



P.O. Box 429
577 Bay Road
Hamilton, MA
01936

PHONE
FAX
WEB SITE

(978) 626-5227
(978) 468-5582
<http://www.hamiltonma.gov>

REQUEST FOR QUALIFICATIONS

PATTON HOMESTEAD DESIGN AND CONSTRUCTION SERVICES



Control # RFQ2018 - 001

Qualifications Due: August 23rd, 2017 @ 4:30pm

Contact _____

Timothy J. Olson
Town of Hamilton
DPW Director

ACKNOWLEDGEMENT OF RECEIPT

Release Date	August 2nd, 2017
Qualifications Title	Patton Homestead Design and Construction Services
ID Number	RFQ2018-001
Qualifications Due	August 23rd, 2017 @ 4:30pm
<p>Please provide the requested information below as acknowledgement that you have received our Request for Qualifications ("RFQ") noted above. It is required that interested bidders complete this acknowledgement and return via Fax to the Town of Hamilton, Attn: Tim Olson at (978)626-5227 or by email to tolson@hamiltonma.gov or by US Mail to Town of Hamilton, Attn: Tim Olson, 577 Bay Road, Hamilton, MA 01936. Only by doing this, will the Town be able to provide notification of any addenda or answered questions relating to this RFQ. Only those companies or individuals shown on the Distribution Register will receive addenda to this RFQ. By completing and returning this acknowledgement will ensure you are recorded on the Distribution Register. Qualifications from companies not acknowledging the addenda may be rejected as not responsive.</p>	
Name of Company or Individual (Print)	
Name/Title of Contact (Print)	
Address (Line 1) (Print)	
Address (Line 2) (Print)	
Telephone Number	
Fax Number	
Email Address (Print)	
Signature	
Date	
<p>Notes: *Any hand delivery or facsimile received after the due date and time will not be addressed. Please allow enough time for hand delivery or facsimile transmissions.</p>	

**PATTON HOMESTEAD
DESIGN AND CONSTRUCTION SERVICES
PROCUREMENT SCHEDULE**

RFQ ID Number RFQ2018-001		
Primary Contact for this Procurement		Tim Olson, DPW Director Telephone 978-626-5227 Email: tolson@hamiltonma.gov
Project Name New Patton Homestead Design and Construction Services		
Contract ID Number		
Event	Date	Details
Request for Qualifications (RFQ) Available	August 2 nd , 2017	Via email from tolson@hamiltonma.gov
Pre-Proposal Briefing Session (Optional)	August 10 th , 2017 @ 11:00am	The Optional Briefing session will be held at the Patton Homestead, 650 Asbury Street, Hamilton, MA. Attendance is strongly recommended.
Deadline for Written Questions	August 16 th , 2017 @ 4:30pm	
Addendums		Will be distributed to firms that have acknowledged the RFQ from the Town.
When and Where Qualifications are Due*	August 23 rd , 2017 @ 4:30pm	Qualifications are due at the Department of Public Works, Hamilton Town Hall, 577 Bay Road, Hamilton, MA
Bid Surety Requirement (Bid Deposit)	N/A	
Proposal Opening	August 23 rd , 2017	Qualifications will be opened and distributed to selection committee
Notify all bidders of finalists selected for interviews	August 28 th , 2017	If interviews are required the Town will notify the consultant by 4:30pm on August 28 th , 2017.
Finalist interviews (if required)	~August 31 st , 2017	Interviews will be scheduled
Contract Awarded**	September 5 th , 2017	
<p>Notes:</p> <p>*Facsimile transmissions for written inquires must be sent prior to the above date and time deadlines. Any hand delivery or facsimile received after the due date and time will not be addressed. Please allow enough time for hand delivery or facsimile transmissions.</p> <p>**The time for award may be extended by the Town. The Town reserves the right to change, delay, cancel, or expedite the contract award date. The Town reserves the right to reject any and all proposals as determined to be in the best interests of the Town and to waive minor informalities.</p>		

End Procurement Schedule

REQUEST FOR QUALIFICATIONS (RFQ)
DESIGN SERVICES
PATTON HOMESTEAD
DESIGN AND CONSTRUCTION SERVICES
TOWN OF HAMILTON, MA
July 21th, 2017

I. INTRODUCTION:

The Town of Hamilton (“Owner”) is seeking the services of a qualified “Designer” within the meaning of M.G.L. Chapter 7C, Section 44, to provide designer and construction services for repairs and improvements to the Patton Homestead, located at 650 Asbury Street, in the Town of Hamilton, Massachusetts. The Designer selected would be eligible to complete the full design and construction services on the project. Request for Qualifications must be returned to the Town of Hamilton, Department of Public Works by **4:30pm on August 23rd, 2017** from the Town of Hamilton Department of Public Works.

Historical, present, and future information included in the Request for Qualifications has been a collaborative effort provided by the Patton Family Advisory Gift Committee, the Patton Homestead, Inc., and the Town of Hamilton.

II. HISTORY OF PROPERTY:

The history of the Patton Homestead has been developed in chronological order that was presented in the report by the “Patton Family Advisory Gift Committee Report to Town of Hamilton May 10, 2012 Release 3” ⁽¹⁾

1786-1927: The home that would become the Patton Homestead was built in 1786 and due to the surrounding lush meadows, was named “Green Meadows”. In 1928, the siblings of Beatrice Ayer Patton surprised Beatrice and her husband, General George S. Patton, Jr. with the purchase of the Green Meadows property. The Patton’s had wished for a home of their own and were thrilled with Green Meadows Farm.

1928-1945: The Patton’s and their four children enjoyed Green Meadows as their home base while the family was still traveling and residing elsewhere due to the military commitments of General Patton. They planned to return to Green Meadows right after the end of WWII, but General Patton’s untimely death in 1945 meant that his wife, Beatrice, would then preside over Green Meadows, alone.

1945-1953: Beatrice made the Homestead a welcoming place for friends and relatives to enjoy her rose gardens and displays of military memorabilia. The land was a regular route for the Myopia Hunt in which Beatrice was a participant. In 1953, Beatrice had a heart attack while riding in the hunt, which unfortunately ended her life.

1953 – 1980: At the time of his mother’s death, General George S. Patton III was serving in Korea. He and his wife, Joanne Holbrook Patton, a fifth-generation army daughter, and their family took over the Homestead but not as their permanent residence. The Patton’s continued to enjoy the Homestead during summers and on vacation, but George wanted to finish his military career, which required living and traveling abroad.

1980 – Present: Joanne Patton and General George S. Patton III lived in the Patton Homestead and it is where they continued the raising of their 5 children. Together they planned and developed a CSA (Community Supported Agriculture) organic farm project at Green Meadows. In 2004, her husband George died and Joanne has continued to live in the Homestead and to oversee Green Meadows Farm as a thriving CSA. Joanne has generously welcomed others to enjoy the estate and Homestead, hosting outings for Operation Troop Support, West Point and various other colleges. She was director of the Hamilton-Wenham Community Center for many years. Joanne is an active member of the Hamilton Community and has contributed generously to the town’s public life and events.

III. DESCRIPTION OF PROPERTY

The Patton Homestead is located at 650 Asbury Street, Hamilton, MA 01982 on approximately 14 acres; the site is bounded by Asbury Street to the East, Green Meadows Farm to the North, the Ipswich River to the West, and Essex County Greenbelt and the Patton Ridge Subdivision to the South. The 7,600 square foot eighteenth century farmhouse house consists of three floors with additions constructed in the nineteenth and twentieth centuries. Other outbuildings and features located on the property include a heated stable with an apartment, and barns, a generator building, and a shed. Additional improvements on the property included a rose arbor, well, river dock, swimming pool and a pool house.



The buildings and grounds have received limited maintenance for several years and in need of renovations to preserve the historic character. A Title V inspection and a home inspection were completed recently. In 2015 the outdoor pool was filled in by the Town to allow additional ground use for outdoor events and functions. Below are a few pictures of the current exterior of the Patton Homestead.



Patton Homestead East Elevation
650 Asbury Street



Patton Homestead North Elevation



Patton Homestead West Elevation



Patton Homestead South Elevation

Below are a few historical features of the Patton Homestead. These features were identified by the Patton Family Advisory Gift Committee ^{1}

- The center section of the home dates from 1786.
- The old colonial oven, used for cooking, is still visible from closets next to the fireplaces in the living and dining rooms.
- There are eight fireplaces in the home – all work. There is “hidden” storage above each mantle.
- You can see the original staircase to the second floor by opening the closet to the right of the living room fire place. The existing stairwell was built over the original, which was built with square nails.
- What is now known as the Trophy Room was built as a separate cooking room, not attached to the main house. It was attached sometime after 1906.
- Also in the Trophy Room, an outside door to a small patio was destroyed during a fire in 1986. It is now a full wall.
- Two closets in the Library were converted to archival shelving several years ago, to accommodate newspaper-sized albums.
- Beatrice and Gen. Patton (the senior) built the addition (library, General's office and the master suite) before WWII – between 1938 -1942. It remains very much the way it was built. The paneling and bookshelves are cherry wood. The display cases between the General's office and the master suite were built to house some of the artifacts Beatrice collected during her travels.
- The front door of the home features bullseye windows.
- There are “speaking tubes” located throughout the house, to communicate with kitchen and house staff.
- There is a small coat closet built half way up the front stairs, next to the chimney. It is thought that this kept the coats warm.
- The upstairs floors are original wide pine. According to JHP, they were covered with 4 layers of deck paint when they moved into the home in 1980.
- The small bedroom over the kitchen was George Patton's bedroom as a boy. When he retired from the Army and moved to Hamilton permanently with Joanne, it became his office.
- The kitchen was built for the era of household help, complete with butler's pantry. What is now the main reception desk was originally the servant's dining room. The other office rooms were servant's bedrooms. The kitchen was updated in 1982 by George Patton as an anniversary gift to his wife.
- Joanne built her office, now the Archives Room, in 1984/85.
- The basement contains an old wine cellar, a walk-in vault put in by Beatrice Patton and a trench that has kept the cellar dry.

IV. THE HOMESTEAD USE

The entire Patton property, including the Homestead, is located in Hamilton's RA "Residence-Agricultural" zoning district. All of the uses that are proposed for the property are permitted by right according to the Town of Hamilton "Table of Use Regulations in section 3.1.3 of the Zoning Bylaw.

As highlighted in the Patton Homestead, Inc. Report ^{2} the building will offer many uses once renovated and publicized. Hamilton residents, veterans and the general public will be able to enjoy:

- A quiet, scenic park;
- Educational, recreational and cultural programs and events;
- Community interior and exterior meeting spaces;
- The Patton archives and artifacts;
- An event center for up to ~75-90 in the Homestead or up to 125 people including the grounds; and
- Access to the Ipswich river

The Homestead will be a location for Hamilton to host a variety of **exterior** events which can be hosted on the grounds near the homestead. Examples of exterior events supported by the Town of Hamilton and Patton Homestead, Inc. are:

- Hamilton residents can use the property for family picnics or reunions. Families can arrange for and pay directly for a tent to be set up on the property.
- Canoe/kayak/bird watching access to the Ipswich River can be accommodated from either the new parking lot or from the wood road (no motorized access) from the abandoned well pump house.
- Seasonal Festivals sponsored by the Town or a local business can be held on the property.
- The Wenham Military History Day (successfully held - 2015, 2016, 2017)
- Veterans' groups can use the property for gatherings. The West Point Society of New England has been holding picnics at the property for many years.
- Wedding ceremonies and/or tented, casual wedding receptions can be held on the property. Tents can be arranged directly on the property or through caterers.
- Popular car shows can be held on the property.
- Road races (start and finish lines) can be scheduled.
- Scouting events can continue to happen on the grounds.



View from the Patton Homestead looking west

Various events will take place inside of the house. The maximum capacity for events inside the house is 50 and 90 people, including the seasonal porch. Examples of interior events supported by the Town of Hamilton and Patton Homestead, Inc. are:

- Town boards, committees, groups can hold meetings in the house.
- Hamilton residents will be able to hold meetings and parties in the Homestead.
- Local societies will be able to book the homestead for presentations (e.g. book signings)
- The Hamilton Historical Society can organize and display exhibits of their archives.
- Tours of the Patton Archives may occur on a scheduled basis.
- Exhibits to highlight other aspects of our collective military history (e.g. Vietnam, cavalry)

V. RENOVATIONS

Before any programming, community activities or fundraising activities can take place the town-owned property must comply with ADA requirements and all other federal, state or local building or access codes for a public building. When the Homestead was a private home such requirements did not pertain.

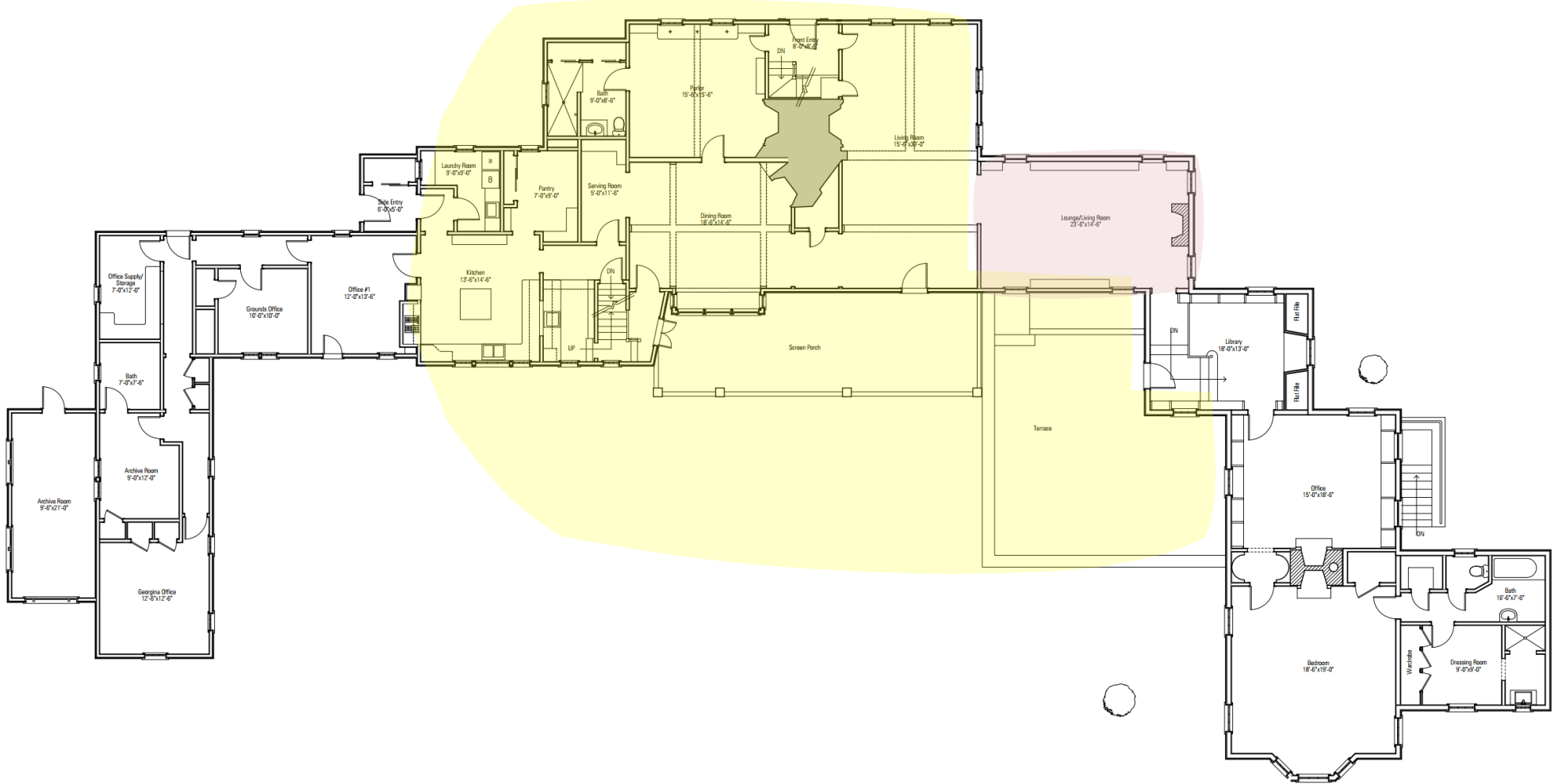
To deliver the short term vision, a renovated Homestead must comply with ADA and other requirements for public buildings include the following:

