

REQUEST FOR PROPOSALS
Town of Provincetown, Massachusetts
SIGHTSEEING VEHICLE / TOUR OPPORTUNITY
Pursuant to Provincetown Parking Regulations 6-4-2

Sealed proposals, addressed to the Town Manager/Chief Procurement Officer, will be received and registered by the Town Manager:

By Mail (USPS, UPS, FedEx, etc.) or in person

Town Manager's Office
Provincetown Town Hall
260 Commercial St.
Provincetown, MA 02657

Until 3pm on Thursday, June 7, 2018

The purpose of this Request for Proposals ("RFP") is to facilitate the selection of a proposer who demonstrates the qualifications and capacity necessary to best effectuate the terms and conditions of a License Agreement for the use of a parking space on the North side of Commercial Street between Ryder Street and Gosnold Street as set forth in Exhibit A of the License Agreement included as Attachment E for the operation of a sightseeing vehicle/guided tour/trolley business. The space is 40 feet long and is reserved for the exclusive use to the Proposer pursuant to a license and the regulations set forth in Provincetown Parking Regulations 6-4-2.

The Town of Provincetown ("Town"), acting by and through its Chief Procurement Officer, is pleased to present this RFP in accordance with Massachusetts General Law Chapter 30B. The Town of Provincetown reserves the right to reject any or all proposals, waive any informalities in the proposals, and to accept the proposal deemed to be in the best interest of the Town. A license Agreement (Attachment E) will be awarded, if at all, to the responsive and responsible proposer whose proposal is deemed by the Town to be the most advantageous, taking into consideration price and the evaluation criteria included in Section 4 of this RFP.

SECTION 1. GENERAL REQUIREMENTS:

Instructions to Proposers

1. Proposers shall submit separate, sealed price and non-price (or technical) proposals. The price proposal form (Attachment D) attached hereto must be completely filled out, signed, placed in an envelope and sealed. The non-price proposal must at the very least address and comply with all minimum requirements set forth in this RFP in order to be considered responsive. The proposal shall be signed, placed in a sealed envelope,

marked with the Proposer's name, description of proposal and returned prior to the deadline date.

Both the envelope containing the price proposal and the envelope containing the non-price proposal must be marked with the Proposer's name, description of proposal, and either PRICE PROPOSAL or NON-PRICE PROPOSAL.

2. A Proposer may correct, modify or withdraw a bid by sealed written notice that must be clearly marked as a correction, modification or withdrawal. Any such correction, modification or withdrawal must be received in the Office of the Town Manager at least one hour prior to the scheduled time and date set for the opening of the proposals.

3. A proposer's failure to complete the enclosed forms, satisfy minimum requirements, or provide required documentation will render its proposal non-responsive and will result in rejection of the proposal, unless the Town determines that such failure constitutes a minor informality, as defined in M.G.L. c.30B.

4. All requests for clarification and any questions about information contained in this RFP must be submitted in writing and addressed to:

Elisabeth Verde
Executive Assistant to the Town Manager
260 Commercial Street
Provincetown, MA 02657
everde@provincetown-ma.gov

5. No requests or questions will be accepted after **5pm on Monday, June 4, 2018**. The proposer must include with any request or question, the name, address, telephone number, fax number and email address of the person to whom a response, if any, should be sent. If the Town determines that an answer or response to a request or question is appropriate, the Town will provide such answer or response in writing to all proposers in the form of an Addendum to this RFP. Proposers are not entitled to rely upon any answers or responses unless the same have been so issued by the Town.

6. One original and four copies of the proposal must be received by the Town Manager prior to **3pm on Thursday, June 7, 2018**. Note that the Town does not consistently receive overnight mail by 3pm and, therefore, proposers should not expect timely delivery of proposals delivered via overnight mail the day before the date designated for receipt of such proposals. Proposals must be delivered in a sealed package, plainly marked "RFP – Sightseeing Vehicle".

7. Each proposal shall remain in effect and be available for acceptance by the Town for a period of ninety (90) calendar days from the deadline for submission, until a lease has been signed by the lessee and the Town, or if this RFP is cancelled, whichever occurs first.

