Item No. 11h

AGENDA ITEM REQUEST FORM

Town Manager's Office
Department Submitting Request

Bud Bentley
Assistant Town Manager

REGULAR COMMISSION MTG
Meeting Dates - 7:00 PM

DEADLINE TO Town Clerk

☒ **May 24, 2011**

ROUNDTABLE MEETING
Meeting Dates – 7:00 PM

DEADLINE TO Town Clerk

☐

☐ Presentation	☐ Reports	☒ **Consent**	☐ Ordinance
☐ Resolution	☐ Quasi Judicial	☐ Old Business	☐ New Business

SUBJECT TITLE: **License Agreement between Fisherman's Pier and the Town for the Annual 4th of July Firework Shows in 2011, 2012 and 2013.**

EXPLANATION: The Town has successfully used the Pier in the past for the annual fireworks show. This year the Commission authorized us to seek a three-year agreement for the use of the Pier and likewise, a three-year term for the fireworks company.

The attached Pier License Agreement (Exhibit 1) reduces the license fee from last year's $12,000 to $10,000 per year for the next three years, which will save the Town $6,000 over the three-year term and reduces our annual administrative expense for this event.

New License Terms

1. Section 1 – Delivery of Fireworks to Pier. Last year the fireworks company was late in loading the fireworks onto the Pier and the Pier Café was not able to open on time. In this agreement, the Pier shall be compensated $1,000 per hour if the load-in is not complete by 7:00 a.m. This would be an expense of the fireworks company.
2. Section 1 – Postponement of Event. If the Event is delayed to July 5th, the Pier's Special Event Permit shall be automatically extended to July 5th.
3. Section 6 Fee for License. The license fee is reduced from $12,000 to $10,000 per year. In the event the Town decided not to hold a fireworks show in a particular year, the Town shall notify the Pier as soon as possible and no fee is due that year.
4. Section 9 – Special Event. The Pier's annual 4th of July's special event is approved with the execution of the License Agreement. The event may be up to three consecutive days and must include the 4th of July. Each year the Pier shall submit a special event application that shall be administratively reviewed and approved with the conditions generally imposed on similar events.
5. Section 11 – Miscellaneous. Item F provides the Town will mention in its promotional materials that the fireworks show will be held at the Anglin's Fishing Pier.

Please note the Pier's Special Event Application for this year's event is a separate item on the May 24th Agenda as is the award of the contract for the Fireworks Display.

Recommendation: We recommend the Commission approve the three-year License Agreement (**Exhibit 1**) for the annual 4th of July Fireworks Show for 2011, 2012 and 2013 to be shot from the Pier.

FISCAL IMPACT AND APPROPRIATION OF FUNDS: Funds for the 4th of July Special Event are budgeted for 2011.

Exhibit:

1. Fireworks License Agreement

FISCAL IMPACT AND APPROPRIATION OF FUNDS:

Special Events Budget $64,000 July 4th Event allocation: $40,000	This Expenditure: $10,000 per year
Transfer of funds: None required	

Reviewed by Town Attorney
☒ Yes ☐ No

Town Manager Initials

File: Pier Fireworks License AC May24

LICENSE AGREEMENT FOR JULY 4th FIREWORKS LAUNCH AREA

THIS LICENSE AGREEMENT (the "Agreement") is made and entered into as of the _____ day of ___, 2011 (the "Effective Date"), by and between the TOWN OF LAUDERDALE-BY-THE-SEA, a Florida municipal corporation (the "**Town**") and Fisherman's Pier, Inc. a Florida corporation (the "**Licensor**").

RECITALS

1. The Licensor is the lessee of certain real property, including a pier ("the Pier") located at 2 Commercial Blvd., Lauderdale-by-the-Sea, Florida in Broward County, Florida, as further described on Exhibit "A" attached hereto and made a part hereof (the "Property").

2. The Town will engage a Fireworks Company (the "Contractor") to manage and provide a fireworks event on July 4, 2011, 2012 and 2013, ("July 4th Fireworks" or "Event") using the Pier and adjacent areas located on and near the Property.

3. The Town and Licensor desire to enter into this Agreement to set forth their respective rights and obligations regarding the use of the Property.

