

Town of Swampscott, Massachusetts



Request for Proposals

16-01

Lease of the Swampscott Fish House

November 4, 2015

PROPOSALS DUE:

Monday, December 7, 2015, 10:00 AM

*Late proposals will be rejected

Whitney C. Haskell
Designated Purchasing Agent
93 Washington Street, 2nd Floor
Salem, MA 01970
whaskell@salem.com
(978) 619-5695

16-01
Lease of Fish House
Cover Sheet

Proposer: _____

Street Address: _____
(Number and Street) (City) (State) (Zip)

Taxpayer
Identification No: _____
(Social Security Number) (Federal Identification Number)

Contact Name: _____

Telephone: _____

Email Address: _____

Fax: _____

Authorized
Signature: _____

Name: _____

Title: _____

Date: _____

<p>16-01 Lease of Fish House Price Proposal</p>
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The Town requires a minimum rent of \$1000.00/month with \$5.00/month yearly increase.

Year	Monthly Rent	Yearly Total
1	\$	\$
2	\$	\$
3	\$	\$
4	\$	\$
5	\$	\$
	Five Year Total	\$
6	\$	
7	\$	\$
8	\$	\$
9	\$	\$
10	\$	\$
	Five Year Option Total	\$

Signature of Authorized Representative:

Printed Name:

Title:

Company/Organization (Proposer):

Date:

**16-01
Lease of Fish House
Certifications**

1. NON-COLLUSION:

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

2. TAX COMPLIANCE:

Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

3. CORPORATE BIDDER *(if applicable):*

I, _____ certify that I am the _____ of the corporation named as Bidder in the Bid included herein, that _____, who signed said Bid on behalf of the Bidder was then _____ of said corporation, that I know his signature, that his signature thereon is genuine and that said Bid was duly signed, sealed and executed for and in behalf of said corporation by authority of its governing body.

(Corporate Seal)

(Secretary-Clerk)

(Signature of authorized individual submitting proposal)

(Printed Name)

(Name of Proposer)

(Federal Tax Identification or Social Security Number)

(Date)

**DISCLOSURE OF BENEFICIAL INTERESTS
ACQUISITION OR DISPOSITION OF REAL PROPERTY**

For acquisition or disposition of Real Property by _____ the undersigned does hereby state, for the purposes of disclosure pursuant to Massachusetts General Laws, Chapter 7, section 40J, of a transaction relating to real property as follows:

(1) REAL PROPERTY DESCRIPTION:

(2) TYPE OF TRANSACTION:

(3) SELLER or LESSOR:

(4) BUYER or LESSEE.

(5) Names and addresses of all persons who have or will have a direct or indirect beneficial interest in the real property described above:

NAME

RESIDENCE

(6) None of the above mentioned persons is an employee of the Division of Capital Asset Management or an official elected to public office in the Commonwealth except as listed below.

(7) This section must be signed by the individual(s) or organization(s) entering into this real property transaction with the public agency named above. If this form is signed on behalf of a corporation or other legal entity, it must be signed by a duly authorized officer of that corporation or legal entity. The undersigned acknowledges that any changes or additions to items 3 and or 4 of this form during the term of any lease or rental will require filing a new disclosure with the Division of Capital Asset Management and Maintenance within thirty (30) days following the change or addition.

The undersigned swears under the pains and penalties of perjury that this form is complete and accurate in all respects.

Signature: _____
Printed Name: _____
Title: _____
Date: _____

Part 1. General Information

1.1 INTRODUCTION

The Town of Swampscott is currently offering for lease Loft 1, 4, and 5 and the third floor portion of the building at 391 Humphrey Street, Swampscott, MA, commonly known as the Swampscott Fish House. This portion of the building is currently used as a yacht club. The portion building offered for lease contains approximately 3,134 square feet of space. It should be noted that parking in the immediate area of the building is extremely limited. It is recommended that prospective bidders give special attention to this condition when viewing the site.

The Town seeks to lease a portion of the building for a term of five years with an additional five-year option at the sole option of the Town of Swampscott.

In light of the traditional maritime character of the building and its listing on the National Register of Historic Properties, the use of the premises must be consistent with that character to support commercial and recreational boating. Manufacturing, repairs and maintenance services are inconsistent with the character of the building and are not permitted uses of the premises. It should be noted that the premises are not handicap accessible.

The Town in its review of bids will evaluate the amount of rent offered and the award will be based on the total for ten years.

1.1.1 SITE DESCRIPTION

The portion of the property for lease is located at the property known as the Swampscott Fish House, 391 Humphrey Street, Swampscott, MA 01907. Humphrey Street is a major road providing access to Marblehead. The property is also easily accessible by bus.

The building is located in the Residential A3 District. The surrounding neighborhood includes retail, office and residential uses. The building has municipal water and sewer, and electric service.

1.2 APPLICABLE LAW

This procurement will be conducted pursuant to M.G.L. ch. 30B, sec. 16.

1.3 APPROVAL

Any contract that may result from the procurement shall be subject to the approval of the Board of Selectmen of the Town of Swampscott.

1.4 INCORPORATION BY REFERENCE

All requirements, specifications, terms and conditions described in this Request for Proposals ('RFP') shall be incorporated by reference into any contract that may result.

1.5 TIME FOR AWARD

Any contract that may result from the procurement shall be awarded within ninety (90) days after the proposal due date. The time for award may be extended for up to 45 additional days by mutual agreement between the Town and the most advantageous proposer.

1.6 RIGHT TO CANCEL/REJECT

The Town reserves the right to cancel this RFP or reject in whole or in part any and all proposals if the Town determines that cancellation or rejection serves the best interests of the Town.

1.7 TAXATION

Purchases made by the Town are exempt from the payment of Federal excise tax and the payment of Commonwealth of Massachusetts sales tax and any such taxes must not be included in the proposal pricing.