8. In the case of a discrepancy on the Price Summary Form between written and numerical amounts, the written amount shall prevail.

Submittal Requirements

Proposal shall include:

1. Description of the type of services offered that are compatible with the goal of the Town to enhance the tourism based economy.
2. Description of fleet of vehicles
3. Description of targeted audience
4. Copy of a Marketing Plan
5. Proposed hours of operations broken out by month (or season). Describe the extent to which the Proposer will provide services throughout the summer and shoulder seasons, and whether services will be provided on weekdays as well as weekends.
6. Demonstrated comprehensive plan to encourage the Proposer's patrons to serve a wide variety of local attractions and promote local businesses.
7. Description of commitment to environmentally sustainable businesses practices, such as use of low-sulfur diesel or alternative fuel sources, decreasing carbon-footprint through alternative fuel sources, decreased engine idling times, participation in carbon-offset programs, regularly scheduled vehicle maintenance, fleet retrofit or other similar practices.

In addition to addressing each of the items in the specifications, the Proposer must submit the following as part of the proposal:

1. A copy of the Vehicle Permit provided by the Mass Division of Public Utilities Transport Oversight Division.
2. Evidence of route approval, if required, by the Cape Cod Regional Transit Authority and the Mass Division of Public Utilities Transport Oversight Division, and the Provincetown Board of Selectmen.

Price Proposal:

The proposer shall make a price proposal with a minimum first year permit fee of at least \$5,000 per vehicle. As part of a price proposal (Attachment D), a Proposer may submit a higher fee. The successful proposal will be the most advantageous proposal from a responsive and responsible proposer, taking into consideration price and other evaluation criteria set forth in the RFP.

Note: Each proposer's price will be an annual permit price over the course of the five year license agreement, unless an escalator is proposed. The combined single number of the five years will be used to compare proposers' prices to determine the highest price.

SECTION 2. LEGAL AND CONTRACTUAL REQUIREMENTS:

1. Proposal Rules

This proposal is solicited and will be awarded pursuant to the rules set forth in Chapter 30B of Massachusetts General Laws. Whenever the requirements of this RFP are inconsistent with or prohibited by Chapter 30B, Chapter 30B shall prevail.

2. Reviewing Period

All proposals meeting the requirements and conditions described herein may be held by the TOWN for a period not to exceed thirty (30) days from the opening of proposals for the purpose of reviewing such proposals and investigating the qualifications of Proposers prior to the awarding of the License Agreement.

3. Basis of Award

All proposals will be reviewed in accordance with M.G.L. c.30B, § 16, by the Town Manager and final selection will be made by the Board of Selectmen based on the results of the Town Manager's evaluation and analysis of the information and materials required under this RFP.

A License Agreement (Attachment E) will be awarded, if at all, to a responsive and responsible proposer whose proposal is deemed by the Town to be the most advantageous, taking into consideration the evaluation criteria included in Section 4 of this RFP and price considerations.

A "responsive" proposal is one that includes all documents and information required, and satisfies all minimum requirements contained in this RFP. A "responsible" proposer is one who demonstrates through its proposal that it possesses the experience and resources to fulfill the requirements contained in this RFP.

The "most advantageous" proposal is one that has been determined by the Town to best satisfy the comparative evaluation criteria, as stated in Section 4 of this RFP, and that offers the highest price.

The successful Proposer must sign the License Agreement included in this RFP no later than ten days from the date of its receipt of a notice of award from the Town. If the successful Proposer fails so to execute a License Agreement, the Town may select the next most advantageous offer. **The Successful Proposer must execute the License Agreement that is included with this RFP.**

4. Compliance with Applicable Laws

The License Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

The Proposer must affirm that he/she will conduct this project in compliance with the General Laws of the Commonwealth of Massachusetts relating to the operation of a public carrier. Therefore, the Proposer must have a complete understanding of these laws.

