

**AGREEMENT BETWEEN OWNER AND DESIGN/BUILDER FOR THE
BATTLE CREEK WINTER RECREATION AREA PROJECT
PART 1 AGREEMENT**

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AGREEMENT is made

BETWEEN the Owner:
Ramsey County
2015 Van Dyke St.
Maplewood, MN 55019

and the Design/Builder:
Loeffler Construction Consulting, LLC
20520 Keokuk Ave. Ste 100
Lakeville, MN 55044

For the following Project:

BATTLE CREEK WINTER RECREATION AREA, as described in the Owner's Request for Proposals ("RFP") # 0000017518 - BATTLE CREEK WINTER RECREATION DESIGN/BUILD including addenda.

The Design/Builder will provide services in two (2) phases:

Part 1: Programming, schematic design, design development and cost estimating leading to a Guaranteed Maximum Price. See attached **Exhibit A** --Scope of Work, attached hereto and made a part of this Part 1 Agreement; for a description of Part 1 services.

Part 2: Balance of design, construction documents, bidding, construction services, and Project closeout. See **Exhibit A** for description of Part 2 services. Part 2 services will be provided using the Design/Build delivery method.

The architectural, landscape architectural, civil, structural, mechanical, and electrical engineering services for the Services described in Article 1 of this Part 1 Agreement will be provided by the following persons or entities lawfully licensed to practice architecture or engineering in the State of Minnesota, both of which shall be referred to as the "Architect" in this Part 1 Agreement and the Part 2 Agreement with respect to their respective scopes.

<u>Name</u>	<u>Address</u>	<u>Reg. #</u>	<u>Relationship</u>
James O'Shea	125 SE Main St #240, Minneapolis, MN 55414	23325	Architect of Record
Craig Milkert	125 SE Main St #240, Minneapolis, MN 55414	18360	Structural Engineer
Michael A Westemeier	3001 Broadway St NE #601, Minneapolis, MN 55413	40621	Mechanical Engineer
Alexander S Quast	3001 Broadway St NE #601, Minneapolis, MN 55413	53095	Electrical Engineer
Johona Harris	125 SE Main St #240, Minneapolis, MN 55414	C02249	Interior Design
Michael C. Brandt	767 Eustis Street, Suite 100, St. Paul, MN 55114	42661	Civil Engineer
Todd Halunen	767 Eustis Street, Suite 100, St. Paul, MN 55114	24900	Landscape Architect

The Owner and the Design/Builder agree as set forth below.

TERMS AND CONDITIONS -- PART 1 AGREEMENT

ARTICLE 1 DESIGN/BUILDER

§ 1.1 SERVICES

§ 1.1.1 Programming, schematic design, design development, project scheduling and cost estimating leading to a Guaranteed Maximum Price for Part 2 of the Project.

§ 1.2 RESPONSIBILITIES

§ 1.2.1 Design services required by this Part 1 Agreement shall be performed by qualified architects and other design professionals. The contractual obligations of such professional persons or entities are undertaken and performed in the interest of the Design/Builder. Prior to the termination of the services of the Architect or any other design professional designated in this Part 1 Agreement, the Design/Builder shall identify to the Owner in writing another architect or design professional with respect to whom the Owner has no reasonable objection, who will provide the services originally to have been provided by the Architect or other design professional whose services are being terminated. The Design/Builder shall be responsible for any additional costs associated with the other architectural or design professionals.

§ 1.2.2 The agreements between the Design/Builder and the persons or entities identified in this Part 1 Agreement, and any subsequent modifications, shall be in writing. These agreements, including financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon request.

§ 1.2.3 Construction budgets shall be prepared by qualified professionals, cost estimators or contractors retained by and acting in the interest of the Design/Builder.

§ 1.2.4 The Design/Builder shall be responsible to the Owner for acts and omissions of the Design/Builder's employees, subcontractors and their agents and employees, including the Architect and other design professionals, performing any portion of the Design/Builder's obligations under this Part 1 Agreement.

§ 1.2.5 If the Design/Builder believes or is advised by the Architect or by another design professional retained to provide services on the Project that implementation of any instruction received from the Owner would cause a violation of any applicable law, the Design/Builder shall notify the Owner in writing. Neither the Design/Builder nor the Architect shall be obligated to perform any act which either believes will violate any applicable law.

§ 1.2.6 Nothing contained in this Part 1 Agreement shall create a contractual relationship between the Owner and any person or entity other than the Design/Builder.

§ 1.2.7 The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design professional practicing under similar conditions at the same time and locality of the Project.

§ 1.3 BASIC SERVICES

§ 1.3.1 The Design/Builder shall provide a preliminary evaluation of the Owner's program and Project budget requirements, each in terms of the other, as described in Exhibits A and B and as identified herein.

§ 1.3.2 The Design/Builder shall visit the site, become familiar with the local conditions, and correlate observable conditions with the requirements of the Owner's program, schedule, and budget.

§ 1.3.3 The Design/Builder shall review laws applicable to design and construction of the Project, correlate such laws with the Owner's program requirements, and if the Design/Builder is aware of any violations, advise the Owner if any program requirement may cause a violation of such laws. Necessary changes to the Owner's program shall be accomplished by appropriate written modification or disclosed as described in Section 1.2.2.

§ 1.3.4 The Design/Builder shall support the Owner's efforts to submit, file, and obtain on behalf of the Owner: all easements, zoning variances and legal authorizations regarding site utilization where essential to the execution of the Owner's program; and support the Owner's efforts to obtain the appropriate permits, reviews by authorities having jurisdiction, historic district reviews, licensures, and other approvals required for the Project.

