

Draft Agenda

PORTLAND FISH PIER AUTHORITY BOARD OF DIRECTORS

February 13, 2017

3:00 p.m. Room 209 City Hall

1. **Bylaws Amendments** – Reflecting past practice and changes in MDOT job titles since original drafting of the Portland Fish Pier Authority Bylaws, staff is recommending amendments to the Bylaws, Article III, Board of Directors, Section 2. Qualifications of Directors.

Sec. 2. Qualifications of Directors.

The Board of Directors shall be divided into three classes as follows:

Class A Director – there shall be one (1) Class A Director who shall be an individual who is a duly elected member of the Portland City Council.

Class B Director – there shall be one (1) Class B Director who shall be an individual who shall ~~be employed in the~~ represent the fishing industry in the State of Maine.

Class C Director – there shall be one (1) Class C Director. Notwithstanding any provision contained in these Bylaws apparently to the contrary, such person: (i) shall be the Commissioner of the Maine Department of Transportation or ~~the Deputy Commissioner for Transportation Services of the Maine Department of Transportation or the Director of the Division of Ports and Marine Transportation of the Maine Department of Transportation and (ii) shall serve the Commissioner's designee... in his or her official capacity.~~ The provisions of Section 4 regarding nomination of directors and Section 5 regarding vacancies shall not apply to the Class C Director. The Commissioner of the Maine Department of Transportation shall have the power to appoint and remove the Class C Director in his or her sole discretion. In order to effect nomination or removal, written notification must be received by the Secretary of the Board of Directors at least forty-eight (48) hours before the annual meeting of the Board of Directors, or any other meeting of the Board of Directors including, without limitation, any regular meeting, any special meeting and any executive session.

Suggested amendments to both the Class B and Class C Directors clarify the qualifications of directors forwarded by State of Maine agencies. The full Bylaws are included with the attachments.

Action Item: **Public Comment**

2. **Approval of January 9, 2017 Meeting Minutes**

Action Item: **Public Comment**

3. **Financial update** - Rhonda Girard, Finance
4. **Fish Exchange update** - Bert Jongerden, PFX
5. **Facilities update** - Diane Gagnon, Facilities
6. **Portland Fish Exchange, Infrastructure Capital Repair Request**, Bert Jongerden, General Manager, PFX

Mr. Jongerden will present the Board with a request to assist with repairs to the bait cooler at the PFX along with three quotes for completion of the work.

Action Item: **Public Comment**

7. Waterfront Maine: Lot 12 Land Lease Renewal and Development Update.

Representatives from Waterfront Maine will be present to discuss their current lease which expires on March 31, 2017. The lease includes an exclusive development option which expires with the lease. Waterfront Maine requests an extension of the lease and of the development option (dates to be determined.) Previously, the Board considered the lease separately from the development option. Two potential motions are suggested below.

Pursuant to 1MRS Sec. 405 Sub.6c, the Board may go into executive session for this item.

- Potential Motion: The Waterfront Maine Lease for Lot 12 is extended to _____. *Date to be determined.*

Action Item: **Public Comment**

- Potential Motion: The exclusive development option in the current Waterfront Maine Lease for Lot 12 (section 14) is extended to _____. *Date to be determined.*

Action Item: **Public Comment**

The current Waterfront Maine lease for Lot 12 is included in the attachments. Other potential amendments to the lease may be presented by Waterfront Maine at the meeting.

8. Portland Fish Exchange, Real Estate Transaction update, Tom Valleau, President, PFX

Pursuant to 1MRS Sec. 405 Sub.6c, the Board may go into executive session for this item.

9. Filling of Vacancy for Officers of the Board of Directors

According to the Bylaws:

Article V. Sec. 1. Officers.

The officers of the corporation shall be chosen annually at the annual meeting of the Board of Directors, and shall be a President, a Vice President, a Treasurer and a Secretary. One individual may serve in more than one such office. The Board of Directors may also appoint one or more Assistant Secretaries and Assistant Treasurers.

Article V. Sec. 4. Vacancies.

Any vacancy in any office (except the Office of Director) may be filled by the Board of Directors.