- Adequate parking
- Accessible bathrooms
- Exterior and Interior repairs
- Improved Interior Use Flow and Space
- Exterior landscaping
- Improved fire safety, extinguishers, exit signs
- Improved security systems
- Electrical system up to code
- Fully accessible entrance to the house
- Fully functioning HVAC system
- Water heater
- Up to date plumbing and backflow prevention
- Sanding and refinishing wood floors
- Separate archives entrance (possibly)
- Functional kitchen for caterer set up (possibly)

Outlined below is a phasing approach for consideration. The Town obviously realizes the building repairs and improvements mentioned above do not come without a price tag. Exploring a phased approach, as identified below, will allow the Town and Designer the ability to focus efforts on a priority scale as well as enable the Town to open the building up for community use and begin to build some capital to shift the focus on other areas of the homestead in the future. This phased sequence was vetted and presented by the Patton Homestead, Inc. and is supported by the Town of Hamilton.

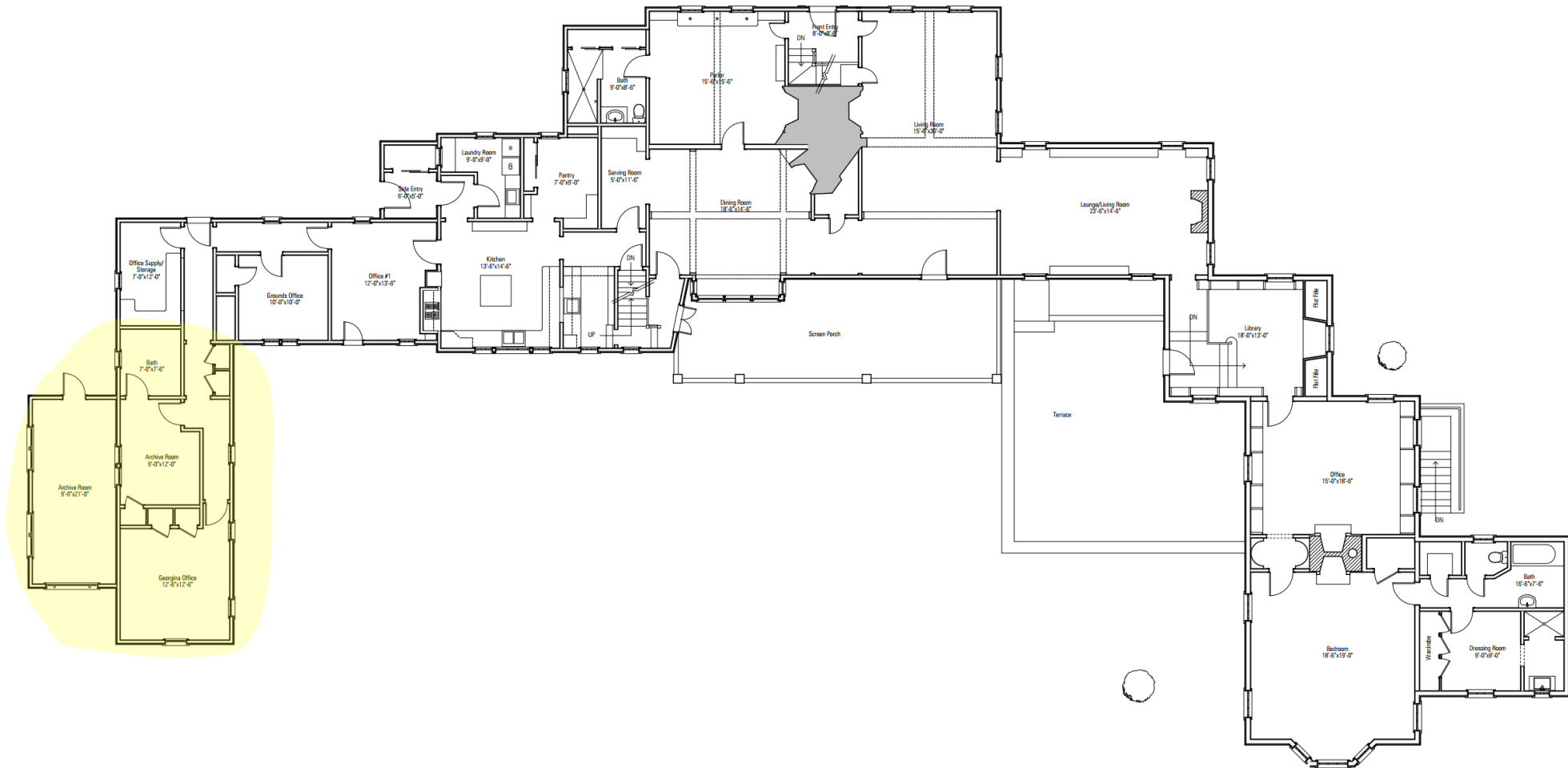
CORE PHASE FOR CONSTRUCTION & DESIGN RFQ

- Flow of traffic through CORE area for public & private meetings and events
- ADA access from existing parking lot
- Public access from new parking lot
- Paint walls, refinish floors, clean window treatments
- Interior & patio lighting recommendations
- Possible caterer's staging area in kitchen or room to left of kitchen
- Safety, comfort and other legal
- Recommendations as to whether any walls should be removed
- Expand and provide ADA access to covered patio/screen porch
- Options to expand terrace incorporate into flow
- Prepare detailed budget adequate for grant applications (e.g. MCC)
- Recommendation of how to phase the work to allow
- Plan for option of additional meeting space if Archives not renewed
- Signage plan
- Landscaping recommendation



POSSIBLE PHASE 2

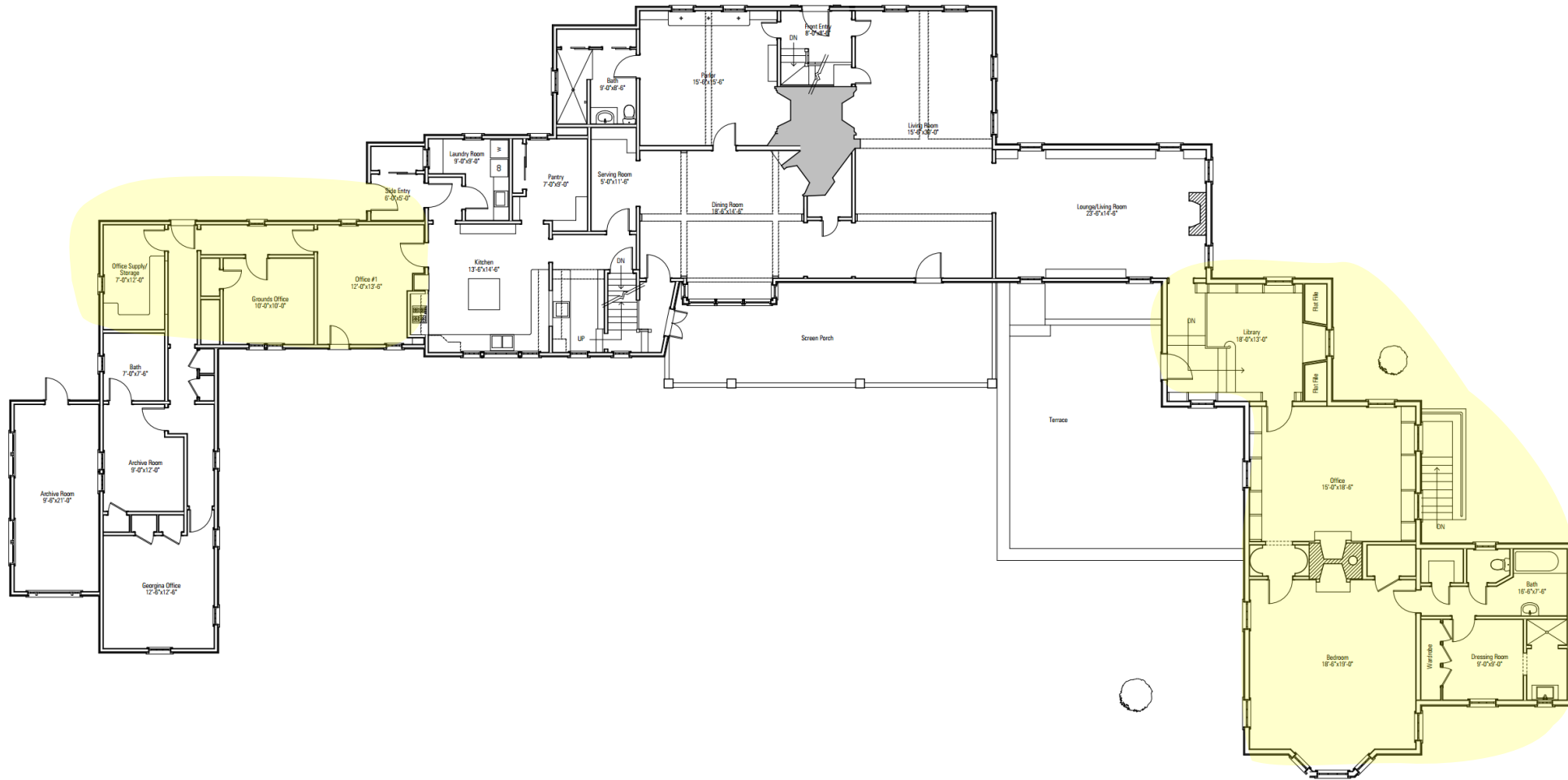
- Layout & improvements for small public & private meetings
- Evaluate adequacy of existing access from existing parking lot
- Evaluate adequacy of existing restroom for meetings only in this section
- Paint walls, refinish floors, clean window treatments
- Lighting recommendations
- Door & internal locked access to remainder of 1st floor
- Remove internal walls & closet between the two rooms on right



POSSIBLE PHASE 3

- Prepare plan how to incorporate this space into flow
- Consider designating space to store event furniture
- Paint walls, refinish floors, clean window treatments

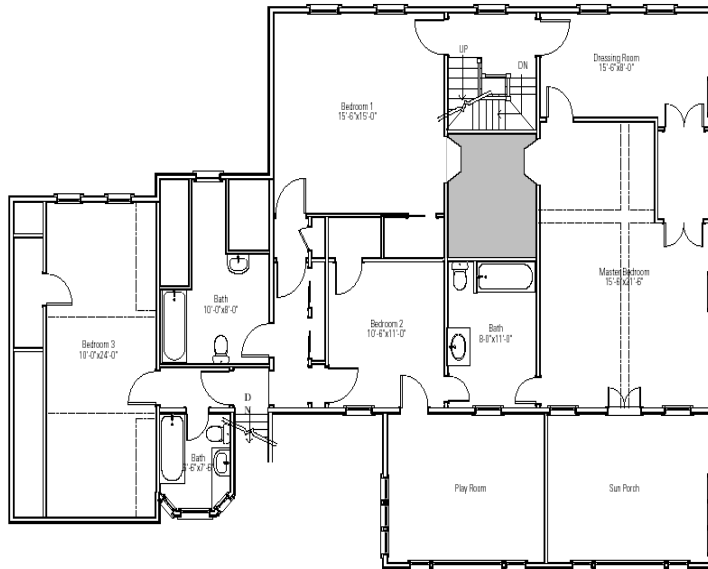
- Lighting recommendations
- Remove internal walls & closets as and if appropriate



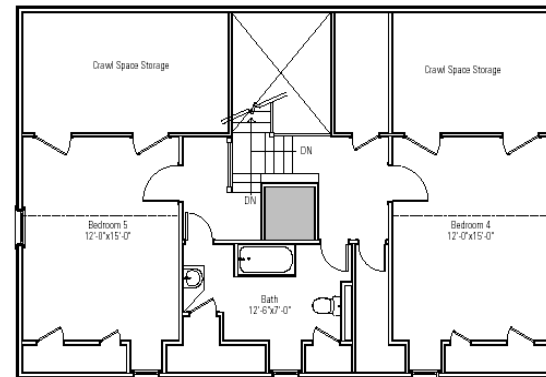
POSSIBLE PHASE 4 – 2ND and 3RD FLOOR INCLUSION

- Prepare plan how to incorporate this space
- Paint walls, refinish floors, clean window treatments
- Remove internal walls & closets as and if appropriate
- Lighting recommendations
- Bathroom and guest accommodation upgrades

Patton Homestead – Second Floor



Patton Homestead – Third Floor



POSSIBLE PHASE 5

- Prepare plan how to incorporate the Patton Archive space into long term flow of property as contingency if Archives not renewed onsite.

VI. SCOPE OF SERVICES

Designer will be working with the Town of Hamilton and the Patton Homestead , Inc. organization and tasked with: performing a needs assessment and space programming study, evaluation of the proposed site and limitations, preparation of concepts and alternatives, preparation of schematic design documents, preparation of design development documents, preparation of construction documents, and bidding, and construction administration services.

