specify how the funds are to be distributed to the students' accounts. Funds may not be transferred between sibling accounts unless written permission is received from the parent or guardian.

### **III. LOW OR NEGATIVE ACCOUNT BALANCES – NOTIFICATION**

- A. The school district will make reasonable efforts to notify families when meal account balances are low or fall below zero.
- B. Families will be notified of an outstanding negative balance once the negative balance reaches \$10.00. Families will be notified by letters sent home.

- C. Reminders for payment of outstanding student meal balances will not demean or stigmatize any student participating in the school lunch program, including, but not limited to, dumping meals, withdrawing a meal that has been served, announcing, or listing students' names publicly, or affixing stickers, stamps, or pins.

#### **IV. UNPAID MEAL CHARGES**

- A. The school district will make reasonable efforts to communicate with families to resolve the matter of unpaid charges. Where appropriate, families may be encouraged to apply for free and reduced-price meals for their children.
- B. The school district will make reasonable efforts to collect unpaid meal charges classified as delinquent debt. Unpaid meal charges are designated as delinquent debt when payment is overdue, the debt is considered collectable, and efforts are being made to collect it.
- C. Accounts that have not had payment in 90 days or more regardless of the balance and/or have a negative \$200 deficit or greater will be turned over to the superintendent or superintendent's designee for collection. In some instances, the school district does use a collection agency to collect unpaid school meal debts after reasonable efforts first have been made by the school district to collect the debt. Collection options may include, but are not limited to, use of collection agencies, claims in the conciliation court, or any other legal method permitted by law.
- D. The school district may not enlist the assistance of non-school district employees, such as volunteers, to engage in debt collection efforts.
- E. The school district will not impose any other restriction prohibited under Minnesota Statutes section 123B.37 due to unpaid student meal balances. The school district will not limit a student's participation in any school activities, graduation ceremonies, field trips, athletics, activity clubs, or other extracurricular activities or access to materials, technology, or other items provided to students due to an unpaid student meal balance.

#### **V. COMMUNICATION OF POLICY**

- A. This policy and any pertinent supporting information shall be provided in writing (i.e., mail, email, back-to-school packet, student handbook, etc.) to:
  - 1. all households at or before the start of each school year;
  - 2. students and families who transfer into the school district, at the time of enrollment; and
  - 3. all school district personnel who are responsible for enforcing this policy.
- B. The school district will post this policy on the school district's website, or the website of the organization where the meal is served, in addition to providing the required written notification described above.
- C. If the school district contracts with a third party for its meal services, it will provide the vendor with its school meals policy. The school district will ensure that any third-party provider with whom the school district enters into either an original or modified contract after July 1, 2021, adheres to the school district's school meals policy.

**Legal References:** Minn. Stat. § 123B.37 (Prohibited Fees)  
Minn. Stat. § 124D.111 (School Meals Policies; Lunch Aid; Food Service Accounting)  
42 U.S.C. § 1751 *et seq.* (Healthy and Hunger-Free Kids Act)  
7 C.F.R. § 210 *et seq.* (School Lunch Program Regulations)  
7 C.F.R. § 220.8 (School Breakfast Program Regulations)  
USDA Policy Memorandum SP 46-2016, Unpaid Meal Charges: Local Meal Charge Policies (2016)  
USDA Policy Memorandum SP 47-2016, Unpaid Meal Charges: Clarification on Collection of Delinquent Meal Payments (2016)  
USDA Policy Memorandum SP 20-2017, Unpaid Meal Charges: Guidance and Q&A

**Cross References:** None

# DRAFT AIA® Document B144/ARCH-CM™ - 1993

## *Standard Form of Amendment for the Agreement Between Owner and Architect where the Architect Provides CONSTRUCTION MANAGEMENT Services as an Adviser to the Owner*

This **AMENDMENT** made as of the **TBD day of November in the year 2022**

is made to the **AGREEMENT** made as of the **TBD day of November in the year 2022**

**BETWEEN** the Owner:

Chisholm Public Schools ISD #695  
301 4<sup>th</sup> St SW  
Chisholm, MN 55719

and

InGensa, Inc. ("**InGensa**"):

InGensa, Inc.  
18215 45<sup>th</sup> Ave. N, Suite C  
Plymouth, MN 55446

for the following Project:

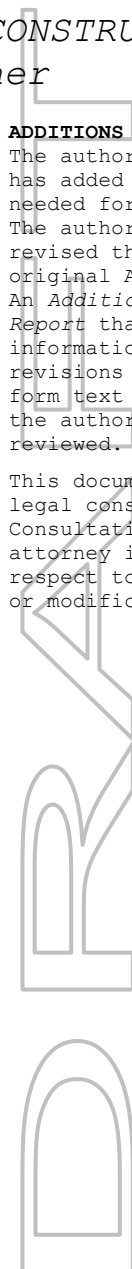
November 8, 2022 proposed referendum project: close both Chisholm Elementary and Vaughan-Steffensrud Elementary Schools and construct a new addition to the district's existing High School to house PreK-6 grade levels.

The Scope of Work is defined in Exhibit A to AIA Document B102-2007.

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.



**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

## ARTICLE 1 CONSTRUCTION MANAGEMENT RESPONSIBILITIES

§ 1.1 The construction management services to be provided by InGensa are as enumerated in Articles 2 and 3 of this Amendment. InGensa shall be entitled to use subconsultants to perform or assist in performing any of InGensa's services as Construction Manager under this Amendment ("**InGensa Subconsultants**"). It is understood by the parties that contracts for such professional services are not subject to competitive bidding requirements. All professionals providing such services whether directly by InGensa or professionals under contract with InGensa shall be qualified, and where required, properly licensed and or certified to perform these services and JCI is responsible to assure such license and certification. InGensa shall be responsible for the negligent acts or omissions of InGensa's Subconsultants, subject to the limitation of liability in Section 4.1.3.1 of A102-2017.

§ 1.2 InGensa shall provide sufficient organization, personnel and management to carry out the requirements of this Amendment at all Project locations in an expeditious and economical manner consistent with the interests of the Owner.

§ 1.3 The services covered by this Amendment are subject to the time limitations contained in the Agreement.

## ARTICLE 2 SCOPE OF SERVICES DURING PRECONSTRUCTION PHASES

§ 2.1 InGensa, as a part of InGensa's review of the program furnished by the Owner, shall provide a preliminary evaluation of the feasibility of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 2.2 InGensa shall prepare, in addition to preliminary estimates of Construction Cost for program requirements based on early schematic designs and other design criteria, comparative estimates for the cost evaluations of alternative materials and systems.

§ 2.3 As the preparation of the Schematic Design, Design Development and Construction Documents progresses, InGensa shall prepare and update preliminary Construction Cost estimates with increasing detail and refinement. Such estimates shall be provided for the Owner's review and approval prior to the commencement of performance by InGensa of services for each succeeding Pre-construction Phase. If separate contracts are to be awarded, the estimated cost of the scope of Work for each contract shall be indicated with supporting detail. InGensa shall advise the Owner if it appears that a preliminary Construction Cost estimate may exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.4 Following the Owner's approval of the Construction Documents, InGensa shall update and submit the latest estimate of Construction Cost for the Owner's approval in accordance with the Agreement.

§ 2.5 InGensa shall submit recommendations on relative feasibility of construction methods, methods of Project delivery, availability of materials and labor, time requirements for procurement, installation and construction, and appropriate utilization of the site for mobilization of construction forces and materials and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets and possible economies. InGensa shall consult with the Owner regarding the Construction Documents and make recommendations whenever design details adversely affect contractibility, cost or schedules. InGensa shall identify bid categories as necessary and describe the scopes of Work to cover all necessary Work.

§ 2.6 InGensa shall prepare and update a Project schedule to show the timing of anticipated services and construction Work for the Owner's review and approval prior to commencement of InGensa's services for each succeeding Pre-construction Phase.

§ 2.7 In developing the Project schedule, InGensa shall identify critical and long-lead-time items for the coordination and integration of InGensa's services with the Owner's responsibilities, including the services of the Owner's other consultants and contractors.

§ 2.8 InGensa shall assist the Owner in selecting, retaining and coordinating the professional services of surveyors, special consultants and testing laboratories required for the Project.

§ 2.9 InGensa shall submit a list of prospective bidders and a bidding schedule for the Owner's review and approval.

§ 2.10 InGensa shall solicit bidders' interest in the Project. InGensa shall prepare the appropriate bidding documents and assist the Owner in issuing bidding documents to bidders and conduct pre-bid conferences with prospective bidders. InGensa shall assist the Owner with the receipt of questions from bidders and the issuance of addenda.

§ 2.11 InGensa shall receive bids, prepare bid analyses and make recommendations to the Owner for the Owner's award of Contracts.

§ 2.12 InGensa shall conduct pre-award conferences with successful bidders. InGensa shall advise the Owner of any reasonable objections to the proposed list of Subcontractors and material suppliers.

§ 2.13 InGensa shall make recommendations to the Owner regarding the assignment of responsibilities for providing temporary Project facilities and services for common use of the Contractors. InGensa shall verify that the requirements and assignment of responsibilities are included in the proposed Contract Documents.

§ 2.14 InGensa shall divide the Project into separate contracts or various categories for work including the method to be used for selecting Contractors and awarding contracts. If multiple Contracts are to be awarded, InGensa shall review the Construction Documents and provide that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project have been assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes has been minimized, and (4) proper coordination has been provided for phased construction.

§ 2.15 InGensa shall make recommendations to the Owner regarding the allocation of responsibilities for Project conditions among the Contractors.

§ 2.16 InGensa shall assist the Owner regarding the allocation of responsibilities for Project conditions among the Contractors. InGensa shall provide recommendations and information to the Owner regarding the allocation of responsibilities for safety programs among the Contractors. InGensa shall be responsible for ensuring that the Safety programs on the site run by the Contractor are coordinated and compliant with applicable laws.

### ARTICLE 3 SCOPE OF SERVICES DURING THE CONSTRUCTION PHASE

§ 3.0 InGensa shall prepare a Project construction schedule providing for each scope of Work, including phasing of construction, times for commencement and completion required of each separate Contractor, ordering and delivery of materials requiring long-lead time and the occupancy requirements of the Owner.

§ 3.1 InGensa shall provide the Project construction schedule for each set of Contract Documents.

§ 3.2 InGensa shall provide administrative, management and related services to endeavor to coordinate the activities of the Contractors with each other and with those of the Owner and InGensa to complete the Project in accordance with the latest approved estimate of Construction Cost, the Project construction schedule and the Contract Documents.

§ 3.3 InGensa shall schedule and conduct pre-construction, construction and progress meetings with the Owner and the Contractors to discuss such matters as procedures, progress and scheduling. InGensa shall prepare and promptly distribute minutes to the Owner and Contractors.

§ 3.4 Utilizing the Construction Schedules provided by the Contractors, InGensa shall update the Project construction schedule incorporating the activities of the Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery of products requiring long-lead time and procurement. The Project construction schedule shall include the Owner's occupancy requirements showing portions of the Project having occupancy priority. InGensa shall update and reissue the Project construction schedule as required to show current conditions. If an update indicates the previously approved Project construction schedule may not be met, InGensa shall recommend corrective action to the Owner.

§ 3.5 Consistent with the Bidding Documents, and utilizing information from the Contractors, InGensa shall coordinate the sequence of construction and assignment of space in areas where multiple Contractors are performing Work.

§ 3.6 InGensa shall monitor the approved estimate of Construction Cost. InGensa shall show actual costs for activities in progress and estimates for uncompleted tasks.

§ 3.7 InGensa shall develop cash flow reports and forecasts for the Project and advise the Owner as to variances between actual and budgeted or estimated costs.

§ 3.8 InGensa shall maintain cost accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, or other Work requiring accounting records.

§ 3.9 InGensa shall record the progress of the Project with written progress reports to the Owner including information on each Contractor's Work, as well as the entire Project, showing percentages of completion.

§ 3.10 InGensa shall keep a daily log containing a record of weather, Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Owner may require.

§ 3.11 InGensa shall maintain at the Project site, on a current basis: one (1) record copy of all Contracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked to record all changes made during construction; Shop Drawings; Product Data; Samples; submittals; purchases; other related documents and revisions that arise out of the Contracts or Work, including as-constructed record drawings provided by the Contractor. InGensa shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. InGensa shall make all such records available to the Owner and, upon completion of the Project, shall deliver them to the Owner.

#### ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 InGensa's Basic CM Services described in Articles 1, 2 and 3 above are included in the compensation set forth in Section 6.1 of AIA Document B102-2007 executed by the Parties dated October 21, 2020. For all services that constitute a Change in Services, InGensa shall be compensated as an Additional Service as set forth in Section 6.2 of the AIA Document B201-2007, as modified by the Parties.

*(Paragraphs deleted)*

§ 4.2 The following services shall constitute a Change in Services:

- .1 Providing services made necessary by the termination or default of the Contractor, by major defects or deficiencies in the work of a contractor, or by failure of performance of either the Owner or a Contractor under a contract for construction.
- .2 Providing services in connection with a public hearing, arbitration proceeding or legal proceeding except where InGensa is a party thereto.
- .3 Providing services relative to future facilities, systems and equipment.
- .4 Providing services to verify the accuracy of drawings or other information furnished by the Owner.
- .5 Providing coordination of construction performed by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.
- .6 Providing services in connection with the work of separate consultants retained by the Owner.
- .7 **INTENTIONALLY OMITTED**
- .8 Providing any other services not otherwise included in this Agreement after notice to Owner and approval prior to providing such services.
- .9 Changes not due to mistake or ambiguity in the plans or specifications arising from Owner-requested changes following the Owner's acceptance of the designs and plans for the Project at each phase of the development process (schematic design, design development and construction documents);
- .10 Provided services that become necessary due to conditions that are encountered at the Site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or Record Drawings provided by the Owner which form a basis

on which InGensa relied for its design of (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents;

- .11 Providing any other services not otherwise included in Exhibit A.

**ARTICLE 5 THE OWNER'S RESPONSIBILITIES**

§ 5.1 The Owner reserves the right to perform Work related to the Project with the Owner's own forces, and to award contracts in connection with the Project that are not part of InGensa's responsibilities under this Amendment. InGensa shall notify the Owner if any such independent action will in any way interfere with InGensa's ability to perform under this Amendment.

§ 5.2 The Owner shall furnish the required information and services and shall render approvals and decisions expeditiously for the orderly progress of InGensa's services.

**ARTICLE 6 BASIS OF COMPENSATION**

§ 6.1 The Owner shall compensate InGensa for Construction Management Services (as described in Articles 1, 2 and 3 above) as set forth in Section 6.1 of AIA Document B102-2007, as modified by the parties.