Copies of the Town's tax exempt paperwork shall be available upon request of the selected contractor.

1.8 OBTAINING THE REQUEST FOR PROPOSALS

The RFP shall be available beginning, November 4, 2015.

The RFP and related documents shall be available for free download from the City's Purchasing Department website at http://saalem.com/Pages/SalemMA_Purchasing/index under the link titled "IFBs RFPs, and RFQs."

Hardcopies of the RFP and related documents may be obtained at the Office of the Purchasing Agent, 93 Washington Street, 2nd Floor, during regular office hours:

Monday-Wednesday: 8:00 AM - 4:00 PM
Thursday: 8:00 AM - 7:00 PM
Friday: 8:00 AM - 12:00 PM

Part 2. Instructions to Proposers

2.1 REQUIREMENTS AND SUBMISSIONS

Below please find a description of the requirements and submissions that must be included as part of a proposal.

2.1.1 PROPOSAL COMPONENTS

- Each proposal must contain a 'Price Proposal Form' stating the amount of rent offered.
- Each proposal must include a completed 'Disclosure of Beneficial Interests Form'
- Each bid must be accompanied by the enclosed Bid Sheet, and a signed 'Affidavit of Non-Collusion', 'Certificate as to Payment of State Taxes', and 'Certificate as to Corporate Bidder' and 'Certificate of Vote' in the form provided by the Purchasing Agent.
- Proposals must also include:
 - An estimate of the number of employees who will be working in this portion of the building.
 - An estimate of the number of customer/clients who will be using this portion of the building.
 - An estimate of the number of cars expected to use the property on a daily basis.
 - A financial statement or other evidence of the proposer's ability to meet its financial obligations with respect to the lease premises.
 - A statement of the intended hours of operation.
 - A list of any proposed physical changes to the leased premises.
 - If the Lessee is other than a natural person, evidence of its legal existence and status. Such evidence may include the following:
 - Articles of Incorporation
 - Trust Agreements
 - Partnership Agreements

2.2 PROPOSAL DELIVERY

Below please find a description of the manner in which sealed proposals must be submitted. Price and Non-Price proposals must be separately sealed and labeled.

2.2.1 DUE DATE AND TIME

Proposals shall be received by the Office of the Purchasing Agent on or before **Monday, December 7, 2015 at 10:00 AM.**

Any proposal received after that time shall be rejected as non-responsive.

2.2.2 ADDRESS

Sealed proposals shall be delivered to the Office of the Purchasing Agent, 93 Washington Street, 2nd Floor, Salem MA 01970.

Facsimile and email submissions will not be accepted.

2.2.3 HOURS OF OPERATION

Proposals must be delivered during the normal hours of operation of the City of Salem:

Monday-Wednesday:	8:00 AM-4:00 PM
Thursday:	8:00 AM-7:00 PM
Friday:	8:00 AM-12:00 PM

2.2.4 COPIES

Proposers must submit one (1) original and three (3) copies of the proposal.

2.2.5 LABELING

Price and Non-Price proposals must be separately sealed and labeled. Each proposal shall be labeled with (1) the proposal number and title, (2) the proposal due date, (3) the name of the proposer and (4) price or non-price proposal.

2.3 SIGNATURES

A proposal must be signed as follows: 1) if the proposer is an individual, by her/him personally; 2) if the proposer is a partnership, by the name of the partnership, followed by the signature of each general partner; and 3) if the proposer is a corporation, by the authorized officer, whose signature must be attested to by the clerk/secretary of the corporation, and with the corporate seal affixed.

2.4 QUESTIONS, CHANGES, MODIFICATIONS AND WITHDRAWALS

2.4.1 QUESTIONS

Questions concerning this RFP must be submitted in writing to: Whitney Haskell at whaskell@salem.com at least five (5) days prior to the bid opening date. Written responses will be mailed to all bidders on record as having picked up the RFP.

2.4.2 CHANGES

If any changes are made to this RFP, addenda will be issued. Addenda will be posted in the Office of the Purchasing Agent, on the website and e-mailed to all proposers on record as having picked up the RFP.

2.4.3 MODIFICATIONS AND WITHDRAWALS

A proposer may correct, modify, or withdraw a proposals by written notice received by the City of Salem prior to the time and date set the proposal due date.

Modifications must be submitted in a sealed envelope clearly labeled "Modification No. ___" to the address listed in part one of this section. Each modification must be numbered in sequence, and must reference the RFP.

After the proposal due date, a proposer may not change any provision of the proposal in a manner prejudicial to the interests of the City or fair competition. Minor informalities will be waived or the proposer will be allowed to correct them.

2.5 UNFORESEEN OFFICE CLOSURES

If, at the time of the scheduled due date, 93 Washington Street, 2nd Floor, Salem, MA 01970, is closed due to uncontrolled events such as fire, snow, ice, wind, or building evacuation, the due date will be postponed until 2:00 PM on the next normal business day. Proposals will be accepted until that date and time.

Part 3. Evaluation of Proposals

3.3 COMPARATIVE CRITERIA

3.3.1 Experience in operating, managing and maintaining the program or service described in the proposal:

Highly Advantageous	More than five (5) years
Advantageous	Between two (2) and five (5) years
Not Advantageous	Less than two (2) years

3.3.2 Proposed use:

Highly Advantageous	The proposed use is consistent with the character of the building (provides launch services to the moorings in the harbor)
Not Advantageous	The proposed use is not consistent with the character of the building.

3.3.3 Proposed monthly rental payments:

Highly Advantageous	Exceed the minimum payments stated in the RFP
Advantageous	Meets the minimum payments stated in the RFP

3.4 RULE FOR AWARD

Any contract that may result from this procurement shall be awarded to the responsible and responsive proposer offering the most advantageous proposal, taking into consideration all evaluation criteria described herein, as well as price.