NOW THEREFORE, in consideration of the mutual covenants of the parties set forth in this Agreement, and other valuable consideration, the sufficiency and receipt of which is acknowledged by the parties, it is hereby agreed by and between the parties hereto as follows:

1. Grant of License and Use. Licensor grants to the Town and Contractor and its subcontractor(s), a temporary license for use of the Property, on the terms set forth herein, for production and presentation of the annual Town Fourth of July Event. The Town shall be entitled to exclusive use of the Pier and other areas as set forth below for the firing of fireworks and non-exclusive access to certain areas of the Property for parking and storage. The Town shall have full and complete access to the Pier for the these uses in accord with the terms listed herein, including any access, parking, and storage described below ~~or reasonably necessary~~ to accomplish the license and uses described herein. In furtherance thereof, the parties acknowledge and agree to the following schedule and details:

Town's "Right of Access" is set forth below:

Access. All access to the Pier is from the Property parking lot.

Delivery of the Fireworks Firing Equipment. Licensor shall make available to Town non-exclusive use of the Property on July 3, of each year for approximately three hours at a time convenient to the parties for the delivery and placement of the firing racks. Contractor shall establish a security zone around its equipment.

Delivery of Plywood. Licensor shall make available to Town non-exclusive use of the Property on July 3rd of each year, accommodating Town's delivery of

approximately 30 sheets of plywood to the Pier, at a time agreeable to the parties. The plywood will be stored on the Pier near the firing locations. Licensor will provide a parking location near the entrance ramp for the delivery of the plywood.

Delivery of Fireworks to Pier. Licensor shall provide Town exclusive possession of the Property (Pier and parking lot) commencing at a time to be agreed to by the Licensor and the Contractor and acceptable to the Town Fire Marshal, such that the delivery to the site of fireworks and their transportation to the firing area shall be completed by 7:00 am July 4th. Said time schedule of exclusive possession shall be set forth in writing in advance and signed by the parties hereto. Licensor shall be compensated in the amount of $1,000.00 for each hour or portion of an hour that delivery is delayed after 7:00 am on July 4th. ~~Contractor shall establish a security zone acceptable to the Town Fire Marshall~~ Contractor shall operate within the Pier Exclusive Use Area as shown in Exhibit "A" and the Town shall provide a person to enforce the security zone. Licensor acknowledges that no vehicles may enter or leave the Property parking lot once the fireworks have been delivered to the parking lot until the fireworks have been transported to the firing area and the parking lot is released by Contractor. Licensor shall make prior arrangements to remove any vehicle that may require removal during these times. Licensor shall provide Town and Contractor use of the parking lot with no outside interference during the time of delivery. Town will provide a security individual at the parking lot during delivery and Licensor shall provide a parking attendant present as well to insure no interference with the delivery process.

Fireworks Show. Town shall have exclusive possession of the Pier Exclusive Use Area to conduct the Event as shown on Exhibit "A" ~~the Pier commencing at approximately 8:00 pm~~ starting with the delivery of the fireworks to the Pier on July 4th of each year and continuing until the Contractor certifies that all fireworks have been removed from the Property, after which time Town shall have non-exclusive access to the Property for the purpose of clean-up, which shall be completed by 8:00 am July 5th of each year.

Parking Spaces. Licensor shall provide Town and Contractor the exclusive use of three designated parking spaces close to the Pier access in the adjacent parking lot on July 4th of each year

Pier Alley. The Fire Department will use the alley to stage some of its equipment and will work with the Pier to designate a fire lane in the parking lot. To this end, Licensor agrees to segregate an area for this purpose along the perimeter of the parking lot leading to the Pier area by using cones or other visible means. The parties agree to cooperate in keeping the designated area open throughout the duration of this License and continuing through the Extended Period (defined below), if necessary.

Postponement of Event. The Event is currently scheduled to occur during the evening of July 4th of each year, with clean-up to be completed by 8:00 am on July 5th of each year. In the event of notice to Licensor by Town of postponement of the Event by Town until the following evening, being July 5th of any year, Licensor and Town agree, at no additional cost to Town, to automatically allow for and cooperate with in all respects an extension of the rights and obligations of Licensor and entitlements to the Town hereunder for an additional 24 hour period (the 'Extended Period"), thereby extending the Time of Access described herein and all other terms, provisions and time frames (including for payment of delayed delivery fees) of this Agreement for that amount of time. This provision requires Licensor, by example and not limitation, to provide use, access and storage, all as described hereinabove, for the Extended Period. The terms of any further postponement beyond the Extended Period shall be only by written agreement of the parties. If the Event is postponement to July 5th, the Pier's July 4th Special Event Permit shall also be extended.

2. Compliance with Laws. Licensor and Town agree to comply with all applicable Federal, State and local laws and with the conditions herein when exercising any of the privileges granted herein.