« »

**ARTICLE 7 OTHER CONDITIONS OR SERVICES**

§ 7.1 The following Reimbursable Expenses are in addition to those listed in the Agreement modified by this Amendment:

*(List Reimbursable Expenses not already listed in the Agreement between Owner and InGensa referenced above.)*

«None. »

§ 7.2 This Amendment shall further modify the Agreement as follows:

*(Insert descriptions of other services, identify Additional Services included within Basic Compensation and modifications to the payment and compensation terms included in this Amendment.)*

«N/A»

This Amendment entered into as of the day and year first written above.

**OWNER**

« »

\_\_\_\_\_  
*(Signature)*

Adrian Norman, Superintendent  
\_\_\_\_\_  
*(Printed name and title)*

**INGENSA, INC.**

« »

\_\_\_\_\_  
*(Signature)*

Jacqueline Coleman, CEO & President  
\_\_\_\_\_  
*(Printed name and title)*

**OWNER**

« »

\_\_\_\_\_  
*(Signature)*

Robert Rahja, Board Chairperson  
\_\_\_\_\_  
*(Printed name and title)*

77620556v2

# DRAFT AIA® Document B201™ – 2017

## Standard Form of Architect's Services: Design and Construction Contract Administration

### for the following PROJECT:

November 8, 2022 proposed referendum project: close both Chisholm Elementary and Vaughan-Steffensrud Elementary Schools and construct a new addition to the district's existing High School to house PreK-6 grade levels.

*The Scope of Work is defined in Exhibit A to AIA Document B102-2007.*

### THE OWNER:

Chisholm Public Schools ISD #695  
301 4<sup>th</sup> St SW  
Chisholm, MN 55719

### INGENSA, INC. ("InGensa"):

InGensa, Inc.  
18215 45<sup>th</sup> Ave. N, Suite C  
Plymouth, MN 55718

### THE AGREEMENT

This AIA Document B201-2007 (hereinafter, this "Agreement") is incorporated by reference in AIA Document B102-2007 Executed by the Owner and InGensa dated the **TBD** day of November in the year 2022.

### TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 SCOPE OF INGENSA'S BASIC SERVICES
- 3 ADDITIONAL SERVICES
- 4 OWNER'S RESPONSIBILITIES
- 5 COST OF THE WORK
- 6 COMPENSATION
- 7 ATTACHMENTS AND EXHIBITS

### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in Article 1 and in optional *Exhibit A*, Initial Information:

*(Complete Exhibit A, Initial Information and incorporate it into this services document at Section 7.1, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, InGensa's Subconsultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)*

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document provides the Architect's scope of services only and must be used with an owner-architect agreement. It may be used with AIA Document B102™-2017, Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services, to provide the Architect's sole scope of services, or with B102 in conjunction with other standard form services documents. It may also be used with G802™-2017, Amendment to the Professional Services Agreement, to create a modification to any owner-architect agreement.

**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

See Exhibit A entitled Scope of Work. Owner Project Budget is \$32,135,337.

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

September 2023

.2 Substantial Completion date:

September 2026

§ 1.3 The Owner and InGensa may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and InGensa shall appropriately adjust the schedule, InGensa's services and InGensa's compensation.

§ 1.4 InGensa's Consultants.

- .1 Architectural: ARI Architects
- .2 Mechanical & Electrical Engineering: ARI Architects
- .3 Structural Engineering: Northland Consulting Engineers
- .4 Civil Engineering: Larson Engineering

## ARTICLE 2 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 2.1 InGensa shall provide design services through licensed consultants ("InGensa's Subconsultants") including all architectural, structural, mechanical, civil and electrical engineering services. The parties agree and understand that all architectural services shall be provided by InGensa or engineer of records as a consultant to InGensa. InGensa shall be responsible for the negligent acts or omissions of InGensa's Subconsultants, subject to the limitation of liability in Section 4.1.3.1 of A102-2017.

§ 2.1.1 InGensa shall manage InGensa's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 2.1.2 InGensa shall coordinate its services with those services provided by the Owner and the Owner's consultants. InGensa shall be entitled to reasonably rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. InGensa shall provide prompt written notice to the Owner if InGensa becomes aware of any error, omission or inconsistency in such services or information, subject to InGensa's obligation as the design professional to investigate with reasonable due diligence the existing conditions, recognizing that this Project primarily involves renovation and replacement of existing structures and systems.

§ 2.1.3 As soon as practicable after the date of this Agreement, InGensa shall submit for the Owner's approval a schedule for the performance of InGensa's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by InGensa or Owner. With the Owner's approval, InGensa shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 2.1.4 InGensa shall not be responsible for an Owner's directive or substitution made without InGensa's approval.

§ 2.1.5 InGensa and InGensa's Subconsultants shall perform the services consistent with the professional skill and care ordinarily provided by architects and engineers performing the same or similar services, in the same or similar locality, under the same or similar circumstances. InGensa and InGensa's Subconsultants shall design the Project and supply plans and specifications that conform to all applicable Federal, State and local laws, codes, ordinances and regulations applicable to InGensa's services. InGensa and InGensa's Subconsultants shall require that the contractors provide written certification that they, and their subcontractors working on the Project, have complied with applicable laws at the time any request for payment is made. This

Agreement is made subject to all applicable law, statutes, codes, rules, ordinances and regulations governing the Owner and its rights, obligations limitations and requirements pertaining to this Agreement and the Project ("Laws").

#### **§ 2.1.6 INTENTIONALLY OMITTED**

**§ 2.1.7** InGensa shall assist the Owner in connection with the Owner's responsibility for obtaining building permits or filing other documents required for the approval of governmental authorities having jurisdiction over the Project. InGensa shall not be responsible for any delays by governmental authorities in the approval process, or for any refusal of governmental authorities to approve any such permits or other documents.

**§ 2.1.8** InGensa shall not be responsible for advising Owner on real estate matters, including the selection, suitability, value, condition, title, zoning or developability of any real estate which is or becomes a part of the Project.

#### **§ 2.2 SCHEMATIC DESIGN PHASE SERVICES**

**§ 2.2.1** InGensa shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to InGensa's services.

**§ 2.2.2** InGensa shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. InGensa shall notify the Owner of (1) any readily apparent inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

**§ 2.2.3** InGensa shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. InGensa shall reach an understanding with the Owner regarding the requirements of the Project.

**§ 2.2.4** InGensa, through InGensa's Subconsultants, shall provide Schematic Design Documents based on the mutually agreed-upon program, schedule, and budget for the Cost of Work. The documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components.

**§ 2.2.5** The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

**§ 2.2.5.1** InGensa, through InGensa's Subconsultants, shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 3.

**§ 2.2.5.2** InGensa shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

**§ 2.2.6** InGensa shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 5.3. As the design process progresses through the end of the preparation of the Construction Documents, InGensa shall update and refine the preliminary estimate of the Cost of Work.

**§ 2.2.7** InGensa shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

#### **§ 2.3 DESIGN DEVELOPMENT PHASE SERVICES**

**§ 2.3.1** Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, InGensa and InGensa's

Subconsultants shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

**§ 2.3.2** InGensa shall update the estimate of the Cost of the Work.

**§ 2.3.3** InGensa shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

**§ 2.3.4** The Owner shall review and approve Design Development Documents within a reasonable period of time following delivery.

## **§ 2.4 CONSTRUCTION DOCUMENTS PHASE SERVICES**

**§ 2.4.1** Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, InGensa, through InGensa's Subconsultants, shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and InGensa acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which InGensa shall review in accordance with Section 2.6.4.

**§ 2.4.2** InGensa shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

**§ 2.4.3** During the development of the Construction Documents, InGensa, along with the architect or engineer of record and the Owner, shall work together to develop and prepare the (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). InGensa and/or InGensa's Subconsultants shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

**§ 2.4.4** InGensa shall update the estimate for the Cost of the Work.

**§ 2.4.5** InGensa shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 5.5, and request the Owner's approval.

## **§ 2.5 BIDDING OR NEGOTIATION PHASE SERVICES**

Following the Owner's approval of the Construction Documents, InGensa shall assist the Owner in obtaining competitive bids; (2) confirming responsiveness of bids; (3) determining the successful bid, if any; and (4) awarding and preparing contracts for construction.

### **§ 2.5.2 COMPETITIVE BIDDING**

**§ 2.5.2.1** Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

**§ 2.5.2.2** InGensa shall assist the Owner in bidding the Project by

- .1** procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2** distributing the Bidding Documents to prospective bidders requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3** organizing and conducting a pre-bid conference for prospective bidders;

- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 2.5.2.3 InGensa shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

### § 2.5.3 NEGOTIATED PROPOSALS

§ 2.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 2.5.3.2 The InGensa shall assist the Owner in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 2.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the InGensa shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

## § 2.6 CONSTRUCTION PHASE SERVICES

### § 2.6.1 GENERAL

§ 2.6.1.1 InGensa shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201-2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201-2007, General Conditions of the Contract for Construction, those modifications shall not affect InGensa's services under this Agreement unless the Owner and InGensa amend this Agreement.

§ 2.6.1.2 InGensa shall advise and consult with the Owner during the Construction Phase Services. InGensa shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. InGensa shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall InGensa or InGensa's Subconsultants be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. InGensa shall be responsible for InGensa's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 2.6.1.3 Subject to Section 3.3, InGensa's responsibility to provide Construction Phase services commences with the award of the Contract for Construction and terminates on the date InGensa issues the final Certificate for Payment.

### § 2.6.2 EVALUATIONS OF THE WORK

§ 2.6.2.1 InGensa or InGensa's Subconsultants, as representatives of the Owner, shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 3.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, neither InGensa nor InGensa's Subconsultants shall be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits InGensa shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 2.6.2.2 InGensa shall reject Work that it discovers does not conform to the Contract Documents unless approved in writing by the Owner. Whenever InGensa considers it necessary or advisable, InGensa shall have the authority to

require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of InGensa nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of InGensa to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

**§ 2.6.2.3** InGensa shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. InGensa's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

**§ 2.6.2.4** Interpretations and decisions of InGensa shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, InGensa shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. InGensa's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

**§ 2.6.2.5** Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, General Conditions of the Contract for Construction, InGensa shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### **§ 2.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR**

**§ 2.6.3.1** InGensa shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. InGensa's certification for payment shall constitute a representation to the Owner, based on InGensa's evaluation of the Work as provided in Section 2.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of InGensa's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by InGensa.

**§ 2.6.3.2** The issuance of a Certificate for Payment shall not be a representation that InGensa has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**§ 2.6.3.3** InGensa shall maintain a record of the Applications and Certificates for Payment.

### **§ 2.6.4 SUBMITTALS**

**§ 2.6.4.1** InGensa shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. InGensa's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in InGensa's professional judgment to permit adequate review.

**§ 2.6.4.2** In accordance with InGensa-approved submittal schedule, InGensa shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. InGensa's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by InGensa, of any construction means, methods, techniques, sequences or procedures. InGensa's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 2.6.4.3** If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, InGensa shall specify the appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to InGensa. InGensa shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

**§ 2.6.4.4** Subject to the provisions of Section 3.3, InGensa shall review and respond to requests for information about the Contract Documents. InGensa shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. InGensa's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, InGensa shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

**§ 2.6.4.5** InGensa shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

### **§ 2.6.5 CHANGES IN THE WORK**

**§ 2.6.5.1** InGensa may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 3.3, InGensa shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

**§ 2.6.5.2** InGensa shall maintain records relative to changes in the Work.

### **§ 2.6.6 PROJECT COMPLETION**

**§ 2.6.6.1** InGensa shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

**§ 2.6.6.2** InGensa's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

**§ 2.6.6.3** When the Work is found to be substantially complete, InGensa shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

**§ 2.6.6.4** InGensa shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

**§ 2.6.6.5** Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, InGensa shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

### **§ 2.6.7 COMMISSIONING SERVICES**

**§ 2.6.7.1** InGensa, with the Owner's assistance, shall oversee the close-out of the Project, as well as the commencement and final reporting and response action determined by the commissioning services for each Project where commissioning is required pursuant to applicable law.

§ 2.6.7.2 InGensa shall coordinate and complete all testing and reporting required by applicable law. InGensa shall consult with Owner on post-construction issues until the Project is turned over to Owner.

**ARTICLE 3 ADDITIONAL SERVICES**

§ 3.1 Additional Services listed below are not included in Basic Services but may be required for the Project. InGensa shall provide the listed Additional Services only if specifically designated in the table below as InGensa’s responsibility, and the Owner shall compensate InGensa as provided in Section 6.2.

*(Designate the Additional Services InGensa shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 3.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 3.2 below or in an exhibit attached to this document and identified below)
§ 3.1.2 Multiple preliminary designs	Not Provided	
§ 3.1.3 Measured drawings	Not Provided	
§ 3.1.4 Existing facilities surveys	Owner	
§ 3.1.5 Site Evaluation and Planning (B203™–2007)	Not Provided	
§ 3.1.6 Building Information Modeling (E202™–2008)	Not Provided	
§ 3.1.10 Value Analysis (B204™–2007)	Not Provided	
§ 3.1.15 As-constructed record drawings	Not Provided	Provided by trade contractors
§ 3.1.16 Post occupancy evaluation	Not Provided	
§ 3.1.17 Facility Support Services (B210™–2007)	Not Provided	
§ 3.1.18 Tenant-related services	Not Provided	
§ 3.1.19 Coordination of Owner’s consultants	InGensa	
§ 3.1.27 Furniture, Furnishings, and Equipment Design (B253™–2007)	Not Provided	

*(Paragraphs deleted)*

§ 3.3 Additional Services may be provided after execution of this Agreement, if mutually agreed in writing, without invalidating the Agreement. Except for services required due to the fault of InGensa, any Additional Services provided in accordance with this Section 3.3 shall entitle InGensa to compensation pursuant to Section 6.3.

§ 3.3.1 Upon recognizing the need to perform the following Additional Services, InGensa shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. InGensa shall not proceed to provide the following services until InGensa receives the Owner’s written authorization.

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner’s schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner’s request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner’s consultants or contractors;
- .5 Preparing digital data for transmission to the Owner’s consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner (Schematic design, design development and construction documents);
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing except as follows: attendance at two (2) public meetings/hearings shall be included in InGensa’s Basic Services;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where InGensa is party thereto;

- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction;
- .11 Assistance to the Initial Decision Maker, if other than InGensa;
- .12 If additional planning services are required;
- .13 Providing services to verify the accuracy of drawings or other information furnished by the Owner;
- .14 Providing services of necessary consultants for other than architectural, structural, mechanical and electrical engineering portions of the Project provided as a part of this Agreement;
- .15 Providing any other services not otherwise included; or
- .16 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .17 Renderings, models, mockups, professional photography and presentation materials required by the Owner.