3.5 SELECTION PROCESS

Following the deadline for receipt of proposals, the Chief Procurement Officer ('CPO') will open the proposals and prepare a register of proposals submitted. The proposals will be evaluated by an evaluation committee based on the Minimum Requirements and Comparative Criteria contained in this RFP. The evaluation committee shall notify the CPO which proposal was deemed most advantageous.

Part 4. Terms and Conditions

4.1 LEASE TERM

The term of the lease shall be five years with an additional five-year option beginning January 1, 2016.

4.2 INSURANCE REQUIREMENTS

Workmen's Compensation: The Lessee shall, before commencing the contract, provide by insurance for the payment of compensation, and the furnishing of other benefits under Chapter 152 of the General Laws (Ter. Ed.) to all persons employed under the contract, and shall continue such insurance in force and effect during the term thereof.

Comprehensive General Liability Insurance: The Lessee shall carry Public Liability Insurance with an insurance company satisfactory to the Town of Swampscott 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 the performance of the contract or from any neglect, default, or omission or want of proper care, or misconduct on the part of the contractor or for anyone in his employ during the execution of the work. Minimum coverage shall be as follows:

Liability for bodily injury, including accidental death: \$500,000 for any one person and subject to the same limit for each person, \$1,000,000 on account of one accident.

Liability for property damage: \$100,000 on account of any one accident and \$500,000 on account of all accidents.

Prior to starting work on this contract, the contractor shall deposit with the Town of Swampscott, certificates from the insurers clearly stating that the insurance policies required in the above paragraphs have been issued to the contractor. The certificate must be in a form satisfactory to the Town of Swampscott.

No cancellation of any insurance, whether by the insurer of the insured, shall be effective unless written notice is given to the Town of Swampscott at least fifteen days prior to the intended effective date thereof, which date has been expressed in the notice. Prior to the effective date of any such cancellation, the contractor shall take out new insurance to cover the policies so cancelled and shall provide certificates stating that such insurance is in effect.

The Town of Swampscott must be included as an additional party insured on the policies.

4.3 OTHER TERMS AND CONDITIONS

1. If the Lessee:

- a) defaults in the payment of a rent installment and such default continue for ten (10) days after written notice thereof;
 - b) defaults in the performance or observance of any other of the Lessee's covenants, agreements or obligations under the lease and fails to correct such default within thirty (30) days after written notice thereof; or
 - c) shall be declared bankrupt or insolvent according to law, or, if any assignment shall be made of Lessee's property for the benefit of creditors, the Lessor, in addition to other rights and remedies, shall have the right to declare the term of the lease ended.
2. The Lessee shall not sublet the leased premises or any portion thereof.
 3. The Lessee shall be required to maintain adequate fire and liability insurance during the entire lease term and shall be required to present evidence of such coverage to the Lessor at the time of the signing of the lease and at such other times as the Lessor shall request. Such insurance shall name the Town as a coinsured. The Town shall provide fire insurance for the building.
 4. No additions or significant alternations may be made to the exterior or interior of the building without the Lessor's prior written approval other than the tenant fit-up approved by the Town at the time the lease is entered into.
 5. The Lessee shall be responsible for the cost of all tenant fix-up, including any special electrical needs. The Lessee shall also be responsible for the cost of heat, air conditioning, electricity, trash collection, dumpsters and its own telephone service.
 6. The Lessee shall be responsible for all custodial/janitorial services in the lease premises during the lease term.
 7. The Lessee, at the time the lease is signed, shall be required to pay to the Lessor as a security deposit an amount equal to one (1) months rent.
 8. The Lessee shall be responsible for maintaining the lease premises in good condition, reasonable wear and tear excluded.
 9. The Lessee shall be responsible for the cost of all repairs occasioned by or due to the fault or neglect of the Lessee, its agents, servants or independent contractors hired by it.
 10. The Lessee shall be responsible for providing a free launch service to the Town's Harbormaster, Assistant Harbormasters, and the Swampscott's sailing program.
 11. The Lessee shall be responsible for the cleaning, care, maintenance, supplies and related costs (i.e., supplies, plumbing, etc.) for the two lavatories (men and women) located on the ground level on the southerly side of the Fish House and have it open to the public at a minimum between one week before Memorial Day and one week after Labor Day.

12. The Lessee shall maintain and operate radio facilities to monitor emergency boating calls. The Lessee is to give immediate notice to the Harbormaster or Assistant Harbormasters of each such call.

4.4 SAMPLE AGREEMENT

See 'Sample Agreement' attached.

ARTICLE I: SUMMARY

1.1 Key Terms

DATE OF LEASE: _____, 2015

LANDLORD: TOWN OF SWAMPSCOTT

LANDLORD'S ADDRESS: Swampscott Town Hall
22 Monument Avenue
Swampscott, MA 01907

TENANT:

TENANT'S ADDRESS:

PREMISES: Loft 1, 4, and 5 and the third floor portion of the building at 391 Humphrey Street, Swampscott, MA, commonly known as the Swampscott Fish House. This portion of the building is currently used as a yacht club. The portion building offered for lease contains approximately 3,134 square feet of space.

ARTICLE II: PREMISES

2.1 Premises. Landlord does hereby demise and lease unto Tenant the Premises, as described in Section 1.1 above.

The Premises are delivered to Tenant and Tenant accepts the Premises in their present condition, "AS IS," it being agreed that Tenant has had an opportunity to examine and inspect the Premises in all respects, that Landlord has made no representations or warranties of any kind with respect thereto, and that Landlord shall have no obligation to do any work on, or make any improvements to the Premises or the condition thereof.

2.2 Permitted Uses. Tenant shall use the Premises for the purpose of _____ (the "Permitted Uses"), in accordance with the terms and conditions set forth in the Request for Proposals issued by the Town of Swampscott and the Tenant's written proposal dated _____, 2015 (the "Proposal"), which Request for Proposals and Proposal are incorporated herein and made a part hereof.