The Proposer must comply with all federal, state and municipal laws, ordinances, rules and/or regulations. The Proposer and/or his/her agents, servants and/or employees shall obtain at their sole cost and expense, all required permits, franchises, approvals, licenses and/or certificates necessary for the performance of his obligations pursuant to the License Agreement.

5. Force Majeure

Neither party shall be liable to the other, or be deemed to be in breach under the agreement for any failure to perform including without limitation, a delay in rendering performance due to causes beyond its reasonable control, such as an order, injunction, judgment or determination of any Court of the United States or of the Commonwealth of Massachusetts, an Act of God, war, civil disobedience, extraordinary weather conditions, labor disputes, or shortages of or labor disputes, or shortages or fluctuation in electric power, heat, light or air conditioning. Performance deadlines will be extended for a period of time equal to the length of such delays, provided that the party whose performance is affected promptly notifies the other party of the existence and nature of such delay.

6. Termination of License Agreement

Subject to the provisions of the section entitled "Force Majeure", if the Proposer shall fail to fulfill in a timely and satisfactory manner its obligations under the agreement, or if the Proposer shall violate any of the conditions or stipulations of this License Agreement, the municipality shall have the right to terminate this License Agreement pursuant to the terms of the Agreement.

7. Assignment of License Agreement

The Proposer shall not assign or in any way transfer any interest in this agreement without the prior written consent of the TOWN.

8. Ability and Experience

The awarding authority will not award a License Agreement to any Proposer who cannot furnish satisfactory evidence of his/her ability and experience in this type of service and that he/she has sufficient capital to enable him/her to provide the service within the given time period.

The awarding authority may make such investigations it deems necessary to determine the above and the Proposer shall furnish the TOWN with any information requested in this regard and shall furnish same under oath if required.

9. Certificate of Non-Collusion and Tax Attestation Form

All Proposers must sign the attached forms (Attachments A, B, and C) which incorporates both an attestation clause regarding Massachusetts state tax returns and a certificate of non-collusion.

10. Corrections

Erasures or other changes in the proposal must be explained or noted over the signature of the Proposer.

11. Conflict of Interest

The Proposer agrees that, to the extent that such law is applicable to the duties it is to perform hereunder, it will comply with the provisions of Chapter 268A of the General Laws concerning conflict of interest. The Proposer covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance under the License Agreement.

No employee of the TOWN and no public official who exercises any function or responsibilities in the review or approval of the undertaking or carrying out of this License Agreement shall:

Participate in any decision relating to this License Agreement which affects his/her personal interest or the interest of any corporation, partnership or association in which he is directly or indirectly interested; or have any financial interest, direct or indirect, in this License Agreement or the proceeds thereof.

12. Liability

The Proposer agrees to indemnify, hold harmless, and defend the TOWN from and against liabilities, claims, penalties, forfeitures, suits, and the costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney fees) which it may hereunder incur, become responsible for, or pay out as a result of death or bodily injuries to any person, destruction or damage to any property, contamination or adverse effects on the environment, or any violation of governmental laws, regulation or orders caused, in whole or in part, by the Proposer's employee's in the performance of this License Agreement.

13. Insurance Coverage

A. General. The Proposer shall, before commencing performance of the License Agreement, be responsible for providing and maintaining insurance coverage in force for the life of the License Agreement of the kind and in adequate amounts to secure all of the obligations under the License Agreement and with insurance companies licensed to write insurance in the Commonwealth of Massachusetts. All such insurance carried shall not be less than the kinds and amounts designated herein, and the Proposer agrees that the stipulation herein of the kinds and limits of coverage shall in no way limit the Liability of the Proposer to any such kinds and amounts of insurance coverage. Certificates of Insurance for all required

coverages evidencing coverages in force shall be supplied to the Town prior to the commencement of work to be performed. Failure to provide and continue in force such insurance as aforesaid shall be deemed a material breach of this License Agreement, and may constitute sufficient grounds for immediate termination of the same. All insurance maintained as provided for in the above shall be carried and maintained at the sole expense of the Proposer.