§ 3.3.2 InGensa shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to InGensa, and the Owner shall have no further obligation to compensate InGensa for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by InGensa;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service except as follows: where the need for the Change Order or Change Directive arises from an error or omission in InGensa's Instruments of Service, these services shall be included in InGensa's Basic Services;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent InGensa's Basic Services are affected, providing Construction Phase Services sixty (60) days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion, identified in Initial Information, whichever is earlier.

§ 3.3.3 InGensa shall provide Construction Phase Services exceeding the limits set forth in Section 3.3.4 below as Additional Services. When the limits below are reached, InGensa shall notify the Owner:

- .1 Visits to the site and inspections by InGensa appropriate to the state of construction over the duration of the Project during construction, but in no event less than weekly.
- .2 Reasonable and necessary inspections, but in no event less than two (2), for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents and all applicable laws, codes and ordinances.
- .3 Reasonable and necessary inspections, but in no event less than two (2), for any of the work to determine final completion. Additional inspection and visits as mutually agreed to by the parties to determine that the work is substantially completed in accordance with the Contract Documents and all applicable laws, codes, ordinances, rules, regulations and architectural and construction industry standards.
- .4 One (1) inspection of the Work before the expiration of the Contractor's correction period.

§ 3.3.4 If the services covered by this Agreement have not been completed by «December 31, 2026», through no fault of InGensa, extension of InGensa's services beyond that time shall be compensated as Additional Services.

§ 3.3.5 Notwithstanding anything to the contrary herein or otherwise, InGensa does not intend for this Agreement and the services furnished hereunder to constitute the "privatization" of any of Owner's government functions as defined in Minnesota Statutes Chapter 13 ("Chapter 13"). Owner will promptly notify InGensa, and InGensa will promptly notify Owner, of any Chapter 13 requests relating to the services hereunder.

#### ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 5.1; (2) the Owner's other costs; and, (3) reasonable contingencies

related to all of these costs. The Owner shall not significantly increase or decrease the overall budget, the portion of the budget allocated for the Cost of the Work, or contingencies included in the overall budget or a portion of the budget, without the agreement of InGensa to a corresponding change in the Project scope and quality.

**§ 4.2** The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

**§ 4.3** The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

**§ 4.4** The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

**§ 4.5** Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and InGensa's Subconsultants through InGensa about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify InGensa of any direct communications that may affect InGensa's services.

**§ 4.6** Before executing the Contract for Construction, the Owner shall coordinate InGensa's duties and responsibilities set forth in the Contract for Construction with InGensa's services set forth in this Agreement. The Owner shall provide InGensa a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

**§ 4.7** The Owner shall provide InGensa access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide InGensa access to the Work wherever it is in preparation or progress.

**§ 4.8** The Parties understand and agree InGensa is not required to make an exhaustive site inspection prior to commencing its services and InGensa is not required to verify concealed conditions on the site.

**§ 4.9** InGensa agrees to prepare the Health & Safety Report as required by the Owner or otherwise and negotiate, or assist the Owner in negotiating, the Health & Safety Report with the appropriate governing board or agency.

**§ 4.10** InGensa shall undertake and produce detailed financial models which will illustrate estimated costs and savings to be gained through the Work. This financial modeling shall be solely for the Owner's information. InGensa does not guarantee or warrant that costs and savings outlined in such financial modeling will be realized and shall not be liable to the Owner in the event that actual costs and savings identified in the financial modeling are less than estimated.

**§ 4.11** InGensa shall present, or assist the Owner in presenting, a detailed plan together with financial models to the appropriate governing board or agency for final review and approval.

**§ 4.12** InGensa shall complete and process all available utility rebate requests on behalf of the Owner, who shall be the beneficiary of such rebates.

## **ARTICLE 5 COST OF THE WORK**

**§ 5.1** For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by InGensa and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of InGensa, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 5.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 4.1, 5.4 and 5.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by InGensa, represent InGensa's judgment as a design professional. It is recognized, however, that neither InGensa nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, InGensa cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by InGensa.

§ 5.3 In preparing estimates of the Cost of Work, InGensa shall be permitted to include contingencies for, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. InGensa's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, InGensa shall provide such services as an Additional Service under Article 3.

§ 5.4 If the Bidding or Negotiation Phase has not commenced within ninety (90) days after InGensa submits the Construction Documents to the Owner, through no fault of InGensa, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 5.5 If at any time InGensa's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, InGensa shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with InGensa in making such adjustments.

§ 5.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 5.5 of AIA Document B102-2007;
- .4 in consultation with InGensa, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 5.7 If the Owner chooses to proceed under Section 5.6.4, InGensa, without additional compensation, shall modify the Construction Documents for which InGensa is responsible under this Agreement as necessary to comply with the Owner's budget for the Cost of the Work. InGensa's modification of the Construction Documents shall be the limit of InGensa's responsibility under this Article 5.

§ 5.8 InGensa shall be entitled to compensation in accordance with this Agreement for all services performed whether or not construction is commenced.

## ARTICLE 6 COMPENSATION

§ 6.1 InGensa's Basic Services described under Article 2 above are included in the compensation set forth in Section 6.1 of AIA Document B102-2007 executed by the Parties dated «November TBD, 2022».

§ 6.2 For Additional Services designated in Section 3.1, the Owner shall compensate InGensa on a time and material basis at hourly rates set forth in Exhibit B unless agreed to otherwise by Owner and InGensa.

§ 6.3 For Additional Services that may arise during the course of the Project, including those under Section 3.3, during the course of the Project, the Owner shall compensate InGensa on a time and material basis at hourly rates set forth on AIA Document B201 Article 6.7, Hourly Fee Breakdown unless agreed to otherwise by Owner and InGensa.

§ 6.4 Compensation for Additional Services of InGensa's Subconsultants when not included in Section 6.2 or 6.3, shall be the amount invoiced to InGensa plus a fee of one percent (1%), or as otherwise stated below:

§ 6.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	Fifteen percent ( 15 %)
Design Development Phase	Twenty percent ( 20 %)
Construction Documents Phase	Forty percent ( 40 %)
Bidding or Negotiation Phase	Five percent ( 5 %)
Construction Phase	Twenty percent ( 20 %)
<b>Total Basic Compensation</b>	<b>One Hundred percent ( 100 %)</b>

§ 6.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 6.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. InGensa shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 6.7 The hourly billing rates for services of InGensa and InGensa’s Subconsultants, if any, are set forth below. The rates shall be adjusted in accordance with InGensa’s and InGensa’s Subconsultants’ normal review practices. (If applicable, attach an exhibit of hourly billing rates or insert them below.)

«See Exhibit B for hourly rates.»

Employee or Category	Rate
« »	

**ARTICLE 7 ATTACHMENTS AND EXHIBITS**

The following attachments and exhibits, if any, are incorporated herein by reference:

- B201 Exhibit A – Scope of Work
- B201 Exhibit B – Hourly Rates

**OWNER**

« »

\_\_\_\_\_  
(Signature)

Adrian Norman, Superintendent  
(Printed name and title)

**INGENSA, INC.**

« »

\_\_\_\_\_  
(Signature)

Jacqueline Coleman, CEO & President  
(Printed name and title)

**OWNER**

« »

\_\_\_\_\_  
(Signature)

Robert Rahja, Board Chairperson  
(Printed name and title)

77620545v3

# DRAFT AIA® Document B102™ – 2017

## *Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services*

**AGREEMENT** made as of the **TBD** day of November in the year 2022 (the "Effective Date")

*(In words, indicate day, month and year.)*

**BETWEEN** InGensa's client identified as the Owner:

Chisholm Public Schools ISD #695  
301 4<sup>th</sup> St SW  
Chisholm, MN 55719

and InGensa, Inc. ("InGensa"):

InGensa, Inc.  
18215 45<sup>th</sup> Ave. N, Suite C  
Plymouth, MN 55446

for the following Project:

November 8, 2022 proposed referendum project: close both Chisholm Elementary and Vaughan-Steffensrud Elementary Schools and construct a new addition to the district's existing High School to house PreK-6 grade levels.

### TABLE OF ARTICLES

- 1 **INGENSA'S RESPONSIBILITIES**
- 2 **OWNER'S RESPONSIBILITIES**
- 3 **COPYRIGHTS AND LICENSES**
- 4 **CLAIMS AND DISPUTES**
- 5 **TERMINATION OR SUSPENSION**
- 6 **COMPENSATION**
- 7 **MISCELLANEOUS PROVISIONS**
- 8 **SPECIAL TERMS AND CONDITIONS**
- 9 **SCOPE OF THE AGREEMENT**

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

## ARTICLE 1 INGENSA'S RESPONSIBILITIES

§ 1.1 The Owner and InGensa agree as follows:

§ 1.1.1 InGensa is not a licensed architect. Therefore, InGensa shall be entitled to use architects, engineers and other design professionals as subconsultants to perform or assist in performing any of InGensa's services under this Agreement ("InGensa's Subconsultants"). The Parties intend to use AIA documents as the basis for the Contract Documents, including InGensa's contracts with InGensa Subconsultants. The Parties understand and agree that the architects or engineers of record on the Project will be InGensa's Subconsultants, and InGensa in no manner represents or implies that InGensa intends to perform architectural or engineering services for which it is not appropriately licensed. Contracts between InGensa and InGensa's Subconsultants shall reference the Owner as a third-party beneficiary as well as an additional insured for insurance purposes. InGensa shall be responsible for the negligent acts or omissions of InGensa's Subconsultants, subject to the limitation of liability in Section 4.1.3.1 below.

§ 1.1.2 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 Owner or InGensa. It is the intent of the Parties that InGensa's contract with architects, engineers, other design professionals and others performing InGensa's services on the Project are for the direct benefit and third-party benefit of the Owner and that the Owner is entitled to the benefit of such contracts. InGensa will include language incorporating this intent in any contracts which InGensa may have with its Subconsultants and any contracts between InGensa's Subconsultants and other consultants.

§ 1.1.3 The Parties intend to use AIA documents as the basis for the Owner's contracts with its contractors. The Owner, not InGensa, shall execute and procure construction agreements with all appropriate contractors in accordance with applicable laws.

§ 1.1.4 The Parties understand and agree that a significant number of improvements and additions have been made at the Site over time. The Parties understand and agree that InGensa does not represent or warrant the quality or acceptability of the previous work.

§ 1.1.5 The Parties understand and agree InGensa and InGensa's Subconsultants will provide design, engineering, and construction management services for the improvements outlined in Exhibit A.

§ 1.1.6 The services to be performed by InGensa and InGensa's Subconsultants under this Agreement include the design and construction contract administration services as set forth in Article 2 of AIA Document B201-2007 and the construction management services set forth in Articles 1, 2, and 3 of AIA Document B144/ARCH-CM-1993, and such other services as expressly set forth therein and in any other documents comprising this Agreement as enumerated in Article 9 below. It is understood by the Parties that contracts for such professional services are not subject to competitive bidding requirements. All professionals providing such services whether directly by InGensa or professionals under contract with InGensa shall be qualified, and where required, properly licensed and/or certified to perform these services.

§ 1.1.7 InGensa, by and through InGensa's Subconsultants, shall perform its design services consistent with the professional skill and care ordinarily provided by architects and engineers performing the same or similar services, in the same or similar locality, under the same or similar circumstances. InGensa shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 1.1.8 InGensa shall identify a representative authorized to act on behalf of InGensa with respect to the Project.

§ 1.1.9 Except with the Owner's knowledge and consent, InGensa shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise InGensa's professional judgment with respect to this Project.

§ 1.1.10 Prior to commencing the services, InGensa shall provide a certificate of insurance to the Owner showing its insurance coverages, and InGensa shall maintain such insurance, naming Owner as an additional insured under its Comprehensive General Bodily Injury and Property Damage policy, in full force and effect at all times until the services have been completed, in the following minimum amounts:

<b>COVERAGES</b>	<b>LIMITS OF LIABILITIES</b>
Workmen's Compensation, including Employer's Liability Insurance	Statutory
Comprehensive General Bodily Injury & Property Damage Liability Insurance, including Contractual	\$1,000,000 Per Occurrence \$2,000,000 Products & Completed Operations Aggregate
Comprehensive General Personal Injury Liability Insurance, including Contractual	\$1,000,000 Per Occurrence
Comprehensive Automobile Liability Insurance: Bodily Injury & Property Damage Liability Insurance	\$1,000,000 Per Accident
Professional Liability Insurance	\$3,000,000 Per Claim \$3,000,000 Aggregate
Umbrella Liability Insurance	\$1,000,000 Per Occurrence \$1,000,000 Aggregate

Owner shall maintain Property Insurance (builder's risk completed value, or equivalent property insurance) in sufficient amount for the entire period of the Agreement on a replacement cost basis. Such insurance shall be on an "all risk" basis including theft and shall protect the interest of the Owner, InGensa, InGensa's Subconsultants, Owner's Contractors and Subcontractors and shall name Owner and InGensa as an additional insured, and shall cover reasonable compensation for InGensa's services and expenses required as a result of such insured loss.

**§ 1.11** InGensa and its Subconsultants shall furnish proof of insurance confirming that they have procured the foregoing required insurance coverages prior to execution of this Agreement. Such proof shall also confirm that the insurer has agreed that it will not cancel the insurance without giving the Owner thirty (30) days advance written notice of its intent to cancel. InGensa shall likewise require of its Subconsultants' proof of insurance meeting the foregoing requirements as a condition precedent to their engagement to perform services on the Project.

## **ARTICLE 2 OWNER'S RESPONSIBILITIES**

**§ 2.1** Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within fifteen (15) days after receipt of a written request from InGensa, the Owner shall furnish the requested information as necessary and relevant for InGensa to evaluate, give notice of or enforce lien rights.

**§ 2.2** The Owner shall identify a representative authorized to act on the Owner's behalf only with respect to specific matters delegated to the representative in writing by the Owner's Board. In no event shall the Owner's Representative have authority to agree to any adjustments in the Contract Sum or Contract Time. Adjustments to the Contract Sum or Contract Time require approval by the Owner's Board. The Owner shall render decisions and approve InGensa's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of InGensa's services.

**§ 2.3** InGensa shall coordinate the services of InGensa's Subconsultants with those services provided by InGensa itself. Upon InGensa's request, the Owner shall furnish copies of the scope of consulting services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement to be furnished by InGensa, or authorize InGensa to furnish them as an Additional Service, when InGensa requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

**§ 2.4** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. Except with regard to a claim covered under Owner's property insurance or builder's risk insurance, for which claims Owner waives

subrogation against InGensa, nothing herein shall be construed to require the Owner to defend or indemnify InGensa for InGensa's own negligence or intentional acts.