§ 1.3.5 Not Used

§ 1.3.6 At the conclusion of the Part 1 services, the Design/Builder shall submit to the Owner a Proposal, including the Design Development Documents; a statement of the proposed Guaranteed Maximum Price based on the Design Development Documents; a statement of the Small Business Enterprises ("SBE") utilization and workforce utilization goals for Part 2 services that have been approved by the Owner; a design energy model; and a proposed schedule for Part 2 Project services; . The Design Development Documents shall consist of drawings, outline specifications or other documents to a percentage completion that is adequate for the Design/Builder to submit a Guaranteed Maximum Price for Part 2 of the Project. The Owner reserves the right to enter into a Part 2 Agreement with the Design/Builder; or to enter into a Part 2 Agreement with a third party if the Owner and the Design/Builder are unable to reach agreement on a Part 2 Agreement within a reasonable period of time after submission of the above-identified documents by the Design/Builder, as determined by the Owner.

§ 1.4 ADDITIONAL SERVICES

§ 1.4.1 The Additional Services described under this Section 1.4 shall be provided by the Design/Builder and paid for by the Owner only if authorized or confirmed in writing by the Owner.

§ 1.4.2 Making revisions in the final, Owner-approved Design Development Documents, budget or other documents when such revisions are:

1.4.2.1 inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program, Project schedule or Project budget;

1.4.2.2 due to material changes required as a result of the Owner's failure to render decisions within the time periods specified in this Part 1 Agreement.

ARTICLE 2 OWNER

§ 2.1 RESPONSIBILITIES

- § 2.1.1 The Owner shall provide supplemental information in a timely manner regarding changes in the requirements for the Project as described in **Exhibit A**.
- § 2.1.2 The Owner designates Ryan Ries or designee as its representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Design/Builder in order to avoid unreasonable delay in the orderly and sequential progress of the Design/Builder's services. The Owner may obtain independent review of the documents by a separate architect, engineer, contractor, or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Design/Builder's services.
- § 2.1.3 The Owner shall disclose, to the extent known to the Owner, the results and reports of prior tests, inspections or investigations conducted for the Project involving: structural or mechanical systems; chemical, air and water pollution; hazardous materials; or other environmental and subsurface conditions. The Owner shall disclose all information known to the Owner regarding the presence of pollutants at the Project's site.
- § 2.1.4 The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including such auditing services as the Owner may require to verify the Design/Builder's Applications for Payment, except in relation to any dispute between the parties.
- § 2.1.5 The Owner shall communicate with persons or entities employed or retained by the Design/Builder through the Design/Builder, unless otherwise directed by the Design/Builder.
- § 2.1.6 The Owner shall promptly obtain easements, zoning variances and legal authorizations regarding site utilization where essential to the execution of the Owner's program. Owner shall obtain Conditional Use Permit as needed for the Project.
- § 2.1.7 The Owner shall provide all necessary access to the project site, including any easements, land rights, or other land agreements.

ARTICLE 3 OWNERSHIP AND USE OF ELECTRONIC DATA AND DOCUMENTS

§ 3.1

- § 3.1.1 The Owner owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works created under this Part 1 Agreement and for which the Design/Builder has received Final Payment. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire".
- § 3.1.2 "Electronic Data" means any and all items resulting from the use of any software program stored in digital format on hard disks, floppy disks, zip drives, CD-ROM discs, magnetic tapes of all types and kinds, microfiche, punched cards, punched tape, computer chips (including but not limited to EPROM, PROM, ROM and RAM of any kind) or in any other vehicle for digital data storage or transmittal, including labels appended to or associated with any physical storage device associated with each original and each copy.
- § 3.1.3 "Works" means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, created or originated by the Design/Builder, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this contract that are actually provided to the Owner as deliverables, that are deliverables in draft form or still "in-progress", or that are expected to become part of the deliverables. "Works" includes "Documents".

"Documents" are comprised of written and electronic forms of deliverables created under the terms of this Part 1 Agreement, and of Electronic Data including the originals of any data or databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Design/Builder, its employees, agents or subcontractors, in the performance of services under the terms of this Part 1 Agreement.

§ 3.1.4 The Documents actually provided to the Owner as Deliverables, that are Deliverables in draft form or still "in-progress", or that are expected to become part of the Deliverables will be the exclusive property of the Owner upon payment in accordance with the provisions of this Part 1 Agreement, and all such Documents must be immediately provided to the Owner by the Design/Builder upon termination of this Part 1 Agreement or upon request. For Deliverables in draft form or still "in-progress", or that are expected to become part of the Deliverables, "Final Payment" means payment of the cost for the services provided to create the Documents to the then-current stage of completion. The Design/Builder assigns all right, title, and interest it may have in the Work to the Owner for which it has received Final Payment.

§ 3.1.5 The Design/Builder must, at the request of the Owner, execute all reasonable papers and perform all other reasonable acts necessary to transfer or record the Owner's ownership interest in the Documents. The Documents shall be submitted to the Owner, upon request, prior to the Owner making Final Payment to the Design/Builder.

§ 3.1.6 Documents in electronic form shall be provided to the Owner in both native format and PDF. The Design/Builder may retain copies of the Documents only for purposes of performance under the terms of this Part 1 Agreement and for its records as part of the Project file and may not use any such Documents for any other purposes without the prior written consent of the Owner except that the Architect may reuse details and specifications contained in the Works and Documents which have been developed by the Architect as the Architect's standards for similar public projects.

§ 3.2 Whether or not the Part 2 Agreement is executed, the Owner shall have the right to use the drawings, specifications, and other documents and electronic data furnished by the Design/Builder without the written permission of the Design/Builder. Such use shall be at the Owner's risk.

ARTICLE 4 TIME

§ 4.1 Within ten (10) business days of execution of this Part 1 Agreement, the Design/Builder shall prepare a Project Schedule for the performance of the Basic Services, which shall not exceed the time limits contained in Exhibit A of this Part 1 Agreement; which allows for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project; and which shows completion of all services under this Part 1 Agreement no later than six calendar months after execution of this Part 1 Agreement.

§ 4.2 If, as a result of Force Majeure, the Design/Builder's services under this Part 1 Agreement have not been completed within six calendar months after execution of this Part 1 Agreement, the parties shall mutually agree to either terminate this Part 1 Agreement or to execute a Change Order regarding changes in scope, schedule, and compensation, if any. Failure of the parties to execute a Change Order within ten (10) business days of the above-identified date shall result in automatic termination of this Part 1 Agreement.