The following is a summary of the anticipated services associated with this project:

Task I – Feasibility Study - Space Programming and Needs Assessment

1. Familiarize itself with the current layout of the Patton Homestead site and any past studies.
2. Meet with the Town and Patton Homestead, Inc. to develop a space programming and a needs assessment based on the future building and site functions including, but not limited to, ADA accessibility for historic properties, interior flow, interior and exterior design improvements, lighting, site landscaping and property use, and access and lighting from parking areas etc.
3. Develop conceptual design alternatives with 3D renderings and modeling, for the existing building and site improvements as well as estimated project costs.
4. Prepare a list including but not limited to, the pros and cons of the alternatives and costs associated with professional recommendations to assist the Town with selection of a preferred site option.
5. Attend public meetings, working meetings, conduct public presentations to allow the general public time to comment as well as provide updates during the design phases

Task II– Schematic Design and Design Development - Develop building and site design concepts for the preferred site as follows:

1. Complete and well detailed construction drawings and specifications in accordance to current codes and regulations to include, but not limited to, site plans, floor plans, and facade drawings from all angles based upon approved educational specifications.
2. Construction cost estimates and schedules, including necessary phasing, site development and construction staging areas.
3. Annual Operation/maintenance cost estimates of the building and grounds
4. The Designer shall be required to cooperate with the Town's Project Manager in the provision of services for the project including but not limited to, value engineering, construction phasing, and overall coordination.
5. Identify and design Green building and energy/water efficiency components.
6. Develop and continuously update a construction cost estimates throughout the design phase. The cost estimates shall include all estimated soft costs associated with a project of this type.
7. Attend public meetings, working meetings, conduct public presentations to allow the general public time to comment as well as provide updates during the design phases

Task III – Contract Documents - Prepare design documents to include:

1. Utilizing approved conceptual site and building plans, prepare schematic design for the Patton Homestead including all required professional design services: civil/site design, structural design, architectural design, mechanical systems (HVAC and plumbing) design, electrical design, and fire protection design.
2. Provide summary of disciplines for which filed sub-bids will be required.
3. Complete working plans and specifications in sufficient detail to permit firm bids in open competition for construction of the Patton Homestead.
4. Detailed cost estimates for the Patton Homestead shall be further developed, and shall include quantities of all materials and unit prices for labor and materials as well as cost estimates for each item of work.
5. Drawings shall be prepared in accordance with Massachusetts General Laws (M.G.L.) Chapter 149 and shall include drawings and specifications.

Task IV – Bidding Services - Undertake bidding oversight as follows:

1. The Designer shall prepare the final construction contract documents, including advertising for receipt of bids from construction contractors.
2. The Designer shall assist in distributing the bidding documents to prospective proposers, and assist the Town in prequalifying proposers.
3. The Designer shall prepare and distribute all addenda, and shall conduct a pre-bid conference.
4. The Designer shall review all bids and make a recommendation of award to the Town.

Task V – Construction Administration - Undertake Construction Administration Services as follows:

1. The Designer will be charged with the general administration of the construction contract, although the Town reserves the right to contract with a separate project management firm for certain services.
2. The Designer must be present and active on the site periodically during the lifetime of the project. Construction oversight should be coordinated with the Project Manager to assure work is in accordance with specifications until the completion and acceptance of the project.
3. Participation, on-site, in weekly project meetings with General Contractor, Site Coordinator, and Project Manager and others as required by the Town.
4. Require each consultant employed by the Designer to make site visits periodically for the same purposes during the progress of that portion of the construction to which the consultant's services relate; and to report in writing thereon to the Designer.
5. Check and approve samples, schedules, shop drawings and other submissions by the General Contractor.
6. Recommend condemnation of all project work observed by the Designer that fails to conform to the contract documents.
7. Decide all questions regarding interpretation of or compliance with the construction documents, except as the Town may, in writing, otherwise determine.
8. Review and act on all requests for changes in the plans, specifications or contracts for the project.
9. Report to the Town, in writing, on the progress of the construction. Conduct semi-final and final inspections of the construction project and report the results of such inspections in writing to the Town.
10. Meet with various Town boards, committees, departments, and community groups as necessary to obtain project approval.
11. Meet with the DPW on a regular basis to discuss project approach, designs, and costs.
12. Provide permitting services necessary to obtain project approval.
13. Assist in the preparation of presentation materials.
14. Provide design development services, construction document services, bidding services (including prequalification if required), and construction administration services when approved by the Town.

VII. RESPONSE TO RFQ – DESIGNER QUALIFICATIONS

This RFQ will be appended to and become part of the Contract for Designer Services. Any Designer selected as a result of this RFQ will be required to execute the "Contract between Owner and Designer" that is attached hereto (Attachment A). Designers submitting an application in response to this RFQ must specify any exemptions to the Contract at the time of application. The Owner may consider any such exceptions but shall not be bound by any such exceptions. A failure to specify exceptions will be deemed an acceptance of the Contract's terms and conditions.

The successful Designer shall provide a certificate of professional liability insurance, at the time of contract execution, in accordance with Article 11 of the Agreement (Attachment A). The Designer shall identify **reimbursable expenses which shall be included within the negotiated fee.**

A. Project Work Plan:

The Designer's adherence to the accepted Work Plan times will be part of the Owner's performance evaluation of the Designer's work, which will be conducted at the end of the Project.

The following schedule is not intended to provide a completion date for each deliverable but to illustrate the date by which each phase must be completed to maintain the overall project schedule. It is expected the selected Designer will include milestone dates for each deliverable in their detailed Project Calendar to be provided during Start-Up.

Description	Completion Date
RFQ Available	August 2nd, 2017
Briefing Session (optional but recommended)	August 10th, 2017
Designer Submit Qualifications (deadline)	August 23rd, 2017
Shortlisted Designer Interviews (if required)	August 31st, 2017
Authorization to proceed	September 5th, 2017
Task I – Programming and Needs	October 20th, 2017
Task II and III – Design and Contract Documents	November 30th, 2017
Task IV - Bidding	December 31st, 2017
Task V – Construction Administration	~September 2018

In evaluating qualifications, the Owner will consider the members of the Designer’s proposed design team. The Designer shall therefore identify those member(s) of the proposed design team who will be responsible for the following categories of work: (Firm’s name, individual’s name and Massachusetts professional registration or license number, as applicable, must be listed in the application for each category of work.

1. Architecture
2. Civil Engineering
3. Landscape Architecture
4. Structural Engineering
5. MEP & Fire Protection Engineering
6. Cost Estimating
7. Registered Land Surveyor
8. Environmental Engineering
9. Interior Design

Applicants must address each category of work listed above in their application whether it is to be performed by in-house staff or by a sub-consultant(s).

Failure to address each category may result in the elimination of the applicant from consideration on this project. Applicants should not list any consultants other than those for the categories of work listed above.

B. Pre-Proposal Briefing Session (optional by recommended):

A briefing session will be scheduled for **THURSDAY, AUGUST 10th, 2017 at 11:00AM** in the Patton Homestead at 650 Asbury Street, Hamilton, MA 01936. In case of inclement weather, the briefing session shall take place on **FRIDAY, AUGUST 11th, 2017**. The conference will start with an introduction and an opportunity for the proposers to direct questions to the Town of Hamilton and Patton Homestead, Inc. and/or designee. Attendance is strongly advised for this important session. Private tours of the project site will not be available.

VIII. PROPOSAL SUBMISSION REQUIREMENTS

The Designer shall submit one (1) original, seven (7) copies and one (1) electronic copy in PDF or similar format on a CD – must be received on or before **4:30PM WEDNESDAY, AUGUST 23rd, 2017**. The applications must include the following:

Section 1: A cover letter setting forth a summary of the Designer’s qualifications and relevant experience. In addition, the cover letter should include an approximate start date, work plan, and primary staff assignments, and any sub-consultants, should the applicant be selected. (3 page maximum)

Section 2: A detailed description of prior similar experience

Section 3: References for past performance on public and private projects. The Designer’s references will provide information for each project. The Designer by submitting reference information agrees that the Town may contact each of the references. Past performance will include brief summaries on similar projects as well as the projects design fee and construction costs separated.

Section 4: Evidence of Financial Stability

Section 5: Qualifications of the Designer's Design Team

Section 6: Qualifications of any included consultants

Section 7: A brief description of the firm's design plan and an anticipated project schedule

Section 8: The current "Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction," which is available for download from the Massachusetts Designer Selection Board website at Designer Selection Board Procedure for Municipalities. The application format may be amended to include additional information as needed as is included as Attachment B.

Section 9: Attachments C-E

Proposal packages should be provided in simple spiral binders or stapled. Double sided printing is encouraged where appropriate to reduce paper.

Qualifications shall be addressed to the attention of:

Timothy J. Olson

Director of Public Works

Town of Hamilton

577 Bay Road

PO Box 429

Hamilton, MA 01936

Tel: (978) 626-5227

Fax: (978) 468-5582

Email: tolson@hamiltonma.gov

Qualifications must be clearly identified by marking the package or envelope with the following:

**Town of Hamilton– Patton Homestead Design and Construction Services RFQ 2018-001
Qualifications for "Name of Applicant"**

All questions regarding this RFQ should be addressed exclusively in writing to:

Timothy J. Olson

Director of Public Works

Town of Hamilton

577 Bay Road

PO Box 429

Hamilton, MA 01936

Email: tolson@hamiltonma.gov

[No oral response will be given, nor may any oral responses be relied upon.](#)

The deadline for questions is **4:30PM WEDNESDAY AUGUST 16th, 2017.**

IX. SELECTION PROCESS:

The selection of the finalist will be based on the following criteria:

1. Prior similar experience of the firm and the experience and qualifications of the personnel assigned to the project.

2. Past performance on completed Historical Buildings and projects of similar size and nature. Provide the project name, contact, brief description, date of completion, quality of past work, design fees associated with related construction costs, and evaluation of past clients (See Minimum criteria below for quantity of projects and reference).
3. Evidence of financial stability.
4. Ability to complete the project. If awarded the project, timeframe that Designer is available to commence work. Provide specifics.
5. Identification of consultants and proposed staff and the qualifications of those who will be directly working on the project. Include a resume with professional registrations, memberships, and detailed project experience.
6. Implementation Plan: Documentation providing the scope of services and the appropriateness to the needs of the Town.
7. Completeness of proposal submitted by each proposer.
8. Any other criteria that the Town considers relevant to the project.

All firms must possess the following minimum qualifications.

1. Massachusetts registration and licensing in all applicable disciplines (list them).
2. Thorough knowledge of procedures, requirements, and practices of the Commonwealth of Massachusetts, and other agencies related to procurement, building codes, fire code, Americans with Disabilities Act (ADA) and Architectural Access Board (AAB) compliance, energy efficient building products under MGL Chapter 149 as amended.
3. Sufficient levels of staff to complete the project. Indicate lead staff that will be assigned to the project.
4. The proposer must present a minimum of ten (10) similar projects completed in the Commonwealth of Massachusetts. The proposer should provide a description of the project and deliverables. Indicate what makes the services and study provided highly advantageous.

X. SELECTION PROCEDURES

Proposals will be evaluated by the Patton Homestead Selection Committee and other officials as necessary. Proposals will be evaluated for minimum evaluation criteria as described in above. Those proposals that meet the minimum evaluation criteria will be evaluated on Comparative Criteria as described in the next section. Proposals that meet the minimum criteria will be placed on a short list of recommended proposers. From this short list, the Patton Homestead Selection Committee or designee may select proposers to participate in an interview with Town officials as designated by the Patton Homestead Selection Committee. Finalists will then be ranked and evaluated, and the reasons for the ranking will be documented. The Selection Committee will submit to the Town Manager the ranking sheets and recommend the consultant who has the highest ranking qualifications and recommendation of the Patton Homestead Selection Committee. The Town Manager will then schedule a meeting with the firm ranked highest by the selection committee and negotiate a design fee within the established not-to-exceed fee (See Section XIII).

XI. MINIMUM EVALUATION CRITERIA

Each applicant shall indicate his/her agreement with each of the following questions as part of their RFQ submission.

To merit further consideration of a proposal by the Review Committee, the applicant must indicate “yes” and comply, where appropriate, with each statement below.

	QUESTION	YES	NO
1	Has the Proposer conformed in all material respects to the submission requirements as set forth in the RFQ?		
2	Has the Proposer the experience and competence to prepare studies, project cost estimates, bid documents, and provide project administrative services?		
3	Has the Proposer read this Request for Proposal and understood their role?		
5	Has the Proposer provided a detailed description of at least ten (10) recent similar projects on which the proposer has performed similar services?		
6	Has the Proposer submitted five (5) references from the public sector?		
7	Has the Proposer included the signed RFQ submission form in their proposal (Certificate of Non-Collusion/Certificate of Tax Compliance)?		

XII. COMPARATIVE CRITERIA

Proposals that meet the minimum requirements described above will be evaluated by the Patton Homestead Selection Committee and/or designee on the basis of proposal submission, qualifications, selection procedures, and other relevant criteria.

1. Relevant experience of proposer organization/firm in relation to the project scope of work:

Highly Advantageous: The proposer’s organization/firm is considered to be above average to perform the scope of work required for the project, based on experience, as well as certifications, registrations, and licensing. Ranking will be based on the opinion of the Patton Homestead Selection Committee.

Advantageous: The proposer’s organization/firm is considered to be average to perform the scope of work required for the project, based on experience, as well as certifications, registrations, and licensing. Ranking will be based on the opinion of the Patton Homestead Selection Committee.

Not Advantageous: The proposer’s organization/firm is considered to be below average to perform the scope of work required for the project, based on experience, as well as certifications, registrations, and licensing. Ranking will be based on the opinion of the Patton Homestead Selection Committee.

Unacceptable: The proposer’s organization/firm is considered to be poorly qualified to perform the scope of work required for the project, based on experience, as well as certifications, registrations, and licensing. Ranking will be based on the opinion of the Patton Homestead Selection Committee.

2. Relevant capability and experience of proposed project staff:

Highly Advantageous: The proposer’s professional staff has more than 20 years of relevant experience to be considered above average based on the opinion of the Patton Homestead Selection Committee.

Advantageous: The proposer’s professional staff has 15-20 years of relevant experience to be considered average based on the opinion of the Patton Homestead Selection Committee.

Not Advantageous: The proposer’s professional staff has 10-15 years of relevant experience to be considered below average based on the opinion of the Patton Homestead Selection Committee.

Unacceptable: The proposer’s professional staff has less than 10 years of relevant experience to be considered poorly qualified based on the opinion of the Patton Homestead Selection Committee.

3. Proposer's demonstrated ability to complete projects on a timely basis:

Highly Advantageous: All five of the proposer's references indicate that the projects were completed on schedule or with minimal, insignificant delays.

Advantageous: Only one of the proposer's references indicates that the project was completed with substantial delays attributable to the proposer.

Not Advantageous: Two of the proposer's references indicate that the project was completed with substantial delays attributable to the proposer.