ARTICLE III: TERM OF LEASE

This Lease shall commence on _____, 2015 (the "Commencement Date") and expire on December 31, 2016 (the "Initial Term"), with the Landlord and Tenant having the right to extend the term of the Lease for five (5) terms of up to three (3) years each (each, an "Extension Term"), for a rent and on such terms as may be mutually agreed upon by Landlord

and Tenant. The Initial Term and, if exercised, the Extension Terms, are referred to herein as the "Term."

ARTICLE IV: RENT

4.1 Payment of Rent. Tenant covenants and agrees to pay Landlord, without notice or demand therefor and without any deduction or set-off whatsoever, except as expressly otherwise provided herein, the "Rent" and "Additional Rent."

4.2 Rent. Commencing on the Commencement Date, Tenant shall pay rent in the amount of _____ Dollars (\$_____) per year [MINIMUM OF - _____ FOR FIRST LEASE YEAR], to be paid in monthly installments of _____ Dollars (\$_____) per month, during the Term of this Lease (as increased annually, the "Rent"). If the Commencement Date shall be on any day other than the first day of a calendar month, Rent shall be pro rated on a per diem basis. Rent shall increase automatically each lease year, on the anniversary of the Commencement Date, by _____ percent (____%). [MINIMUM OF 3%]

4.3 General Rent Provisions. Rent shall be payable by Tenant to Landlord monthly in advance on the first day of each month during the Term of this Lease without counterclaim, notice, demand, abatement or offset. All Rent and other payments required to be made by Tenant to Landlord under this Lease shall be paid by check made payable to the "Town of Swampscott" and delivered to Landlord at the address set forth above, or at such other place as Landlord may from time to time direct by written notice to Tenant.

4.4 Interest. All payments becoming due under this Lease and not paid when due shall bear interest from the applicable due date until received by Landlord at an annual rate equal to the prime rate of interest charged from time to time by Bank of America or its successor, plus two percent (2%).

ARTICLE V: UTILITIES

5.1 Utilities. Tenant agrees to pay promptly, as and when the same become due and payable, all charges for water, sewer, electricity, gas, heat, steam, hot and/or chilled water, air conditioning, ventilating, lighting systems, and other utilities supplied to the Premises (whether prior or during the Term, or subsequent thereto if relating to Tenant's use of the Premises). If Tenant fails to pay for the utilities furnished to the Premises, Landlord shall have the right, but not the obligation, to pay the same, and Tenant shall reimburse Landlord promptly upon demand for all costs, expenses and other sums of money in connection therewith, with interest, as Additional Rent.

5.2 Additional Utilities. In the event Tenant requires additional utilities or equipment, all costs incurred in connection therewith, including installation, maintenance and repairs of the same, shall be Tenant's sole obligation, provided that such installation shall be subject to the prior written consent of Landlord and shall be installed in conformity with plans and specifications provided by Tenant and approved by Landlord, said consent not to be unreasonably withheld.

5.3 Tenant Not to Exceed Capacity of Feeders or Wiring. Tenant covenants and agrees that at all times its use of electric current shall never exceed the capacity of the feeders to the Premises or the wiring installations therein.

ARTICLE VI: ALTERATIONS AND ADDITIONS

6.1 Construction of Improvements. Tenant shall not make any structural alterations or additions to the Premises without Landlord's prior written consent. Tenant may make non-structural alterations or additions to the Premises, provided Tenant shall first obtain Landlord's prior written consent thereto, which consent shall not be unreasonably withheld. All such allowed alterations or additions shall be at Tenant's sole expense, shall be in accordance with all applicable laws and codes, and shall be in quality at least equal to the present construction.

6.2 Compliance with Laws. Tenant shall procure all necessary permits before undertaking any work on the Premises, including without limitation any structural alterations, and shall cause all such work to be performed in a good and first-class workmanlike manner and in accordance with the requirements of insurers, employing new materials of prime quality and shall defend, hold harmless, exonerate and indemnify Landlord from all injury, loss or damage to any person or property occasioned by such work. Tenant shall at all times comply with (i) Massachusetts public bidding laws and all laws, rules, orders and regulations of governmental authorities having jurisdiction thereof, in effect at the time of application for permits for such work; (ii) orders, rules and regulations of any Board of Fire Underwriters, or any other body hereafter constituted exercising similar functions, and governing insurance rating bureaus; and (iii) plans and specifications (which shall be prepared by and at the expense of Tenant and approved by Landlord prior to beginning any work). Tenant agrees to employ responsible contractors for such work and shall cause such contractors to carry workers' compensation insurance in accordance with statutory requirements and comprehensive public liability insurance and automobile liability insurance covering such contractors on or about the Premises in amounts reasonably acceptable to Landlord and agrees to submit certificates evidencing such coverage to Landlord prior to the commencement of and during the continuance of any such work.

6.3 Liens and Encumbrances. Tenant shall not permit any mechanics' liens, or similar liens, to remain upon the Premises for labor and material furnished to Tenant or claimed to have been furnished to Tenant in connection with work of any character performed or claimed to have been performed at the direction of Tenant, and shall cause any such lien to be released of record without cost to Landlord within twenty (20) days after Tenant receives notice of filing of same. In connection with the foregoing, Tenant agrees to indemnify, save, defend, and hold harmless Landlord against, of and from all costs, liabilities, suits, penalties, claims and demands, including reasonable counsel fees, resulting therefrom. If Tenant shall fail to discharge such liens within such period or fail to furnish security therefor, then Landlord may, but shall not be obligated to, discharge the same, and Tenant agrees to reimburse Landlord promptly upon demand for all costs, expenses and other sums of money in connection therewith as Additional Rent, with interest. All materialmen, contractors, artisans, mechanics, laborers and any other persons now or hereafter who contract with Tenant for the furnishing of any labor, services, materials, supplies or equipment with respect to any portion of the Premises are hereby charged with notice that they must look exclusively to Tenant to obtain payment for same. Tenant agrees that it will, on request from

Landlord, comply with any and all reasonable requirements of Landlord with respect to the work performed or materials furnished by Tenant or its agents, contractors, and sub-contractors in the Premises.