§ 4.3 The Design/Builder shall immediately notify the Owner if it determines that it may not meet the six month completion date, and advise the Owner of actions it is and will undertake to complete the services within the project schedule so as to meet the six month deadline.

ARTICLE 5 PAYMENTS

§ 5.1 There will be no initial payment upon execution of this Part 1 Agreement.

§ 5.2 Payments for Basic Services, Additional Services, and Reimbursable Expenses provided for in this Part 1 Agreement shall be made monthly on the basis set forth in Article 7.

§ 5.3 Each application for payment shall contain the order/contract number, an itemized list of goods or services furnished and dates of services provided, cost per item or service, and total invoice amount

§ 5.4 Payment shall be made within thirty-five (35) calendar days after the date of receipt of a detailed invoice and verification of the charges. At no time will cumulative payments to the Design/Builder exceed the percentage of project completion, as determined by the Owner.

§ 5.5 Interest accrual and disputes regarding payment shall be governed by the provisions of Minnesota Statutes §471.425.

§ 5.6 Invoices shall show applicable Minnesota sales tax of 6.875% separately. Each invoice must include administrative documents as required by the County. . No payment will be made until the invoice and administrative documents have been approved by the County. Within ten (10) days of contract execution, the County will transmit to the Design/Builder a list of documents required to be submitted with each invoice.

§ 5.7 The Design/Builder may not submit invoices more than once a month.

§ 5.8 Invoices for any goods or services not identified in this Agreement will be disallowed.

§ 5.9 Surety Deposit Requirement for Non-Minnesota Construction Contractors
For any one contract where the anticipated contract value of the construction portion of the contract exceeds \$50,000, the department must withhold 8 percent from payments and send the money to the Minnesota Department of Revenue. The department will hold the funds as surety for the payment of state taxes owed as a result of the contract. For more information about this law, including exceptions to the withholding requirement, visit the [MN Department of Revenue](#) or [Withholding Tax Fact Sheet 12 -- Surety Deposits for Non-Minnesota Construction Contractors](#).

§ 5.10 Not Used

ARTICLE 6 DISPUTE RESOLUTION -- MEDIATION AND ARBITRATION

§ 6.1 Claims, disputes or other matters in question between the parties to this Part 1 Agreement arising out of or relating to this Part 1 Agreement or breach thereof may be subject to and decided by mediation or arbitration only if agreed to in writing by both parties.

ARTICLE 7 BASIS OF COMPENSATION

The Owner shall compensate the Design/Builder in accordance with Article 5, Payments, and the other provisions of this Part 1 Agreement as described below.

§7.1 COMPENSATION FOR BASIC SERVICES

§7.1.1 FOR PART 1 BASIC SERVICES, compensation shall be as follows:

The Owner shall pay the Design/Builder a lump sum of \$120,000 (One Hundred Twenty Thousand Dollars) for Part 1 services Part 2 fees for the Design/Builder will be included in the GMP accepted by the Owner at the end of Part 1.

§ 7.1.2 PAYMENTS shall be as follows:

Invoices will be forwarded to the Owner by the 10th day of each month for services performed in the previous month. The Owner shall pay invoices (with no retainage), within thirty-five (35) calendar days of receipt of the invoice, provided, however, that the Owner's cumulative payments to the Design/Builder shall at no time exceed the percentage Project completion as determined by the Owner.

§ 7.2 COMPENSATION FOR ADDITIONAL SERVICES

§ 7.2.1 FOR ADDITIONAL SERVICES, compensation shall be as follows:

The Design/Builder shall not perform Additional Services until the parties have executed a Change Order, including scope, schedule and compensation terms.

ARTICLE 8 OTHER CONDITIONS AND SERVICES

§ 8.1 The Basic Services to be performed under this Part 1 Agreement shall be commenced within ten (10) business days of final execution of this Part 1 Agreement, and, subject to authorized adjustments and to delays not caused by the Design/Builder, shall be completed in accordance with the provisions of § 4.1 of this Part 1 Agreement. If the Design/Builder believes that a delay by the Owner in making a timely decision will result in an extension to the Design/Builder's completion date, then the Design/Builder shall notify the Owner and the parties shall agree on the impact, if any, to the Design/Builder's completion date.

§ 8.2 See **Exhibit A** for the Scope of Work.

§ 8.3 The Owner's General Terms and Conditions are attached hereto and made a part of this Part 1 Agreement as **Exhibit D**.

§ 8.4 It is the intention of the parties to execute a Part 2 Agreement for Part 2 of this Project. However, if the parties are unable to agree on the Project scope and/or the Guaranteed Maximum Price for Part 2, the Owner reserves the right to terminate its relationship with the Design/Builder and seek an alternate relationship and/or seek alternate methods of construction. All documents, drawings, and specifications created under this Part 1 Agreement shall be the property of the Owner subject to the provisions of Article 3 of this Part 1 Agreement.

§ 8.5 The Owner and the Design/Builder will incorporate into the Part 2 Agreement activities regarding utilization of certified Small Business Enterprises and workforce diversity that build on the inclusiveness in contracting models developed and used on prior Owner projects, as a means of making a good faith effort towards achievement of the SBE utilization and labor goals determined pursuant to the provisions of paragraph 1.3.5 of this Part 1 Agreement.

§ 8.6 The Design/Builder will develop and incorporate into its services under this Part 1 Agreement sustainable architecture and universal design guidelines and specifications for Part 2 of the Project, subject to approval by the Owner.

§ 8.7 This Part 1 Agreement includes the following:

Exhibit A --Scope of Work , including Attachment A.1 – Concept Site Plan and A.2 – Existing Conditions Plan

Exhibit B -- Ramsey County Solar Ready Guidelines

Exhibit C -- Universal Design Guidelines

Exhibit D -- General Terms and Conditions

§ 8.8 All notices under this Agreement, and any amendments to this Agreement, shall be in writing and shall be deemed given when delivered by certified mail, return receipt requested, postage prepaid, when delivered via personal service or when received if sent by overnight courier. All notices shall be directed to the Parties at the respective addresses set forth below. If the name and/or address of the representatives changes, notice of such change shall be given to the other Party in accordance with the provisions of this section.