**§ 2.5** The Owner shall provide prompt written notice to InGensa if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Instruments of Service.

**§ 2.6** The Owner shall provide InGensa all Record Drawings, as-built drawings, or construction drawings of the existing facilities within the Owner's possession, custody or control. InGensa shall be entitled to reasonably rely on any such drawings.

### **ARTICLE 3 COPYRIGHTS AND LICENSES**

**§ 3.1** InGensa and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and InGensa intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

**§ 3.2** InGensa and InGensa's Subconsultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of InGensa and InGensa's Subconsultants.

**§ 3.3** Upon execution of this Agreement, InGensa grants to the Owner a nonexclusive license to use the Instruments of Service solely and exclusively for the Project, provided that the Owner performs its obligations, including prompt payment of all sums when due, under this Agreement. InGensa shall obtain similar nonexclusive licenses from InGensa's Subconsultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services for the Project and for future use in maintaining, repairing, and improving the Project. The Owner's non-exclusive license to use the Instruments of Service shall be governed by Section 5.8.

#### **§ 3.3.1 INTENTIONALLY OMITTED**

**§ 3.4** Except for the licenses granted in this Article 3, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of InGensa. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to InGensa and InGensa's Subconsultants.

### **ARTICLE 4 CLAIMS AND DISPUTES**

#### **§ 4.1 GENERAL**

##### **§ 4.1.1 INTENTIONALLY OMITTED**

**§ 4.1.2** To the extent damages are covered by property insurance, the Owner and InGensa waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction, if applicable. The Owner or InGensa, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein. Owner's builder's risk insurance shall be primary and not contributory.

**§ 4.1.3** To the extent allowed by law, InGensa and the Owner each agree to indemnify the other party and its respective officers, agents, directors and employees from third party claims, demands, actions, liabilities, expenses or suits for bodily injury, including death or tangible property damage to the extent resulting from the intentional misconduct or any negligent act or omission by its employees or agents. The parties expressly agree that the other shall be responsible only to the extent such injury or damage was caused by the intentional misconduct or negligent

act or omission of its own employees or agents and neither party shall be responsible for any injury or damage to the extent caused, or contributed to, in any manner by the other.

**§ 4.1.3.1** INGENSA'S LIABILITY TO OWNER UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT OF ANY INSURANCE PROCEEDS AVAILABLE TO AND PAID TO OR ON BEHALF OF INGENSA. THIS LIMITATION OF LIABILITY SHALL APPLY TO ANY DAMAGES THE OWNER INCURS AS A RESULT OF THE SERVICES, INCLUDING BUT NOT LIMITED TO DAMAGES CHARACTERIZED AS SPECIAL, INDIRECT, CONSEQUENTIAL, REMOTE, PUNITIVE, EXEMPLARY; LOSS OF PROFITS OR REVENUE, LOSS OF USE, OR SIMILAR DAMAGES, REGARDLESS OF HOW CHARACTERIZED, ARISING IN ANY MANNER FROM THIS AGREEMENT, THE SERVICES, THE IMPROVEMENT MEASURES, THE PREMISES, OR OTHERWISE.

#### **§ 4.1.4 HAZARDOUS MATERIALS**

**§ 4.1.4.1 Asbestos Containing Materials** –Neither Party desires to or is licensed to undertake direct obligations relating to the identification, abatement, cleanup, control, removal or disposal of asbestos-containing materials (“ACM”). Consistent with applicable laws, Owner shall supply InGensa with any information in its possession relating to the presence of ACM in areas where InGensa undertakes any services that may result in the disturbance of ACM. It is InGensa's policy to seek certification for facilities constructed prior to 1982 that no ACM is present, and Owner shall provide such certification for buildings it owns, or aid InGensa in receiving such certification from facility owners in the case of buildings that it does not own, if InGensa will undertake any services in the facility that would disturb ACM. If either Owner or InGensa becomes aware of or suspects the presence of ACM that may be disturbed by InGensa's services, it shall immediately stop the services in the affected area and notify the other's contacts. If ACM is identified in the information provided by the Owner to InGensa, and the Project services will disturb or require abatement of any ACM, the Owner shall be responsible at its sole expense for addressing abatement of such ACM. Except where InGensa expressly agrees to provide environmental services under this Agreement, InGensa shall have no obligation to monitor, verify or otherwise warrant that such abatement work has been completed.

**§ 4.1.4.2 Other Hazardous Materials** – InGensa shall have no obligations relating to the identification, abatement, cleanup, control, removal or disposal of mold, regardless of the cause of the mold. InGensa shall be responsible for removing or disposing of any Hazardous Materials that it uses in providing any services (“InGensa Hazardous Materials”) and, other than mold, for the remediation of any areas impacted by the release of InGensa Hazardous Materials. For other Hazardous Materials that may be otherwise present at its facilities (“Non-InGensa Hazardous Materials”), Owner shall supply InGensa with any information in its possession relating to the presence of such materials if their presence may affect InGensa's performance of any services. If either Owner or InGensa becomes aware of or suspects the presence of Non-InGensa Hazardous Materials that may interfere with InGensa's services, it shall immediately stop the services in the affected area and notify the other's contacts. As between Owner and InGensa, Owner shall be responsible for removing and disposing of mold and Non-InGensa Hazardous Materials from its facilities and the remediation of any areas impacted by mold or the release of Non-InGensa Hazardous Materials.

**§ 4.1.4.3 Environmental Indemnity** – To the fullest extent permitted by Law, Owner shall indemnify and hold harmless InGensa and InGensa's Subconsultants, and their respective directors, officers, employees, agents, representatives, shareholders, affiliates, and assigns and successors, from and against any and all losses, costs, damages, expenses (including reasonable legal fees and defense costs), claims, causes of action or liability, directly or indirectly, relating to or arising from the Owner's use, or the storage, release, discharge, handling or presence of ACM, mold or Non-InGensa Hazardous Materials on, under or about the facilities, or Owner's failure to comply with this Section 4.1.4.

**§ 4.1.5 FORCE MAJEURE** – Neither party shall be responsible to the other for damages, loss, injury or delay caused by conditions beyond its reasonable control, and without the intentional misconduct or negligence of that party (“Uncontrollable Events”). Uncontrollable Events include, but are not limited to: (a) extreme acts of nature for which reasonable measures were taken by the party to mitigate the effects, where possible; (b) acts of Government agencies; (c) strikes and/or labor disputes; (d) fire; (e) explosions or other casualties; (f) thefts; (g) vandalism; (h) terrorism, riots or war; (i) unavailability of parts, materials or supplies; (j) change in law, including the promulgation, modification or repeal of any law or the imposition of any material condition on the issuance or renewal of any permit which (A) occurs after the Effective Date, (B) establishes new laws or requires any new or

existing permits, or modifies any law or permit requirement for the Project existing as of the Effective Date, or (C) materially and adversely affects the cost or expense of the services to InGensa; (k) lawsuits from parties seeking to enjoin the Owner, InGensa or both from performing in accordance with the Agreement, or (l) any other event beyond InGensa's control.

**§ 4.1.6 DELAYS** – If either party is delayed in the commencement or completion of these services by failure of the other party to perform its obligations under this Agreement and Schedules or failure by the other party to cooperate in the timely condition of the services, then the delayed party shall provide written notice to the other party of the existence, extent of, and reason for such delays. An equitable adjustment in completion dates and compensation shall be made as a result.

## **§ 4.2 MEDIATION**

### **§ 4.2.1 INTENTIONALLY OMITTED**

**§ 4.2.2** The Owner and InGensa shall endeavor to resolve claims, disputes and other matters in question between them by mediation. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 4.2.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation and ratified by the Owner's Board shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**§ 4.2.4** If the parties do not resolve a dispute through mediation pursuant to this Section 4.2, the method of binding dispute resolution shall be the following:

*(Check the appropriate box. If the Owner and InGensa do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

Arbitration pursuant to Section 4.3 of this Agreement

Litigation in a court of competent jurisdiction (venue shall be the Minnesota District Court, Sixth Judicial District, Hibbing, Minnesota, or the closest federal courthouse in the U.S. Federal District Court for the District of Minnesota)

Other (Specify)

### **§ 4.3 INTENTIONALLY OMITTED**

## **ARTICLE 5 TERMINATION OR SUSPENSION**

**§ 5.1** Except for amounts that are the subject of a good-faith dispute, if the Owner fails to make payments to InGensa in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at InGensa's option, cause for suspension of performance of services under this Agreement. If InGensa elects to suspend services, InGensa shall give seven (7) days' written notice to the Owner before suspending services. In the event of a suspension of services, InGensa shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services, so long as the suspension of services is through no fault of InGensa or its Subconsultants. Before resuming services, InGensa shall be paid all sums which are not the subject of a good-faith dispute prior to suspension and any expenses incurred in the interruption and resumption of InGensa's services. InGensa's fees for the remaining services and the time schedules shall be equitably adjusted.

**§ 5.2** If the Owner suspends the Project, InGensa shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, InGensa shall be compensated for expenses incurred in the interruption and resumption of InGensa's services. InGensa's fees for the remaining services and the time schedules shall be equitably adjusted.

**§ 5.3** If the Owner suspends the Project for more than ninety (90) cumulative days for reasons other than the fault of InGensa, InGensa may terminate this Agreement by giving not less than seven (7) days' written notice.

**§ 5.4** Either party may terminate this Agreement upon not less than seven (7) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

**§ 5.5** The Owner may terminate this Agreement upon not less than seven (7) days' written notice to InGensa for the Owner's convenience and without cause.

**§ 5.6** In the event of termination not the fault of InGensa, InGensa shall be compensated for services performed prior to termination, together with Reimbursable Expenses as defined in Section 6.2 then due.

**§ 5.7 INTENTIONALLY OMITTED**

**§ 5.8** In the event of Termination, and upon payment to InGensa of all sums that are not the subject of a good faith dispute, the Owner and its designated agents and consultants, shall have a non-exclusive license to use InGensa and its Subconsultants' Instruments of Service, documents, data, and records relating to the Project, in the condition they were in on the date of Termination, for the limited purpose of completing, maintaining, and operating the Project. InGensa's contracts with its Subconsultants shall incorporate provisions whereby its Subconsultants agree to be bound by the terms of this section. Upon request, InGensa and its Subconsultants shall promptly furnish the Owner with legible copies of their Instruments of Service, documents, data, and records relating to the Project, and the Owner shall reimburse InGensa for the reasonable copying and clerical expenses therefor.

**ARTICLE 6 COMPENSATION**

**§ 6.1** The Owner shall compensate InGensa for services described in Section 1.1 as set forth below:

The Owner shall compensate InGensa in the amount of \$5,576,171 for

- Program Management,
- Architectural & Engineering (Mechanical, Electrical, Civil),
- Construction Management,
- Commissioning Services,
- General Conditions,
- All Reimbursables and other services as described herein.

**§ 6.1.1** General Conditions include the following:

1. Building Permit
2. Plan Review
3. Job site Office Trailer
4. Job site Office Equipment
5. Construction Signage
6. Safety Barricade
7. General Rubbish Removal
8. Temporary Site/Access Roads
9. Temporary Toilets

**§ 6.2 INTENTIONALLY DELETED**

**§ 6.3 COMPENSATION FOR USE OF INSTRUMENTS OF SERVICE**

The Owner's non-exclusive license to use Instruments of Service shall be at no additional cost and governed by Section 5.8.

## § 6.4 PAYMENTS TO INGENSA

### § 6.4.1 INTENTIONALLY OMITTED

§ 6.4.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of InGensa's invoice. Amounts unpaid thirty-five (35) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of InGensa.

Interest at the rate of four percent (4.00%) per annum simple interest.

§ 6.4.3 The Owner shall not withhold amounts from InGensa's compensation to impose a penalty or liquidated damages on InGensa. The Owner's right, if any, to offset sums due InGensa shall be governed by applicable law.

§ 6.4.4 InGensa and its Subconsultants shall keep and maintain accurate documentation of all claimed reimbursable expenses in such a form that they may be independently audited and shall provide said documentation with every invoice seeking payment for those expenses.

## ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 This Agreement shall be governed by the law of the place where the Project is located.

§ 7.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 7.3 The Owner and InGensa, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor InGensa shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 7.4 If the Owner requests InGensa to execute certificates, the proposed language of such certificates shall be submitted to InGensa for review at least fourteen (14) days prior to the requested dates of execution. If the Owner requests InGensa to execute consents reasonably required to facilitate assignment to a lender, InGensa shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to InGensa for review at least 14 days prior to execution. InGensa shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 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 Owner or InGensa.

§ 7.6 Subject to Owner's written consent, consent not to be unreasonably withheld, InGensa shall have the right to include photographic or artistic representations of the design of the Project among InGensa's promotional and professional materials. InGensa shall be given reasonable access to the completed Project to make such representations. However, InGensa's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised InGensa in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for InGensa in the Owner's promotional materials for the Project.

§ 7.7 If Owner receives information specifically designated by the other party as "confidential" or "business proprietary," Owner 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 perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information. InGensa maintains that this Agreement does not constitute the "privatization" of any of Owner's government functions, or otherwise require or authorize InGensa to perform any such functions as defined in Minn. Stat. Chapter 13 ("Chapter 13") or otherwise. InGensa further maintains that data created, collected, received, stored, used, maintained, or disseminated by InGensa in connection with this Agreement, but not conveyed to Owner, is

confidential and not subject to disclosure under Chapter 13. Owner will promptly notify InGensa, and InGensa will promptly notify Owner, of any Chapter 13 requests relating to the Project.

**§ 7.8** If the services covered by this Agreement have not been completed by December 31, 2026, through no fault of InGensa, extension of InGensa's services beyond that time shall be compensated accordingly.

**§ 7.9** Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, InGensa agrees that the books, records, documents and accounting procedures and practices of InGensa, that are relevant to the Contract or transaction, are subject to examination by the Owner and the state auditor for a minimum of six (6) years. InGensa shall maintain such records for a minimum of six (6) years after final payment.

**§ 7.10** All payments made to InGensa under this Agreement shall be governed by the Municipal Prompt Payment Act, Minnesota Statutes, Section 471.425 ("MPPA"), unless waived by mutual agreement of the parties for good cause. InGensa shall comply with subdivision 4a of the PPA requiring payment to its Subconsultants within ten (10) days of receipt or be subject to the penalties set forth in PPA subdivision 4a.

**ARTICLE 8 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Agreement are as follows:

«None.»