6.4 Insurance for Tenant's Work. Tenant shall have and maintain in force public liability insurance, builder's risk insurance covering Landlord, and workmen's compensation insurance affording applicable statutory coverage and containing statutory limits. All such policies shall comply with the provisions of Article X hereof.

6.5 Ownership of Improvements. All structural alterations and additions made by Tenant shall become the exclusive property of Landlord upon completion. All nonstructural alterations and additions made by Tenant shall remain the exclusive property of Tenant. Tenant may at any time, at its sole option, remove any such alteration or addition, provided that removal does not damage the Premises or Tenant restores the Premises to the same condition as prior to such alteration or addition.

6.6 Inspection of Improvements. Landlord's representatives may enter upon the Premises from time to time on reasonable notice to Tenant for the purpose of inspecting the improvements being constructed by Tenant, and such entry shall not be construed to be a violation of Tenant's right to exclusive possession of the Premises. At final completion of any improvement, Landlord shall have the right to inspect the work to determine material conformity with the approved plans, and may direct Tenant to perform such additional work as may be necessary to materially conform with said plans. Any entry upon the Premises by Landlord shall be at its sole risk.

ARTICLE VII - USE OF PREMISES

7.1 Permitted Uses. Tenant shall use the Premises solely for the operation of a _____ (the "Permitted Uses"). Tenant shall keep the Premises in good order, reasonable wear and tear and damage by fire or other casualty only excepted, and shall not commit or permit Tenant's servants, agents or invitees to commit waste to the Premises. Tenant agrees not to erect any signs on the Premises without the prior written consent of the Landlord, which consent shall not be unreasonably withheld.

7.2 Compliance with Laws, Regulations, and Codes. Tenant acknowledges that no trade or occupation shall be conducted in the Premises or use made thereof which will be unlawful, improper, offensive, or contrary to any federal, state or local law, regulations, codes and bylaws, including, but not limited to, those that relate to health and safety and those of the Board of Fire Insurance Underwriters.

7.3 Hazardous Substances. Tenant shall not bring onto, store, release, dispose or threaten the release from the Premises or elsewhere on the Premises any hazardous, toxic, inflammable, combustible or explosive fluid, material, chemical, or substance, including without limitation any item defined as hazardous pursuant Chapter 21E of the Massachusetts General Laws and federal and other state laws ("Hazardous Substances"), except as may be required in connection with the Permitted Uses, a list of which shall be provided to Landlord, updated as applicable. Tenant shall defend, indemnify and hold harmless Landlord, and those claiming by, through and under Landlord, from and against any and all liability, loss, damage, costs, expenses (including, without

limitation, reasonable attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any nature in any way suffered, incurred, or paid as a result of any release or threatened release of Hazardous Substances on or from the Premises which is caused or exacerbated by Tenant, its agents, employees, contractors, representatives, or invitees. Landlord shall have no responsibility to Tenant, its agents, employees, representatives, permittees and invitees, for the presence of Hazardous Substances on the Premises or be required to abate or remediate the same. The provisions of this Section shall survive the expiration or earlier termination of the Lease.

7.4 Compliance with Landlord's Rules and Regulations. Tenant and Tenant's employees, agents, invitees and licensees shall observe and comply with all reasonable rules and regulations as established from time to time by Landlord with respect to the manner of conducting business in the Premises and the upkeep and the use of the Premises.

7.5 Assignment and Subleasing. Tenant shall not assign, sublet, underlet, mortgage, pledge or encumber (collectively referred to as "Transfer") this Lease without Landlord's prior written consent, which may be withheld in Landlord's sole discretion. Consent by Landlord, whether express or implied, to any Transfer shall not constitute a waiver of Landlord's right to prohibit any subsequent Transfer; nor shall such consent be deemed a waiver of Landlord's right to terminate this Lease upon any subsequent Transfer. As used herein, the term "assign" or "assignment" shall be deemed to include, without limitation, any transfer of Tenant's interest in the Lease by operation of law.

ARTICLE VIII - MAINTENANCE; CAPITAL REPAIRS

8.1 Tenant's Responsibility. The Tenant shall be responsible, at its sole expense, for the general maintenance, repair and operation of the Premises. The Tenant shall keep the Premises, including, without limitation, the electrical fixtures, windows, halls, stairwells, lavatories, pipes, wiring and lighting, all plumbing and utility lines serving the Premises, the boilers and the heating and ventilating system and the fire protection equipment and systems serving the Premises, in good and safe order, condition and repair, excepting only reasonable use and wear, and damage by fire or other casualty. The Tenant shall also, at its sole expense, keep and maintain the Premises and all sidewalks, curbs and drives on or adjoining the same in a clean and orderly condition, free of dirt, rubbish, unlawful obstructions, and snow and ice. The Tenant shall not permit the Premises to be overloaded, damaged, stripped, or defaced, nor suffer any waste. The Tenant shall be responsible for removing trash from the Premises, and the collection and disposal thereof. The Tenant shall not allow rubbish or trash to accumulate on or about the Premises. The Tenant agrees to keep, operate, use and maintain every part of the Premises in conformity with all requirements of the law and applicable fire underwriting and related regulations, and to do all other work necessary to comply with the foregoing covenants.

8.2 Tenant's Failure to Maintain. If the Tenant shall fail to keep the Premises in the condition required herein, or if repairs are required to be made by the Tenant pursuant to the terms hereof, within thirty (30) days after notice by the Landlord (or without notice in any emergency, immediately threatening life or property), the Landlord shall have the right (but shall not be obligated) to make such repairs or replacements, or perform maintenance work or any other work

required of the Tenant pursuant to this Lease, and charge the reasonable cost thereof to the Tenant, with interest.