Owner: Ryan Ries

2015 Van Dyke St.
Maplewood, MN 55109

Design/Builder: Doug Loeffler
20520 Keokuk Ave. Ste 100
Lakeville, MN 55044

If the name and/or address of the above-identified representatives changes, notice of such change shall be given to the other party in accordance with the provisions of this section.

Exhibit A to the Part 1 Agreement

Scope of Work

Note: For purposes of this Exhibit A, the term "Contractor" shall mean "Design/Builder" and the term "County" shall mean "Owner" as those terms are defined in the Part 1 Agreement.

Contractor shall provide complete design, engineering, estimating, scheduling, construction management, and energy efficiency services necessary to arrive upon a Guaranteed Maximum Price, and associated deliverables, for incorporation into a Part 2 Agreement.

Note: Paragraphs A and B below, and the conceptual site plan depicted in Attachment A.1, shall be construed as a recommended basis of design. However, the County encourages innovative, creative design solutions that will maximize the resultant energy savings, building efficiencies and therefore provide the best long-term value to the County. All design solutions that address the design goals listed will be considered.

A) Basis of Design

The County's priority for Part 1 is developing a scope of work, schedule, and detailed Guaranteed Maximum Price for Part 2. As such, accurate estimating and budgeting is the primary focus for Part I. Design work in this phase shall be completed only as necessary to provide appropriate levels of estimating and as supported by the Project schedule. Estimates shall be provided using life-cycle costs, which incorporate not only the upfront or capital cost but also factors in costs related to energy, maintenance, replacement costs, and other costs borne over the lifespan of the asset, component, or system in question.

The snowmaking system will be designed with sufficient capacity to establish a cross-country ski trail with an 18-inch base of snow over a period of approximately 21 days at temperatures of 27 degrees F or less.

A conceptual site plan for the project can be found in **Attachment A.1 – Concept Site Plan**.
An existing conditions site plan can be found in **Attachment A.2 – Existing Conditions Plan**.

B) Detailed Basis of Design

1. Snowmaking System
 - a. 4 fixed and 4 mobile snow guns
 - b. Grooming equipment
 - c. Fittings, hoses, connections as necessary for a complete system
 - d. Digital weather-based control system
2. Pump/Maintenance Building
 - a. 80' L x 40' W precast concrete building with necessary foundations and precast wall panels. Preliminary program as follows:
 - i. 60' L x 40' W for maintenance/storage facilities
 - ii. 30' L x 20' W for pump house
 - iii. 12' L x 10' W office/break room area
 - iv. 8' L x 7' W bathroom
 - v. 8' L x 3' W electrical closet
 - b. Masonry fire separation wall between the maintenance/storage and pump house sides of building.
 - c. Steel wall/roof supports

- d. 3 overhead doors
 - e. HVAC system to include heating/cooling of office space and heating of maintenance/storage facilities.
 - f. Water pumping equipment and all associated piping needed for construction of complete water pumping system.
 - g. Cooling tower and required wet well.
 - h. Sidewall height/clear space under structure
 - I. Building shall be made “solar ready” per Exhibit B – Ramsey County Solar Ready Guidelines
 - J. FF&E by County – office furniture
3. Site Work/Utilities
- a. Demolition of existing conditions, including any necessary concrete removals needed for the installation of new driveway & parking area for pump house/maintenance building.
 - b. Clearing/grubbing of necessary areas for the construction of water piping system, building and adjacent spaces.
 - c. Preparation of the new building foundation and slab.
 - d. New water piping supply system for snow making equipment.
 - e. Waterlines may not follow trails. Any disturbed areas to be restored with prairie mix seed.
 - f. Snowmaking related hydrants, below grade concrete support structures, air relief manholes, and other necessary components required for a complete system.
 - g. Associated site earthwork in and around the sledding hill area to ensure safety and functionality.
 - h. Create defined walk up hill area separated from sledding area
 - i. Significant tree protection plan – identify all trees near construction disturbances and provide a plan for protection during construction.
 - j. Soil decompaction – provide a soil decompaction plan for disturbed areas. All disturbed soils shall have 5% organic matter minimum utilizing compost ripped into 12” soil profile
 - k. Stormwater treatment as required per requirements of Authorities Having Jurisdiction, Ramsey Washington Metro Watershed district, and other applicable codes and regulations.
4. Trail Lighting
- a. Provide adequate LED trail lighting to enhance site safety, security, and wayfinding.
 - b. Remove/replace existing light fixtures. Poles may be reused if appropriate
 - c. Provide photometrics of proposed layout for County review.
5. Electrical
- a. All electrical costs associated with the construction of the snowmaking system, including water pumps, cooling tower and hydrant/snow gun connections.
 - b. New 3- phase power service to site.
 - c. 4 security cameras
 - d. Building security system – integrate with Parks standard system
 - e. Power for customer kiosk near existing parking lot
 - d. Coordinate electrical service with Xcel Energy.
6. Water Service
- a. Coordinate water service needs to support project with St. Paul Regional Water Services. 8” water main has already been installed on site along with concrete vault to house it.
7. Noise Study
- a. Contractor, through qualified consultants, shall provide a noise study to evaluate impacts of future facility on surrounding neighborhood.
8. Site Signage/Wayfinding
- a. Provide appropriate signage across the site to direct users as intended. Signage shall conform to MUTCD standards and Ramsey County branding standards.