**ARTICLE 9 SCOPE OF THE AGREEMENT**

**§ 9.1** This Agreement represents the entire and integrated agreement between the Owner and InGensa and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and InGensa.

**§ 9.2** This Agreement is comprised of the following documents listed below:

- .1 AIA Document B102–2007, Standard Form Agreement Between Owner and Architect
- .2 AIA Document B201–2007, Standard Form of Architect’s Services: Design and Construction Contract Administration
- .3 AIA Document B144 ARCH/CM-1993, Standard Form of Amendment for the Agreement Between Owner and Architect
- .4 B102 Exhibit A: Chisholm Public Schools #695 Scope of Work
- .5 B201 Exhibits A and B

This Agreement entered into as of the day and year first written above.

**OWNER**

« »

\_\_\_\_\_  
(Signature)

Adrian Norman, Superintendent  
\_\_\_\_\_  
(Printed name and title)

**INGENSA, INC.**

« »

\_\_\_\_\_  
(Signature)

Jacqueline Coleman, CEO & President  
\_\_\_\_\_  
(Printed name and title)

**OWNER**

« »

\_\_\_\_\_  
(Signature)

Robert Rahja, Board Chairperson  
\_\_\_\_\_  
(Printed name and title)

77620531v3

DRAFT

# AIA<sup>®</sup> Document B102<sup>™</sup> - 2017

## *Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services*

**AGREEMENT** made as of the **TBD** day of November in the year 2022(the "Effective Date")  
(In words, indicate day, month and year.)

**BETWEEN** InGensa's client identified as the Owner:

Chisholm Public Schools ISD #695  
301 4<sup>th</sup> St SW  
Chisholm, MN 55719

and InGensa, Inc. ("InGensa"):

InGensa, Inc.  
18215 45<sup>th</sup> Ave. N, Suite C  
Plymouth, MN 55446

for the following Project:

November 8, 2022 proposed referendum project: close both Chisholm Elementary and  
Vaughan-Steffensrud Elementary Schools and construct a new addition to the district's  
existing High School to house PreK-6 grade levels.

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

### TABLE OF ARTICLES

- 1 INGENSA'S RESPONSIBILITIES
- 2 OWNER'S RESPONSIBILITIES
- 3 COPYRIGHTS AND LICENSES
- 4 CLAIMS AND DISPUTES
- 5 TERMINATION OR SUSPENSION
- 6 COMPENSATION
- 7 MISCELLANEOUS PROVISIONS
- 8 SPECIAL TERMS AND CONDITIONS
- 9 SCOPE OF THE AGREEMENT

**ELECTRONIC COPYING** of any portion of this AIA<sup>®</sup> Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

## ARTICLE 1 INGENSA'S RESPONSIBILITIES

§ 1.1 The Owner and InGensa agree as follows:

§ 1.1.1 InGensa is not a licensed architect. Therefore, InGensa shall be entitled to use architects, engineers and other design professionals as subconsultants to perform or assist in performing any of InGensa's services under this Agreement ("InGensa's Subconsultants"). The Parties intend to use AIA documents as the basis for the Contract Documents, including InGensa's contracts with InGensa Subconsultants. The Parties understand and agree that the architects or engineers of record on the Project will be InGensa's Subconsultants, and InGensa in no manner represents or implies that InGensa intends to perform architectural or engineering services for which it is not appropriately licensed. Contracts between InGensa and InGensa's Subconsultants shall reference the Owner as a third-party beneficiary as well as an additional insured for insurance purposes. [InGensa shall be responsible for the negligent acts or omissions of InGensa's Subconsultants, subject to the limitation of liability in Section 4.1.3.1 below.](#)

§ 1.1.2 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 Owner or InGensa. It is the intent of the Parties that InGensa's contract with architects, engineers, other design professionals and others performing InGensa's services on the Project are for the direct benefit and third-party benefit of the Owner and that the Owner is entitled to the benefit of such contracts. InGensa will include language incorporating this intent in any contracts which InGensa may have with its Subconsultants and any contracts between InGensa's Subconsultants and other consultants.

§ 1.1.3 The Parties intend to use AIA documents as the basis for the Owner's contracts with its contractors. The Owner, not InGensa, shall execute and procure construction agreements with all appropriate contractors in accordance with applicable laws.

§ 1.1.4 The Parties understand and agree that a significant number of improvements and additions have been made at the Site over time. The Parties understand and agree that InGensa does not represent or warrant the quality or acceptability of the previous work.

§ 1.1.5 The Parties understand and agree InGensa and InGensa's Subconsultants will provide design, engineering, and construction management services for the improvements outlined in Exhibit A.

§ 1.1.6 The services to be performed by InGensa and InGensa's Subconsultants under this Agreement include the design and construction contract administration services as set forth in Article 2 of AIA Document B201-2007 and the construction management services set forth in Articles 1, 2, and 3 of AIA Document B144/ARCH-CM-1993, and such other services as expressly set forth therein and in any other documents comprising this Agreement as enumerated in Article 9 below. It is understood by the Parties that contracts for such professional services are not subject to competitive bidding requirements. All professionals providing such services whether directly by InGensa or professionals under contract with InGensa shall be qualified, and where required, properly licensed and/or certified to perform these services.

§ 1.1.7 InGensa, by and through InGensa's Subconsultants, shall perform its [design](#) services consistent with the professional skill and care ordinarily provided by architects and engineers performing the same or similar services, in the same or similar locality, under the same or similar circumstances. InGensa shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 1.1.8 InGensa shall identify a representative authorized to act on behalf of InGensa with respect to the Project.

§ 1.1.9 Except with the Owner's knowledge and consent, InGensa shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise InGensa's professional judgment with respect to this Project.

§ 1.1.10 Prior to commencing the services, InGensa shall provide a certificate of insurance to the Owner showing its insurance coverages, and InGensa shall maintain such insurance, naming Owner as an additional insured under its Comprehensive General Bodily Injury and Property Damage policy, in full force and effect at all times until the services have been completed, in the following minimum amounts:

COVERAGES	LIMITS OF LIABILITIES
Workmen's Compensation, including Employer's Liability Insurance	Statutory
Comprehensive General Bodily Injury & Property Damage Liability Insurance, including Contractual	\$1,000,000 Per Occurrence \$2,000,000 Products & Completed Operations Aggregate
Comprehensive General Personal Injury Liability Insurance, including Contractual	\$1,000,000 Per Occurrence
Comprehensive Automobile Liability Insurance: Bodily Injury & Property Damage Liability Insurance	\$1,000,000 Per Accident
Professional Liability Insurance	\$3,000,000 Per Claim \$3,000,000 Aggregate
Umbrella Liability Insurance	\$1,000,000 Per Occurrence \$1,000,000 Aggregate

Owner shall maintain Property Insurance (builder's risk completed value, or equivalent property insurance) in sufficient amount for the entire period of the Agreement on a replacement cost basis. Such insurance shall be on an "all risk" basis including theft and shall protect the interest of the Owner, InGensa, InGensa's Subconsultants, Owner's Contractors and Subcontractors and shall name Owner and InGensa as an additional insured, and shall cover reasonable compensation for InGensa's services and expenses required as a result of such insured loss.

§ 1.11 InGensa and its Subconsultants shall furnish proof of insurance confirming that they have procured the foregoing required insurance coverages prior to execution of this Agreement. Such proof shall also confirm that the insurer has agreed that it will not cancel the insurance without giving the Owner thirty (30) days advance written notice of its intent to cancel. InGensa shall likewise require of its Subconsultants' proof of insurance meeting the foregoing requirements as a condition precedent to their engagement to perform services on the Project.

## ARTICLE 2 OWNER'S RESPONSIBILITIES

§ 2.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within fifteen (15) days after receipt of a written request from InGensa, the Owner shall furnish the requested information as necessary and relevant for InGensa to evaluate, give notice of or enforce lien rights.

§ 2.2 The Owner shall identify a representative authorized to act on the Owner's behalf only with respect to specific matters delegated to the representative in writing by the Owner's Board. In no event shall the Owner's Representative have authority to agree to any adjustments in the Contract Sum or Contract Time. Adjustments to the Contract Sum or Contract Time require approval by the Owner's Board. The Owner shall render decisions and approve InGensa's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of InGensa's services.

§ 2.3 InGensa shall coordinate the services of InGensa's Subconsultants with those services provided by InGensa itself. Upon InGensa's request, the Owner shall furnish copies of the scope of consulting services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement to be furnished by InGensa, or authorize InGensa to furnish them as an Additional Service, when InGensa requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 2.4 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. Except with regard to a claim covered under Owner's property insurance or builder's risk insurance, for which claims Owner waives

subrogation against InGensa, nothing herein shall be construed to require the Owner to defend or indemnify InGensa for InGensa's own negligence or intentional acts.

§ 2.5 The Owner shall provide prompt written notice to InGensa if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Instruments of Service.

§ 2.6 The Owner shall provide InGensa all Record Drawings, as-built drawings, or construction drawings of the existing facilities within the Owner's possession, custody or control. InGensa shall be entitled to reasonably rely on any such drawings.

### ARTICLE 3 COPYRIGHTS AND LICENSES

§ 3.1 InGensa and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and InGensa intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 3.2 InGensa and InGensa's Subconsultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of InGensa and InGensa's Subconsultants.

§ 3.3 Upon execution of this Agreement, InGensa grants to the Owner a nonexclusive license to use the Instruments of Service solely and exclusively for the Project, provided that the Owner performs its obligations, including prompt payment of all sums when due, under this Agreement. InGensa shall obtain similar nonexclusive licenses from InGensa's Subconsultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services for the Project and for future use in maintaining, repairing, and improving the Project. The Owner's non-exclusive license to use the Instruments of Service shall be governed by Section 5.8.

#### § 3.3.1 INTENTIONALLY OMITTED

§ 3.4 Except for the licenses granted in this Article 3, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of InGensa. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to InGensa and InGensa's Subconsultants.

### ARTICLE 4 CLAIMS AND DISPUTES

#### § 4.1 GENERAL

##### § 4.1.1 INTENTIONALLY OMITTED

§ 4.1.2 To the extent damages are covered by property insurance, the Owner and InGensa waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction, if applicable. The Owner or InGensa, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein. Owner's builder's risk insurance shall be primary and not contributory.

§ 4.1.3 To the extent allowed by law, InGensa and the Owner each agree to indemnify the other party and its respective officers, agents, directors and employees from third party claims, demands, actions, liabilities, expenses or suits for bodily injury, including death or tangible property damage to the extent resulting from the intentional misconduct or any negligent act or omission by its employees or agents. The parties expressly agree that the other shall be responsible only to the extent such injury or damage was caused by the intentional misconduct or negligent

act or omission of its own employees or agents and neither party shall be responsible for any injury or damage to the extent caused, or contributed to, in any manner by the other.

**§ 4.1.3.1** ~~INGENSA SHALL NOT BE LIABLE~~INGENSA'S LIABILITY TO THE OWNER FOR ANY AMOUNT EXCEEDING THE COMPENSATION PAYABLE TO INGENSA UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT OF ANY INSURANCE PROCEEDS AVAILABLE TO AND PAID TO OR ON BEHALF OF INGENSA. THIS LIMITATION OF LIABILITY SHALL APPLY TO ANY DAMAGES THE OWNER INCURS AS A RESULT OF THE SERVICES, INCLUDING BUT NOT LIMITED TO DAMAGES CHARACTERIZED AS SPECIAL, INDIRECT, CONSEQUENTIAL, REMOTE, PUNITIVE, EXEMPLARY; LOSS OF PROFITS OR REVENUE, LOSS OF USE, OR SIMILAR DAMAGES, REGARDLESS OF HOW CHARACTERIZED, ARISING IN ANY MANNER FROM THIS AGREEMENT, THE SERVICES, THE IMPROVEMENT MEASURES, THE PREMISES, OR OTHERWISE.

#### **§ 4.1.4 HAZARDOUS MATERIALS**

**§ 4.1.4.1 Asbestos Containing Materials** –Neither Party desires to or is licensed to undertake direct obligations relating to the identification, abatement, cleanup, control, removal or disposal of asbestos-containing materials (“ACM”). Consistent with applicable laws, Owner shall supply InGensa with any information in its possession relating to the presence of ACM in areas where InGensa undertakes any services that may result in the disturbance of ACM. It is InGensa’s policy to seek certification for facilities constructed prior to 1982 that no ACM is present, and Owner shall provide such certification for buildings it owns, or aid InGensa in receiving such certification from facility owners in the case of buildings that it does not own, if InGensa will undertake any services in the facility that would disturb ACM. If either Owner or InGensa becomes aware of or suspects the presence of ACM that may be disturbed by InGensa’s services, it shall immediately stop the services in the affected area and notify the other's contacts. If ACM is identified in the information provided by the Owner to InGensa, and the Project services will disturb or require abatement of any ACM, the Owner shall be responsible at its sole expense for addressing abatement of such ACM. Except where InGensa expressly agrees to provide environmental services under this Agreement, InGensa shall have no obligation to monitor, verify or otherwise warrant that such abatement work has been completed.

**§ 4.1.4.2 Other Hazardous Materials** – InGensa shall have no obligations relating to the identification, abatement, cleanup, control, removal or disposal of mold, regardless of the cause of the mold. InGensa shall be responsible for removing or disposing of any Hazardous Materials that it uses in providing any services (“InGensa Hazardous Materials”) and, other than mold, for the remediation of any areas impacted by the release of InGensa Hazardous Materials. For other Hazardous Materials that may be otherwise present at its facilities (“Non-InGensa Hazardous Materials”), Owner shall supply InGensa with any information in its possession relating to the presence of such materials if their presence may affect InGensa’s performance of any services. If either Owner or InGensa becomes aware of or suspects the presence of Non-InGensa Hazardous Materials that may interfere with InGensa’s services, it shall immediately stop the services in the affected area and notify the other’s contacts. As between Owner and InGensa, Owner shall be responsible for removing and disposing of mold and Non-InGensa Hazardous Materials from its facilities and the remediation of any areas impacted by mold or the release of Non-InGensa Hazardous Materials.

**§ 4.1.4.3 Environmental Indemnity** – To the fullest extent permitted by Law, Owner shall indemnify and hold harmless InGensa and InGensa’s Subconsultants, and their respective directors, officers, employees, agents, representatives, shareholders, affiliates, and assigns and successors, from and against any and all losses, costs, damages, expenses (including reasonable legal fees and defense costs), claims, causes of action or liability, directly or indirectly, relating to or arising from the Owner’s use, or the storage, release, discharge, handling or presence of ACM, mold or Non-InGensa Hazardous Materials on, under or about the facilities, or Owner’s failure to comply with this Section 4.1.4.