8.3 Capital Repairs. Notwithstanding the foregoing, the Tenant agrees to make all major structural repairs reasonably determined by the Tenant to be necessary, including the building exterior, the roof, framing, floor slabs, and foundation of the Premises, the heating and ventilation system serving the Premises, replacement of original equipment, and such capital repairs or improvements necessary to make the Premises functional for the Permitted Uses (collectively, the "Capital Repairs"). The Landlord shall make such Capital Repairs within a reasonable time, consistent with the Landlord's budgetary, appropriation and borrowing requirements and with the Landlord's obligation to comply with legal requirements relating to public building projects and public procurement.

8.4 Capital Costs. The Landlord shall be responsible for paying for the cost of the Capital Repairs, subject to appropriation of funds by Town Meeting. "Capital Costs," as used herein, shall include the cost of undertaking any Capital Repairs and the payment of principal and interest on bonds or other obligations issued to finance the Capital Repairs.

8.5 Ownership of Improvements. All Capital Repairs and/or structural alterations and additions made to the Premises shall be the exclusive property of the Landlord upon completion. All other nonstructural alterations and additions made by the Tenant that are not affixed to the Premises may be removed in accordance with the provisions of Section 6.5.

ARTICLE IX: INDEMNIFICATION; RELEASE

9.1 Indemnification. Tenant shall, during the term hereof, assume and maintain exclusive control of the Premises and defend, indemnify and save harmless Landlord from and against all claims, expenses or liability of whatever nature arising from any act, omission or negligence of Tenant, Tenant's contractors, agents, employees, customers, and invitees, or anyone claiming by, through or under Tenant, or arising, directly or indirectly, from any accident, injury or damage whatsoever, however caused, to any person, or to the property of any person, occurring after Tenant enters the Premises for any reason and until the end of the term of this Lease and, thereafter, so long as Tenant or any occupant claiming under Tenant is in occupancy of any part of the Premises, in or about the Premises, or arising from any accident occurring outside the Premises but within the general area of the Premises, where such accident, injury or damage results or is claimed to have resulted from any act, omission or negligence on the part of Tenant or Tenant's contractors, agents, employees, customers, and invitees, or anyone claiming by, through or under Tenant.

9.2 The foregoing indemnity and hold harmless agreement shall include indemnity against all costs, expenses and liabilities incurred in or in connection with any such claim or proceeding brought thereon, including attorneys' fees, and the defense thereof with counsel acceptable to Landlord or counsel selected by an insurance company which has accepted liability for any such claim.

9.3 Release. To the maximum extent this Lease may be made effective according to law, Tenant agrees to use and occupy the Premises at Tenant's own risk, and Landlord shall have no

responsibility or liability for any loss or damage to fixtures or other personal property of Tenant or any person claiming by, through or under Tenant. Without limitation, Tenant agrees that Landlord shall not be responsible or liable to Tenant, or those claiming by, through or under Tenant, for any loss or damage resulting to Tenant or those claiming by, through or under Tenant, its or their property from the breaking, bursting, stopping or leaking of electric cables and wires, and water, gas or steam pipes.

The provisions of this Article shall survive any termination of this Lease.

ARTICLE X: INSURANCE

10.1 Tenant's Insurance. Tenant shall obtain and keep in force at its own expense so long as this Lease remains in effect and thereafter so long as Tenant, or anyone claiming by, through or under Tenant, uses or occupies the Premises or any part thereof, policies of insurance for the benefit of such parties, in the amounts, and in the manner and form set forth in this Section; provided, however, that amounts of insurance coverage may from time to time be increased. Tenant shall furnish certificates evidencing each such insurance coverage to Landlord prior to the execution of this Lease (to the extent such insurance is appropriate at such time) and providing that the insurer shall give Landlord written notice at least thirty (30) days in advance of any termination, expiration or any and all changes in coverage. The kinds and amounts of such insurance coverage shall not be less than the kinds and amounts designated herein, and Tenant agrees that the stipulation herein of the kinds and minimum amounts of insurance coverage, or the acceptance by Landlord of Certificates of Insurance indicating the kinds and limits of coverage shall in no way limit the liability of Tenant to any such kinds and amounts of insurance coverage.

(a) **General Liability Insurance:** A Comprehensive General Liability policy on an occurrence basis endorsed to include broad form comprehensive general liability with a combined single limit of liability of not less than \$1,000,000.00. The policy shall name Landlord, and its officers, agents, servants, employees and consultants as additionally insured parties.

(b) **Worker's Compensation Insurance:** Tenant and any subtenants, as applicable, shall provide Workers' Compensation Insurance required by law and the Employer's Liability insurance for at least the amounts of liability for bodily injury by accident of \$500,000.00 each accident and bodily injury by disease each employee of \$100,000.00 or such greater amount as may be required from time to time by the laws of the Commonwealth of Massachusetts.

(c) **Umbrella/Excess Liability Insurance:** An Umbrella/Excess Liability insurance policy on an occurrence basis "following form" of the primary coverage with a limit of liability of \$2,000,000.00. The Umbrella/Excess Liability insurance policy shall include but not be limited to the following coverages for bodily injury, property damage and personal injury: (i) Premises - Operations Liability; (ii) Contractual Liability; (iii) Automobile Liability for owned, non-owned and hired vehicles. Landlord, its officers, agents, servants and employees shall be named as additional insureds.