9. Surveying
 - a. Partial site survey provided by County. All additional surveying is the responsibility of the Contractor.
10. Geotechnical Investigation
 - a. County will hire independent testing agency to conduct geotechnical investigation as needed for the Project

C) Part 1 Services

1. Participate in a kickoff meeting with County staff to discuss Project goals and review preliminary design concepts.
2. Coordinate and participate in progress meetings as appropriate. Progress meetings shall occur bi-weekly unless otherwise agreed upon by County. Additionally, Contractor shall participate in meetings with authorities having jurisdiction, regulatory agencies, utility companies, or others as necessary to support Project approvals. In particular, the Project will require detailed coordination with SPRWS and other City of St. Paul/City of Maplewood agencies, and the Ramsey Washington Metro Watershed District. Also, the County will be leading a targeted community engagement process to obtain resident feedback on the project. Contractor shall participate in meetings, charettes, etc. as necessary to support this process.
3. Provide a design of sufficient detail to arrive upon a Guaranteed Maximum Price for Part 2 services. Design approach should be reviewed and approved by County prior to commencing work so that the Project team mutually understands the expectations and requirements. This GMP design shall include a narrative of scope assumptions and exclusions as well.
4. Provide a detailed cost estimate for the Part 2 services, which, if accepted by the County, will become the basis of the Part 2 Agreement Guaranteed Maximum Price. Contractor shall provide progress estimates at regular intervals during Part 1 using life cycle costing methods as described in paragraph A above.
5. Provide a baseline Critical Path Method construction schedule for incorporation into Part 2 Agreement.
6. Coordinate with Xcel Energy for new electrical service and available Project rebates. Participate in any qualifying Xcel Energy programs such as Energy Efficient Buildings (EEB) or Energy Design Assistance (EDA). Complete and submit paperwork to Xcel as required to maximize County rebates.
7. Coordinate with St. Paul Regional Water Service to ensure adequate water service to support the Project.
8. Coordinate with Authorities Having Jurisdiction to ensure design meets all applicable laws, codes, ordinances, statutes, and regulations. Incorporate all such requirements into design. For accessible design requirements, the U.S. Department of Justice 2010 ADA Standards for Accessible Design shall take precedence, unless local codes are more stringent.
9. Design shall follow State of Minnesota Sustainable Building Guidelines and meet all applicable B3 standards. Project will be enrolled in B3 tracking program (<https://trackingtool.b3mn.org/>). Project setup costs for the B3 tracking tool, including the SB2030 program component, and administrative reviews and support will be provided at no cost to the project by the State of Minnesota. All other costs necessary, if any, for Contractor to follow B3 guidelines and administer the project in the B3 tracking tool are the responsibility of the Contractor.
 - a. Contractor shall provide energy modeling for the design, for inclusion in the Part 2 agreement.

10. Design and calculations must be performed by registered engineers licensed in the State of Minnesota.
11. Design shall follow the principles of “universal design” per the Center for Excellence in Universal Design (<http://universaldesign.ie/What-is-Universal-Design/The-7-Principles/>) and **Exhibit C –Universal Design Guidelines**.
12. Part 1 services shall be completed no later than six months after the date of contract execution.

D) Part 2 Services

1. Prepare design based on approved Part 1 design services and consistent with the provisions of this Agreement, including but not limited to, working drawings and specifications setting forth and describing the construction work to be done, the materials to be used and the work and equipment required. The design work shall be completed in support of the project schedule, and at a minimum level that allows for proper permitting and approvals, subcontracting, and construction. Given the project budget, the County wishes to minimize design related expenses in the execution of the Project.
2. Conduct construction bidding services for subcontracted work, including but not limited to:
 - a. Soliciting bids from multiple contractors, with a specific outreach focus on CERT Small Business Enterprises, utilizing a bid packaging strategy in alignment with the Project schedule.
 - b. Conducting a public bid opening which shall be observed by a representative of the County.
 - c. Reviewing and comparing all bids.
 - d. Normalizing bids to ensure an “apples-to-apples” comparison.
 - e. Compiling normalized bids into a Bid Tabulation for review by County, depicting SBE vendors as well as a recommendation for award.
 - f. Awarding subcontracts to the responsive and responsible bidders submitting the lowest price.
3. Work with County and awarded subcontractors to conduct a value analysis on the design, to identify cost savings or performance-improvement opportunities.
4. Provide construction management services, including but not limited to:
 - a. Development of initial Critical Path Method construction schedule for County approval and updating the schedule as appropriate throughout the duration of the Project
 - b. Development of Site Utilization Plan, identifying work done while the site is open/in use, safety precautions enacted to protect employees and visitors, temporary barricades, rerouting of pedestrian or vehicle traffic, temporary signage locations, staging and delivery locations, worker parking locations, and other project-specific considerations for minimizing disruption to County operations, providing safe working conditions for project workers, ensuring safety of the public, and coordinating the execution of the Work. This plan shall be reviewed and approved by County prior to commencing construction. Additionally, Contractor shall assist the County in stakeholder communications throughout the duration of the project, including but not limited to sending out regular project updates to a County-provided stakeholder list along with current Site Utilization Plan and relevant schedule information.
 - c. Overall management and supervision of all subcontractors and consultants utilized to complete the Project.
 - d. Maintain clean record copies of drawings and specifications on site for viewing by County as requested.
 - e. Preparation of Project submittals according to industry standards. Submittals shall include product data for all equipment and materials; shop drawings showing equipment and piping layouts, equipment schedules, control diagrams, riser diagrams; engineering calculations confirming viability of proposed system; others as appropriate. Shop drawings and calculations shall be stamped by an engineer licensed in the State of Minnesota.
 - f. Track utilization of Small Business Enterprises and submit monthly report on County’s form/software with pay applications.