**§ 4.1.5 FORCE MAJEURE** – Neither party shall be responsible to the other for damages, loss, injury or delay caused by conditions beyond its reasonable control, and without the intentional misconduct or negligence of that party (“Uncontrollable Events”). Uncontrollable Events include, but are not limited to: (a) extreme acts of nature for which reasonable measures were taken by the party to mitigate the effects, where possible; (b) acts of Government agencies; (c) strikes and/or labor disputes; (d) fire; (e) explosions or other casualties; (f) thefts; (g) vandalism; (h) terrorism, riots or war; (i) unavailability of parts, materials or supplies; (j) change in law, including the promulgation, modification or repeal of any law or the imposition of any material condition on the issuance or

renewal of any permit which (A) occurs after the Effective Date, (B) establishes new laws or requires any new or existing permits, or modifies any law or permit requirement for the Project existing as of the Effective Date, or (C) materially and adversely affects the cost or expense of the services to InGensa; (k) lawsuits from parties seeking to enjoin the Owner, InGensa or both from performing in accordance with the Agreement, or (l) any other event beyond InGensa's control.

**§ 4.1.6 DELAYS** – If either party is delayed in the commencement or completion of these services by failure of the other party to perform its obligations under this Agreement and Schedules or failure by the other party to cooperate in the timely condition of the services, then the delayed party shall provide written notice to the other party of the existence, extent of, and reason for such delays. An equitable adjustment in completion dates and compensation shall be made as a result.

## **§ 4.2 MEDIATION**

### **§ 4.2.1 INTENTIONALLY OMITTED**

**§ 4.2.2** The Owner and InGensa shall endeavor to resolve claims, disputes and other matters in question between them by mediation. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 4.2.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation and ratified by the Owner's Board shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**§ 4.2.4** If the parties do not resolve a dispute through mediation pursuant to this Section 4.2, the method of binding dispute resolution shall be the following:

*(Check the appropriate box. If the Owner and InGensa do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

Arbitration pursuant to Section 4.3 of this Agreement

Litigation in a court of competent jurisdiction ([venue shall be the Minnesota District Court, Sixth Judicial District, Hibbing, Minnesota, or the closest federal courthouse in the U.S. Federal District Court for the District of Minnesota](#))

Other (Specify)

### **§ 4.3 INTENTIONALLY OMITTED**

## **ARTICLE 5 TERMINATION OR SUSPENSION**

**§ 5.1** Except for amounts that are the subject of a good-faith dispute, if the Owner fails to make payments to InGensa in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at InGensa's option, cause for suspension of performance of services under this Agreement. If InGensa elects to suspend services, InGensa shall give seven (7) days' written notice to the Owner before suspending services. In the event of a suspension of services, InGensa shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services, [so long as the suspension of services is through no fault of InGensa or its Subconsultants](#). Before resuming services, InGensa shall be paid all sums which are not the subject of a good-faith dispute prior to suspension and any expenses incurred in the interruption and resumption of InGensa's services. InGensa's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 5.2 If the Owner suspends the Project, InGensa shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, InGensa shall be compensated for expenses incurred in the interruption and resumption of InGensa's services. InGensa's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 5.3 If the Owner suspends the Project for more than ninety (90) cumulative days for reasons other than the fault of InGensa, InGensa may terminate this Agreement by giving not less than seven (7) days' written notice.

§ 5.4 Either party may terminate this Agreement upon not less than seven (7) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 5.5 The Owner may terminate this Agreement upon not less than seven (7) days' written notice to InGensa for the Owner's convenience and without cause.

§ 5.6 In the event of termination not the fault of InGensa, InGensa shall be compensated for services performed prior to termination, together with Reimbursable Expenses as defined in Section 6.2 then due.

#### § 5.7 INTENTIONALLY OMITTED

§ 5.8 In the event of Termination, and upon payment to InGensa of all sums that are not the subject of a good faith dispute, the Owner and its designated agents and consultants, shall have a non-exclusive license to use InGensa and its Subconsultants' Instruments of Service, documents, data, and records relating to the Project, in the condition they were in on the date of Termination, for the limited purpose of completing, maintaining, and operating the Project. InGensa's contracts with its Subconsultants shall incorporate provisions whereby its Subconsultants agree to be bound by the terms of this section. Upon request, InGensa and its Subconsultants shall promptly furnish the Owner with legible copies of their Instruments of Service, documents, data, and records relating to the Project, and the Owner shall reimburse InGensa for the reasonable copying and clerical expenses therefor.

### ARTICLE 6 COMPENSATION

§ 6.1 The Owner shall compensate InGensa for services described in Section 1.1 as set forth below:

The Owner shall compensate InGensa in the amount of \$5,576,171 for

- Program Management,
- Architectural & Engineering (Mechanical, Electrical, Civil),
- Construction Management,
- Commissioning Services,
- General Conditions,
- All Reimbursables and other services as described herein.

§ 6.1.1 General Conditions include the following:

1. Building Permit
2. Plan Review
3. Job site Office Trailer
4. Job site Office Equipment
5. Construction Signage
6. Safety Barricade
7. General Rubbish Removal
8. Temporary Site/Access Roads
9. Temporary Toilets

#### § 6.2 INTENTIONALLY DELETED

#### § 6.3 COMPENSATION FOR USE OF INSTRUMENTS OF SERVICE

The Owner's non-exclusive license to use Instruments of Service shall be at no additional cost and governed by Section 5.8.

## § 6.4 PAYMENTS TO INGENSA

### § 6.4.1 INTENTIONALLY OMITTED

§ 6.4.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of InGensa's invoice. Amounts unpaid thirty-five (35) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of InGensa.

Interest at the rate of four percent (4.00%) per annum simple interest.

§ 6.4.3 The Owner shall not withhold amounts from InGensa's compensation to impose a penalty or liquidated damages on InGensa. The Owner's right, if any, to offset sums due InGensa shall be governed by applicable law.

§ 6.4.4 InGensa and its Subconsultants shall keep and maintain accurate documentation of all claimed reimbursable expenses in such a form that they may be independently audited and shall provide said documentation with every invoice seeking payment for those expenses.

## ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 This Agreement shall be governed by the law of the place where the Project is located.

§ 7.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 7.3 The Owner and InGensa, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor InGensa shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 7.4 If the Owner requests InGensa to execute certificates, the proposed language of such certificates shall be submitted to InGensa for review at least fourteen (14) days prior to the requested dates of execution. If the Owner requests InGensa to execute consents reasonably required to facilitate assignment to a lender, InGensa shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to InGensa for review at least 14 days prior to execution. InGensa shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 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 Owner or InGensa.

§ 7.6 Subject to Owner's written consent, consent not to be unreasonably withheld, InGensa shall have the right to include photographic or artistic representations of the design of the Project among InGensa's promotional and professional materials. InGensa shall be given reasonable access to the completed Project to make such representations. However, InGensa's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised InGensa in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for InGensa in the Owner's promotional materials for the Project.

§ 7.7 If Owner receives information specifically designated by the other party as "confidential" or "business proprietary," Owner 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 perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information. InGensa maintains that this Agreement does not constitute the "privatization" of any of Owner's government functions, or otherwise require or authorize InGensa to perform any such functions as defined in Minn. Stat. Chapter 13 ("Chapter 13") or otherwise. InGensa further maintains that data created, collected, received, stored, used, maintained, or disseminated by InGensa in connection with this Agreement, but not conveyed to

Owner, is confidential and not subject to disclosure under Chapter 13. Owner will promptly notify InGensa, and InGensa will promptly notify Owner, of any Chapter 13 requests relating to the Project.

§ 7.8 If the services covered by this Agreement have not been completed by December 31, 2026, through no fault of InGensa, extension of InGensa's services beyond that time shall be compensated accordingly.

§ 7.9 Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, InGensa agrees that the books, records, documents and accounting procedures and practices of InGensa, that are relevant to the Contract or transaction, are subject to examination by the Owner and the state auditor for a minimum of six (6) years. InGensa shall maintain such records for a minimum of six (6) years after final payment.

§ 7.10 All payments made to InGensa under this Agreement shall be governed by the Municipal Prompt Payment Act, Minnesota Statutes, Section 471.425 (“PPA”) MPPA), unless waived by mutual agreement of the parties for good cause. InGensa shall comply with subdivision 4a of the PPA requiring payment to its Subconsultants within ten (10) days of receipt or be subject to the penalties set forth in PPA subdivision 4a.

## ARTICLE 8 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

«None.»

## ARTICLE 9 SCOPE OF THE AGREEMENT

§ 9.1 This Agreement represents the entire and integrated agreement between the Owner and InGensa and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and InGensa.

§ 9.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B102–2007, Standard Form Agreement Between Owner and Architect
- .2 AIA Document B201–2007, Standard Form of Architect’s Services: Design and Construction Contract Administration
- .3 AIA Document B144 ARCH/CM-1993, Standard Form of Amendment for the Agreement Between Owner and Architect
- .4 B102 Exhibit A: Chisholm Public Schools #695 Scope of Work
- .5 B201 Exhibits A and B

This Agreement entered into as of the day and year first written above.

### OWNER

« »

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Adrian Norman, Superintendent

\_\_\_\_\_  
(Printed name and title)

### INGENSA, INC.

« »

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Jacqueline Coleman, CEO & President

\_\_\_\_\_  
(Printed name and title)

### OWNER

« »

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Robert Rahja, Board Chairperson

\_\_\_\_\_  
(Printed name and title)

[77620531v3](#)

[62892111.2](#)

DRAFT

<b>Summary report:</b>	
<b>Litera® Change-Pro for Word 10.9.2.0 Document comparison done on 11/11/2022 9:07:41 AM</b>	
<b>Style name:</b> Linda's Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original DMS:</b> iw://ECDBB-DMS.IMANAGE.WORK/FB1/77620531/2	
<b>Modified DMS:</b> iw://ECDBB-DMS.IMANAGE.WORK/FB1/77620531/3	
<b>Changes:</b>	
Add	8
Delete	5
Move From	0
Move To	0
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>13</b>

***Standard Form of Architect's Services: Design and Construction Contract Administration***

**for the following PROJECT:**

November 8, 2022 proposed referendum project: close both Chisholm Elementary and Vaughan-Steffensrud Elementary Schools and construct a new addition to the district's existing High School to house PreK-6 grade levels.

*The Scope of Work is defined in Exhibit A to AIA Document B102-2007.*

**THE OWNER:**

Chisholm Public Schools ISD #695  
301 4<sup>th</sup> St SW  
Chisholm, MN 55719

**INGENSA, INC. ("InGensa"):**

InGensa, Inc.  
18215 45<sup>th</sup> Ave. N, Suite C  
Plymouth, MN 55718

**THE AGREEMENT**

This AIA Document B201-2007 (hereinafter, this "Agreement") is incorporated by reference in AIA Document B102-2007 Executed by the Owner and InGensa dated the TBD day of November in the year 2022.

**TABLE OF ARTICLES**

- 1 INITIAL INFORMATION**
- 2 SCOPE OF INGENSA'S BASIC SERVICES**
- 3 ADDITIONAL SERVICES**
- 4 OWNER'S RESPONSIBILITIES**
- 5 COST OF THE WORK**
- 6 COMPENSATION**
- 7 ATTACHMENTS AND EXHIBITS**

**ARTICLE 1 INITIAL INFORMATION**

**§ 1.1** This Agreement is based on the Initial Information set forth in Article 1 and in optional *Exhibit A*, Initial Information:

*(Complete Exhibit A, Initial Information and incorporate it into this services document at Section 7.1, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, InGensa's Subconsultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)*

**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document provides the Architect's scope of services only and must be used with an owner-architect agreement. It may be used with AIA Document B102<sup>™</sup>-2017, Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services, to provide the Architect's sole scope of services, or with B102 in conjunction with other standard form services documents. It may also be used with G802<sup>™</sup>-2017, Amendment to the Professional Services Agreement, to create a modification to any owner-architect agreement.

**ELECTRONIC COPYING** of any portion of this AIA<sup>®</sup> Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

See Exhibit A entitled Scope of Work. Owner Project Budget is \$32,135,337.

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

September 2023

.2 Substantial Completion date:

September 2026

§ 1.3 The Owner and InGensa may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and InGensa shall appropriately adjust the schedule, InGensa's services and InGensa's compensation.

§ 1.4 InGensa's Consultants.

- .1 Architectural: ARI Architects
- .2 Mechanical & Electrical Engineering: ARI Architects
- .3 Structural Engineering: Northland Consulting Engineers
- .4 Civil Engineering: Larson Engineering

## ARTICLE 2 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 2.1 InGensa shall provide design services through licensed consultants ("InGensa's Subconsultants") including all architectural, structural, mechanical, civil and electrical engineering services. The parties agree and understand that all architectural services shall be provided by InGensa or engineer of records as a consultant to InGensa. [InGensa shall be responsible for the negligent acts or omissions of InGensa's Subconsultants, subject to the limitation of liability in Section 4.1.3.1 of A102-2017.](#)

§ 2.1.1 InGensa shall manage InGensa's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 2.1.2 InGensa shall coordinate its services with those services provided by the Owner and the Owner's consultants. InGensa shall be entitled to reasonably rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. InGensa shall provide prompt written notice to the Owner if InGensa becomes aware of any error, omission or inconsistency in such services or information, subject to InGensa's obligation as the design professional to investigate with reasonable due diligence the existing conditions, recognizing that this Project primarily involves renovation and replacement of existing structures and systems.

§ 2.1.3 As soon as practicable after the date of this Agreement, InGensa shall submit for the Owner's approval a schedule for the performance of InGensa's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by InGensa or Owner. With the Owner's approval, InGensa shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 2.1.4 InGensa shall not be responsible for an Owner's directive or substitution made without InGensa's approval.

§ 2.1.5 InGensa and InGensa's Subconsultants shall perform the services consistent with the professional skill and care ordinarily provided by architects and engineers performing the same or similar services, in the same or similar services, in the same or similar locality, under the same or similar circumstances. InGensa and InGensa's Subconsultants shall design the Project and supply plans and specifications that conform to all applicable Federal, State and local laws, codes, ordinances and regulations applicable to InGensa's services. InGensa and InGensa's Subconsultants shall require that the contractors provide written certification that they, and their subcontractors

working on the Project, have complied with applicable laws at the time any request for payment is made. This Agreement is made subject to all applicable law, statutes, codes, rules, ordinances and regulations governing the Owner and its rights, obligations limitations and requirements pertaining to this Agreement and the Project ("Laws").

#### § 2.1.6 INTENTIONALLY OMITTED

§ 2.1.7 InGensa shall assist the Owner in connection with the Owner's responsibility for obtaining building permits or filing other documents required for the approval of governmental authorities having jurisdiction over the Project. InGensa shall not be responsible for any delays by governmental authorities in the approval process, or for any refusal of governmental authorities to approve any such permits or other documents.