With the transition of Mr. Elder and Mr. Swenton off the Board, the officer positions of President and Treasurer have become vacant. The Office of the Vice President was not listed as filled in the last report of the corporation to the Secretary of State's Office.

The current slate of officers is:

President:	Vacant
Vice President:	Vacant
Treasurer:	Vacant
Secretary:	Vacant
Clerk:	Danielle West-Chuta, Corporation Council

According to the Bylaws, only the office of the president is listed as required to be a Director of

the Portland Fish Pier Authority. The same is assumed for Vice President. The Board is asked to nominate and elect a President and Vice President and discuss the offices of Treasurer and Secretary and elect candidates if so resolved.

10. Other Business

11. Public Comment

Attachments:

Agenda Item 1, Bylaws of the Portland Fish Pier Authority

Agenda Item 2, Minutes from the January 9, 2017 PFPA meeting

Agenda Item 3, Financial Update

Agenda Item 5, Facilities Update

Agenda Item 7, Waterfront Maine Current Lease and 1st Amendment

BYLAWS OF PORTLAND FISH PIER AUTHORITY

ARTICLE I

Name, Principal Office, Corporate Seal

Sec. 1. Name.

The name of this corporation shall be Portland Fish Pier Authority.

Sec.2. Principal office.

The principal office for the conduct of the activities of the corporation shall be located at the premises leased by the corporation on the Portland Fish Pier, Portland, Maine.

Sec. 3. Corporate seal.

The corporate seal of the corporation shall be circular in form and shall bear the words and figures "Portland Fish Pier Authority," the word "Maine" and the year of the corporation's incorporation. The form of such seal may be altered from time to time by the Board of Directors.

ARTICLE II

Meetings of Corporator

Sec. 1. Annual meeting.

The annual meeting of the Corporator shall be held upon such date during the month of July in each year as shall be fixed by the Board of Directors at the principal office of the corporation, provided that the Corporator may in any year itself fix the date of the Annual Meeting of the Corporator and may fix the place thereof as the City Council Chambers, City Hall, Portland, Maine. If the Board of Directors or Corporator for any reason fails to fix such date, the Annual Meeting of the Corporator shall be held at the principal office of the corporation on the third Monday of September in each year. The Secretary shall cause a notice of the Annual Meeting: (i) to be posted at some conspicuous place at the principal office of the corporation; and (ii) to be mailed to the Clerk of the City of Portland, in both cases not less than 30 days before the date fixed for the meeting. The Board of Directors and members of the public shall be entitled and encouraged to attend the Annual Meeting and shall be entitled, subject to the direction of the chairman of the meeting, to ask questions and state their views.

Sec. 2. Special meetings.

Special meetings of the Corporator may be called by the President or by the Board of Directors or by the Corporator to be held at such time and place as shall be fixed in the call of the

meeting. If no such place is fixed, the special meeting shall be held at the principal office of the corporation. Notice of special meetings shall be given in the same manner as the notice of the annual meeting, and the Board of Directors and members of the public shall have the same right to attend and to ask questions and state their views as in the case of the annual meeting.

Sec. 3. Proxies.

The Corporator may vote at any annual or special meeting of the Corporator by proxy or proxies executed in writing by the Corporator as authorized by its City Council. The Corporator may, but is not required to, appoint any one or more, or all, of its City Councilors as its proxy agents to represent it at any annual or special meeting of the Corporator.

Sec. 4. Action in writing.

Notwithstanding any other provision of these bylaws, any action required or permitted by law or otherwise to be taken at a meeting of the Corporator may be taken without a meeting if a written consent, setting forth the action so taken, is signed by the Corporator by authority of its City Council and is filed with the Secretary of the corporation as part of the corporate records. Such written consent shall have the same effect as a unanimous vote by the Corporator and may be stated as such in any certificate or document required or permitted to be filed with the Secretary of State, and in any certificate or document prepared or certified by any officer of the corporation for any purpose.

ARTICLE III

Board of Directors

Sec. 1. Powers; Eligibility.

The business and affairs of the corporation shall be managed by a Board of Directors, who shall have the powers and duties set forth in the Articles of Incorporation, these Bylaws and the Rules and Regulations. Directors need not be residents of the City of Portland; provided, however, that Directors shall be residents of the State of Maine.