(d) Should Tenant choose to make improvements to the building, Tenant shall provide Landlord with evidence that Tenant has required its contractors to maintain (i) worker's compensation insurance in the amounts required by law (or reasonably comparable insurance if

such insurance is no longer available), (ii) builder's risk (or such reasonably comparable insurance) insurance on an "all risk" basis (including collapse) insuring against casualty to such construction for full replacement value of the work performed and the equipment supplies and materials furnished and stored, (iii) automobile liability insurance in the minimum amounts required by law with limits of liability not less than \$1,000,000 per occurrence for property damage and \$2,000,000 combined single limit, (iv) Employer's Liability Insurance affording protection in the amount of not less than \$500,000 per accident and \$500,000 for disease, (v) public liability insurance within limits in an amount not less than \$3,000,000 comprehensive general liability total with a limit of \$1,000,000 an occurrence, and (vi) Professional/Environmental Impairment Liability Insurance providing coverage for environmental contamination, bodily injury and/or property damage arising out of acts and omissions of Tenant or its contractors, employees or agents in the performance of the Permitted Uses or any other activities or failures to act at or with respect to the Premises in the amount of \$1,000,000 for each claim and \$1,000,000 in the aggregate (which insurance, unlike the other insurance noted above, may be made on a claims made basis). Tenant shall require that Landlord, and its officers, agents, servants and employees be named as additional insureds on all subtenants, concessionaires, subcontractor's and independent contractor's insurance, excluding Workers' Compensation.

Upon Landlord's reasonable request, the limits of any of the above-mentioned insurance coverages may be increased at the written request of the Landlord to amounts reasonably requested by the Landlord, but not to exceed the amounts of coverage generally maintained at the time in question for similar properties in Massachusetts.

Landlord shall have the same rights and remedies for the non-payment by Tenant to Landlord of amounts due on account of insurance premiums as Landlord has under this Lease for the failure of Tenant to pay the Rent.

10.2 Personal Property. Tenant agrees that Landlord shall have no responsibility or liability for any loss or damage or injury to from any cause whatsoever, including theft or otherwise of fixtures, improvements, or other personal property of Tenant. Tenant agrees that it shall continuously keep its fixtures, merchandise (if any), equipment and other personal property from time to time located in, on or about the Premises, and all leasehold improvements to the Premises constructed or installed by Tenant insured by reputable, duly licensed insurance companies against loss or damage by fire with the usual extended coverage endorsements. Within a reasonable time after Tenant enters the Premises, no less often than annually thereafter, and at any other time upon the request of Landlord, Tenant shall furnish to Landlord evidence of such continuous insurance coverage satisfactory to Landlord. It is understood and agreed that Tenant assumes all risk of damage to its own property arising from any cause whatsoever, including, without limitation, loss by theft or otherwise.

10.3 Property Insurance. Landlord shall, at its sole expense, obtain and keep in force during the Term, property insurance on the Premises consistent with the insurance coverage of buildings of similar character maintained by the Landlord on other Town-owned buildings.

10.4 General Requirements. Landlord shall be named as an additional insured on all insurance policies. All required insurance shall be written with such companies qualified to do business in Massachusetts, as Tenant shall select and Landlord shall approve, which approval Landlord agrees

not to withhold unreasonably. Without limiting Landlord's other rights under any other provisions of this Lease, if Tenant shall fail to keep the Premises insured as provided herein, and if such failure shall continue to a period of ten (10) days following written notice by Landlord to Tenant thereof, then Landlord, without further notice to Tenant, may take out and pay for such insurance, and the amount of such payment shall become due and payable as Additional Rent on demand.

Tenant hereby waives any and all rights of recovery which it might otherwise have against Landlord, its agents, employees and other persons for whom Landlord may be responsible for any loss or damage to Tenant's property or improvements in the Premises which are either required to be insured under the terms of this Lease or which Tenant, in the absence of any such requirement, elects to insure, notwithstanding that the loss or damage may result from the negligence, willful act or default under the terms of this Lease by Landlord, its agents, employees, contractors, or other persons for whom Landlord may be responsible.

ARTICLE XI: CASUALTY; EMINENT DOMAIN

(a) For the purposes of this Article XI, "substantial part" shall be defined as that portion of the Premises which if damaged or taken by eminent domain would materially affect the use of the Premises for the Permitted Uses.

(b) If the Premises or any portion thereof shall be destroyed or damaged by fire or other casualty, or taken by any public or quasi-public agency or authority other than Landlord by right of eminent domain, and the casualty/taking unreasonably interferes with the use of the Premises for the Permitted Uses in a manner comparable to such use prior to such casualty/condemnation, this Lease shall terminate at the election of either Landlord or Tenant. Any such termination shall be effective thirty (30) days after the date of notice thereof.

(c) If any part of the Premises is damaged by fire or other casualty or is taken by a public authority and this Lease is not terminated by Landlord or Tenant as provided above, Tenant shall proceed with reasonable diligence to repair and restore the Premises, or what remains thereof in the case of a partial taking, to its condition prior to such casualty/taking. Tenant acknowledges and agrees that in no event shall Landlord be liable for any injury, harm or any other loss, cost, expense, demand, claim, or have any obligation to repair, replace, improve, restore and/or rebuild, any damage of any kind or nature whatsoever to the Premises or any portion thereof caused by an eminent domain taking or by fire, flood or other casualty.

(d) In the event of a taking by eminent domain, Landlord shall have, and hereby reserves and excepts, and Tenant hereby grants and assigns to Landlord, all rights to recover for damages to the Premises and the leasehold interest hereby created, and to compensation accrued or hereafter to accrue by reason of such taking or damage. Tenant covenants to deliver such further assignments and assurances thereof as Landlord may from time to time request, hereby irrevocably designating and appointing Landlord as its attorney-in-fact to execute and deliver in Tenant's name and behalf all such further assignments thereof. Nothing contained herein shall be construed to prevent Tenant from prosecuting in any condemnation proceedings a claim for the value of any of Tenant's usual trade fixtures installed in the Premises by Tenant at Tenant's expense and for relocation expenses, provided that such action shall not affect the amount of compensation otherwise recoverable hereunder by Landlord from the taking authority.