§ 2.1.8 InGensa shall not be responsible for advising Owner on real estate matters, including the selection, suitability, value, condition, title, zoning or developability of any real estate which is or becomes a part of the Project.

#### § 2.2 SCHEMATIC DESIGN PHASE SERVICES

§ 2.2.1 InGensa shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to InGensa's services.

§ 2.2.2 InGensa shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. InGensa shall notify the Owner of (1) any readily apparent inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 2.2.3 InGensa shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. InGensa shall reach an understanding with the Owner regarding the requirements of the Project.

§ 2.2.4 InGensa, through InGensa's Subconsultants, shall provide Schematic Design Documents based on the mutually agreed-upon program, schedule, and budget for the Cost of Work. The documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components.

§ 2.2.5 The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 2.2.5.1 InGensa, through InGensa's Subconsultants, shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 3.

§ 2.2.5.2 InGensa shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 2.2.6 InGensa shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 5.3. As the design process progresses through the end of the preparation of the Construction Documents, InGensa shall update and refine the preliminary estimate of the Cost of Work.

§ 2.2.7 InGensa shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

### § 2.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 2.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, InGensa and InGensa's Subconsultants shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 2.3.2 InGensa shall update the estimate of the Cost of the Work.

§ 2.3.3 InGensa shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 2.3.4 The Owner shall review and approve Design Development Documents within a reasonable period of time following delivery.

### § 2.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 2.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, InGensa, through InGensa's Subconsultants, shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and InGensa acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which InGensa shall review in accordance with Section 2.6.4.

§ 2.4.2 InGensa shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 2.4.3 During the development of the Construction Documents, InGensa, along with the architect or engineer of record and the Owner, shall work together to develop and prepare the (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). InGensa and/or InGensa's Subconsultants shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 2.4.4 InGensa shall update the estimate for the Cost of the Work.

§ 2.4.5 InGensa shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 5.5, and request the Owner's approval.

### § 2.5 BIDDING OR NEGOTIATION PHASE SERVICES

Following the Owner's approval of the Construction Documents, InGensa shall assist the Owner in obtaining competitive bids; (2) confirming responsiveness of bids; (3) determining the successful bid, if any; and (4) awarding and preparing contracts for construction.

#### § 2.5.2 COMPETITIVE BIDDING

§ 2.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 2.5.2.2 InGensa shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;

- .2 distributing the Bidding Documents to prospective bidders requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 2.5.2.3 InGensa shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

### § 2.5.3 NEGOTIATED PROPOSALS

§ 2.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 2.5.3.2 The InGensa shall assist the Owner in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 2.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the InGensa shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

### § 2.6 CONSTRUCTION PHASE SERVICES

#### § 2.6.1 GENERAL

§ 2.6.1.1 InGensa shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201-2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201-2007, General Conditions of the Contract for Construction, those modifications shall not affect InGensa's services under this Agreement unless the Owner and InGensa amend this Agreement.

§ 2.6.1.2 InGensa shall advise and consult with the Owner during the Construction Phase Services. InGensa shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. InGensa shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall InGensa or InGensa's Subconsultants be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. InGensa shall be responsible for InGensa's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 2.6.1.3 Subject to Section 3.3, InGensa's responsibility to provide Construction Phase services commences with the award of the Contract for Construction and terminates on the date InGensa issues the final Certificate for Payment.

#### § 2.6.2 EVALUATIONS OF THE WORK

§ 2.6.2.1 InGensa or InGensa's Subconsultants, as representatives of the Owner, shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 3.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, neither InGensa nor InGensa's Subconsultants shall be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits InGensa shall keep the Owner reasonably informed about the progress and quality of the portion of the Work

completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

**§ 2.6.2.2** InGensa shall reject Work that it discovers does not conform to the Contract Documents unless approved in writing by the Owner. Whenever InGensa considers it necessary or advisable, InGensa shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of InGensa nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of InGensa to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

**§ 2.6.2.3** InGensa shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. InGensa's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

**§ 2.6.2.4** Interpretations and decisions of InGensa shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, InGensa shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. InGensa's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

**§ 2.6.2.5** Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, General Conditions of the Contract for Construction, InGensa shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### **§ 2.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR**

**§ 2.6.3.1** InGensa shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. InGensa's certification for payment shall constitute a representation to the Owner, based on InGensa's evaluation of the Work as provided in Section 2.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of InGensa's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by InGensa.

**§ 2.6.3.2** The issuance of a Certificate for Payment shall not be a representation that InGensa has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**§ 2.6.3.3** InGensa shall maintain a record of the Applications and Certificates for Payment.

### **§ 2.6.4 SUBMITTALS**

**§ 2.6.4.1** InGensa shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. InGensa's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in InGensa's professional judgment to permit adequate review.

**§ 2.6.4.2** In accordance with InGensa-approved submittal schedule, InGensa shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. InGensa's review shall not constitute approval of safety

precautions or, unless otherwise specifically stated by InGensa, of any construction means, methods, techniques, sequences or procedures. InGensa's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 2.6.4.3** If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, InGensa shall specify the appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to InGensa. InGensa shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

**§ 2.6.4.4** Subject to the provisions of Section 3.3, InGensa shall review and respond to requests for information about the Contract Documents. InGensa shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. InGensa's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, InGensa shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

**§ 2.6.4.5** InGensa shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

#### **§ 2.6.5 CHANGES IN THE WORK**

**§ 2.6.5.1** InGensa may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 3.3, InGensa shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

**§ 2.6.5.2** InGensa shall maintain records relative to changes in the Work.

#### **§ 2.6.6 PROJECT COMPLETION**

**§ 2.6.6.1** InGensa shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

**§ 2.6.6.2** InGensa's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

**§ 2.6.6.3** When the Work is found to be substantially complete, InGensa shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

**§ 2.6.6.4** InGensa shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

**§ 2.6.6.5** Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, InGensa shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

#### **§ 2.6.7 COMMISSIONING SERVICES**

§ 2.6.7.1 InGensa, with the Owner's assistance, shall oversee the close-out of the Project, as well as the commencement and final reporting and response action determined by the commissioning services for each Project where commissioning is required pursuant to applicable law.

§ 2.6.7.2 InGensa shall coordinate and complete all testing and reporting required by applicable law. InGensa shall consult with Owner on post-construction issues until the Project is turned over to Owner.

**ARTICLE 3 ADDITIONAL SERVICES**

§ 3.1 Additional Services listed below are not included in Basic Services but may be required for the Project. InGensa shall provide the listed Additional Services only if specifically designated in the table below as InGensa’s responsibility, and the Owner shall compensate InGensa as provided in Section 6.2.

*(Designate the Additional Services InGensa shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 3.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

<b>Additional Services</b>	<b>Responsibility</b> <i>(Architect, Owner or Not Provided)</i>	<b>Location of Service Description</b> <i>(Section 3.2 below or in an exhibit attached to this document and identified below)</i>
§ 3.1.2 Multiple preliminary designs	Not Provided	
§ 3.1.3 Measured drawings	Not Provided	
§ 3.1.4 Existing facilities surveys	Owner	
§ 3.1.5 Site Evaluation and Planning (B203™-2007)	Not Provided	
§ 3.1.6 Building Information Modeling (E202™-2008)	Not Provided	
§ 3.1.10 Value Analysis (B204™-2007)	Not Provided	
§ 3.1.15 As-constructed record drawings	Not Provided	Provided by trade contractors
§ 3.1.16 Post occupancy evaluation	Not Provided	
§ 3.1.17 Facility Support Services (B210™-2007)	Not Provided	
§ 3.1.18 Tenant-related services	Not Provided	
§ 3.1.19 Coordination of Owner’s consultants	InGensa	
§ 3.1.27 Furniture, Furnishings, and Equipment Design (B253™-2007)	Not Provided	

*(Paragraphs deleted)*

§ 3.3 Additional Services may be provided after execution of this Agreement, if mutually agreed in writing, without invalidating the Agreement. Except for services required due to the fault of InGensa, any Additional Services provided in accordance with this Section 3.3 shall entitle InGensa to compensation pursuant to Section 6.3.

§ 3.3.1 Upon recognizing the need to perform the following Additional Services, InGensa shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. InGensa shall not proceed to provide the following services until InGensa receives the Owner’s written authorization.

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner’s schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner’s request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner’s consultants or contractors;
- .5 Preparing digital data for transmission to the Owner’s consultants and contractors, or to other Owner authorized recipients;

- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner (Schematic design, design development and construction documents);
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing except as follows: attendance at two (2) public meetings/hearings shall be included in InGensa's Basic Services;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where InGensa is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction;
- .11 Assistance to the Initial Decision Maker, if other than InGensa;
- .12 If additional planning services are required;
- .13 Providing services to verify the accuracy of drawings or other information furnished by the Owner;
- .14 Providing services of necessary consultants for other than architectural, structural, mechanical and electrical engineering portions of the Project provided as a part of this Agreement;
- .15 Providing any other services not otherwise included; or
- .16 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .17 Renderings, models, mockups, professional photography and presentation materials required by the Owner.

**§ 3.3.2** InGensa shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to InGensa, and the Owner shall have no further obligation to compensate InGensa for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by InGensa;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service except as follows: where the need for the Change Order or Change Directive arises from an error or omission in InGensa's Instruments of Service, these services shall be included in InGensa's Basic Services;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent InGensa's Basic Services are affected, providing Construction Phase Services sixty (60) days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion, identified in Initial Information, whichever is earlier.

**§ 3.3.3** InGensa shall provide Construction Phase Services exceeding the limits set forth in Section 3.3.4 below as Additional Services. When the limits below are reached, InGensa shall notify the Owner:

- .1 Visits to the site and inspections by InGensa appropriate to the state of construction over the duration of the Project during construction, but in no event less than weekly.
- .2 Reasonable and necessary inspections, but in no event less than two (2), for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents and all applicable laws, codes and ordinances.
- .3 Reasonable and necessary inspections, but in no event less than two (2), for any of the work to determine final completion. Additional inspection and visits as mutually agreed to by the parties to determine that the work is substantially completed in accordance with the Contract Documents and all applicable laws, codes, ordinances, rules, regulations and architectural and construction industry standards.
- .4 One (1) inspection of the Work before the expiration of the Contractor's correction period.

**§ 3.3.4** If the services covered by this Agreement have not been completed by «December 31, 2026», through no fault of InGensa, extension of InGensa's services beyond that time shall be compensated as Additional Services.

**§ 3.3.5** Notwithstanding anything to the contrary herein or otherwise, InGensa does not intend for this Agreement and the services furnished hereunder to constitute the "privatization" of any of Owner's government functions as

defined in Minnesota Statutes Chapter 13 (“Chapter 13”). Owner will promptly notify InGensa, and InGensa will promptly notify Owner, of any Chapter 13 requests relating to the services hereunder.

#### **ARTICLE 4 OWNER’S RESPONSIBILITIES**

**§ 4.1** The Owner shall establish and periodically update the Owner’s budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 5.1; (2) the Owner’s other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall not significantly increase or decrease the overall budget, the portion of the budget allocated for the Cost of the Work, or contingencies included in the overall budget or a portion of the budget, without the agreement of InGensa to a corresponding change in the Project scope and quality.

**§ 4.2** The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

**§ 4.3** The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

**§ 4.4** The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

**§ 4.5** Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and InGensa’s Subconsultants through InGensa about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify InGensa of any direct communications that may affect InGensa’s services.

**§ 4.6** Before executing the Contract for Construction, the Owner shall coordinate InGensa’s duties and responsibilities set forth in the Contract for Construction with InGensa’s services set forth in this Agreement. The Owner shall provide InGensa a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

**§ 4.7** The Owner shall provide InGensa access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide InGensa access to the Work wherever it is in preparation or progress.

**§ 4.8** The Parties understand and agree InGensa is not required to make an exhaustive site inspection prior to commencing its services and InGensa is not required to verify concealed conditions on the site.

**§ 4.9** InGensa agrees to prepare the Health & Safety Report as required by the Owner or otherwise and negotiate, or assist the Owner in negotiating, the Health & Safety Report with the appropriate governing board or agency.

**§ 4.10** InGensa shall undertake and produce detailed financial models which will illustrate estimated costs and savings to be gained through the Work. This financial modeling shall be solely for the Owner's information. InGensa does not guarantee or warrant that costs and savings outlined in such financial modeling will be realized and shall not be liable to the Owner in the event that actual costs and savings identified in the financial modeling are less than estimated.

**§ 4.11** InGensa shall present, or assist the Owner in presenting, a detailed plan together with financial models to the appropriate governing board or agency for final review and approval.

**§ 4.12** InGensa shall complete and process all available utility rebate requests on behalf of the Owner, who shall be the beneficiary of such rebates.

## ARTICLE 5 COST OF THE WORK

§ 5.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by InGensa and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of InGensa, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 5.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 4.1, 5.4 and 5.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by InGensa, represent InGensa's judgment as a design professional. It is recognized, however, that neither InGensa nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, InGensa cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by InGensa.

§ 5.3 In preparing estimates of the Cost of Work, InGensa shall be permitted to include contingencies for, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. InGensa's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, InGensa shall provide such services as an Additional Service under Article 3.

§ 5.4 If the Bidding or Negotiation Phase has not commenced within ninety (90) days after InGensa submits the Construction Documents to the Owner, through no fault of InGensa, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 5.5 If at any time InGensa's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, InGensa shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with InGensa in making such adjustments.

§ 5.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 5.5 of AIA Document B102-2007;
- .4 in consultation with InGensa, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 5.7 If the Owner chooses to proceed under Section 5.6.4, InGensa, without additional compensation, shall modify the Construction Documents for which InGensa is responsible under this Agreement as necessary to comply with the Owner's budget for the Cost of the Work. InGensa's modification of the Construction Documents shall be the limit of InGensa's responsibility under this Article 5.

§ 5.8 InGensa shall be entitled to compensation in accordance with this Agreement for all services performed whether or not construction is commenced.

## ARTICLE 6 COMPENSATION

§ 6.1 InGensa's Basic Services described under Article 2 above are included in the compensation set forth in Section 6.1 of AIA Document B102-2007 executed by the Parties dated «November TBD, 2022».

§ 6.2 For Additional Services designated in Section 3.1, the Owner shall compensate InGensa on a time and material basis at hourly rates set forth in Exhibit B unless agreed to otherwise by Owner and InGensa.