Sec. 2. Qualifications of Directors.

The Board of Directors shall be divided into three classes as follows:

Class A Director – there shall be one (1) Class A Director who shall be an individual who is a duly elected member of the Portland City Council.

Class B Director – there shall be one (1) Class B Director who shall be an individual who shall ~~be employed in the~~ represent the fishing industry in the State of Maine.

Class C Director – there shall be one (1) Class C Director. Notwithstanding any provision contained in these Bylaws apparently to the contrary, such person: (i) shall be the Commissioner of the Maine Department of Transportation or ~~the Deputy Commissioner for Transportation Services of the Maine Department of Transportation or the Director of the Division of Ports and Marine Transportation of the Maine Department of Transportation and (ii) shall serve the Commissioner's designee... in his or her official capacity.~~ The provisions of Section 4 regarding nomination of directors and Section 5 regarding vacancies shall not apply to the Class C Director. The Commissioner of the Maine Department of Transportation shall have the power to appoint and remove the Class C Director in his or her sole discretion. In order to effect nomination or removal, written notification must be received by the Secretary of the Board of Directors at least forty-eight (48) hours before the annual meeting of the Board of Directors, or any other meeting of the Board of Directors including, without limitation, any regular meeting, any special meeting and any executive session.

Sec. 3. Ex-Officio members of the Board of Directors.

There shall be two (2) individuals who shall be deemed ex-officio members of the Board of Directors by virtue of his or her holding the position of:

- (i) City Manager of the City of Portland.

In the event that the City Manager shall decline or is precluded from serving, the first of the following city officials who is able and eligible shall serve as ex officio member: (i) Assistant City Manager; (ii) Finance Director; and

- (ii) President of the Board of Directors of the Portland Fish Exchange.

In the event that the person holding the office of President shall decline or be precluded from serving, the first of the following officers who is able and eligible shall serve as ex-officio member: (i) Secretary; (ii) Treasurer; (iii) Assistant Secretary; (iv) Assistant Treasurer.

The provisions of these bylaws contained in Section 5 regarding term of office, Section 4 regarding nomination of directors and Section 7 regarding vacancies shall not apply to said ex-officio members. Each ex-officio member may be a member of the Board of Directors so long as

he or she continues to serve in the office by virtue of which he or she was appointed; and shall enjoy all the rights, privileges and responsibilities of all other members of the Board of Directors. The Board of Directors may take action by unanimous consent only with the consent of said ex-officio members. Ex-officio members shall be entitled to the same indemnification rights available to all Directors under the law, these bylaws or otherwise.

Sec. 4. Nomination of Directors.

In determining who shall be appointed Directors at the first annual meeting of the Corporator following the incorporation of this corporation, and at each annual meeting thereafter, the Corporator, acting through its City Manager or an appropriate committee, shall receive nominations as follows:

Class A Director - nomination of the Class A Director shall be received from the Mayor of the City of Portland.

Class B Director – nomination of the Class B Director shall be received from the Commissioner of the Maine Department of Marine Resources.

Sec. 5. Term of office.

Each director shall serve for a term of one year or until his or her successor is appointed and qualified. Directors shall be appointed prior to the annual meeting of the Board.

Sec. 6. Voting.

Each director shall be entitled to one vote.

Sec. 7. Vacancies.

Vacancies occurring in the Board of Directors for any reason shall be filled for the unexpired term by the Corporator by appointment of an individual qualifying and eligible for such position.

Sec. 8. Resignations.

Any director may resign his or her office by delivering a written resignation to the President, such resignation to be effective upon the date or condition stated therein.

ARTICLE IV

Meetings of Board of Directors

Sec. 1. Annual meeting.

The annual meeting of the Board of Directors shall be held without call immediately following the annual meeting of the Corporation at the principal office of the corporation, or at some other place fixed by the President.

Sec. 2. Regular meetings.

Other regular meetings of the Board of Directors may be held, without call, at such place, date and time as shall be fixed from time to time by resolution of the Board of Directors.

Sec. 3. Special meetings.

Special meetings of the Board of Directors may be called by such persons as are authorized by law to call special meetings. The place, date and time of the special meeting shall be fixed in the call therefor.

Sec. 4. Notice of meetings.

Notice of each annual, regular or special meeting of the Board of Directors shall be given by the person or persons calling the same or by the President or Secretary at least five (5) days in advance thereof. Notice may be given in writing, by telegraph, by telephone, by oral statement or by any other means to the Directors in person or by delivery of a writing to his or her residence or business address. Notice given in writing by mail shall be deemed given on the day that the same is deposited in the U.S. Mail as first class mail, postage prepaid. Neither the business to be transacted thereat, nor the purpose of, any annual, regular or special meeting of the Board of Directors need be specified in the notice of such meeting, except when otherwise provided by law.

Sec. 5. Executive Session.

The Board of Directors may go into Executive Session and determine matters therein when they deem appropriate and whenever, in their judgment, the best interests of the corporation would be served thereby.

Sec. 6. Quorum.

Three directors shall constitute a quorum for the transaction of business at meetings of the Board of Directors. The act of a majority of the directors present at a meeting of the Board of Directors at which a quorum is present shall be the act of the Board of Directors.

Sec. 7. Indemnification.

This corporation shall in all cases indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director, officer, employee or agent of this corporation, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred

by him in connection with such action, suit or proceeding to the maximum extent permitted by law, including, without limitation, 13-B M.R.S.A. § 714 and acts additional thereto and supplementary thereof, to which reference is made.

ARTICLE V

Officers

Sec. 1. Officers.

The officers of the corporation shall be chosen annually at the annual meeting of the Board of Directors, and shall be a President, a Vice President, a Treasurer and a Secretary. One individual may serve in more than one such office. The Board of Directors may also appoint one or more Assistant Secretaries and Assistant Treasurers.

Sec. 2. Term.

Officers shall be elected for a term of one (1) year to serve until the next annual meeting of the Board of Directors or until their successors are duly chosen and qualified. Officers may succeed themselves for any period of years. The initial officers shall be appointed by the Board of Directors at their first meeting following incorporation to serve as such until the first annual meeting of the Board of Directors.

Sec. 3. Removal.

Any officer of the corporation may be removed by the Board of Directors whenever in their judgment the best interests of the corporation will be served thereby.

Sec. 4. Vacancies.

Any vacancy in any office (except the Office of Director) may be filled by the Board of Directors.

Sec. 5. President.

The President shall be a Director and shall preside at all meetings of the Board of Directors.

Sec. 6. Secretary.

The Secretary shall attend all meetings of the Corporation and the Board of Directors and keep minutes of all meetings of the Corporation and the Board of Directors in a book or books kept for that purpose. The Secretary shall perform such other duties as may be prescribed by the Board of Directors or the President, under whose supervision the Secretary shall be. The Secretary, and any Assistant Secretaries, shall have authority to affix the corporate seal to any instrument which requires it, and when so affixed, it may be attested by the Secretary or by any Assistant Secretary.

Sec. 7. Treasurer.

The Treasurer shall be the chief financial officer of the corporation and shall have the responsibility for all corporate funds and securities and shall maintain full and accurate accounts of receipts and disbursements in a book or books kept for that purpose. The Treasurer shall perform such other duties as may be prescribed by the Board of Directors or the President, under whose supervision the Treasurer shall be. The Treasurer may delegate any of his or her duties to the Fish Pier Authority Manager.

Sec. 8. Assistant Treasurers and Assistant Secretaries.

If appointed by the Board of Directors, Assistant Secretaries and Assistant Treasurers shall have such powers and duties as may be prescribed from time to time by the Board of Directors.

Sec. 9. Fish Pier Authority Manager.

The Fish Pier Authority Manager shall have superintendence of the business activities of the corporation, and shall have such other powers and duties as may be set forth in the Rules and Regulations of the Fish Pier Authority. The Fish Pier Authority Manager may be an individual, corporation or partnership, and shall be selected by the Board of Directors, which shall fix the compensation of the Fish Pier Authority Manager. The Fish Pier Authority Manager as such shall not be an officer of the corporation or a member of the Board of Directors, but the Fish Pier Authority Manager, if an individual, may be a member of the Board of Directors of the corporation.

Sec. 10. Other employees.

Other employees of the corporation shall be appointed and supervised by, and shall serve at the pleasure of, the Fish Pier Authority Manager.

ARTICLE VI

Adoption, Amendment

Sec. 1. Adoption.

The initial bylaws of this corporation shall be adopted by the Board of Directors.

Sec. 2. Amendments.

These bylaws may be amended at any meeting of the Board of Directors, provided that a written notice stating the proposed amendments shall be sent to each director and member of the Advisory Committee no less than five (5) days before the date of such meeting. A two-thirds (2/3) vote of those directors present is necessary for the passage of any amendment.

ARTICLE VII

Conflict of Interest

No director may vote on any matter in which the director has a direct or indirect pecuniary interest as defined in 30-A MRS 2605(4). Directors shall also attempt to avoid the appearance of a conflict of interest in any matter by disclosure or by abstention pursuant to 30-A MRS 2605(6).

Draft Meeting Minutes

**PORTLAND FISH PIER AUTHORITY BOARD OF
DIRECTORS**

January 9, 2017 (making up for the Dec. 2016 meeting)

3:00 p.m. Room 24 City Hall

Board Members in attendance: Nick Mavodones
Anita LaChance
Ellen Sanborn representing Tom Valleau, Ex-Officio Member,
President of the Portland Fish Exchange
John Nass representing the Class C Board Member for MDOT
Terry Stockwell

Staff present: Rhonda Girard, Finance
Diane Gagnon, Facilities
Jennifer Smith, MDOT
Bert Jongerden, General Manager, Portland Fish Exchange
Anne Torregrossa, Associate Corporation Counsel
Bill Needelman, Waterfront Coordinator, Principal Staff

Public in attendance: No public participants

Board Member Mavodones acting as Chair pro tem brought the meeting to order.

6. Board Transition (Taken out of order)

The Board recognized that two board members have transitioned onto next steps in their careers. Ray Swenton, former President of the Portland Fish Exchange and Treasurer of the PFFA, stepped down from the PFX Board and been replaced by Mr. Tom Valleau. As per the PFFA bylaws, this is an ex-officio appointment and no action is needed to confirm Mr. Valleau's position on the Board.

Rob Elder, long time MDOT (Class C) representative and President of the Board also retired. The Board discussed that MDOT Commissioner, David Bernhart has assigned Jennifer Smith, MDOT Business and Community Relations Liaison, to fill the Class C Director seat. Due to restrictive language in the Portland Fish Pier Authority Bylaws listing specific positions that are eligible to hold the Class C seat, MDOT Deputy Commissioner, John Nass, represented MDOT at the meeting. The board discussed changes to the Bylaws to generalize the Class C member qualifications to clarify the Commissioners authority in assigning the seat. Staff committed to noticing language for the next meeting to allow an action by the Board to seat Ms Smith, per the direction of Commissioner Bernhart.

Staff also recommended that the Board discuss election of officers for action at an upcoming meeting.

1. Approval of October 17, 2016, 2016 Meeting Minutes, as presented.

Action Item: **Motion by AL, 2nd by NM: Motion passed 5-0 by all present**

2. Financial update - Rhonda Girard, Finance

Financial Statements were provided at the meeting and presented by Ms. Girard and are attached to these minutes.

3. Fish Exchange update - Bert Jongerden, PFX

For the benefit of the new members, Mr. Jongerden reviewed the PFX. He noted that the PFX was on target for January with good trends in buying and pricing. Several new buyers came on board. With previous downturns, the finances are still tight.

Ellen Sanborn described the relationship between the PFX and the PFPA, noting that the PFPA has authority to reimburse shortcomings in the PFX fiscal year, if needed. The PFX fiscal year ends in March.. Mr. Nass inquired as to the current yearend outlook. Mr. Jongerden anticipated a deficiency estimated at \$25-\$50,000, depending on landings.

4. Facilities update - Diane Gagnon, Facilities

Ms Gagnon reported that the electrical bid was likely not going to be successful due to difficulty finding parts for the bid items. They would likely need to "make do" with the existing equipment. Ms. LaChance noted on the need to make a decision on the remaining \$80,000 to close out the State grant.