- g. Track workforce utilization against Project goals and submit monthly report on County's form/software with pay applications.
 - h. County is in the process of implementing construction project management software solutions. Should these solutions be available, Contractor shall utilize them at County's direction to assist in administering the Project.
5. Provide construction services as necessary to complete the Work safely, with highest levels of quality, and within approved budget and schedule. Secure all permits necessary to complete the work. Cost of permits shall be included in GMP.
6. Provide construction administration services, utilizing qualified personnel who participated in Part 1 services and independent from Part 2 subcontractors, including but not limited to:
- a. Review construction submittals.
 - b. Respond to RFIs and issue ASIs as appropriate.
 - c. Coordinate and participate in periodic progress meetings with County and appropriate Project personnel.
 - d. Provide Building Information Modeling services as appropriate to avoid installation conflicts or field problems
 - e. Perform punch-list prior to Substantial Completion to identify incomplete work.
 - f. Provide commissioning/measurement and verification services to verify that the constructed project meets the design energy model.
 - g. Services described in this paragraph 6 may not be performed by Part 2 subcontractors.
7. Provide project close-out services, including but not limited to:
- a. Obtain final approvals from authorities having jurisdiction.
 - b. Verify completion of punch-list.
 - c. Provide in-depth training on new systems to County staff.
 - d. Provide complete Turnover Documents to the County in hard copy (1) and electronic copy. Electronic documents should be organized in an intuitive folder/file structure. Files should be in CAD and PDF format. Turnover Documents include but are not limited to:
 - i. As-built drawings and specifications. Record documents shall be scanned and submitted electronically, as well as original "red-lines." CAD version of all drawings should also be submitted.
 - ii. Operations and maintenance instructions for all Project materials and equipment.
 - iii. Warranties (one year parts and labor) from all subcontractors on the Project, effective from the date of Substantial Completion.
 - iv. Extended manufacturer's warranties on all applicable equipment, effective from the date of Substantial Completion.
 - v. Contact information for all appropriate contractors, vendors, suppliers, and manufacturers on the Project.
 - vi. Video of system training.
 - f. Submit final rebate paperwork to Xcel Energy.
 - g. Provide an itemized inventory of assets added or modified as a result of the Project, with associated life cycles and present value replacement costs, using template provided by County. This inventory will be imported into the County's enterprise asset management software project.
8. Repair or replace products that fail in materials or workmanship within warranty period of one year, commencing from date of Substantial Completion. Failures shall be adjusted, repaired, or replaced at no additional cost or reduction in service to Owner. Warranty service shall occur during normal business hours and commence within four hours of County's warranty service request. Provide standard manufacturer's extended warranties on all equipment.
9. Contractor shall include 20 hours of post-occupancy support for re-training, seasonal adjustments, or other services as requested by County. These hours will be utilized at the County's discretion.

10. Time is of the essence. Part 2 services shall be completed in accordance with the CPM schedule developed in Part 1.

11. Contractor and any subcontractors must coordinate and seek approval of all telecommunications and network requirements with Ramsey County Information Services prior to any purchase or installation/implementation of a technology solution as part of the Project.

Exhibit B to the Part 1 Agreement

Ramsey County Solar Ready Guidelines

See attached Exhibit B.

Exhibit C to the Part 1 Agreement

Universal Design Guidelines

See attached Exhibit C.

Exhibit D to the Part 1 Agreement

General Terms and Conditions

Note: For Purposes of this Exhibit D, the term "Contractor" shall mean "Design/Builder" and the term "County" shall mean "Owner" as those terms are defined in the Part 1 Agreement.

1. Independent Contractor

The Contractor is and shall remain an independent contractor throughout the term of this Agreement and nothing herein is intended to create, or shall be construed as creating, the relationship of partners between the parties or as constituting the Contractor as an employee of the Owner.

2. Successors, Subcontracting and Assignment

2.1.

The Contractor binds itself, its partners, successors, assigns and legal representatives to the Owner in respect to all covenants, contracts and obligations contained in this Agreement.

2.2.

The Contractor shall not enter into any subcontract for performance of any services under this Agreement nor assign or transfer any interest in this Agreement without the prior written approval of the Owner and subject to such conditions and provisions as the Owner may deem necessary. The Contractor shall be responsible for the performance of all subcontractors.

3. Compliance with Legal Requirements

3.1.

The Contractor shall comply with all applicable federal, state and local laws, local ordinances, and the rules and regulations of any regulatory body acting thereunder and with the provisions of all licenses, certifications and other requirements necessary for the execution and completion of the contract.

3.2.

Unless otherwise provided in the agreement, the Contractor, at its own expense, shall secure and pay for all permits, fees, charges, duties, licenses, certifications, inspections, and other requirements and approvals necessary for the execution and completion of the contract, including registration to do business in Minnesota with the Secretary of State's Office.

3.3.

Prior to entering into a contract with Ramsey County, a domestic corporation must submit a Certificate of Good Standing issued by the Minnesota Secretary of State's office pursuant to Minn. Stat. §5.12, and a foreign corporation must submit a Certificate of Authority issued by the Minnesota Secretary of State's Office pursuant to Minn. Stat. §303.03. The Contractor shall maintain a Certificate of Good Standing or a Certificate of Authority, as applicable, and shall submit the Certificate upon request by the Owner, throughout the term of the agreement and including amendments to renew as and if allowed by the contract.

4. Data Practices

4.1.

All data collected, created, received, maintained or disseminated for any purpose in the course of the Contractor's performance under this Agreement is subject to the provisions of the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, any other applicable state statutes, any state rules adopted to implement the Act and statutes, as well as federal statutes and regulations on data privacy.

4.2.

The Contractor shall take all reasonable measures to secure the computers or any other storage devices in which Owner data is contained or which are used to access Owner data in the course of providing services under this Agreement. Access to Owner data shall be limited to those persons with a need to know for the provision of services by the Contractor. Except where client services are provided, at the end of the Project all Owner data will be purged from the Contractor's computers and storage devices used for the Project and the Contractor shall give the Owner written verification that the data has been purged.

5. Security

5.1.

The Contractor is required to comply with all applicable Ramsey County Information Services Security Policies ("Policies"), as published and updated by Information Services Information Security. The Policies can be made available on request.

5.2.