ARTICLE XII: TERMINATION; DEFAULT

In the event that:

- (a) Tenant shall default in the payment of Rent or any other sum herein specified or shall fail to carry and/or maintain the insurance required hereunder and such default shall continue for ten (10) days after written notice thereof; or
- (b) Tenant shall default in the observance or performance of any other of Tenant's covenants, agreements, or obligations hereunder and such default shall not be corrected within thirty (30) days after written notice (or any shorter period, if specified herein); or
- (c) the occurrence of any of the following events: (i) the making by Tenant of any general arrangement or assignment for the benefit of creditors; (ii) Tenant's becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Tenant, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days; provided, however, in the event that any provision of this paragraph (c) is contrary to any applicable law, such provision shall be of no force, and not affect the validity of the remaining provisions.

The Landlord shall have the right thereafter, while such default continues, to re-enter and take complete possession of the Premises, to declare the Term of this Lease ended, and remove Tenant's effects, without prejudice to any other remedy which may be available to Landlord. To the extent permitted by law, Tenant shall indemnify Landlord against all payments which Landlord may incur by reason of such termination during the residue of the Term. If Tenant shall default after reasonable notice thereof, in the observance or performance of any conditions or covenants on Tenant's part to be performed or observed by virtue of any of the provisions of any article of this Lease, Landlord, without being under any obligation to do so and without thereby waiving such default, may remedy such default for the account and at the expense of Tenant. If Landlord makes any expenditures or incurs any obligations for the payment of money in connection with Tenant's default, including but not limited to, reasonable attorneys' fees in instituting, prosecuting or defending any action or proceeding, such sums paid or obligations incurred shall be paid to Landlord by Tenant as Additional Rent.

Without limiting any of Landlord's rights and remedies hereunder, and in addition to all other amounts Tenant is otherwise obligated to pay, it is expressly agreed that Landlord shall be entitled to recover from Tenant all costs and expenses, including reasonable attorneys' fees, incurred by Landlord in enforcing this Lease from and after Tenant's default.

ARTICLE XIII: MISCELLANEOUS

13.1 Changes in Lease. None of the covenants, agreements, provisions, terms and conditions of this Lease shall in any manner be changed, altered, waived or abandoned except by a written instrument signed, sealed and mutually agreed upon by all the parties hereto, and approved as required by law. Such instrument shall not be void for want of consideration.

13.2 Quiet Enjoyment. Landlord hereby warrants and covenants that Tenant shall have peaceful and quiet use and possession of the Premises without hindrance or interruption on the part of Landlord, or by any other person(s) for whose actions Landlord is legally responsible, or by any person claiming by, through or under Landlord, except as herein provided.

13.3 Landlord's Entry. Landlord or its agents may, at reasonable times and without interfering with Tenant's business operations, enter the Premises from time to time to make repairs or to inspect the Premises. Landlord shall give Tenant a minimum of twenty-four (24) hours notice for such visits, provided however that Landlord may enter the Premises at any hour and without prior notice in the case of an emergency affecting the Premises.

13.4 Yield Up at Termination of Lease. Tenant shall at the expiration or other termination of this Lease remove all Tenant's effects from the Premises. Tenant shall deliver the Premises to Landlord in the condition in which Tenant is required to maintain the same as set forth in this Lease, reasonable wear and tear excepted and fire and other casualty excepted.

13.5 Holding Over. If Tenant or anyone claiming under Tenant shall remain in possession of the Premises or any part thereof after the expiration of the term hereof, without any agreement in writing between Landlord and Tenant with respect thereto, the person remaining in possession shall be deemed a tenant at sufferance. After acceptance by Landlord of any payments made under this Lease, the person remaining in possession shall be deemed a tenant from month-to-month, subject to the provisions of this Lease insofar as the same may be made applicable to a tenant from month-to-month, which occupancy or use may at any time be terminated by either party by one (1) month's written notice to the other party.

13.6 Severability. If any provision of this Lease is declared to be illegal, unenforceable, or void, then both parties shall be relieved of all obligations under that provision provided, however, that the remainder of the Lease shall be enforced to the fullest extent permitted by law.

13.7 Binding Agreement; Covenants and Agreements; Governing Law; Personal Liability. This Lease shall bind and inure to the benefit of the parties hereto and their respective representatives, successors and assigns. All covenants, agreements, terms and conditions of this Lease shall be construed as covenants running with the land. This Lease contains the entire agreement of the parties and may not be changed or modified except by a written instrument in accordance with the provisions herein. This Lease shall be governed by the laws of the Commonwealth of Massachusetts. The provisions of those laws shall not be deemed waived by any provision of this Lease.

The failure of either party to seek redress for violation or to insist upon the strict performance of any covenant or condition of this Lease shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of a violation. No

provision of this Lease shall be deemed to have been waived by either party unless such waiver is in writing and signed by the party to be bound thereby.

No mention in this Lease of any specific right or remedy shall preclude Landlord or Tenant from exercising any other right, or from having any other remedy, or from maintaining any action to which it may otherwise be entitled either in law or in equity.

No official, employee or consultant of the Town of Swampscott shall be personally liable to Tenant or any partner thereof, or any successor in interest or person claiming through or under Tenant or any such partner, in the event of any default or breach, or for or on account of any amount which may be or become due, or on any claim, cause or obligation whatsoever under the terms of this Lease or any amendment or extension entered into pursuant hereto.

13.8 Notice. Any notice relating to the Premises or to the occupancy thereof shall be in writing and shall be deemed duly served when mailed by registered or certified mail, postage prepaid, addressed to the other party at the addresses listed in Section 1.1, or at such other addresses as the parties may from time to time designate by written notice to the other party.

[Signature Page Follows]

IN WITNESS WHEREOF, this Lease has been executed by the parties hereto, under seal.

LANDLORD:

TENANT:

TOWN OF SWAMPSCOTT

Thomas G. Younger
Town Administrator

By: _____
Name:
Title:

By: _____
Name:
Title: