

LICENSE AGREEMENT

This License Agreement ("Agreement") is made this 6th day of April, 2022, by and between the CITY OF LONG BEACH, a New York municipal corporation with offices located at 1 West Chester Street, Long Beach, New York 11561 ("City" or "Licensor") and Fish Long Island, LLC, a New York State domestic limited liability company, having an address of 765 Shore Road, Suite 1J, Long Beach, New York 11561 ("Licensee"). Licensor and Licensee may be referred to collectively as "Parties" and sometimes referenced individually as "Party".

RECITALS:

A. Licensor is the owner of the Municipal Pier, surrounding area and parking lot, located at the northern end of Magnolia Boulevard adjacent to Reynolds Channel ("Property").

B. On January 26, 2022, Licensor issued a Request for Proposals for Recreation Programs ("RFP").

C. On February 17, 2022, Licensee submitted its RFP response to the Licensor ("RFP Response").

D. Licensee desires to use a thirty foot by ten foot (30' x 10') area, designated by the City, located at the Property (the "Licensed Space").

E. Licensee desires to obtain the right to use Licensed Space to place a trailer and provide bait, tackle, instruction and rental equipment to enable the public to engage in fishing at the Municipal Pier.

F. Licensor is willing to permit Licensee to use the Licensed Space to provide bait, tackle, instruction and rental equipment to enable fishing at the Municipal Pier, in accordance with the terms and conditions set forth herein.

ACCORDINGLY, the Parties agree as follows:

1. Recitals. The foregoing preambles and all other recitals set forth above, as well as the documents referenced therein, are hereby incorporated into and made a part of this Agreement.

2. Grant of License. Licensor hereby grants to Licensee a license to use the Licensed Space to provide bait, tackle, instruction and rental equipment to enable fishing at the Municipal Pier, on the terms and conditions set forth in this Agreement, on an annual basis for an initial term of one (1) year, with two (2) additional one (1) year options to renew, subject to the sole discretion of the City ("Term"), unless terminated sooner as provided herein.

3. License Fee. Licensee shall pay the Licensor an annual license fee of \$3,000.00. Payment for the initial year is due on the date of execution of this agreement. In the event the Parties decide to exercise one or both of the optional renewal periods, payment for each renewal period shall be due as follows: If renewed for 2023, the annual license fee for same shall be due on or before December 31, 2022; if renewed for 2024, the annual license fee for same shall be due

on or before December 31, 2023. Should Licensee wish to exercise the optional renewal period(s), it shall provide the City with its request in writing ninety (90) days prior to the expiration of the then current term of the agreement.

4. Use of the Licensed Space. During the Term, Licensee shall have the right to enter upon and use the Licensed Space for the purposes set forth in Paragraph 2 above and in accordance with the following:

- a. Licensee shall comply with and use the Licensed Space in accordance with all local, state and federal laws, ordinances and regulations (the "Laws"), now or hereafter in effect, including any Laws relating to access for persons with disabilities and any Laws, guidance or emergency orders issued in response to a City, State or Federally declared disaster or emergency, including COVID-19, including any and all guidance, now or hereafter in effect, issued by the New York State Department of Health and the Centers for Disease Control and Prevention in response to COVID-19.
- b. Licensee shall be responsible for obtaining, at its sole cost and expense, any and all licenses, certifications, accreditations and/or approvals (collectively the "Approvals") necessary in order to operate its program in the Licensed Space, shall maintain the same in good standing for the Term of this Agreement, and shall comply with all requirements associated therewith. Licensee shall provide to Licensor a copy of all Approvals prior to commencement of the Term/Licensee's use of the Licensed Space.
- c. Licensee shall, at its sole cost and expense, have the Long Beach Police Department conduct background checks on all employees, instructors, agents, representatives, invitees, and volunteers involved in the program(s) conducted by Licensee in the Licensed Space prior to commencement of the Term of Licensee's use of the Licensed Space. Licensee shall provide to Licensor copies of all such background checks prior to commencement of the Term of Licensee's use of the Licensed Space.
- d. Licensee shall not hold the Licensor liable or seek reimbursement, abatement, or remuneration for any interruption in business, utilities, supplies, programming, or other operation resulting from any City, Local, State or Federally declared disaster or emergency, including any shutdowns required in response to COVID-19.

5. Termination. This Agreement may be terminated as set forth below.

- a. Licensor reserves the absolute right to terminate this Agreement with or without cause (cause meaning any breach of the terms of the RFP or this agreement) at any time by service of written notice sent by certified mail to the Licensee's address set forth above. Upon termination of this Agreement, Licensee shall, at its sole cost and expense, promptly remove or cause to be removed from the licensed areas of the Premises any and all of the machinery, equipment, supplies and other personal property, and Licensee shall restore any areas within the Premises affected by the entry of Licensee to the condition existing prior to the entry; or
- b. Licensee may terminate this Agreement upon thirty (30) days' notice to the Licensor.

The exercise by Licensor of its rights of termination as provided in Subparagraph (a) above is a nonexclusive remedy and Licensor shall have the right to pursue any other remedies available to it under applicable law.

6. Maintenance. Licensee shall maintain the Licensed Space in good repair and condition. Licensee shall not make, or suffer to be made, any alterations of the improvements to or of the Licensed Space without the prior written consent of Licensor, which may be withheld or conditioned in Licensor's sole discretion.

7. Utilities. The Parties agree that Licensee will pay utility costs at a flat rate of \$100.00 per month for the first year of this agreement, for electric only. In the event that the optional renewal period(s) are exercised, prior to the start of each renewal year, the Parties agree to renegotiate a new flat rate for utilities based upon Licensee's actual usage and needs, subject to the discretion of the City. Licensee has represented to the City that it does not require gas/oil.

8. Trailer. The Parties agree that Licensee shall provide and place, at its own cost and expense, a trailer at the Licensed Space, subject to City approval, to provide its goods and services. Licensee agrees to purchase all materials needed for the City to provide electricity to Licensee's trailer. The City agrees to advise licensee of the materials it must purchase for said electricity to be provided to the trailer. The City shall perform the labor associated with providing electricity to Licensee's trailer.

9. Records. The Licensee shall, at its sole expense, maintain full, complete and accurate books and records, documents, accounts and other evidence of accounts, whether maintained electronically or manually ("Records") pertinent to its use and operation of the Licensed Space. Records shall be maintained in accordance with generally accepted accounting principles and, if the Licensee is a non-profit entity and receives any local, state or federal funds, must comply with the accounting guidelines set forth by the local, state and/or federal agency. The Licensee shall maintain the Records for a period of seven (7) years following termination or expiration of this Agreement. Such Records shall at all times be available for audit and inspection by the City Comptroller, the City Manager, any other governmental authority with jurisdiction over the administration of the Licensed Space and the payment therefore, and any of their duly designated representatives. Licensee further agrees to provide a response to any request from the Licensor's Records Access/FOIL Officer.

10. Assignment and Subletting. Licensee shall not assign this Agreement or any interest in it, nor sublicense the Licensed Space or any part of it or any right or privilege, nor permit the occupancy or use of any part of it by any other person or entity, without the prior written consent of Licensor, which may be withheld or conditioned in Licensor's sole discretion. In the event of any permitted assignment or sublicense, Licensee shall remain liable to Licensor for performance of all of the terms and conditions of this Agreement. Consent by the Licensor to an assignment or sublicense shall not be a consent to subsequent assignment or sublicense.

11. Taxes. The Property is exempt from real property taxes. Licensee shall be responsible for the payment of all taxes applicable to the operation of its program conducted in the Licensed Space.

12. Request for Proposal. Licensee shall operate its program in the Licensed Space in accordance with the standards and requirements as set forth in the RFP issued by Licensor and in accordance with Licensee's RFP Response, both of which are incorporated herein and made a part of this Agreement. In the event of any conflict between the RFP, the RFP Response and this Agreement, the RFP shall prevail. Any representations given by Licensee in the RFP Response shall be true as of the date of the execution of this Agreement and throughout the Term. Should Licensee fail to follow the requirements as set forth in this Agreement, the RFP or as indicated in the RFP Response (unless such change is otherwise approved by Licensor in writing), such failure shall be deemed a default under this Agreement.

13. Rules and Regulations. Licensor reserves the right to adopt rules and regulations with respect to the Licensed Space. Said rules and regulations as may be adopted shall apply to Licensee and Licensee hereby agrees to be bound thereby and to cooperate as to their enforcement by Licensor and to disseminate or communicate them to its employees, instructors, agents, representatives, invitees and volunteers. Smoking is not permitted at, near or in the Property. Licensee shall take all reasonable steps to enforce the "no smoking" policy.

14. Notices. All notices hereunder shall be in writing and shall be delivered in person or sent by registered or certified mail, postage prepaid, or by nationally-recognized overnight courier to the address of the other party as set in the preamble to this Agreement or to such other address as such party shall have designated. Any notice shall be deemed received upon delivery, if delivered in person, three (3) days after deposit with the United States Postal Service, if sent by registered or certified mail, postage prepaid, and the next day after deposit with the nationally-recognized overnight courier, if sent by nationally-recognized overnight courier.

15. Independent Contractor. In performing, directing, or otherwise managing its respective duties and obligations hereunder, Licensee shall be deemed to be acting as an independent contractor and nothing herein shall be considered or deemed to establish or otherwise create a relationship of employer and employee, principal and agent, partnership, agency, or joint venture as between the parties, or between either party and any employee or subcontractor of the other party. Each party shall at all times maintain complete control over its employees and operations, including the activities of its instructors, agents, representatives, invitees and volunteers and shall be responsible for all payments to and claims by any of its employees, instructors, agents, representatives, invitees and volunteers in connection with the program(s) operated by Licensee in the Licensed Space.

16. Entry and Inspection. Licensor and its agents may enter upon the Licensed Space at any time and for any purpose, including to assess Licensee's compliance with the terms of this Agreement. In the event Licensor or its agents find violations, liquidated damages may be assessed to the Agreement for each violation.

17. Limitations of Licensor's Liability. The Licensor shall not be liable for any damage or injury to the Licensed Space, or any person therein, or to goods, wares, merchandise or property of the Licensee, or of any other person contained therein, done or occasioned by or from, unless the aforesaid occurs as a result of the negligence of the Licensor.

18. Expiration of Term. Upon expiration or earlier termination of this Agreement,

Licensee shall immediately vacate the Licensed Space and leave the Licensed Space in the same condition as it existed upon execution of this Agreement, excepting reasonable wear and tear.

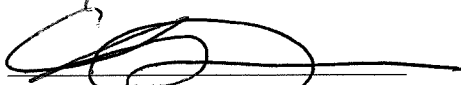
19. Miscellaneous.

- a. *Entire Agreement.* This Agreement sets forth all the promises, agreements and understandings between the parties with respect to the subject matter hereof. It is further agreed that any amendment or modification to this Agreement shall not be binding unless such amendment or modification is reduced to writing and signed by all of the parties hereto.
- b. *Governing Law.* Any controversy or claim arising from or relating in any way to this Agreement shall be governed and controlled by the laws of the State of New York.
- c. *Invalidity of Particular Provision.* If any term or provision of this Agreement or the application hereto to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- d. *Paragraph Headings.* The paragraph headings in this Agreement are for convenience only and shall not limit or be deemed to construe or interpret the terms and provisions of this Agreement.
- e. *Counterparts.* This Agreement may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. PDF signatures shall be treated as original signatures for all purposes hereunder.

[Signature Page Follows]

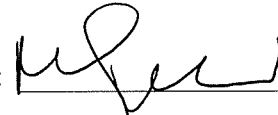
IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date first set forth above.

Sworn to before me this 12th day
of ~~April~~ 2022

msy

Notary Public

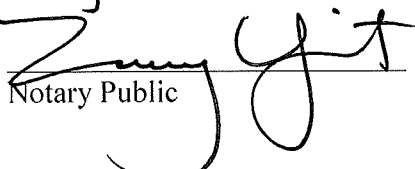
CHARLES M. GEIGER
Notary Public, State of New York
Registration No. 02GE6425050
Qualified in Nassau County
Commission Expires 11/15/2025

LICENSOR:
CITY OF LONG BEACH

By: 
Name: Donna M. Gayden


Title: City Manager

Sworn to before me this 6 day
of ~~April~~ 2022

May

Notary Public

ZACHARY D. KNIGHT
Notary Public - State of New York
NO. 01KN6395478
Qualified in Nassau County
My Commission Expires Jul 27, 2023

LICENSEE:
FISH LONG ISLAND, LLC

By: 
Name: Justin Kula

Title: Owner