Unacceptable: Three or more of the proposer's references indicate that the project was completed with substantial delays attributable to the proposer.

4. Evaluation of the proposed plan:

Highly Advantageous: The proposal contains a clear and comprehensive plan that addresses the entire project objectives stated in the RFQ.

Advantageous: The proposal contains a clear plan to address most of the project objectives stated in the RFQ.

Not Advantageous: The proposal does not contain a clear plan that addresses most of the project objectives stated in the RFQ.

Unacceptable: The proposal does not present an understanding or clear plan of the project objectives.

Proposals will be rated on these criteria as follows:

- **Highly Advantageous** – Proposal excels on specified criteria (3pts.)
- **Advantageous** – Proposal fully meets the evaluation standard as specified (2pts.)
- **Not Advantageous** – Proposal does not fully meet the evaluation standard, is incomplete or both (1 pt.)
- **Unacceptable** – Proposal does not meet the specified criteria (0pts.)

The Town of Hamilton places a premium on the applicant's approach to the project and the ability to present a program of services, which complies with the required Project Scope in a manner which is clear, concise, and complete with respect to required activities. The Town of Hamilton will find it unacceptable if such a program of services is not included, or is included in an incomplete manner. Proposals that address required items, but only in general or vague terms that do not adequately represent tasks to be performed and will be given the rating of Not Advantageous.

Each category will be assigned a point rating based on the evaluation of the Hamilton Town Hall Building Committee (0-3 points). Award preference will originally be based on the ranking of the most Highly Advantageous Proposal.

The contract will be awarded to the Consultant who has the highest ranking proposal based solely on qualifications on the opinion and recommendation of the Hamilton Town Hall Building Committee.

XIII. FEE:

The not-to-exceed design fee for Phases I - V will be \$75,000 and will be negotiated with the Town Manager and will include all costs associated with, but not limited to, staffing, consultants, staffing back-ups, telephone, computer, electronic communications, fax, postage, courier/special handling and delivery fees, camera, technical assistants, expense of additional insurance including professional liability insurance, travel mileage, or photocopying or reproduction, project photographs, and applicable cost estimating. A detailed scope of services will be reviewed with the designer at the fee negotiating stage.

If unable to negotiate a contract with the first-ranked selection, the Town Manager will then commence negotiation with the second ranked selection and so on, until a contract is successfully negotiated and approved by the Town.

The Town reserves the right to re-advertise if a fee and/or final scope of work cannot be negotiated with one of the top three ranked firms. The negotiated fee will include all expenses, direct and indirect, related to this project.

The Designer relationship shall be that of an independent contractor and not as an employee of the Town. The Town shall have no liability whatsoever except for the payment of compensation for services rendered and other reimbursable expenses, if approved in advance of spending by the Town.

The award of each phase under this contract is subject to the availability of funding. Refer to the Contract Terms and Conditions section of this RFQ for more information regarding phase contracting.

XIV. INSURANCE REQUIREMENTS:

Within five (5) days after award of this Request for Qualifications, and prior to the commencement of any work activity, the consultant shall submit certificates from insurers clearly stating that the insurance policies required in the following paragraphs have been issued to the consultant. The certificate must be in a form satisfactory to the Town. Liability policies shall name the Town of Hamilton as an additional insured.

The consultant shall, before commencing the contract, provide by insurance for the payment of compensation, professional liability, and the furnishing of other benefits under Chapter 152 of the General Laws to all persons employed under the contract, and shall continue such insurance in full force and effect during the term thereof. Statutory limits shall apply.

The consultant shall carry Public Liability Insurance with an insurance company satisfactory to the Town of Hamilton so as to save the Town harmless from any and all claims for damages arising out of bodily injury or destruction of property caused by accident resulting from the use of implements, equipment, or labor used in performance of the contract or from any neglect, default, or omission or want of proper care, or misconduct on the part of the Consultant or for anyone in their employ during the execution of the work. Minimum coverage shall be as follows:

See Attachment A – Sample Agreement, Section 11.0 for Insurance Requirements

The consultant shall not cancel, change, or revise any insurance relating to this contract without at least fifteen (15) days prior notice. Prior to the effective date of any such cancellation, the consultant shall take out new insurance to cover the policies so cancelled and shall provide certificates stating that such insurance is in effect.

The consultant agrees to save, defend, indemnify, and hold harmless the Town of Hamilton against any and all suits, claims, or liabilities of any name, nature or description arising out of or in consequence of the acts of its agents, servants, or employees, in the performance of the obligations under this contract or by reason of its failure to fully comply with the terms of this contract, such indemnity to run to the Town officers, agents, and employees of the Town of Hamilton.

XV. OTHER:

Rule for Award

The Town reserves a period of up to sixty (60) calendar days following the opening of the qualifications in which to evaluate and award the contract.

The Town herein declares its express purpose not to award the contract to any Designer unable to furnish evidence, satisfactory to the Town that it has sufficient ability, experience, and capital to execute and complete the work in accordance with the contract.

The Designer must possess and identify the physical resources, equipment and personnel necessary to carry out the work in accordance with the specified requirements. If requested, any Designer MAY be required to demonstrate financial stability satisfactory to the Town.

The Town Manager is the awarding authority for the contract (Attachment A, or a contract substantially in this form). Award, payment and performance obligations shall depend on the availability and appropriation of funds. The Town reserves the right to reject any and all qualifications as determined to be in the best interest of the Town and to waive minor informalities.

All proposals, materials, drawings, plans, etc. submitted in conjunction with the selection process shall become the property of the Town of Hamilton and may be disposed of without notification and shall be considered public information.

All proposers shall submit a complete proposal that lists all criteria outlined in the RFQ. Failure to submit a complete proposal as required may result in the proposal being deemed nonresponsive. Responsiveness shall be determined by the completeness of the proposal in strict accordance to the specifications as provided herein.

Contractual Liability

Failure to perform when such failure is due to an act of God, public enemy, fire, strikes, labor difficulties, transportation embargoes, or other similar causes beyond the control of the consultant, shall be good and sufficient reason for excuse from contractual liability.

Good Faith, Fraud, & Collusion

The consultant hereby certifies that no officer, agent, or employee of the Town of Hamilton has a special interest in the RFQ; that the consultant is competing solely on their own behalf without connection with, or obligation to, any undisclosed person or firm; that this proposal is made in good faith without fraud, collusion, or connection of any kind with any other bidder for the same work (See Non-Collusion Form Attachment C). The form must be executed and returned with the proposal.

Federal and State Taxes

The Town is exempt from federal and state sales taxes and/or use taxes. Taxes are not to be included in the Proposal price to be negotiated with the winning Designer.

Information about changes to the RFQ (Addenda)

In the event that changes/additions are made to this RFQ, an addendum will be issued. Addenda will be emailed to every potential responder on record as receiving the RFQ package. It is necessary for the prospective Designer to submit the "Acknowledgement of Receipt" so that Addenda can be forwarded to interested firms.

Examination of documents and questions

The Designer shall be satisfied as to the requirements of the contemplated services to enable intelligent preparation of this Proposal. The Designer shall be familiar with all of the RFQ documents before submitting the Proposal in order that no misunderstanding shall exist in regard to the nature and character of the contemplated services to be performed. No allowance will be made for any claim that the Proposal is based on incomplete information.

Inquiries concerning any part of this RFQ shall be directed to the individual(s) listed under the Procurement Schedule. Designers should note that oral communications are not binding on the Town. All requests/questions must be submitted in writing. Questions must be sent in writing and may be delivered by hand, fax, or email as referenced under the Procurement Schedule by the deadline. The Town will respond to written questions that are received by the deadline and will forward responses to all persons who are on record as receiving the Proposal package. Questions received after the due date will not be responded to unless the Town determines it is necessary. Designers, please allow enough time for hand delivery or facsimile transmissions.

Proposal modifications or withdrawals

Qualifications may be corrected, modified, or withdrawn prior to the submission deadline; requests to do so must be received in writing to the Director of Public Works. After the submission deadline, qualifications may not be changed. Minor mistakes may be waived by the Town.

Premature opening of a Proposal

The Town will not be responsible for the premature opening of any qualifications not properly identified. The Town may reject qualifications which are incomplete, not properly endorsed, or signed, or which otherwise are contrary to these instructions.

Unexpected closure of delays

If, at the time of the scheduled proposal submission deadline, the building is closed due to uncontrolled events such as fire, snow, ice, wind, building evacuation, or other, the deadline will be postponed until 11:00AM on the next normal business day. Qualifications will be accepted until that date and time.

Late Submissions

The Town assumes no responsibility for late submissions due to mail, courier, or delivery problems. LATE QUALIFICATIONS WILL NOT BE CONSIDERED.

Rejection of Proposals

The Qualifications must satisfy all the requirements of the RFQ, in order to be considered for award. Failure to complete the required forms, answer any questions, or provide the required documentation will be deemed NON-RESPONSIVE and result in rejection of the qualifications unless the Town determines that such failure constitutes a minor informality that can be corrected without prejudice to other Designers.

A proposal may be rejected if the Designer:

- Fails to adhere to one or more of the provisions established in the RFQ;
- Fails to submit its proposal by the time or in the format specified herein or to supply the minimum information requested herein;
- Fails to submit its proposal to the required address on or before the specified submission deadline;
- Misrepresents its service or provides demonstrably false information in its proposal
- Fails to provide material information
OR
- Qualifications that are incomplete, not properly endorsed, or signed.

The Town reserves the right to reject any and all qualifications as determined to be in the best interests of the Town and to waive minor informalities.

General and special provisions

The consideration of all proposals and subsequent selection of the successful applicant shall be made without regard to race, color, sex, age, gender identity, handicap, religion, political affiliation or national origin.

The Designer shall adhere to the provisions of the Fair Employment Practices Law of the Commonwealth (M.G.L. Chapter 151B)

The provisions relating to non-discrimination and affirmation action in employment shall follow through all contracts and subcontracts that the successful Designer may receive or award as a result of this contract.

Services provided by the Designer shall be rendered through a professional services contract; the Designer will not be considered an employee of the Town and will not receive any benefits of an employee.

The Designer shall comply with M.G.L., Chapter 66A if the Designer becomes a "holder" of "personal data." The Designer shall also protect the physical security and restrict any access to personal or other Town data in the Designers' possession, or used by the Designer in the performance of the Contract, which shall include, but is not limited to the Town's public records, documents, files, software, equipment or systems.

Ownership of Documents: All qualifications, materials, drawings, plans etc. shall become the property of the Town and may not be disposed of without notification and shall be considered public information.

The Designer selected shall be expected to comply will all applicable federal and state laws in the performance of services.

By execution of a contract with the Town of Hamilton, the Designer acknowledges that the Town of Hamilton is a municipality for the purposes of M.G.L., Chapter 268A (the Massachusetts conflict of interest statue), and agrees, as circumstances require, to take actions and to forbear from taking actions so as to be in compliance at all times with the obligations of the contractor based on said statute.

Selection shall be subject to additional discussions and/or negotiations based on proposals received.

Firms and/or individuals preparing proposals may be asked to provide additional information and/or may be requested to make a presentation of their proposal.

Proposals must be unconditional.

The Town of Hamilton is an equal opportunity employer. Women and minority owned businesses are encouraged to apply.

No protests regarding validity or appropriateness of the specifications or of the Request for Qualifications will be considered unless the protest is filed in writing with the Director of Public Works prior to the closing date for proposals. Should a protest be rejected or disallowed, the protester may, within forty-eight (48) hours (except Saturdays, Sundays, and State Holidays), appeal this decision in writing to the Town Manager.

Contract Terms and Conditions

The contract is anticipated to be executed by the date indicated under Procurement Schedule for this Proposal. The Town reserves the right to change, delay, cancel, or expedite the contract execution date. The selected Designer is required to furnish all bonds and certificate of insurances required under the contract, in a form acceptable to the Town prior to the execution date.

The Town's Standard Contract is incorporated herein as Attachment A. Bidders are expected to review the sample contract. Unless otherwise noted by the Town in this RFQ, the terms and conditions contained therein are NOT negotiable.

Breach of Contract

In the case of failure on the part of the consultant to execute the work as per agreement, the Town reserves the right to terminate the contract, satisfying its requirements through another consultant, and the Town may collect from the original consultant any difference in price as a result of such failure on the part of the original consultant. "Failure" shall be interpreted as meaning willful non-compliance of any item included in the specifications.

References:

1. Patton Family Advisory Gift Committee Report, May 10, 2012 Release 3. Town of Hamilton
2. Patton Homestead Inc. Report, March 14, 2017. Town of Hamilton

Attachments:

- Attachment A: Town of Hamilton Designer Services Agreement SAMPLE
- Attachment B: Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction
- Attachment C: Certifications Required by Law
- Attachment D: Certificate of Vote
- Attachment E: Certifications

CONTRACT FOR SERVICES AGREEMENT FOR DESIGN SERVICES

This Contract, effective as of the ____ day of _____, 2017, by and between the Town of _____, a municipal corporation with a principal place of business at _____, MA _____, acting by and through its _____, (the “Town”) and _____, a _____ with a principal place of business at _____ (the “Designer”) for Design Services in connection with the _____ Project (the “Project”).

The Designer is authorized to perform the services required by this Contract through the _____ Design Phase. At the Town’s option, the Designer may be authorized to perform services for subsequent _____ [list phases] _____, at which time a mutually agreed upon amendment to this Contract will be executed between the Town and Designer.

Sub-consultants (List all sub-consultants)

1.0 DEFINITIONS

Approval: A signed written communication from the Town to the Designer expressing the Town’s approval of submittals, services or documents prepared by the Designer. An Approval shall not relieve the Designer from any of its professional responsibilities under this Contract.

Approved: An item for which an Approval has been issued.

As-Built Drawings: All Drawings, Specifications, Approved shop drawings, catalogue cuts and other items bearing markings or containing information provided by the general contractor to indicate construction details and changes made during the construction period.

Basic Fee: The Designer’s Basic Fee specified in Section 5.0 of this Contract.

Basic Services: All services required to be performed by the Designer under this Contract except those for which reimbursement or additional compensation is specified in Sections 6.0 and 7.0.

Construction Contract: One or more contracts between the Town and a general contractor for the construction of the Project.

Construction Cost: The cost of constructing the Project inclusive of all designed construction, demolition, and renovation work, all supportive and preparatory construction work required for the Project, all general contractors, subcontractors, suppliers, materials, equipment, general conditions, insurance, overhead and profit and all other allowances. The Construction Cost includes change orders during the construction administration phase of the Project.

Construction Cost Estimate: The written estimate of the Construction Cost of the Project prepared by the Designer at various phases of the Project to the level of detail specified in this Contract.

Consultant: A subcontractor of the Designer.

Contract Documents: The Contract Documents consist of this Contract, the Request for Qualifications and any Addenda issued prior to the execution of this Contract (collectively, the “RFQ”), the Study, other documents listed in this Contract and Modifications issued after execution of this Contract.

Contract Schedule: A critical path management or Gantt schedule for the activities of the Designer and its Consultants required by this Contract.

Deliverable: Work product of the Designer that is required to be delivered or submitted to the Town pursuant to the terms of this Contract.

Laws: Applicable statutes, acts, rules, regulations, requirements, orders, directions, ordinances, judgments, decrees, and injunctions of or by the United States of America, the Commonwealth of Massachusetts; and any political subdivisions of either of them; and any agency, department, commission, board, bureau, or instrumentality of any of them.

Materials: All reports, drawings, designs, calculations, surveys, inspections, plans, specifications, photographs, images, notes, and other data, material and ideas of the Designer and its Consultants and subcontractors related to the performance of this Contract, including computer programs and other material in electronic media that are produced by the Designer and its Consultants and subcontractors pursuant to this Contract, regardless of whether such Materials were furnished to the Town.

Milestone: An Approval of a completed Deliverable or group of Deliverables, which Approval entitles the Designer to a payment of a portion of its fee for Basic Services as specified in Section 8.0 as modified by the Work Plan.

Modification: A written amendment to this Contract signed by both Parties.

Permits: Governmental, quasi-governmental, and other necessary permits and approvals, including the filing of notices or information with governmental or quasi-governmental entities and authorities that are necessary for the implementation of the Project at the site. Without limitation, the term "Permits" shall include permits and approvals from and notices to electrical, water, gas, communications and other utility providers and also permissions and consents from and notices to private parties necessary for the design and construction of the Project, such as an approval or consent of a landlord or other holder of an easement, restriction or other interest in the Project site.

Premises: The property located at 650 Asbury Street, Hamilton, Massachusetts.

Record Drawings: The Drawings prepared by the Designer and its Consultants pursuant to this Contract which incorporate the changes made during the construction period and which incorporate information from the marked-up prints, As-Built Drawings and other data furnished by the general contractor and subcontractors.

Work Plan: An Approved written plan of services that is consistent with the Scope of Work and that meets the requirements of Section 4.0 of this Contract and the RFQ. In the case of any conflict between the terms of the Work Plan and the RFQ, the terms of the Work Plan shall be controlling. The Approved Work Plan shall become a part of this Contract.

2.0 RESPONSIBILITIES OF THE TOWN

2.1. **Project Data:** The Town shall deliver to the Designer any existing and available plans of the Premises; studies and reports concerning the existing building; reports from any borings, test pits, chemical, mechanical or other tests; photographs and information as to water, sewer, electricity, steam, gas, telephone and other services; and data and drawings regarding existing buildings. All items and data provided to the Designer by the Town shall remain the property of the Town. The Designer may use items and data provided by the Town only for the purposes of this Contract, unless the Town shall give the Designer specific written permission for some other use. The Town does not guarantee nor does it make any express or implied warranties concerning the accuracy of any such information furnished to the Designer and the Designer must satisfy itself as to the correctness of data, except in instances where the Town makes specific written exceptions. The Designer shall analyze and evaluate the information provided by the Town.

2.2. **Review and Approval of Submittals:** The Town shall review certain submittals required by this Contract and shall, without unreasonable delay either: (1) render to the Designer any Approval required by this Contract, or (2) notify the Designer in writing why such Approval is being withheld. The Town shall not unreasonably withhold any Approval, acceptance, or consent required under this Contract. Approval by the Town shall not in any way relieve the Designer from its responsibility for all data, designs, drawings,

specifications, area calculations, surveys, cost estimates and other work or materials furnished by the Designer and its Consultants. The Town's review, approval or acceptance of, or payment for, any of the services furnished by the Designer shall not be construed as a waiver of rights under Contract or any cause of action arising out of performance of this Contract.

2.3. Payments to Designer: For satisfactory performance of all of the Designer's obligations under this Contract, the Town shall compensate the Designer in accordance with the provisions of the Sections 5.0 through 8.0 of this Contract.

2.4 Bidding Assistance and Construction Contract Procurement: Should the Town engage the Designer in the Bidding Assistance phase of the project, the Designer shall provide all bidding phase services from preparing the IFB to recommending bid award. The Designer shall utilize an on-line bidding service, such as Boddconline.com, to print bid documents, allow access to electronic bid documents, issue addenda, receive bids and summarize bids.

Designer shall manage the process necessary for the competitive procurement of the Construction Contract and shall conduct the procurement process with the assistance of the Town as provided in Section 4.4 of this Contract.

3.0 DESIGNER'S BASIC SERVICES – GENERAL

3.1 General: The Designer shall perform professional services in accordance with the terms of this Contract, the Contract Documents, the preliminary design study for the Project, the Scope of Services set forth in Attachment A and the provisions of M.G.L. c. 7C, § 15. In the case of conflict between the terms of this Contract and any of the provisions incorporated herein by reference, the provisions of this Contract shall control. The Designer shall be responsible for the professional accuracy and coordination of all designs, drawings, specifications, cost estimates, and other services and submittals furnished by Designer and by its Consultants in accordance with the standard of care set forth below in Section 3.4. The Basic Fee shall compensate Designer for all of Designer's obligations specified in this Contract except as otherwise specifically provided herein.

3.2 Scope of Services: The services that the Designer shall perform include those services outlined in the in Contract Documents, as amended and further defined from time to time by a Modification or upon the Town's direction. The Town may, at any time, amend or limit the Scope of Services as it deems appropriate.

3.3 Performance Schedule: The Designer shall perform its service in accordance with the Contract Schedule developed by the Designer and the Town in accordance with Section 4.1, below. The Designer acknowledges that time is of the essence in the performance of this Contract. The Designer further acknowledges that it has reviewed the Contract Schedule and that it is a reasonable schedule. The Contract Schedule shall only be extended for causes that are beyond the Designer's control, or if mutually agreed by Town and Designer.

3.4 Standard of Care: The Designer and its Consultants shall perform its services in accordance with the highest professional standards of skill, care and diligence. All services shall be performed by qualified personnel competent to adequately perform the services assigned to them and the recommendations, guidance and performance of such personnel shall reflect the standard of due care and professional practice. Because time is of the essence of this Contract, the Designer shall staff his or her office with sufficient personnel to complete the Work required by this Contract in a continuous and expeditious manner, and shall meet the approved schedule and submittal dates established during the course of this Contract.

3.5 Professional and Technical Accuracy: The Designer shall be responsible for the professional and technical accuracy and the coordination of all studies, reports, designs, drawings, specifications, estimates and other work furnished by the Designer and its Consultants.

3.6 Compliance with Laws and Contract Documents: The Designer's work and services performed hereunder shall conform to the standards set forth in this Contract, the Contract Documents and to all applicable Laws. It is the responsibility of the Designer that the Project be conducted, and that all Services and

other work performed by the Designer hereunder be performed so as to comply with all applicable Laws and any permit conditions as to which the Designer has knowledge, as the same may be in effect as of the time of the performance of such work. In particular, without limitation, the Designer agrees to comply with (1) all regulations pertaining to approvals for local, federal and state grants, and with all local, federal and state environmental laws and regulations, and assist in making any submissions with respect thereto and (2) all applicable requirements of the Massachusetts public construction and procurement laws, which are incorporated by reference herein.

3.7 Brands/Description of Materials and Manufacturers/Producers: The Designer shall thoroughly acquaint his or her employees and Consultants with the provisions of M.G.L. c.30, §39M, which provides, in part “[f]or each item of material the specifications shall provide for either a minimum of three named brands of material or a description of material which can be met by a minimum of three manufacturers or producers, and for the equal of any one of said name or described materials.” The Designer shall ensure all plans and other work product comply with the law regarding proprietary items, and shall notify the Town when they believe items should be specified on a proprietary basis.

3.8 Designer to Evaluate Town Information and Data: The Designer shall analyze and evaluate the information furnished by the Town pursuant to this Contract.

3.9 Staffing; Personnel Changes: The Designer’s personnel who shall provide services under this Contract are those listed in its response to the RFQ. No changes or additions may be made to Designer’s personnel without Approval by the Town. The Designer shall provide sufficient competent personnel to complete the services required by this Contract in a continuous and timely manner in accordance with this Contract.

3.10 Assignment; Contracts with Consultants: Except as specifically provided in this Contract, the Designer shall not employ Consultants, or sublet, assign or transfer any part of its services or obligations under this Contract without the prior Approval by the Town. The Designer may not request Approval for the hiring of a substitute for any Consultant that was part of the team presented in the Designer’s response to the RFQ unless such Consultant has, in the Designer’s opinion, become unable or unwilling to perform its services in a satisfactory manner or unless the Consultant has voluntarily requested in writing to be relieved of its duties as a team member. The Designer shall make the request for substitution in writing and the request shall state with specificity the reasons why the Designer believes that the Consultant has become unable or unwilling to perform its services in a satisfactory manner, or if the Consultant has voluntarily requested to be relieved of its duties as a team member, the Designer shall include with the request a copy of the Consultant’s written request for such relief.

.1 Special Consultants: The Designer shall retain the services of a Qualified Testing Laboratory, special field inspectors, and other special Consultants not referenced in Section 3.9 when required for the Designer’s services for the Project. To the extent applicable, Designer shall comply with the requirements of the Massachusetts Prevailing Wage Law, M.G.L. c. 149, §§26-27D, in the employment of and such special Consultants. The identity of such Consultants shall be Approved in advance by the Town, which Approval shall not be withheld unreasonably. When such a special Consultant’s services are required, including the services of a Qualified Testing Laboratory functioning under the jurisdiction of both a Massachusetts registered engineer and licensed inspectors, a detailed description of the proposed services shall be prepared by the Designer and shall be subject to the Approval of the Town. Each such Consultant whose fee for such services exceeds \$25,000 shall demonstrate coverage by liability insurance in an amount not less than its fee. The cost for services of any Approved Special Consultant not listed in Section 3.9 or the RFQ shall be reimbursed as provided in Section 7. For solicitation, inspection, analysis, coordination, and evaluation of such Consultants’ services, and for assuming liability therefore, the Designer shall be compensated as provided in Section 7.

3.11 Town’s Right to Rescind Approval of Designer’s Employee or Consultants: The Town may rescind the Approval of an employee of Designer or a Consultant if such employee or Consultant is deemed by the Town to be incompetent, irresponsible or otherwise unsatisfactory, and the Designer shall remove such Consultant or employee from work on this Contract. If an employee or Consultant is so removed, the Designer shall provide

another employee or Consultant with similar credentials and qualifications (including but not limited to MBE/WBE, if applicable) that meets with the Town's Approval. The removal of such Consultant shall not relieve the Designer from its responsibilities for the services of its Consultants and subconsultants under this Contract.

3.12 Consultants Barred from Construction Work: The Designer shall not employ in any element of design, specification, estimating, evaluation or other work under this Contract any person or firm that expects to be a bidder, subcontractor or supplier for the construction of the Project or any part thereof. The Designer shall obtain from every Consultant a written representation that such Consultant is aware that it is prohibited from serving as a bidder, subcontractor, or supplier for the construction of the Project or any part thereof.

3.13 Prompt payment to Consultants: The Designer shall, within fourteen (14) calendar days after receiving payment from the Town, either make payment to each Consultant whose work was included in the work for which such payment was received or notify the Town in writing of the reason why such payment is not being made within such time period.

3.14 Permits: Unless otherwise agreed to in writing, with the exception of the standard building permits customarily obtained by the general contractor or subcontractor, the Designer shall obtain all other permits required to implement Designer's design. The Designer shall obtain the prior Approval of the Town of all permit applications, notices, MAAB variances and accompanying documentation before filing them with the appropriate governmental entity or other party. The Designer shall provide the Town with a certified list of all Permits required to implement the design at the site as soon as possible during design development, shall schedule target dates for the procurement of such Permits, and shall regularly update such list and schedule during the term of this Contract. The Designer shall certify in writing at the time that construction documents (or changes thereto) are submitted to the Town that the Designer has identified all Permits required to implement the Project and that those not identified in writing as being the responsibility of the Town have been identified in the specifications as being the general contractor's responsibility. As part of its Basic Services, the Designer shall attend public hearings in connection with any Permit necessary to obtain such permit. Any Permit application fee shall be considered a Reimbursable Expense to be reimbursed in accordance with the provisions of Section 7.

.1 Permits Related to Change Orders: The Designer shall also provide to the Town a written certification of all Permits required to implement change order work at the site when the Designer submits for approval any change order request to the Town during the construction phase of the Project, whether the change order request was made by the Designer, the Town, or the general contractor.

3.15 Ownership; Intellectual Property Rights:

.1 The Designer hereby grants to the Town an irrevocable royalty-free license to use for any purpose all Materials which are or may be covered by copyright, patent, or other intellectual property Laws or as to which Designer and its Consultants and subcontractors may assert any rights or establish any claim under any such Laws. The Designer agrees on behalf of itself and its Consultants and subcontractors that the Town shall have unlimited royalty-free rights, for the benefit of the Town any public entity to which the Town may grant the right to share such rights, in any and all Materials, including the right to use the same on any Town or other public entity projects.

.2 All Materials that are produced by the Designer, its Consultants and subcontractors pursuant to this Contract (regardless of whether such Materials were furnished to the Town) shall be deemed "work for hire" and become the Town's property. Such Materials may be used by the Town (or such parties as the Town may designate) thereafter in such manner and for such purposes as the Town (or such parties as the Town may designate) may deem advisable, without further employment of or additional compensation to the Designer. The Designer shall not release or disclose to any third party any Materials produced for the Town without obtaining the Town's prior written consent. At no time shall the Designer release or disclose to any third party any materials, data or other information furnished to the Designer by the Town in connection with the performance of the Designer's Services.

.3 Upon the expiration or the termination of this Contract for any reason, all Materials and other work product that have been accumulated, developed or prepared by the Designer, its Consultants and subcontractors (whether completed or in process) shall become the property of the Town and the Designer shall immediately deliver or otherwise make available such Materials to the Town.

.4 The Designer shall incorporate by reference this provision into all contracts with its Consultants and subconsultants with respect to the services provided under this Contract including, but not limited to, architects, engineers, estimators, surveyors, designers, and photographers. The Designer and its Consultants and subconsultants shall not be responsible for changes made in the documents or other items without the Designer's authorization, nor for the Town's use of the documents on projects other than the Project.

3.16 **Confidentiality:** The Designer shall not, without the Town's prior written consent, release or disclose any information relating to the Project to anyone except as necessary to perform its duties hereunder.