3. Term. The term (the "Term") of this Agreement shall commence upon execution hereof and shall remain in effect through the Time of Access as described above in 2013, unless extended as provided herein or by additional written agreement between the Licensor and the Town. During the Term of this Agreement, the Town shall have the right to reasonably use the Pier and Property for the uses set forth herein or as the parties may further agree.

4. Access. The Town, its contractors, subcontractors, its agents, employees, and invitees shall have the exclusive right of access to the Pier and other areas as provided herein. Any other rights of use granted hereunder shall not be exclusive.

5. Condition of Premises. Town agrees to accept the Pier in "as is" condition and return the Pier to Licensor at the end of the Term in the same condition as provided to Town, subject to the provisions contained herein. Licensor agrees to remove all personal property and movable fixtures from any areas which could be affected by the uses allowed under this Agreement. Licensor further agrees that Town will not be responsible for any loss or damage to movable or personal property left on the Pier or in the area during Town's use hereunder. Town will provide plywood and provide assistance to Contractor to cover (and subsequently remove) the wood decking in the firing area so as to guard against damage to the Pier. Nothing in this Agreement will be construed to affect in any way the Town's rights, privileges, and immunities, including the provisions and monetary

limitations of Section 768.28 (5), Florida Statutes, which limitations shall be applicable regardless of whether such provisions would otherwise apply.

6. Fee for License. Town agrees to pay Licensor a fee of Ten Thousand Dollars and no/cents ($10,000.00) for each July 4th Fireworks Event as full and final compensation for the license granted hereunder. Town shall pay a $5,000.00 deposit on May 1st of each year and shall pay the balance of $5,000.00 on July 3rd of each year. In the event Town determines not to have a July 4th Fireworks Event in any particular year, Town shall notify Licensor of same in writing as soon as feasibly possible after such determination and no fee shall be due hereunder. Any fee previously paid for such year shall be refunded. The right of Town to a refund or to non-payment in any year is contingent on absence of the Event in such year.

7. Insurance. Licensor acknowledges and agrees that Town will execute a Fireworks Agreement with Contractor to produce the Event. Insurance requirements for Contractor are set forth in the Fireworks Agreement at $10,000,000 and include a requirement of certification of Licensor as an additional insured. Licensor shall provide Town with a copy of its insurance for the Property by April 15th of each year and Licensor agrees to make no modifications until after July 6th of each year. Town shall provide Licensor evidence of compliance with this provision prior to using the Property.

8. Security. Town shall provide police and fire security forces in the area during the firing Event.

9. Special Event. Licensor is pre-approved to conduct a three-day July 4th special event as defined by Chapter 17 Article VIII ("Special Events") of the Town Code for each of the three years of the term hereof, limited as provided herein. The three days of this event must be continuous and include July 4th as one of the days. Licensor shall submit a complete application in accord with Town Code requirements at least 60 days in advance of each annual event for administrative review and subject to conditions to be imposed by the Town Manager in accord with conditions generally imposed by the Town for similar events, taking into account the proposed site plan, estimated crowd and other relevant factors. Licensor must obtain an approved Town Special Event Permit each year as described herein, however, Commission approval is not required for each of the three years of the term hereof.

10. Non-Interference. During its use hereunder, Town agrees to make all reasonable efforts to minimize interference with the Property or the business of Licensor in the vicinity of the Pier to the extent possible.

11. Miscellaneous.

A. The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of Licensor and Town and their respective legal representatives, successors, and assigns.

B. If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be invalid or unenforceable to any extent, the remaining terms, covenants, conditions and provisions of this Agreement shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of the agreement between the parties.

C. This Agreement may be signed in two or more counterparts, each of which constitutes the agreement of the parties and each of which will be treated as an original.

D. This Agreement sets forth the entire agreement between Licensor and Town with respect to the subject matter of this Agreement. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties.

E. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida applicable to contracts made and to be performed entirely in the state. The parties agree that venue for any legal action instituted in connection with this agreement shall be proper exclusively in Broward County, Florida. The parties hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to, or arising out of this agreement.

F. In the Town's promotional material for the Event, the Town will mention the Fireworks Show will be held at the Anglin's Fishing Pier.

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IN WITNESS WHEREOF the parties hereto have executed this Agreement on this ____ day of _____, 2011.

TOWN:

TOWN OF LAUDEDALE-BY-THE-SEA

By:_____
Connie Hoffmann, Town Manager

ATTEST:

_____
Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____
Town Attorney

LICENSOR:

FISHERMAN'S PIER, INC.