B. Proposer's Comprehensive General Public Liability and Property Damage Liability. Licensee shall maintain public liability insurance, including coverage for bodily injury, wrongful death and property damage, in the minimum amount set forth herein to support the obligations of Licensee under the terms and conditions of this License to defend, indemnify, and hold harmless the Town: General Liability: \$1,000,000.00/occurrence, \$2,000,000.00/aggregate; Bodily Injury Liability: \$1,000,000.00/occurrence, \$2,000,000.00/aggregate. Licensee shall also maintain workers compensation insurance, if required by law.

C. Comprehensive Automotive Liability and Property Damage Insurance. The Proposer shall carry Automobile Liability limits with a Combined Single Limit for Bodily Injury and Property Damage in the amount of one million dollars (\$1,000,000.00). Such coverage shall include coverage for owned, non-owned and hired autos.

D. Workman's Compensation. The Proposer shall carry Workman's Compensation Insurance as required by law.

FAILURE TO COMPLY WITH THE ABOVE CONDITIONS AND REQUIREMENTS OR ANY ATTACHED SPECIFICATIONS OR ANY OTHER MINIMUM QUALIFICATIONS WILL BE JUSTIFICATION TO REJECT ANY PROPOSAL AS INCOMPLETE.

SECTION 3. SCOPE OF PROJECT AND OVERVIEW:

1. Profile of Provincetown:

Provincetown is located at the extreme tip of Cape Cod in Barnstable County, Massachusetts, in the United States. A small coastal resort town with a year-round population of just under 3,000, Provincetown's summer population increases to as high as 60,000.

Provincetown is a historic and scenic town with a robust seasonal tourist economy. The Town is highly dependent upon the visitor service industry. Scenic tours have been a mainstay of the visitor attractions to Provincetown for nearly a century.

Provincetown is known for its beaches, harbor, art community, tourist industry, and its status as a vacation destination for the LGBT community. The town has many local attractions such as MacMillan Wharf, the Pilgrim Monument & Provincetown Museum, Commercial Street shops, art galleries, great restaurants, bars, coffee shops, bakeries, fudge and taffy shops and much more.

From the signing of the Mayflower Compact by the Pilgrims in 1620 to the staging of Eugene O'Neill's first play in 1916, Provincetown's harbor, homes and other landmarks are rich in a layered history and have inspired artists and tourists alike. Sightseeing tours highlight the most significant buildings and sites associated with four centuries of Provincetown history.

2. Parking Regulations Section 6-4-2 Sightseeing Vehicles

A. The Board of Selectmen shall specify the location of all special parking zones for sightseeing vehicles and shall designate who may use them as such. No person shall park a specially designated vehicle under these rules and orders in any other place on any street other than in those zones designated below for said vehicles.

B. Sightseeing Vehicles shall be defined as dune tour operators, trolleys, tours and other similar services that are intended to provide primarily tourist activities rather than transportation services.

C. Sightseeing Vehicles shall only use reserved parking spaces designated by the Town pursuant to a permit issued by the Board of Selectmen. Such permits shall be issued on a competitive basis pursuant to a Request for Proposals. Permits will be issued based on evaluation criteria set forth in the Request for Proposals. Permits shall be issued for terms of five years and shall be revocable for cause after a public hearing. The minimum fee for such permits shall be \$1,000.00 per vehicle per year.

3. Description of Designated Space

The Designated Space was approved by the Board of Selectmen on April 23, 2018 and consists of a 40 foot x 9 foot exclusive use area within the public way of Commercial Street in the Town of Provincetown. The space may be used for the loading and unloading of passengers associated with a sightseeing vehicle. Vehicle idling is prohibited.

4. Responsibilities of the TOWN:

The TOWN shall provide the identified parking space (Exhibit A of Attachment E) free and clear as designated by the Board of Selectmen.

The TOWN shall provide adequate signage and enforcement to secure the space as a Sightseeing Vehicle space pursuant to the Parking Regulations.

5. Performance

In addition to the services performed pursuant to this RFP, THE PROPOSER agrees to comply with the all rules, regulations and bylaws of the Town and shall minimally perform the services as described in the proposal.