3.17 **Corrections by the Town:** The Designer shall furnish appropriate competent professional services for each of the phases of the Project to the point where excessive or detail checking or reviewing by the Town is not necessary. Any changes, corrections, additions, or deletions made by the Town shall be incorporated into the design of the Project unless specific written objections thereto are made by the Designer and Approved by the Town. The decision of the Town shall be final in matters pertaining to this section, but the Designer shall not be responsible for any such decision by the Town that is inconsistent with generally accepted standards of professional practice provided that the Designer advised the Town in writing of the inconsistency at the time the decision was made.

4.0 PROSECUTION AND PROGRESS OF BASIC SERVICES

4.1 Preliminary Services

.1 **Initial Meeting:** After executing this Contract, the Designer, its key personnel, and such key Consultants as may be designated by the Town shall attend an administrative conference with the Town for the purpose of making introductions, exchanging contact information, clarifying relationships, communication protocols, arriving at a mutual understanding of the requirements of the Project and reviewing billing procedures.

.2 **Preparation of Work Plan:** Upon execution of this Contract the Designer, working with the Town, shall submit a draft work plan for the Designer's Services pursuant to this Contract including anticipated tasks and submittals. The proposed work plan shall comply with the requirements of this Contract and the Town's goals, as described in the RFQ. The Designer shall submit the proposed work plan to the Town within one (1) week of the date of the execution of this Contract. The proposed work plan shall:

- .1 define and identify the tasks and Deliverables required to be provided by the Designer as part of Basic Services;
- .2 specify the sequences in which these tasks and Deliverables must be performed, prepared and submitted;
- .3 contain a Contract Schedule;
- .4 include allowances of time for the Town's review and for the review and Approval of Deliverables;
- .5 specify the Milestones at which Approvals are required before any succeeding work is permitted to be performed by the Designer; and
- .6 specify method and sequence of payment for services rendered.

- .3 When Approved by the Town, the proposed work plan shall become the Work Plan and shall constitute a part of this Contract. In case of any conflict between the Scope of Work and the Work Plan, the terms of the Work Plan shall be controlling. Approval by the Town of the Work Plan shall constitute the Notice to Proceed with next phase of Basic Services.
- 4.2 **Submittals:** All document submissions shall be in the form of neatly bound printed material, and delivered to the location or locations as indicated by the Town. One or more document submission components may be submitted in an approved electronic format, subject to specific authorization by the Town.
- .1 **Electronic Submittals:** In addition to all other submittals called for by this Section 4 and elsewhere in the Contract, including but not limited to hard copies and reproducible of all submittals, the Designer shall submit two (2) electronic copies on compact disks or some other approved format for all required submissions of Deliverables called for by this Contract ("Electronic Submittals"). All Electronic Submittals shall be deemed to be Materials that are subject to all provisions of Section 11.
- .1 The Electronic Submittals shall be provided on CD electronic format or some other approved format as approved by the Town and as follows:
- (a) All drawings shall be provided in standard AutoCAD software (release number and version to be established at time of contract execution) or in a compatible electronic CADD (.dxf) format or other industry-standard format as approved by the Owner. Electronic file naming convention shall be acceptable to the Town. Also provide PDF versions of these documents.
 - (b) All other documents shall be provided on Microsoft Word, Excel, Project, or PowerPoint, as applicable to the particular submittal. Also provide PDF versions of these documents.
 - (c) All submissions shall be labeled identifying project name and number, file name, drawing title, software and release, and layer investigation.
 - (d) The Town reserves the right to require the Designer to provide all electronic media as may be required at any time during the duration of this Contract due to technology upgrades and/or changes to the electronic systems used by the Town, provided that if such requirement demands that the Designer purchase new software or train existing employees for the application of media or software such costs shall be a Reimbursable Expense.
 - (e) The Designer's compliance with the terms of this Section shall be performed as part of the Basic Services under the Contract, and the Designer shall not receive any additional compensation for providing the Electronic Submittals, (including but not limited to conversions or copies of software), except as specified herein. The Designer shall not be responsible for any use of Electronic Submittals on hardware or software for which it was not intended. Creation of a Building Information Model is excluded from the definition of Electronic Submittals; if the Town requests the Designer to create such a Model, the parties shall execute a separate agreement and Designer shall receive Extra Services for its creation.
- .2 **Hard Copies:** Three full-size sets and three half-size sets of drawings and three bound sets of the project manual, including specifications shall be provided for each submittal.
- 4.3 **Feasibility Study Phase:** The Designer's services shall consist of a feasibility study relating to the proposed renovation/expansion of the existing building, or construction of a new building.

- .1 The Designer shall provide a minimum of _____ (___) conceptual design approaches. Feasibility Study submittals shall be provided pursuant to Section 4.2 and shall be subject to the written Approval of the Town.
 - .2 The Designer shall prepare an architectural feasibility study for proposed new construction or a renovation/addition to the existing facility. The study shall include conceptual architectural plans, engineering studies, cost estimates and project schedules and work plans.
 - .3 The Designer shall present a written recommendation with supporting documents and explain the Feasibility Study to the Town. The Town will select a "Preferred Option" that will be developed through the Schematic Design phase.
 - .4 The Designer shall prepare presentation materials of the "Preferred Option" as may be required for submission to various Town Boards, Committees and Public Hearings as part of basic Services.
 - .5 The Designer shall meet with the Town at least every other week during this Phase.
- 4.4 Schematic Design Phase Services.
- .1 Upon receipt of a Notice to Proceed with the Schematic Design Phase, the Designer and its Consultants shall meet regularly and as necessary with agents of the Town, shall update and refine the Contract Schedule to include appropriate milestones for the Schematic Design Phase, and shall submit, on or before the date specified in the Contract Schedule all schematic design documents required by 4.4.2.
 - .2 Upon selection by the Town of the preferred alternative, the Designer shall develop the preferred alternative to a full schematic design level. Designer shall provide the following schematic design level documentation, which shall include and incorporate the Town's comments:
 - .1 drawings, concept sketches, three dimensional representations, and specifications;
 - .2 a building code analysis historical analysis (if applicable);
 - .3 an environmental assessment, if needed;
 - .4 a preliminary life cycle cost analysis to determine which design decisions related to all energy and water consuming devices and overall building operation and maintenance are the most cost effective pursuant to M.G.L. c. 149, § 44M and c. 7C, § 29;
 - .5 a summary of applicable public utility incentive programs as determined by the Town and a plan for implementation or inclusion of incentives;
 - .6 an analysis of the design's compliance with the Americans with Disabilities Act/Massachusetts Architectural Access Board requirements, if applicable;
 - .7 [intentionally omitted]
 - .8 a Construction Cost Estimate for the design with aggregated unit rates and quantities supporting each item and verified as accurate and complete by the cost estimator.
 - .9 facilitate "charrette" working group with all project stakeholders to identify potential historical, energy efficiency and sustainability features that can be incorporated into the project.
 - .3 Schematic design level documentation shall also include a summary comparing the schematic plans, specifications and Estimated Construction Cost of the design to the Program and Study requirements and shall explain any deviation therefrom. The Designer shall be aware of the following provisions of M.G.L. c. 7C, § 60 and shall cause its services to comply therewith:

“No state agency . . . administering a capital facility project shall enter into any contracts for that project . . . or cause to be performed design services for that project . . . if such would result in the completion of a project which cannot be accomplished (a) within the appropriation or authorization for the project or within the project cost limits specified by the appropriation or authorization and (b) without substantial deviation from (i) any study or program which must be prepared in accordance with section 59; or (ii) any other pre-design planning document which must be prepared in accordance with any other statute, appropriation or authorization or administrative directive consistent therewith. In no event shall the design work be such as would result in a change in the number of gross square feet to be constructed in the project of more than 10 per cent from the number specified in the study, program or other pre-design document referred to [above].”

- .4 Schematic Design Phase drawings, specifications, Construction Cost Estimates and other submittals shall be subject to the written Approval of the Town. Unless a lesser number is requested by the Town, the Designer shall submit to the Town for approval six (6) copies of schematic design drawings, specifications, cost estimates, and other submittals.

4.5 Design Development Phase Services.

- .1 Upon receipt of a Notice to Proceed with the Design Development Phase, the Designer and its Consultants shall meet at least every two weeks, or more frequently as necessary with agents of the Town, shall update and refine items submitted during the Schematic Design Phase, and shall submit, on or before the date specified in the Contract Schedule, and on the basis of the Approved Schematic Design Phase documents:
 - .1 an updated work plan and Project Schedule
 - .2 a list of all Permits and approvals required to implement the design and a schedule of target dates for the procurement of such Permits and approvals, which list and schedule shall be regularly updated during the term of this Contract;
 - .3 information and documentation within the technical expertise of the Designer and its Consultants that is necessary for the Town to file any filings for Permits and approvals that must be filed during the design development phase;
 - .4 complete design development drawings, draft specifications indicating any filed sub-bid sections based on the cost of the work and other documents necessary to specify the size and character of the Project as to siting, landscape, architectural, historical, structural, fire protection, plumbing, HVAC, electrical, ADA/MAAB, historic, product requirements, and other features;
 - .5 quality control documentation demonstrating without limitation coordination of: specifications and drawings; filed sub- bid work or sections; scheduling; equipment and power; existing and new construction; and phasing;
 - .6 design development drawings for which the Designer shall submit for a “tentative approval” review to the public agency having jurisdiction over enforcement of the State Building Code with respect to the Project;
 - .7 an updated life cycle cost analysis to determine which design decisions related to all energy and water consuming devices and overall building operation and maintenance are the most cost effective pursuant to M.G.L. c.149, §44M, which are then included in design decision discussions;
 - .8 Construction Cost Estimate for the design with unit rates and quantities supporting each item, which shall have been reviewed and approved as accurate and complete by any cost estimator with respect to the Project;
 - .9 a summary or summaries comparing the design development drawings, specifications and cost estimates with the Program requirements, and explaining any deviations in writing;

- .10 [intentionally omitted]
- .11 signage and wayfinding graphically coordinated with the project proponent (user group) and the general building requirements, including, without limitation, all signage and wayfinding required by applicable building codes, cautionary signage, signage relative to exterior parking, loading and building areas, interior directories, department names, hours of operation, room names and numbers, and any signage required for American with Disabilities Act;
- .12 Such drawings, specifications, cost estimate and other design development submittals shall be subject to the written Approval of the Town. Unless a lesser number is requested by the Town, the Designer shall submit to the Town for approval six (6) copies of design development drawings, specifications, cost estimates, and other submittals.
- .13 Presentation: Designer shall make a presentation to the Town which highlighting the keys aspects of the Design Development submission.

4.6 Construction Documents Phase Services.

- .1 Upon receipt of a Notice to Proceed with the Construction Documents Phase of the Project from the Town, the Designer and its Consultants shall meet at least every two weeks, or more frequently as necessary with agents of the Town, and based on the submittals Approved in the design development phase of the Project, shall update and refine the items previously submitted and shall submit on or before the date and time specified in the Approved Project Schedule:
 - .1 an updated work plan and Project Schedule;
 - .2 complete construction drawings and specifications, certified by the Designer as having satisfied the applicable quality control review, in sufficient detail to permit fixed-price bids in open competition for construction of the Project;
 - .3 an updated environmental assessment, building code analysis, ADA/MAAB analysis, and a certified list of all required testing and all required Permits/approvals as well as a certification that all applicable local, state and utility officials have been contacted by the Designer regarding each utility connection and that the persons responsible for permits or connection approval has agreed to the systems' use;
 - .4 structural and energy calculations, building code analysis, historic analysis, ADA/MAAB analysis, if required;
 - .5 at the 60% stage of completion of the final drawings and specifications, a Construction Cost Estimate, including quantities of all materials and unit prices of labor, equipment, and materials as well as a cost estimate for each item of work, for review by the Town.
 - .6 signage and wayfinding graphically coordinated with the project proponent (user group) and the general building requirements, including, without limitation, all signage and wayfinding required by applicable building codes, cautionary signage, signage relative to exterior parking, loading and building areas, interior directories, department names, hours of operation, room names and numbers, and any signage required for American with Disabilities Act;
 - .7 review and comment on the revised Construction Cost Estimate for the design of the Project that has been prepared by the Town's Owner's Project Manager;

- .8 Presentation: Designer shall make a presentation to the Permanent Building Committee (PBC) which highlights the keys aspects of the 95% Construction Document Phase submission;
- .9 Approval of Drawings and Other Construction Documents: Two sets of the foregoing documents shall be approved, stamped and signed by the Town's building official, the Town's plumbing inspector (as applicable), the Town's electrical inspector (as applicable), and the Town's fire chief respectively;
- .10 Approval of Final Documents: All submittals shall be subject to the written approval of the Town. Unless a lesser number is requested by the Town, the Designer shall furnish to the Town for approval six (6) sets of the drawings, specifications Construction Cost Estimates and other submittals. The Designer shall also furnish electronic media copies of the foregoing drawings and documents if the Town may require.
- .11 Approved Final Documents: From the Approved construction drawings and specifications, with such changes as the Town requires, the Designer shall prepare and transmit to the Town a set of reproducible black and white drawings and original specifications both in electronic format and on high quality white bond paper, single-sided, properly packaged, suitable for reproduction, stamped and signed by all disciplines, which documents shall become the property of the Town. Other suitable methods may be used with the prior Approval of the Town. One copy of the drawings and specifications shall be submitted with the reproducible drawings and specifications. For projects that will be bid using an on-line bidding service, provide documents in the format that is required by the service.

4.7 Bidding Phase Services

- .1 Upon receipt of a Notice to Proceed with the Bidding Phase of the Project from the Town, the Designer and its Consultants shall perform the following services in accordance with MGL Chapter 149 on or before the date and time specified in the Approved Project Schedule.
- .2 General: Designer shall utilize an on-line bidding service to print bid documents, allow access to electronic bid documents, issue addenda, receive bids and summarize bids. The designer shall:
 - .1 prepare the invitation for bid (IFB), advertise and post the IFB in local newspaper, Central Register and COMMBUYS;
 - .2 if applicable, the Designer shall assist the Town with the prequalification of bidders in accordance with M.G.L. c.149, §§44E1/2 and 44D3/4 or M.G.L. c.149A;
 - .3 attend and chair the pre-bid conference if one is scheduled, taking note of all questions asked;
 - .4 prepare all addenda (to include bidders' questions and Designer's responses), subject to the Approval of the Town. The Designer and its Consultants shall attend and chair the pre-bid conference if one is scheduled, taking note of all questions asked. Relevant questions submitted in writing shall be answered by means of written addenda to the bid documents as required. The Designer shall attend the bid opening (if not performed by on-line service) and conduct a review of the qualifications, including review of DCAMM file, of the three (3) lowest filed sub-bidders and general bidders (and of other bidders if necessary) and shall, within three (3) business days of the respective bid opening dates, advise the Town in writing of the Designer's opinions as to the sub-bidders' bids and as to which general bidder is the responsible and eligible bidder that has submitted the lowest bid;
 - .5 assist Town in obtaining bonds, insurance and other documents necessary to execute the contract, return bid deposits and publicize the contract in Central Register.