Contractors shall report to Ramsey County any privacy or security incident regarding the information of which it becomes aware. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with System operations in an information system. "Privacy incident" means violation of the Minnesota Government Data Practices Act (MGDPA) and/or the HIPAA Privacy Rule (45 C.F.R. Part 164, Subpart E), including, but not limited to, improper and/or unauthorized use or disclosure of protected information, and incidents in which the confidentiality of the information maintained by it has been breached. This report must be in writing and sent to the Owner not more than 7 business days after learning of such non-permitted use or disclosure. Such a report will at least: (1) Identify the nature of the non-permitted use or disclosure; (2) Identify the data used or disclosed; (3) Identify who made the non-permitted use or disclosure and who received the non-permitted or violating disclosure; (4) Identify what corrective action was taken or will be taken to prevent further non-permitted uses or disclosures; (5) Identify what was done or will be done to mitigate any deleterious effect of the non-permitted use or disclosure; and (6) Provide such other information, including any written documentation, as the Owner may reasonably request. The Contractor is responsible for notifying all affected individuals whose sensitive data may have been compromised as a result of the Security or Privacy incident.

5.3.

Contractors must ensure that any agents (including contractors and subcontractors), analysts, and others to whom it provides protected information, agree in writing to be bound by the same restrictions and conditions that apply to it with respect to such information.

5.4.

The Owner retains the right to inspect and review the Contractor's operations for potential risks to Owner operations or data. The review may include a review of the physical site, technical vulnerabilities testing, and an inspection of documentation such as security test results, IT audits, and disaster recovery plans.

5.5.

All Owner data and intellectual property stored in the Contractor's system is the exclusive property of the Owner.

6. Indemnification

The Contractor shall indemnify, hold harmless and defend the Owner, its officials, agents, and employees against any and all liability, losses, costs, damages, expenses, claims or actions, including reasonable attorney's fees, which the Owner, its officials, agents, or employees may hereafter sustain, incur or be required to pay, arising out of or by reason of any act or omission of the Contractor, or its

subcontractors, and their officers, agents or employees, in the execution, performance, or failure to adequately perform the Contractor's obligations pursuant to this Agreement.

7. Contractor's Insurance

7.1.

The Contractor shall purchase and maintain such insurance as will protect the Contractor from claims which may arise out of, or result from, the Contractor's operations under this Agreement, whether such operations are by the Contractor or by any subcontractor, or by anyone directly employed by them, or by anyone for whose acts or omissions anyone of them may be liable.

7.2.

Throughout the term of this Agreement, the Contractor shall secure the following coverages and comply with all provisions noted. Certificates of Insurance shall be issued to the Owner contracting department evidencing such coverage to the Owner throughout the term of this Agreement.

7.2.1

Commercial general liability of no less than \$500,000 per claim, \$1,500,000 per occurrence, \$2,000,000 general aggregate, \$2,000,000 products/completed operations total limit, \$1,500,000 personal injury and advertising liability

7.2.2.

All policies shall be written on an occurrence basis using ISO form CG 00 01 or its equivalent.

7.2.3

Ramsey County, its officials, employees, and agents, shall be added to the policy as additional insured on a primary basis with respect to ongoing and completed operations of the Contractor, using ISO endorsement form CG 20 10 and 20 37 or the equivalent.

7.2.4

Professional liability of no less than \$1,000,000 per claim and \$2,000,000 aggregate limit.

7.2.5

Certificate of Insurance must indicate if the policy is issued on a claims-made or occurrence basis. If coverage is carried on a claims-made basis, then 1) the retroactive date shall be noted on the Certificate and shall be prior to or the day of the inception of the contract; and 2) evidence of coverage shall be provided for three years beyond expiration of the contract.

7.3.

Workers' Compensation as required by Minnesota Law. Employer's liability with limits of \$500,000/\$500,000/\$500,000.

7.4.

An umbrella or excess liability policy over primary liability insurance coverages is an acceptable method to provide the required commercial general liability and employer's liability insurance amounts.

7.5.

If the Contractor is driving on behalf of the Owner as part of the Contractor's services under the Agreement, a minimum of \$1,000,000 combined single limit auto liability, including hired, owned, and non-owned.

7.6.

These are minimum insurance requirements. It is the sole responsibility of the Contractor to determine the need for and to procure additional insurance which may be needed in connection with this Agreement.

7.7.

Certificates shall specifically indicate if the policy is written with an admitted or non-admitted carrier. Best's Rating for the insurer shall be noted on the Certificate, and shall not be less than an A-.

7.8.

The Contractor shall not commence work until it has obtained the required insurance and if required by this Agreement, provided an acceptable Certificate of Insurance to the Owner.

7.9.

All Certificates of Insurance shall provide that the insurer give the Owner prior written notice of cancellation or non-renewal of the policy as required by the provisions of Minn. Stat. Ch. 60A, as applicable.

7.10.

Nothing in the Agreement shall constitute a waiver by the Owner of any statutory or common law immunities, defenses, limits, or exceptions on liability.

8. Audit

Until the expiration of six years after the furnishing of services pursuant to this Agreement, the Contractor, upon written request, shall make available to the Owner, the State Auditor, or the Owner's ultimate funding source, a copy of the Agreement, and the books, documents, records, and accounting procedures and practices of the Contractor relating to this Agreement.

9. Non-Conforming Services

The acceptance by the Owner of any non-conforming goods/services under the terms of this Agreement or the foregoing by the Owner of any of the rights or remedies arising under the terms of this Agreement shall not constitute a waiver of the Owner's right to conforming services or any rights and/or remedies in respect to any subsequent breach or default of the terms of this Agreement. The rights and remedies of the Owner provided or referred to under the terms of this Agreement are cumulative and not mutually exclusive.

10. Setoff

Notwithstanding any provision of this Agreement to the contrary, the Contractor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the contract by the Contractor. The Owner may withhold any payment to the Contractor for the purpose of setoff until such time as the exact amount of damages due the Owner from the Contractor is determined.

11. Conflict of Interest

The Contractor shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Agreement. The Contractor warrants that it is not now aware of any facts that create a conflict of interest. If the Contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to the Owner. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this subparagraph shall be deemed a material breach of this Agreement.

12. Respectful Workplace and Violence Prevention

The Contractor shall make all reasonable efforts to ensure that the Contractor's employees, officers, agents, and subcontractors do not engage in violence while performing under this Agreement. Violence, as defined by the Ramsey County Respectful Workplace and Violence Prevention Policy, is defined as words and actions that hurt or attempt to threaten or hurt people; it is any action involving the use of physical force, harassment, intimidation, disrespect, or misuse of power and authority, where the impact is to cause pain, fear or injury.