6. Term Of Agreement

The parties' obligations under this Agreement shall be consistent with the License Agreement.

7. Payment.

The PROPOSER shall pay the annual fee in a timely manner.

SECTION 4. EVALUATION CRITERIA

A. Minimum Evaluation Criteria

1. The extent to which the Proposer's description of the services offered are compatible with the goal of the Town to enhance a tourism based economy.
2. The extent to which the fleet of vehicles are safe, handicap accessible and attractive and project a positive image of the Town.
3. The extent to which the targeted audience and marketing plan address a wide cross section of the tourist market.
4. The extent to which the Proposer will provide services throughout the summer and shoulder seasons, and whether services will be provided on weekdays as well as weekends.
5. The extent to which the Proposer demonstrated a comprehensive plan to encourage the Proposer's patrons to serve a wide variety of local attractions and promote local businesses.
6. The extent to which the description of commitment to environmentally sustainable businesses practices, such as use of low-sulfur diesel or alternative fuel sources, decreasing carbon-footprint through alternative fuel sources, decreased engine idling times, participation in carbon-offset programs, regularly scheduled vehicle maintenance, fleet retrofit or other similar practices.
7. The extent to which the price proposal has included price escalation to adjust for market value increase over time.

B. Comparative Evaluation Criteria

A Proposer shall be deemed acceptable, advantageous or highly advantageous based on how well they satisfy or exceed the applicable Minimum Evaluation Criteria set forth in Section 4.A.

A Proposer shall be viewed favorably if they are willing to provide within the License Agreement a fee greater than the minimum annual permit fee.

In order to fairly evaluate the above criterion, the Proposers must submit sufficient documentation and references to substantiate any information provided in conjunction with the above requirements.

ATTACHMENT A

CERTIFICATE OF STATE TAX COMPLIANCE

Pursuant to Massachusetts General Laws, Chapter 62C, Section 49A,

I, _____ of _____, whose principal place of business is located at _____, do hereby certify that the above-mentioned _____ has complied with all laws of the Commonwealth relating to taxes, reporting of employees and Proposers, and withholding and remitting of child support. M.G.L. C. 62C, Section. 49A (b)

Signed under the penalties of perjury on this ____ day of _____ 20____.

Name of Proposer _____

By: _____

Title: _____

Personally appeared the above-named, _____, and being duly sworn, deposed and says that he/she is the person named therein, and who signed the foregoing, and that the statements therein are true.

(Notary Public)

My Commission Expires

ATTACHMENT B

STATEMENT OF NON-COLLUSION

I, _____, of _____, whose principal place of business is located at _____, do hereby certify that:

1. The proposed bid price has been arrived at independently, without collusion, consultation or communication as to any other Proposer or with any competitor.
2. The said bid price was not disclosed by the Proposer and was not knowingly discussed prior to the submission, directly or indirectly, to any other Proposer or to any competitor.
3. No attempt was made by the Proposer to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.
4. This bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this section the word "person" shall mean any natural person, joint venture, partnership, corporation, or other business or legal entity.

Signed under the penalties of perjury on this ____ day of _____, 20____.

Name of Proposer _____

By: _____

Title: _____

Personally appeared the above-named, _____, and being duly sworn, deposed and says that he/she is the person named therein, and who signed the foregoing, and that the statements therein are true.

(Notary Public)

My Commission Expires

ATTACHMENT C
CERTIFICATE OF AUTHORITY
(Corporations Only)

At a meeting of the Directors of _____, 20____, duly called and held at _____ on the _____ day of _____, 20____, at which a quorum was present and acting, it was VOTED that _____ this corporation is hereby authorized and empowered to make, enter into, sign, seal and deliver on behalf of this corporation a contract for _____ with the _____ of Massachusetts.

I do hereby certify that the above is a true and correct copy of this record, that said vote has not been amended or repealed and is in full force and in effect as of this date, and that _____ is the duly elected _____ of this corporation.