- .3 The Designer shall assist in rebidding of sub bid and/or general bid unless such rebidding is made necessary by the fault of the Town, in which event such rebidding shall be deemed an Additional Service.

4.8 Construction Administration Phase Services

- .1 General - Consistent with the standard of care and practice stipulated in Section 3.4 above, upon the award of the Construction Contract the Designer and its Consultants shall:
- .1 be charged with general administration of the Construction Contract to the extent set forth herein;
 - .2 furnish the general contractor with information for establishing lines and grades and shall prepare a set of plans and specifications that incorporate all addenda and sketch drawings issued during the bidding process;
 - .3 promptly and in accordance with the requirements of the Construction Contract check, obtain testing where necessary, and approve samples, schedules, shop drawings and other submissions by the general contractor;
 - .4 prepare, maintain and update logs for all submittals and changes to the Construction Contract;
 - .5 provide to the Town a list of all Permits, variances or approvals required to implement change order work at the Project site when the Designer submits for Approval any change order request to the Town during the construction phase of the Project, whether the change order request was made by the Designer, the Town, or the general contractor;
 - .6 visit the site at intervals appropriate to the stage of construction but not less than weekly, and observe the progress of the work, issue written progress reports, and conduct job meetings, and prepare and distribute agendas and meeting minutes to assure that the work is being built in conformance with Approved construction documents;
 - .7 report to the Town weekly in writing on the progress of the work including whether or not the general contractor is keeping as-built drawings updated;
 - .8 on a weekly basis (or more often as may be necessary), make specific recommendations on rejection of all Project work observed by the Designer that fails to conform to the Construction Contract documents, and review and inspect corrected work;
 - .9 require each Consultant employed in accordance with Section 3 to make weekly visits during the progress of any work that relate to the Consultant's services and to report in writing to the Designer;
 - .10 authorize minor changes in Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Construction Cost or an extension of time. The Designer shall prepare Change Orders and Construction Change Directives for the Town's approval and execution in accordance with the Contract Documents. The Designer shall only be entitled to additional compensation for change orders or construction change directives that are initiated by the Town or that arise due to encountering unanticipated conditions during construction. The Designer will not be entitled to additional compensation related to change orders or construction change directives that arise due to errors, omissions, ambiguities, or conflicts in the Construction Documents. When the Designer is entitled to additional compensation for design services related to change orders or construction change directives, the Designer's compensation shall be

based on the actual labor and expense costs of the additional design work. Designer shall provide timesheets or other documentation to support such requests.

- .11 conduct semi-final and final “punch list” inspections of the Project and report the results of such inspections in writing to the Town. Manage the final inspection “punch list” until all items have been completed or otherwise addressed to the satisfaction of the Town.
 - .10 observe the balancing of air and water circulation systems and report the results thereof;
 - .11 observe the setting and adjustment of automatic controls and report thereon;
 - .12 in a timely manner, decide all questions regarding interpretation of, or compliance with, the Construction Contract documents, except as the Town may in writing otherwise determine;
 - .13 transmit the Contractor’s electronic versions of the Record Drawings, a final cost report, and other required documents to the applicable regulatory agencies; and
 - .14 assist the Town in any bid protest hearings, change order appeal hearings requested under M.G.L. c. 30, § 39Q, and any other litigation, except as provided in Section 6.
 - .15 Except as otherwise specifically set forth in the Construction Contract documents, the Designer shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor’s rights and responsibilities under the Construction Contract documents.
- .2 General Contractor’s Requisition for Payment: The Designer shall submit to the Town in a timely manner all requisitions for payment submitted by the general contractor in the form required by the Town. With respect to each such requisition, the Designer shall certify to the best of its knowledge that the percentage of work included in the requisition is accurate and that the work performed conforms to the Construction Contract documents. In the event the Designer does not approve the requisition exactly as submitted by the general contractor, the Designer shall forward it for payment to the Town dated and signed with corrections and explanations setting forth the Designer’s objections and recommended changes. The Designer shall coordinate the required visits to the construction site so as to enable it to submit to the Town the general contractor’s monthly requisition for payment bearing the Authorized Representative’s approval or accompanied by the Authorized Representative’s letter of exceptions. Timely payments to the contractor are required by M.G.L. c. 30, § 39K; therefore, the Designer shall establish procedures assuring either immediate delivery of the requisition for payment to the Town, and shall process requisitions for payment within two working days after receipt of the same.
- .3 Review of As-Built Drawings: Before examining the requisition for final payment submitted to the Town by the general contractor and making any certification in response thereto, the Designer shall obtain from the general contractor As-Built Drawings, including drawings showing the actual installation of the site utilities, envelope repairs and any changes to plumbing, heating, ventilating and electrical work under the Construction Contract, and recording all changes. The Designer shall review and approve the general contractor’s As-Built Drawings. Such review shall include, but not be limited to, the Designer ascertaining that changes authorized by change orders, construction change directives and/or Designer-approved minor changes in the work are shown on the general contractor’s As-Built Drawings. The Contractor shall revise the applicable original reproducible drawings and electronic media drawings on the basis of the As-Built Drawings and shall submit them through the Architect as Record Drawings electronically along with two (2) sets of prints to the Town; which Record Drawings shall become the property of the Town, all as part of its Basic Fee.
- .4 Evaluation of General Contractor: At the conclusion of the Construction Contract the Designer shall assist the Town and/or the Owner’s Project Manager in the evaluation of the performance of the

general contractor and the filed sub-contractors as required by M.G.L. c.149, §44D or any other law.

.5 Copies of Original Design Drawings: One suitably bound legible copy of all original design drawings including those pertinent to change orders and shop drawings if applicable shall be furnished by the Designer to the Town at the conclusion of the Construction Contract.

4.9 Warranty Phase Services

.1 The Designer and its Consultants shall perform the following services starting at substantial completion and ending three (3) months after the one-year warranty period has ended:

.1 conduct pre-final (9 to 10 months after substantial completion) and final “warranty punch list” inspections of the Project and report the results of such inspections in writing to the Town. Manage the final inspection “punch list” until all items have been completed or otherwise addressed to the satisfaction of the Town.

.2 provide Additional services during this phase as may be requested by the Town in accordance with Article 6.

5.0 DESIGNER’S BASIC FEE

5.1 Basic Fee: For the performance of all services required in this Contract excluding those services specified under Sections 6.0 and 7.0, the Designer shall be compensated by on a Lump Sum basis on each Task of Basic Services. The total amount of compensation due the Designer for full performance of each Task of its Basic Services is:

Task I - Feasibility Study and Programming	\$ _____
Task II - Schematic & Design Development Phase Services	\$ _____
Task III - Construction Document Phase Services	\$ _____
Task IV - Bidding Phase Services	\$ _____
Task V - Construction Administration Phase Services	\$ _____

5.2 Manner of Payment: Payment of the Designer’s Basic Fee shall be made in accordance with Section 8.0 as modified by any changes Approved by the Town and included in the Work Plan.

6.0 ADDITIONAL SERVICES

6.1 Additional Services: If there is a substantial change in the Scope of Services in the opinion of the Town, the Designer and the Town will agree to an equitable adjustment in the Designer’s Basic Fee. For purposes of this Contract, a “substantial change” in services shall include: (i) a substantial change in the Scope of Services that is not the fault of the Designer; or (ii) a significant increase in the duration of the Project that is not the fault of the Designer. Increases to the Designer’s Scope of Services shall be made only by written Amendment to this Contract. Decreases to the Designer’s Scope of Services may be made by written directive of the Town to the Designer. Services requested of the Designer by the Town that are not set forth in the Work Plan shall be considered Additional Services for which the Designer shall be entitled to an increase in the Lump Sum Fee. No increase in the Lump Sum Fee shall occur as a result of the performance of Additional Services unless the Town has given advance written approval for such Additional Services and such increase in the Lump Sum Fee. Neither the Designer nor any of its Consultants shall be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the Designer in the preparation of the work products, as reasonably determined by the Town, nor for any services made

necessary by the fault or negligence of the Designer or its Consultants. No authorization by the Town for the Designer's performance of Additional Services shall be valid unless it is made in writing and contains a "not to exceed" limit that may not be exceeded without further Approval by the Town.

6.2 With prior Approval of the Town, the Designer shall perform all or any of the following services in addition to the Basic Services:

- .1 revise previously Approved drawings, specifications or other documents to accomplish changes authorized by the Town or required by changes in applicable Laws, and revisions not occasioned by the Designer's errors or omissions;
- .2 [intentionally omitted];
- .3 [intentionally omitted];
- .4 [intentionally omitted];
- .5 provide consultation concerning replacement of any work damaged by fire or other cause during construction and furnishing professional services of the type set forth in Section 3 as may be required in connection with the replacement of such work;
- .6 provide professional services necessary to evaluate substitutions proposed by the general contractor and, if necessary, prepare subsequent revisions to drawings and other documents resulting therefrom or furnish professional services made necessary by the default of the general contractor;
- .7 provide services later than three months after the one-year warranty phase has ended, except for services occasioned by the Designer's errors or omissions;
- .8 prepare special documents for or appearing as a witness in change order appeal hearings under M.G.L. c. 30, § 39Q or in judicial litigation arising out of the Construction Contract, except for litigation arising from the Designer's negligent acts or omissions;
- .9 [intentionally omitted];
- .10 revise construction drawings and specifications submitted in their final and complete form for which bids were not received within six (6) months after submission, unless a new building code has been promulgated within that time frame which requires revisions to the documents;
- .11 make studies other than those normally required and preparing applications and reports to assist the Town in obtaining federal aid;
- .12 additional site visits requested by the Town for which additional payment is provided in Section 6.3.
- .13 prepare documents for and manage procurement for fixtures, furniture and equipment (FFE) phase of the project.

6.3 Additional Site Visits. Additional services shall also include site visits by the Designer or its Consultants made at the request of the Town during the construction administration phase, that are in addition to those required by the Contract and have been requested in writing by the Town.

6.4 Compensation for Additional Services: Except as otherwise authorized in writing by the Town, for the services provided pursuant to Sections 6.1 through 6.3 of this Contract, the Designer shall be compensated as determined by the Town as follows:

- .1 by a lump sum fee agreed upon in advance in writing by the Designer and the Town; or
- .2 on an hourly basis (based on pro-rated hourly wages exclusive of benefits) in accordance with the rate schedule attached hereto as Attachment B, which is incorporated by reference herein. Clerical/support staff of the Designer and Consultants to the Designer shall not be compensated and is considered as part of office overhead.

7.0 REIMBURSABLE COSTS AND EXPENSES.

- 7.1 The Basic Fee shall include all the Designer's expenses associated with the performance of its services pursuant to this Contract. Any Amendment that increases the Basic Fee shall likewise include all expenses associated with the performance of the services that is the subject of the Contract.
- 7.2 The Designer shall be reimbursed by the Town for:
- .1 the actual cost to the Designer of special consultants, not specified in its response to the RFQ, and approved in writing by the Town, provided, however, that no reimbursement for such expense shall be made unless the rates of compensation for said consultant services shall have been previously approved in writing by the Town. The Town may approve a lump sum fee;
 - .1 The Designer shall not be entitled to compensation under this Article for the services of Subconsultants hired to perform Basic Services under this Agreement. If a Subconsultant hired to perform Basic Services performs Additional Services approved by the Town, compensation for such Additional Services shall be made under Article 6.
 - .2 other actual costs, including special printing, but only when specifically authorized in writing by the Town or its designee; and
 - .3 for document copies in excess of numbers specified in the Contract if requested by the Town.
- 7.3 The Town shall not reimburse the Designer for the following:
- .1 any expenses associated with performing its services;
 - .2 travel expenses under this Contract, provided, however, that in special circumstances and with prior approval of the Town, the Designer may be reimbursed for out-of-state travel expenses consistent with applicable statutes, rules, and regulations; and
 - .3 any telephone (land line and cellular), computer or other out-of-pocket expenses unless specifically authorize as provided above.
- 7.4 Mark-Up for Overhead and Profit: For solicitation, coordination, inspection, analysis, and evaluation of and for the assumption of responsibility for, services authorized under 7.2.1 of this Contract, the Designer shall be paid 10% of the actual expense where the cost of the specific services is estimated not-to-exceed \$100,000. The aforementioned percentage will be negotiated to a lesser figure in those instances when the not-to-exceed cost is projected to exceed \$100,000.

8.0 PAYMENTS TO THE DESIGNER

- 8.1 Change Orders: Unless otherwise Approved by the Town, payments to the Designer for a modification or a change order shall be made when the modification or change order has been Approved by the Town and the Designer's services with respect to the same, other than construction administration services, have been completed.
- 8.2 Schedule for Payment of Basic Fee: The Designer shall submit requisitions on a monthly basis for any Services completed within that month. Town shall not be obliged to pay any claims received more than

forty-five (45) days after notification to the Designer of final acceptance of the contractor's work under the Construction Contract.

8.3 Right of Offset: If the Town finds that Deliverables previously paid for by the Town contained deficiencies, errors, or omissions, then the Town may withhold from any future payment due to the Designer under this Contract an amount reasonably calculated by the Town to cover the cost of correcting the deficiencies, errors, or omissions until the deficiencies, errors, or omissions have been corrected. The Town may also offset against any payment due to the Designer under this Contract the amount of any costs incurred by the Town arising from the Designer's failure to provide required services, or the Designer's deficiencies, errors or omissions. Nothing in this paragraph shall limit any legal remedies of the Town against the Designer for default, errors, omissions, erroneous claims, false claims, tort claims, or any breach by the Designer of the terms of this Contract or applicable Laws.

8.4 Subject to Appropriation: The obligations of the Town hereunder shall be subject to appropriation. In the absence of appropriation, this Contract shall be terminated immediately without liability of the Town for damages, lost profits, penalties, or other charges arising from early termination.

9.0 TERMINATION

9.1 Termination by the Town: By written notice to the Designer, the Town may terminate this Contract in whole or in part at any time whether for the Town's convenience or because of the failure of the Designer to fulfill his or her Contract obligations. If any such termination shall occur without the fault of the Designer, all compensation and reimbursement due to the Designer up to the date of termination, in accordance with all Contract terms, including proportionate payment for partially completed work, shall be paid to the Designer by the Town. Such payment shall not exceed the fair value of the work, as the Town shall determine. No amount shall be allowed for anticipated profit or overhead on unperformed services.

9.2 Failure of Designer to Perform/Liability: If the Contract is terminated due to the failure of the Designer to fulfill his or her Contract obligations, the Town may take over the Work and prosecute the same to completion by contract or otherwise. In such case, the Designer shall be liable to the Town for any additional cost occasioned to the Town thereby. These rights and remedies of the Town are in addition to any rights and remedies provided by law or under this Contract.

9.3 Termination By Designer: By written notice to the Town, the Designer may terminate this Contract if the Town, within sixty (60) days following written notice to the Town of any default by the Town hereunder, shall have failed to remove such default. The payments to the Designer shall not exceed the fair value of the Designer's work, as the Town shall determine. No amount shall be allowed for anticipated profit or overhead on unperformed services.

9.4 Delivery of Data to Town Upon Termination of Contract: Upon any termination of the Contract, the Designer shall promptly deliver to the Town all Materials, including all documents, work papers, studies, calculations, computer programs, data, drawings, plans, specifications and other tangible work product or materials pertaining to the Services performed under this Contract, whether completed or in process, performed under this Contract to the time of termination, and thereupon the Town shall pay the Designer any unpaid and undisputed balance owing for Services rendered prior to the date of termination.

9.5 Rights of the Town: Any termination of this Contract shall not affect or impair the right of the Town to recover damages occasioned by any default of the Designer or to set off such damages against amounts otherwise owed to the Designer.

10.0 RELEASE AND DISCHARGE

10.1 The acceptance by the Designer of the last payment for services paid under the provisions of either Section 8.0 or Section 9.0, in the event of termination of this Contract, shall in each instance operate as a release of the Town and every employee, member and agent of the Town, from all claims of the Designer arising from this Contract, and from liability for any act or omission relating to or affecting the Designer's

services hereunder, except for those written claims submitted by the Designer to the Town with the last payment requisition; and except that such acceptance shall not release such parties from any liability they would otherwise have for injuries to third parties resulting from their negligent acts or omissions.

11.0 INSURANCE

11.1 The Designer shall obtain and maintain the following insurance in amounts not less than the Minimum Insurance Limits set forth below during all times that the Designer is performing Services and for at least one (1) year after termination of this Contract in the case of Commercial General Liability, Worker's Compensation and Employer's Liability insurance, and for at least the applicable period of limitations on actions provided by law in the case of Professional Liability insurance:

- .1 Commercial General Liability insurance covering claims for injury to persons and damage to property. Such insurance shall include contractual liability and shall cover the use of all equipment and motor vehicles on the Site or transporting persons, equipment, materials or debris to and from the Site. Products and Completed Operations insurance shall be maintained for at least three years after completion of this Contract. Minimum Insurance Limits: \$1,000,000 per occurrence, \$3,000,000 aggregate.
- .2 Professional Liability insurance for protection from claims arising out of the performance of professional services, including contractual coverage. Minimum Insurance Limits: \$1,000,000/\$3,000,000
- .3 Worker's Compensation Liability insurance in amounts not less than those required by law and Employer's Liability insurance.
- .4 Automobile Liability insurance applicable for any contractor who has an automobile operating exposure for protection against bodily injury and property damage. Minimum Insurance Limits: \$1,000,000 CSL.
- .5 Umbrella Liability insurance, which shall be maintained for at least three years after completion of this Contract. Minimum Insurance Limits: \$2,000,000.

11.2 Certificates of insurance and copies of policies evidencing the coverage required hereunder and copies of the policies, together with evidence that all premiums for such insurance have been paid, shall be filed with the Town at the time of execution of the Contract. All such policies and certificates shall be written through companies and in forms acceptable to the Town's lender or lenders, if any. All policies shall contain a provision that coverages afforded by them will not be cancelled or amended until at least thirty (30) days prior written notice has been given to the Town. The insurance provided under clauses 11.1, 11.4 and 11.5, above, shall name the Town and such other parties as the Town shall require as "Additional Insured" parties. Insufficient insurance shall not release the Designer from any liability for breach of its obligations under this Contract.

11.3 Any Consultant employed by the Designer shall obtain and maintain a professional liability insurance policy covering negligent errors, omissions and acts of such Consultant or of any person or business entity for whose performance the Consultant is legally liable arising out of the performance of the contract for Consultant services. The Consultant shall furnish a certificate or certificates of such insurance coverage to the Town prior to the employment of such Consultant by the Town. A liability insurance policy maintained under this paragraph shall provide for coverage of such type and duration and in such amount as the Town shall require.

12.0 INDEMNIFICATION

12.1 To the maximum extent permitted by law, the Designer agrees to indemnify, defend with counsel acceptable to the Town and save harmless the Town and its agents and employees from all suits, actions, claims, demands, damages, losses, expenses and costs, including attorneys' fees, of every kind and description which the Town may incur or suffer resulting from, in connection with, or arising out of any act, error or omission

of, or breach of contractual duties to the Town by, the Designer, its agents, servants, employees or Consultants. The extent of the foregoing indemnification and hold harmless provisions shall not be limited by any provision of insurance required by this Contract and shall survive the termination of this Contract.

13.0 EQUAL EMPLOYMENT OPPORTUNITY

13.1 In connection with the performance of work under this Contract, the Designer shall not discriminate against any employee or applicant for employment because of race, color, religion, creed, national origin, ancestry, age, sex or handicap. The Designer shall post in conspicuous places, available for employees and applicants for employment, notices to be provided by the Massachusetts Commission Against Discrimination (the "Commission"), setting forth the provisions of the Fair Employment Practices Law of the Commonwealth.

13.2 In connection with the performance of work under this Contract, the Designer shall not discriminate in its relationships with Consultants or suppliers on the basis of race, color, religion, creed, national origin, ancestry, age, sex or handicap.

13.3 The Designer shall comply with all applicable Laws pertaining to non-discrimination, equal opportunity and affirmative action, including without limitation executive orders and rules and regulations of federal and state agencies of competent jurisdiction.

14.0 CERTIFICATIONS BY DESIGNER

14.1 By execution of this Contract, the Designer certifies:

- .1 The Designer has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this Contract.
- .2 No Consultant to or sub-contractor for the Designer has given, offered or agreed to give any gift, contribution or offer of employment to the Designer or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the Consultant or subcontractor of a contract by the Designer.
- .3 No person, corporation or other entity, other than a bona fide full time employee of the Designer, has been retained or hired by the Designer to solicit for or in any way assist the Designer in obtaining this Contract upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this Contract to the Designer.
- .4 The Designer shall comply with all applicable requirements of M.G.L. c.30, §39R. The Designer has internal accounting controls as required by M.G.L. c.30, §39R(c) and the Designer has and will continue to file an audited financial statement as required by M.G.L. c.30, §39R(d).

15.0 TAXES

15.1 By execution of this Contract the Designer, pursuant to Section 49A of Chapter 62C of the Massachusetts General Laws, certifies under the penalties of perjury that it has, to the best knowledge and belief of the person(s) who signed this Contract on the Designer's behalf, filed all state tax returns and paid all state taxes required under law.

15.2 The Town is exempt from payment of certain Sales and Use taxes applicable in the Commonwealth of Massachusetts. At the Designer's request, Tax Exemption Certificates will be furnished by the Town to the Designer with respect to such tax exempt articles as may be required under this Contract. The Designer shall not pay, and the Town shall not reimburse or pay the Designer or any other party either directly or indirectly for any tax for which an exemption is provided under law.

16.0 CONFLICT OF INTEREST

16.1 The Designer acknowledges that the Town is a public employer for the purposes of Chapter 268A of the Massachusetts General Laws (the Massachusetts conflict of interest statute), and the Designer agrees, as circumstances require, to take actions and to forbear from taking actions so as to be in compliance at all times with obligations of the Designer based on said statute.

17.0 NOTICES

17.1 Notices: Any notice required under this Contract to be given by the Town to the Designer, or by the Designer to the Town, shall be deemed to have been so given, whether or not received, if mailed by prepaid postage by, respectively, the Town to the Designer at the address specified for the Designer on Page 1 above, or the Designer to the Town at Town of Hamilton, 577 Bay Road, PO Box 429, Hamilton, MA 01936

18.0 MISCELLANEOUS PROVISIONS

18.1 Successors and Assigns. Subject to the provisions of Section 18.2, below, the Town and the Designer each binds itself, its partners, successors, assigns, and legal representatives to the other party.

18.2 Assignment by Designer. The Designer shall not assign, sublet or transfer any of its obligations, responsibilities, rights or interests (including, without limitation, its right to receive any moneys due hereunder) under this Contract without the written consent of the Town. Any assignment, subletting, or transfer by the Designer in violation of this Section 18.2 shall be void and without force or effect.

18.3 Entire Agreement. This Contract represents the entire and integrated agreement between the Town and the Designer with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both the Town and the Designer.

18.4 Confidentiality. The Designer shall not, without the Town's prior written consent, release or disclose any information relating to the Project to anyone except as necessary to perform its duties hereunder.

18.5 Certifications. The Designer shall, from time to time, make such certifications and statements to the Town and to such of the Town's architects, designers, Designers and lenders, and such other parties, as the Town shall reasonably request, in such form as the Town shall reasonably request, provided that the Designer determines that such certifications are true and correct based upon the Services performed by the Designer hereunder.

18.6 Additional Services. If the Town requests the Designer to perform additional services beyond the scope of Services hereunder, the Designer shall perform such additional services only upon obtaining written authorization from the Town including written agreement as to the method and amount of compensation for such additional services.

18.7 Disputes. All claims, disputes and other matters in question between the Town and the Designer arising out of or relating to this Contract or the breach thereof shall be submitted for resolution to a court of competent jurisdiction in Essex County, Massachusetts, unless otherwise agreed by the parties. No such action shall be brought, however, until the completion of all Services under this Contract or the earlier termination thereof as provided in Section 9.0 above, the parties agreeing to negotiate in good faith any claims, disputes or other matters in question during the term of this Contract before resorting to litigation. Notwithstanding the foregoing, the Town reserves the following rights in connection with claims and disputes between the Town and the Designer, which rights may be exercised by the Town unilaterally and in the Town's sole discretion: (1) the right to institute legal action against the Designer in any court of competent jurisdiction in lieu of demanding arbitration; and/or (2) the right to demand mediation or arbitration against the Designer in the Town's sole discretion.

18.8 Limited Liability. No officer, director, member, employee, Town or other principal, agent or representative (whether disclosed or undisclosed) of the Town, nor any participant with the Town, shall be personally liable to the Designer hereunder, for the Town's payment obligations or otherwise, the Designer hereby agreeing to look solely to the assets of the Town for the satisfaction of any liability of the Town hereunder. In no event shall the Town ever be liable to the Designer for indirect, incidental or consequential damages.

18.9 Governing Law. This Contract shall be governed by the law of the Commonwealth of Massachusetts.

18.10 No Waiver. The Town's review, approval, acceptance or payment for Services under this Contract shall not operate as a waiver of any rights under this Contract and the Designer shall be and remain liable to the Town for all damages incurred by the Town as the result of the Designer's failure to perform in conformance with the terms and conditions of this Contract. The rights and remedies of the Town provided for under this Contract are in addition to any other rights or remedies provided by law. The Town may assert a right to recover damages by any appropriate means, including but not limited to set-off, suit, withholding, recoupment, or counter-claim either during or after performance of this Contract.

18.11 Interpretation. If any provision of this Contract shall to any extent be held invalid or unenforceable, the remainder of this Contract shall not be deemed affected thereby. Paragraph headings are included herein for reference purposes only and in no way define, limit or describe the scope or intent of any of the provisions of this Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Contract under seal as of the date first written above and the individual executing this Contract on behalf of the Designer makes the representations and certifications set forth in this Design Contract under the pains and penalties of perjury.

DESIGNER:

TOWN OF HAMILTON:

By its Town Manager

By:

Michael Lombardo

Its:

(hereunto duly authorized)

I hereby certify that there is an appropriation available for the amount of the Agreement and that the Town Manager is authorized to execute this Agreement and the Hamilton Department of Public Works approve all requisitions and change orders.

Finance Director

ATTACHMENT C – CERTIFICATIONS REQUIRED BY LAW

**CERTIFICATIONS REQUIRED BY LAW
FOR PUBLIC CONSTRUCTION CONTRACTS**

You must COMPLETE and SIGN the following certifications. You must also print, at the bottom of this page, the name of the contractor for whom these certifications are submitted.

TAX COMPLIANCE

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A(b), I, the undersigned, authorized signatory for the below named contractor, do hereby certify under the pains and penalties of perjury that said contractor has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

NON-COLLUSION

The undersigned certifies under the penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this subsection the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

COMPLETE AND SIGN BELOW:

Authorized Person's Signature	Date
Print Name & Title of Signatory	
Name of Contractor	

ATTACHMENT D- CERTIFICATION OF VOTE

CERTIFICATE OF VOTE

(To be filed if Contractor is a Corporation)

I, _____, hereby certify that I am the duly qualified
(Secretary of the Corporation)

and acting Secretary of _____ and I further certify that a meeting of the
(Name of Corporation)

Directors of said Company, duly called and held on _____, at which
(Date of Meeting)

all Directors were present and voting, the following vote was unanimously passed:

VOTED: To authorize and empower

Anyone acting singly, to execute Forms of General Bid, Contracts or Bonds on behalf of the Corporation.

I further certify that the above vote is still in effect and has not been changed or modified in any respect.

By: _____
(Secretary of Corporation)

A True Copy:

Attest: _____
(Notary Public)

My Commission Expires: _____
(Date)

ATTACHMENT E– CERTIFICATIONS

In accordance with M.G.L. Chapter 7C, Section 51, the undersigned states that the wages rates and other costs used to support the Designer’s compensation are accurate, complete, and current at the time of contracting; and agrees that the original contract price and any additions to the contract may be adjusted within one year of completion of the contract to exclude any significant amount if the fee was increased by such amounts due to inaccurate, incomplete, or noncurrent wage rates or other costs.

In accordance with M.G.L. Chapter 7C, Section 51, the undersigned certifies under penalties of perjury that the Designer or construction manager has not given, offered, or agreed to give any person, corporation, or other entity any gift, contribution, or offer of employment as an inducement for, or in connection with, the award of the contract for design services.

The undersigned certifies under penalties of perjury that no consultant to, or subcontractor for, the Designer of construction manager has given, offered, or agreed to give any gift, contribution, or offer of employment to the Designer or construction manager, or to any person, corporation, or entity as an inducement for, or connection with, the award to the consultant or subcontractor of a contract by the designer or construction manager.

The undersigned certifies under penalties of perjury that no person, corporation, or other entity, other than a bona fide full-time employee of the Designer or construction manager, has been retained or hired by the Designer or construction manager to solicit for or in any way assist the Designer or construction manager in obtaining the contract for design services upon an agreement or understanding that such person, corporation, or other entity be paid a fee or other consideration contingent upon the award of the contract to the Designer; and

Signature of individual submitting Proposal

Name of Business (please type or print)

This form is required with RFQ proposal submission.