§ 6.3 For Additional Services that may arise during the course of the Project, including those under Section 3.3, during the course of the Project, the Owner shall compensate InGensa on a time and material basis at hourly rates set forth on AIA Document B201 Article 6.7, Hourly Fee Breakdown unless agreed to otherwise by Owner and InGensa.

§ 6.4 Compensation for Additional Services of InGensa’s Subconsultants when not included in Section 6.2 or 6.3, shall be the amount invoiced to InGensa plus a fee of one percent (1%), or as otherwise stated below:

§ 6.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	Fifteen percent ( 15 %)
Design Development Phase	Twenty percent ( 20 %)
Construction Documents Phase	Forty percent ( 40 %)
Bidding or Negotiation Phase	Five percent ( 5 %)
Construction Phase	Twenty percent ( 20 %)
<hr/>	<hr/>
Total Basic Compensation	One Hundred percent ( 100 %)

§ 6.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 6.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. InGensa shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 6.7 The hourly billing rates for services of InGensa and InGensa’s Subconsultants, if any, are set forth below. The rates shall be adjusted in accordance with InGensa’s and InGensa’s Subconsultants’ normal review practices. (If applicable, attach an exhibit of hourly billing rates or insert them below.)

«See Exhibit B for hourly rates.»

Employee or Category	Rate
« »	

**ARTICLE 7 ATTACHMENTS AND EXHIBITS**

The following attachments and exhibits, if any, are incorporated herein by reference:

- \_\_\_\_\_ B201 Exhibit A – Scope of Work
- \_\_\_\_\_ B201 Exhibit B – Hourly Rates

**OWNER**

« »

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Adrian Norman, Superintendent  
(Printed name and title)

**INGENSA, INC.**

« »

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Jacqueline Coleman, CEO & President  
(Printed name and title)

**OWNER**

« »

\_\_\_\_\_  
(Signature)

Robert Rahja, Board Chairperson  
*(Printed name and title)*

---

| [77620545v3](#)

| ~~62892577.2~~

DRAFT

<b>Summary report:</b>	
<b>Litera® Change-Pro for Word 10.9.2.0 Document comparison done on 11/11/2022 9:09:43 AM</b>	
<b>Style name:</b> Linda's Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original DMS:</b> iw://ECDBB-DMS.IMANAGE.WORK/FB1/77620545/2	
<b>Modified DMS:</b> iw://ECDBB-DMS.IMANAGE.WORK/FB1/77620545/3	
<b>Changes:</b>	
Add	2
Delete	1
Move From	0
Move To	0
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>3</b>

DRAFT AIA® Document B144/ARCH-CM™ - 1993

*Standard Form of Amendment for the Agreement Between Owner and Architect where the Architect Provides CONSTRUCTION MANAGEMENT Services as an Adviser to the Owner*

This AMENDMENT made as of the TBD day of November in the year 2022

is made to the AGREEMENT made as of the TBD day of November in the year 2022

**BETWEEN** the Owner:  
Chisholm Public Schools ISD #695  
301 4<sup>th</sup> St SW  
Chisholm, MN 55719

and

InGensa, Inc. ("**InGensa**"):  
InGensa, Inc.  
18215 45<sup>th</sup> Ave. N, Suite C  
Plymouth, MN 55446

for the following Project:

November 8, 2022 proposed referendum project: close both Chisholm Elementary and Vaughan-Steffensrud Elementary Schools and construct a new addition to the district's existing High School to house PreK-6 grade levels.

The Scope of Work is defined in Exhibit A to AIA Document B102-2007.

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

DRAFT

**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

## ARTICLE 1 CONSTRUCTION MANAGEMENT RESPONSIBILITIES

§ 1.1 The construction management services to be provided by InGensa are as enumerated in Articles 2 and 3 of this Amendment. InGensa shall be entitled to use subconsultants to perform or assist in performing any of InGensa's services as Construction Manager under this Amendment ("**InGensa Subconsultants**"). It is understood by the parties that contracts for such professional services are not subject to competitive bidding requirements. All professionals providing such services whether directly by InGensa or professionals under contract with InGensa shall be qualified, and where required, properly licensed and or certified to perform these services and JCI is responsible to assure such license and certification. [InGensa shall be responsible for the negligent acts or omissions of InGensa's Subconsultants, subject to the limitation of liability in Section 4.1.3.1 of A102-2017.](#)

§ 1.2 InGensa shall provide sufficient organization, personnel and management to carry out the requirements of this Amendment at all Project locations in an expeditious and economical manner consistent with the interests of the Owner.

§ 1.3 The services covered by this Amendment are subject to the time limitations contained in the Agreement.

## ARTICLE 2 SCOPE OF SERVICES DURING PRECONSTRUCTION PHASES

§ 2.1 InGensa, as a part of InGensa's review of the program furnished by the Owner, shall provide a preliminary evaluation of the feasibility of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 2.2 InGensa shall prepare, in addition to preliminary estimates of Construction Cost for program requirements based on early schematic designs and other design criteria, comparative estimates for the cost evaluations of alternative materials and systems.

§ 2.3 As the preparation of the Schematic Design, Design Development and Construction Documents progresses, InGensa shall prepare and update preliminary Construction Cost estimates with increasing detail and refinement. Such estimates shall be provided for the Owner's review and approval prior to the commencement of performance by InGensa of services for each succeeding Pre-construction Phase. If separate contracts are to be awarded, the estimated cost of the scope of Work for each contract shall be indicated with supporting detail. InGensa shall advise the Owner if it appears that a preliminary Construction Cost estimate may exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.4 Following the Owner's approval of the Construction Documents, InGensa shall update and submit the latest estimate of Construction Cost for the Owner's approval in accordance with the Agreement.

§ 2.5 InGensa shall submit recommendations on relative feasibility of construction methods, methods of Project delivery, availability of materials and labor, time requirements for procurement, installation and construction, and appropriate utilization of the site for mobilization of construction forces and materials and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets and possible economies. InGensa shall consult with the Owner regarding the Construction Documents and make recommendations whenever design details adversely affect contractibility, cost or schedules. InGensa shall identify bid categories as necessary and describe the scopes of Work to cover all necessary Work.

§ 2.6 InGensa shall prepare and update a Project schedule to show the timing of anticipated services and construction Work for the Owner's review and approval prior to commencement of InGensa's services for each succeeding Pre-construction Phase.

§ 2.7 In developing the Project schedule, InGensa shall identify critical and long-lead-time items for the coordination and integration of InGensa's services with the Owner's responsibilities, including the services of the Owner's other consultants and contractors.

§ 2.8 InGensa shall assist the Owner in selecting, retaining and coordinating the professional services of surveyors, special consultants and testing laboratories required for the Project.

§ 2.9 InGensa shall submit a list of prospective bidders and a bidding schedule for the Owner's review and approval.

§ 2.10 InGensa shall solicit bidders' interest in the Project. InGensa shall prepare the appropriate bidding documents and assist the Owner in issuing bidding documents to bidders and conduct pre-bid conferences with prospective bidders. InGensa shall assist the Owner with the receipt of questions from bidders and the issuance of addenda.

§ 2.11 InGensa shall receive bids, prepare bid analyses and make recommendations to the Owner for the Owner's award of Contracts.

§ 2.12 InGensa shall conduct pre-award conferences with successful bidders. InGensa shall advise the Owner of any reasonable objections to the proposed list of Subcontractors and material suppliers.

§ 2.13 InGensa shall make recommendations to the Owner regarding the assignment of responsibilities for providing temporary Project facilities and services for common use of the Contractors. InGensa shall verify that the requirements and assignment of responsibilities are included in the proposed Contract Documents.

§ 2.14 InGensa shall divide the Project into separate contracts or various categories for work including the method to be used for selecting Contractors and awarding contracts. If multiple Contracts are to be awarded, InGensa shall review the Construction Documents and provide that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project have been assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes has been minimized, and (4) proper coordination has been provided for phased construction.

§ 2.15 InGensa shall make recommendations to the Owner regarding the allocation of responsibilities for Project conditions among the Contractors.

§ 2.16 InGensa shall assist the Owner regarding the allocation of responsibilities for Project conditions among the Contractors. InGensa shall provide recommendations and information to the Owner regarding the allocation of responsibilities for safety programs among the Contractors. InGensa shall be responsible for ensuring that the Safety programs on the site run by the Contractor are coordinated and compliant with applicable laws.

### ARTICLE 3 SCOPE OF SERVICES DURING THE CONSTRUCTION PHASE

§ 3.0 InGensa shall prepare a Project construction schedule providing for each scope of Work, including phasing of construction, times for commencement and completion required of each separate Contractor, ordering and delivery of materials requiring long-lead time and the occupancy requirements of the Owner.

§ 3.1 InGensa shall provide the Project construction schedule for each set of Contract Documents.

§ 3.2 InGensa shall provide administrative, management and related services to endeavor to coordinate the activities of the Contractors with each other and with those of the Owner and InGensa to complete the Project in accordance with the latest approved estimate of Construction Cost, the Project construction schedule and the Contract Documents.

§ 3.3 InGensa shall schedule and conduct pre-construction, construction and progress meetings with the Owner and the Contractors to discuss such matters as procedures, progress and scheduling. InGensa shall prepare and promptly distribute minutes to the Owner and Contractors.

§ 3.4 Utilizing the Construction Schedules provided by the Contractors, InGensa shall update the Project construction schedule incorporating the activities of the Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery of products requiring long-lead time and procurement. The Project construction schedule shall include the Owner's occupancy requirements showing portions of the Project having occupancy priority. InGensa shall update and reissue the Project construction schedule as required to show current conditions. If an update indicates the previously approved Project construction schedule may not be met, InGensa shall recommend corrective action to the Owner.

§ 3.5 Consistent with the Bidding Documents, and utilizing information from the Contractors, InGensa shall coordinate the sequence of construction and assignment of space in areas where multiple Contractors are performing Work.

§ 3.6 InGensa shall monitor the approved estimate of Construction Cost. InGensa shall show actual costs for activities in progress and estimates for uncompleted tasks.

§ 3.7 InGensa shall develop cash flow reports and forecasts for the Project and advise the Owner as to variances between actual and budgeted or estimated costs.

§ 3.8 InGensa shall maintain cost accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, or other Work requiring accounting records.

§ 3.9 InGensa shall record the progress of the Project with written progress reports to the Owner including information on each Contractor's Work, as well as the entire Project, showing percentages of completion.

§ 3.10 InGensa shall keep a daily log containing a record of weather, Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Owner may require.

§ 3.11 InGensa shall maintain at the Project site, on a current basis: one (1) record copy of all Contracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked to record all changes made during construction; Shop Drawings; Product Data; Samples; submittals; purchases; other related documents and revisions that arise out of the Contracts or Work, including as-constructed record drawings provided by the Contractor. InGensa shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. InGensa shall make all such records available to the Owner and, upon completion of the Project, shall deliver them to the Owner.

#### ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 InGensa's Basic CM Services described in Articles 1, 2 and 3 above are included in the compensation set forth in Section 6.1 of AIA Document B102-2007 executed by the Parties dated October 21, 2020. For all services that constitute a Change in Services, InGensa shall be compensated as an Additional Service as set forth in Section 6.2 of the AIA Document B201-2007, as modified by the Parties.

*(Paragraphs deleted)*

§ 4.2 The following services shall constitute a Change in Services:

- .1 Providing services made necessary by the termination or default of the Contractor, by major defects or deficiencies in the work of a contractor, or by failure of performance of either the Owner or a Contractor under a contract for construction.
- .2 Providing services in connection with a public hearing, arbitration proceeding or legal proceeding except where InGensa is a party thereto.
- .3 Providing services relative to future facilities, systems and equipment.
- .4 Providing services to verify the accuracy of drawings or other information furnished by the Owner.
- .5 Providing coordination of construction performed by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.
- .6 Providing services in connection with the work of separate consultants retained by the Owner.
- .7 **INTENTIONALLY OMITTED**
- .8 Providing any other services not otherwise included in this Agreement after notice to Owner and approval prior to providing such services.
- .9 Changes not due to mistake or ambiguity in the plans or specifications arising from Owner-requested changes following the Owner's acceptance of the designs and plans for the Project at each phase of the development process (schematic design, design development and construction documents);
- .10 Provided services that become necessary due to conditions that are encountered at the Site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those

indicated in the Contract Documents or Record Drawings provided by the Owner which form a basis on which InGensa relied for its design of (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents;

.11 Providing any other services not otherwise included in Exhibit A.

**ARTICLE 5 THE OWNER'S RESPONSIBILITIES**

§ 5.1 The Owner reserves the right to perform Work related to the Project with the Owner's own forces, and to award contracts in connection with the Project that are not part of InGensa's responsibilities under this Amendment. InGensa shall notify the Owner if any such independent action will in any way interfere with InGensa's ability to perform under this Amendment.

§ 5.2 The Owner shall furnish the required information and services and shall render approvals and decisions expeditiously for the orderly progress of InGensa's services.

**ARTICLE 6 BASIS OF COMPENSATION**

§ 6.1 The Owner shall compensate InGensa for Construction Management Services (as described in Articles 1, 2 and 3 above) as set forth in Section 6.1 of AIA Document B102-2007, as modified by the parties.

« »

**ARTICLE 7 OTHER CONDITIONS OR SERVICES**

§ 7.1 The following Reimbursable Expenses are in addition to those listed in the Agreement modified by this Amendment:

*(List Reimbursable Expenses not already listed in the Agreement between Owner and InGensa referenced above.)*

«None. »

§ 7.2 This Amendment shall further modify the Agreement as follows:

*(Insert descriptions of other services, identify Additional Services included within Basic Compensation and modifications to the payment and compensation terms included in this Amendment.)*

«N/A»

This Amendment entered into as of the day and year first written above.

**OWNER**

« »

\_\_\_\_\_  
*(Signature)*

Adrian Norman, Superintendent  
*(Printed name and title)*

**INGENSA, INC.**

« »

\_\_\_\_\_  
*(Signature)*

Jacqueline Coleman, CEO & President  
*(Printed name and title)*

**OWNER**

« »

\_\_\_\_\_  
*(Signature)*

Robert Rahja, Board Chairperson  
*(Printed name and title)*

~~62892520.2~~77620556v2

DRAFT

<b>Summary report:</b>	
<b>Litera® Change-Pro for Word 10.9.2.0 Document comparison done on 11/11/2022 9:10:30 AM</b>	
<b>Style name:</b> Linda's Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original DMS:</b> iw://ECDBB-DMS.IMANAGE.WORK/FB1/77620556/2	
<b>Modified DMS:</b> iw://ECDBB-DMS.IMANAGE.WORK/FB1/77620556/3	
<b>Changes:</b>	
Add	2
Delete	1
Move From	0
Move To	0
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>3</b>