(Clerk) (Secretary) of the
Corporation

Attest:
(Affix Corporate Seal Here)

ATTACHMENT D

PRICE SUMMARY FORM
Exclusive Use of Sightseeing Vehicle Parking Space

TOWN OF PROVINCETOWN
260 Commercial Street
Provincetown, Massachusetts 02657

This price summary form must be submitted with the proposal. Failure to adhere to this instruction will result in disqualification of your proposal.

Name of Proposer: _____

Fee Schedule

<u>Year</u>	<u>Annual License Fee</u> (must be no less than \$5,000)	<u>Percentage Annual Escalator</u> (optional)	<u>Total Annual Value</u>
1			
2			
3			
4			
5			

ATTACHMENT E
DRAFT LICENSE AGREEMENT

This License Agreement (this "License") is entered into on this _____ day of _____, 2018, by and between the **Town of Provincetown** (the "Town"), acting by and through its Board of Selectmen, having an address of 260 Commercial Street, Provincetown Massachusetts 02657, and _____ ("Licensee"), a _____, having an address of _____.

Whereas, Licensee operates "Sightseeing Vehicles," as the term is defined in the Town of Provincetown's bylaws, rules and/or regulations (as the same may be amended from time to time), for the purpose of leading members of the public to tourist attractions in and around the Town of Provincetown (the "Tourism Business");

Whereas, the Town has control Commercial Street, which are public ways in the Town of Provincetown (the "Roadways"), and the parking spaces thereon;

Whereas, Licensee has requested that the Town allow Licensee to park one (1) Sightseeing Vehicle at a parking space located on the North side of Commercial Street between Ryder Street and Gosnold Street, which parking space is shown more particularly on the sketch plan attached hereto as Exhibit A and incorporated herein (the "Parking Space"); and

Whereas, the Town is amenable to granting such a license to Licensee.

Now, therefore, the Town hereby grants Licensee a license to use the Parking Space subject to, and Licensee agrees to use said Parking Space in compliance with, the following terms and conditions:

1. USE, PURPOSE, TERM. The Town hereby grants Licensee a license to use the Parking Space for the sole purpose of parking one (1) Sightseeing Vehicle thereon between the hours of ____ a.m. and ____ p.m. The term of this License is five (5) years (the "License Term"), commencing on _____, 2018 (the "Commencement Date") and terminating _____, 2023, unless sooner terminated in accordance with this License (the "Termination Date"). The Town shall have the right to relocate the Parking Space to other locations on the Roadways provided that the Town gives Licensee at least fourteen (14) days prior written notice thereof. Such entry and use shall be further limited by the provisions of Section 4. In the Town's sole discretion, the successful proposer who is awarded and signs a license agreement may be permitted an opportunity to renew for an additional five years, as approved by the Board of Selectmen.

2. CONSIDERATION. During the term of this License, Licensee shall pay the Town a fee equal to the amounts listed on the Price Summary Form (Attachment D) each year (the "License Fee"), which License Fee shall be paid to the Town by the 30th day of April of each year during the term, at the address set forth above. As further consideration for this License, Licensee shall observe and perform all the obligations and covenants set forth within this License to the reasonable satisfaction of the Town.

3. RISK OF LOSS. Licensee acknowledges and agrees that it accepts the Parking Space in its "AS-IS" condition, and that the Town has made no representation or warranty regarding the fitness thereof. The Town is not responsible for the security of the Property, including without limitation, the Parking Space, or for the maintenance and repair thereof, including, without limitation, removing snow and ice therefrom. The Town shall not be liable to Licensee or its employees, agents, representatives, customers or invitees, or anyone claiming by, through or under Licensee (collectively, with Licensee, the "Licensee Parties"), for any injury or death to persons on or around the Roadways, or loss or damage to any and vehicles, equipment or other property that are brought upon the Parking Space pursuant to the License, except if such injury, death, loss or damages is caused directly by the gross negligence or willful misconduct of the Town, or its employees, agents or representatives. The provisions of this Section shall survive the expiration or termination of this License.

4. PARKING SPACE; CONDUCT. Licensee shall, at the Town's request, place signs on the Parking Space or adjacent areas to indicate they are for Licensee's use, which signs shall comply with the Town's bylaws, if applicable, and be reasonably acceptable to the Town. Licensee shall have the right to use the Parking Space every day during the Term hereof only during the hours of ____:00 a.m. to ____:00 p.m., except when the Parking Space are unavailable for street cleaning, snow clearing and/or during snow emergencies, and/or during such times when the Roadway(s) is/are otherwise closed to the public (the "Permitted Hours"). Only Sightseeing Vehicles may be parked in the Parking Space. All Sightseeing Vehicles must have current registration and inspection stickers. Personnel operating the Sightseeing Vehicles must have valid drivers' licenses and wear a uniform or identification badge to show they are Licensee's employees. Licensee must obtain any and all licenses, permits and approvals required to use the Parking Space and operate the Tourism Business, and shall make a copy of the permit available at all times.

Licensee shall not, and shall not permit any of the Licensee Parties to, park vehicles on the Parking Space overnight, store any equipment or other property within the Parking Space, park any commercial vehicles, large trucks, trailers, boats or off-road vehicles on the Parking Space, or clean or repair any vehicle while on the Parking Space. Licensee shall be responsible for removing any vehicles parked and/or equipment stored on the Parking Space in violation of the terms hereof, at its sole cost and expense. If Licensee fails to remove such vehicles or other property within one hour after the Town has notified Licensee of the same, which notice may be oral or written, the Town may, at Licensee's sole cost and expense, tow the vehicles to a public parking lot or remove equipment to a location of its choice. The Town shall not be

responsible for any damage occurring to vehicles or other property resulting from such removal.

Licensee agrees that it shall at all times conduct itself so as not to unreasonably interfere with the use of the Roadways by others or the operations of the Town. Licensee shall comply with any and all applicable laws, statutes, ordinances, regulations and permitting or licensing requirements and observe all reasonable rules and regulations that may be established by the Town from time to time relating to the use of or access to the Parking Space. Licensee shall, at the Town's reasonable request and at Licensee's cost, take such measures reasonably necessary to ensure the safety of others using the Roadways. Licensee shall promptly repair any damages caused by or resulting directly or indirectly as a result of the acts or omissions of the Licensee Parties, at its sole cost and expense.

Other than the signs that Licensee may place adjacent to the Parking Space in accordance with the terms hereof, Licensee shall not construct, install or place any other temporary or permanent buildings, structures, utilities, objects, equipment or other property in, on, under, over or across the Parking Space, or make any improvements to the Parking Space or the Roadways, without the Town's prior written consent, which may be exercised in the Town's sole discretion.

Licensee shall strictly comply with all environmental laws affecting the Parking Space and shall not bring, place, store, release or otherwise dispose of at or near the Parking Space any oil, hazardous materials, hazardous substances, and/or toxic substances as such terms may be used or defined under federal, state or local law under any existing or future arising statutory or common law, including but not limited to Comprehensive Environmental, Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq., the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, G.L. c. 21E, and all applicable rules and regulations promulgated thereunder (collectively, the "Hazardous Materials").

5. INDEMNIFICATION. Licensee shall defend, indemnify, and hold harmless the Town from 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 whatsoever, in law and equity, which are or may be brought against the Town or its agents, employees, successors and assigns arising out of or relating to: (a) the discharge, release or threatened release at or from the Parking Space and/or the Roadways of any Hazardous Materials that is caused by any of the Licensee Parties, (b) any failure on the part of Licensee to comply with any provision or term required to be performed or complied with by Licensee under this License, and (c) for the death, injury or property damage suffered by any person on account of or based upon the act, omission, fault, negligence or misconduct of any of the Licensee Parties on or about the Parking Space or relating in any way to Licensee's exercise of its rights hereunder. The obligations of this Section shall survive the expiration or termination of this License.