13. Force Majeure

Neither party shall be liable for any loss or damage incurred by the other party as a result of events outside the control of the party ("Force Majeure Events") including, but not limited to: war, storms, flooding, fires, strikes, legal acts of public authorities, or acts of government in time of war or national emergency.

14. Unavailability of Funding - Termination

The purchase of goods and/or labor services or professional and client services from the Contractor under this Agreement is subject to the availability and provision of funding from the United States, the State of Minnesota, or other funding sources, and the appropriation of funds by the Board of County Commissioners. The Owner may immediately terminate this Agreement if the funding for the purchase is no longer available or is not appropriated by the Board of County Commissioners. Upon receipt of the Owner's notice of termination of this Agreement the Contractor shall take all actions necessary to discontinue further commitments of funds to this Agreement. Termination shall be treated as termination without cause and will not result in any penalty or expense to the Owner.

15. Termination

15.1. Termination by the Owner

15.1.1.

The Owner may immediately terminate this Agreement if any proceeding or other action is filed by or against the Contractor seeking reorganization, liquidation, dissolution, or insolvency of the Contractor under any law relating to bankruptcy, insolvency or relief of debtors. The Contractor shall notify the Owner upon the commencement of such proceedings or other action.

15.1.2.

The Owner may terminate this Part 1 Agreement if the Contractor violates any material term or condition of this Part 1 Agreement or does not fulfill in a timely and proper manner its obligations under this Part 1 Agreement. In the event that the Owner exercises its right of termination under this Paragraph, it shall submit written notice to the Contractor and its surety, if any, specifying the reasons therefore. Termination shall be immediately effective upon the failure of the Contractor to cure the default within ten (10) business days of receipt of the notice of default. Upon termination, the Contractor shall take all actions necessary to discontinue further commitments of funds, and the Owner shall take possession of the site and of all materials and finish the Part 1 Services by whatever method the Owner may deem expedient.

15.1.3.

The Owner may terminate this Part 1 Agreement without cause upon giving at least thirty (30) business days written notice thereof to the Contractor. In such event, the Contractor shall be entitled to receive compensation for services provided in accordance with this Agreement up to and including the effective date of termination.

15.1.4.

This Part 1 Agreement may be terminated by the Owner upon immediate written notice to the Contractor in the event that the Project is abandoned. If such termination

occurs, the Owner shall pay the Contractor for services completed and for proven loss sustained upon materials, equipment, tools, construction equipment and machinery.

15.1.5.

Any termination by the Owner shall be without prejudice to the rights of the Owner to pursue other remedies against the Contractor.

15.2. Termination by the Contractor

15.2.1.

If the Owner fails to make payment of undisputed amounts or otherwise violates any material term or condition of this Part 1 Agreement the Contractor may give written notice that the Contractor intends to terminate this Part 1 Agreement, giving the specific reasons therefore. Termination shall be immediately effective upon the failure of the Owner to cure the default within ten (10) business days of receipt of the notice of default. A good faith dispute by the Owner regarding the amount of payment and failure to pay disputed amounts, which is subject to the provisions of the Minnesota Prompt Payment Act, does not constitute grounds for termination by the Contractor under this paragraph.

16. Interpretation of Agreement; Venue

16.1.

The Agreement shall be interpreted and construed according to the laws of the State of Minnesota. All litigation regarding this Agreement shall be venued in the appropriate State or Federal District Court in Ramsey County, Minnesota.

16.2.

The provisions of this Agreement are severable. If any part of this Agreement is rendered void, invalid or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement.

17. Warranty

The Contractor warrants that it has the legal right to provide the goods and services identified in this Agreement and further warrants that the goods and services provided shall be in compliance with the provisions of this Agreement.

18. Alteration

Any alteration, variation, modification, or waiver of the provisions of this Agreement shall be valid only after it has been reduced to writing and signed by both parties.

19. Title - Risk of Loss

19.1

Title to goods and/or all associated documentation shall pass to the County upon payment by the County for goods and/or associated documentation; or for construction projects, upon incorporation of the goods into the Project.

19.2

The County shall be relieved from all risks of loss or damage to goods, and/or all documentation prior to the time title passes to the County as described above. The Contractor shall not be responsible for loss or damage to goods and/or documentation occasioned by negligence of the County or its employees.

20. Submittals

No portion of the work requiring submission of a shop drawing, drawing, manufacturer's literature, test data or other information, or a sample shall be commenced until the submittal has been approved by the County.

21. Clean Up

The Contractor shall at all times keep County premises free from accumulation of waste materials or rubbish caused by its operations.

22. Lobbying

For all contracts involving over \$150,000 in federal funds, the Contractor must sign the Certification Regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreements, attached to this RFP, and submit it as part of the proposal contents.

23. Safety Compliance

23.1

The Contractor and all subcontractors shall at all times during the performance of the Work under this Part 2 Agreement be and remain in compliance with and responsible for any conditions imposed upon the County by OSHA requirements.

23.2

A risk control program must be implemented on site during this project.

24. Entire Agreement

The written Agreement, including all attachments, represent the entire and integrated agreement between the parties hereto and supersede all prior negotiations, representations or contracts, either written or oral. No subsequent agreement between the Owner and the Contractor to waive or alter any of the provisions of this Agreement shall be valid unless made in the form of a written Amendment to this Agreement signed by authorized representatives of the parties.

25. Sustainable Architecture Guidelines and Specifications

25.1

The Contractor will develop and incorporate sustainable architecture guidelines and specifications under the Part 1 Agreement, subject to approval by the Owner.

25.2

The Project will be required to follow the State of Minnesota Sustainable Building Guidelines and meet the Minnesota SB 2030 Energy Standard (<http://www.b3mn.org>). Energy modeling shall be included at each design phase to model the energy use for the building and evaluate various options for reducing energy use in order to meet the sustainable building requirements.