Date: _____, 2011

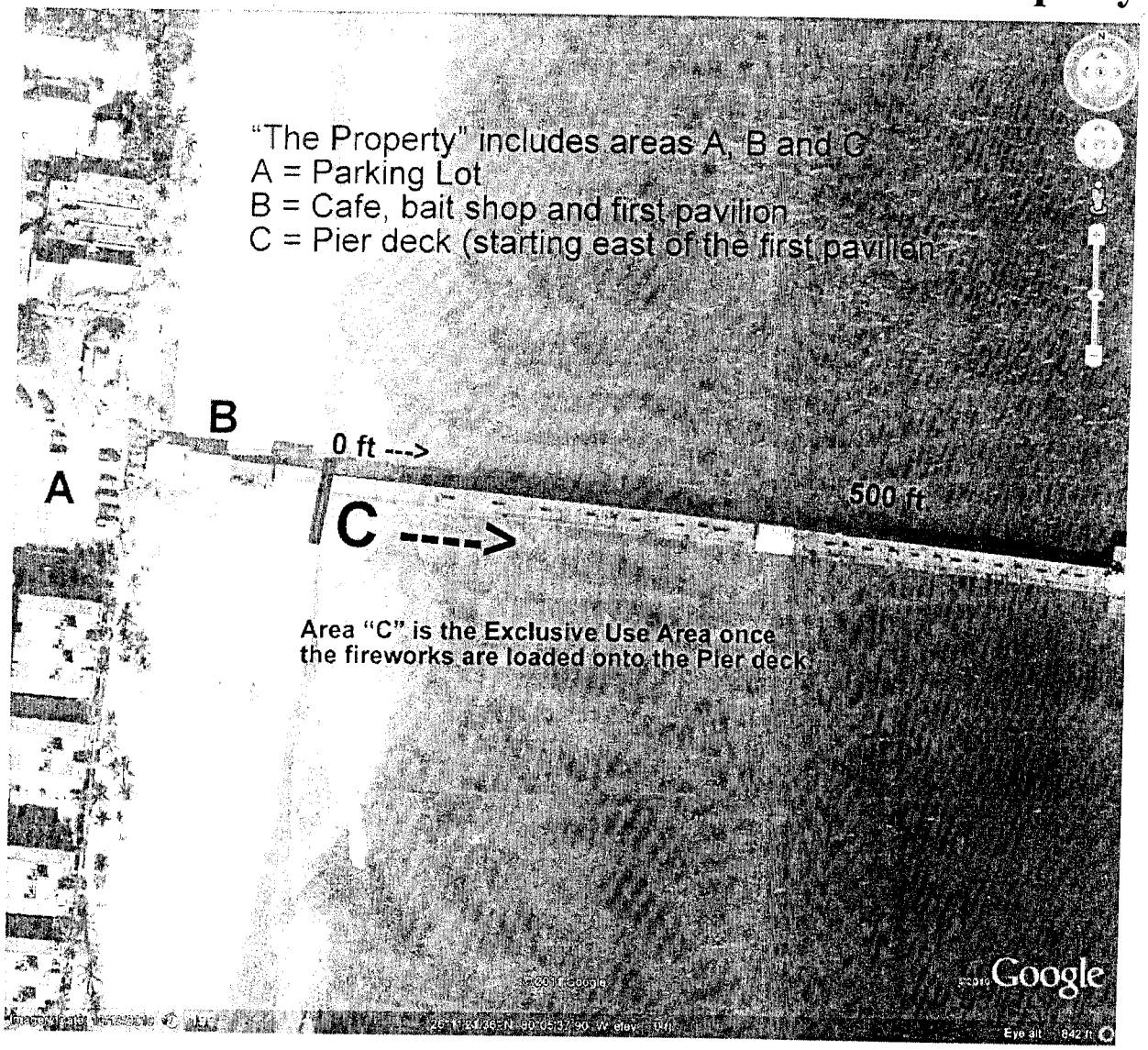
By: _____

Name: _____

Title: _____

File: W:\4th of July\Pier License 2011\Pier License R5-13-11.doc

Exhibit "A" – The Property



The Pier deck Exclusive Use Area shown above is approved by the Fire Marshal. The specific locations for the firing racks shall be submitted by the Fireworks Company and reviewed and approved separately by the Fire Marshal according to all applicable requirements.

_____ Date: _____

Steve Paine, Town of Lauderdale-By-The-Sea Fire Chief and Fire Marshal