6. INSURANCE. Licensee shall maintain public liability insurance, including coverage for bodily injury, wrongful death and property damage, in the minimum amount set forth herein to support the obligations of Licensee under the terms and conditions of this License to defend, indemnify, and hold harmless the Town: General Liability: \$1,000,000.00/occurrence, \$2,000,000.00/aggregate; Bodily Injury Liability: \$1,000,000.00/occurrence, \$2,000,000.00/aggregate. Licensee shall also maintain workers compensation insurance, as required by law.

Prior to using the Parking Space for any reason, Licensee shall provide the Town with a copy of such insurance policy in each case indicating the Town is an additional insured on the policy and showing compliance with the foregoing provisions. The insurance coverage required hereunder shall be issued by insurance companies licensed by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and having a Best's rating of A or better. Licensee shall require the insurer to give at least thirty (30) days' written notice of termination, reduction or cancellation of the policy to the Town.

To the extent possible, Licensee shall obtain, for each policy of insurance secured by it, provisions permitting waiver of any claims against the Town for loss or damage within the scope of the insurance, and Licensee, for itself and its insurers, waives all claims against the Town as to such claims covered by such insurance.

7. TERMINATION and REVOCATION. This License may be revoked by either party for any reason upon written notice of revocation at least sixty (60) days prior to the termination date stated within said notice. Notwithstanding the foregoing, the Town shall have the right to terminate this License: (a) by giving Licensee ten (10) days prior written notice thereof if Licensee fails to pay the License Fee when due or comply with any other material term of this License, provided that the notice of termination shall be void and of no further effect if Licensee cures such default within the aforesaid ten (10)-day period, and (b) immediately by written or oral notice, if Licensee is involved in accidents resulting in property damages or personal injury, regardless of fault, or Licensee's use of the Parking Space causes traffic jams or otherwise interferes with the pedestrian or vehicular use of the Roadways, at the Town's discretion.

At the expiration of this License or its prior termination, Licensee shall forthwith remove all vehicles from the Parking Space, remove Licensee's signs and any other personal property upon or adjacent to the Parking Space, and repair any damage caused by any of the Licensee Parties. If vehicles and/or signs or other personal property are not removed from the Parking Space or adjacent areas within twenty-four (24) hours of expiration or termination, they shall be deemed abandoned and shall become the sole property of the Town. This obligation shall survive the expiration or termination of this License.

8. NOTICE. Any notice required or permitted to be given under this License shall be in writing and signed by the party or the party's attorney or agent and shall be

deemed to have been given: (a) when delivered by hand, or (b) when sent by Federal Express or other similar overnight courier service, or (c) when mailed by certified mail, return receipt requested, to the party at the address set forth above. These addresses are subject to change, and the parties hereto agree to inform each other of such changes as soon as practicable.

9. MISCELLANEOUS.

(a) This License contains the entire agreement of the parties and there are no other agreements or understandings between the parties regarding the subject matter of this License.

(b) Modifications or amendments to this License shall be in writing and duly executed by both parties hereto to be effective.

(c) This License shall not be construed as creating or vesting in Licensee any estate in the Parking Space, but only the limited right of use as hereinabove stated.

(d) Licensee is not authorized to bind or involve the Town in any contract or to incur any liability for or on the part of the Town.

(e) This License shall not be transferred or assigned to any person without the prior written consent of the Town, which may be withheld in its sole discretion, it being acknowledged by Licensee that this License is personal to Licensee and be valid so long as Licensee operates the Tourism Business.

(f) If any portion of this License is declared to be illegal, unenforceable or void, then all parties to this License shall be relieved of all obligations under that portion; provided, however, that the remainder of this License shall be enforced to the fullest extent permitted by law.

(g) The captions in this License are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this License or any of the provisions thereof.

(h) All appropriate terms and provisions relating to indemnification and the restoration of the property affected hereby shall survive the expiration or termination of this License.

(i) This License shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, and any and all legal actions brought in connection with this License shall be brought in courts within the Commonwealth of Massachusetts.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this License Agreement to be executed and effective as of the date first above written.

Licensee:

Licensor:

TOWN OF PROVINCETOWN,
By its Board of Selectmen

By: _____

Name:

Title:

Exhibit A
Sketch Plan