5. Portland Fish Exchange, Infrastructure Capital Repair Request

Postponed until next meeting.

7. Recognition of Service

Staff recognized and thanked the two outgoing board members (Mr. Swenton and Mr. Elder, not in attendance) noting their service to the Portland Fish Pier Authority, the fishing economy, and the Portland waterfront. Representing the best of both public and private sector professionalism, Rob and Ray have provided steady, wise, informed, and sophisticated guidance to this Board and City staff. Their efforts are greatly appreciated and their presence will be equally missed.

Board members discussed appropriate gestures thanks for consideration.

8. Other Business

Ms. Sanborn noted ongoing use of monies allocated to the PFX at the last meeting.

Meeting adjourned

Respectfully submitted

WBN

Agenda 2 January 9, 2017 Minutes

**Fish Pier Authority
FY17 Budget Status
As of Dec 31, 2016**

	FY17 Budget	YTD	Balance	%	FY16 YTD	FY17 vs. FY16	%
Revenue:							
<i>Miscellaneous</i>	14,655	8,832	5,823	60.3%	9,982	(1,150)	-11.5%
<i>Berthing</i>	29,376	14,688	14,688	50.0%	14,688	0	0.0%
<i>Parking</i>	305,750	154,392	151,358	50.5%	148,794	5,598	3.8%
<i>Ground Rent (Leases)</i>	172,266	89,084	83,182	51.7%	84,784	4,300	5.1%
Total Revenue	522,047	266,996	255,051	51.1%	258,248	8,748	3.4%
Expenditures:							
<i>Admin. and Maint. Services</i>	39,251	10,601	28,650	27.0%	15,980	(5,379)	-33.7%
<i>Travel/Training/Meetings</i>	1,200	10	1,190	0.8%	0	10	0.0%
<i>Contractual Services</i>	21,219	8,979	12,240	42.3%	9,691	(712)	-7.4%
<i>Engineering Services</i>	23,000	0	23,000	0.0%	0	0	0.0%
<i>Printing/Copying</i>	400	0	400	0.0%	0	0	0.0%
<i>Equipment Repair</i>	4,850	4,460	390	92.0%	830	3,630	437.5%
<i>Land/Pier/Building Repair</i>	100,000	17,696	82,304	17.7%	12,931	4,765	36.8%
<i>Insurance</i>	13,440	12,600	840	93.7%	12,805	(206)	-1.6%
<i>Supplies</i>	13,500	4,426	9,074	32.8%	2,061	2,365	114.8%
<i>Electricity</i>	15,000	4,854	10,146	32.4%	3,340	1,514	45.3%
<i>Stormwater</i>	12,437	19,584	(7,147)	0.0%	0	19,584	0.0%
<i>Capital</i>	40,000	0	40,000	47.0%	0	0	0.0%
<i>Debt Service</i>	58,436	18,783	21,217		18,223	560	3.1%
Total Expenditures	342,733	101,993	222,304	29.8%	75,862	26,131	34.4%
Net Revenues Over(Under) Expenditures	179,314	165,003	32,747		182,386	(17,383)	-9.5%

**Fish Pier Authority
FY17 Budget Status
As of Jan 31, 2017**

	FY17 Budget	YTD	Balance	%	FY17 vs.		
					FY16 YTD	FY16	%
Revenue:							
<i>Miscellaneous</i>	14,655	10,291	4,364	70.2%	10,596	(306)	-2.9%
<i>Berthing</i>	29,376	17,136	12,240	58.3%	17,136	0	0.0%
<i>Parking</i>	305,750	179,021	126,730	58.6%	171,622	7,399	4.3%
<i>Ground Rent (Leases)</i>	172,266	103,841	68,425	60.3%	98,894	4,947	5.0%
Total Revenue	522,047	310,288	211,759	59.4%	298,248	12,040	4.0%
Expenditures:							
<i>Admin. and Maint. Services</i>	39,251	15,781	23,470	40.2%	17,218	(1,438)	-8.3%
<i>Travel/Training/Meetings</i>	1,200	10	1,190	0.8%	0	10	0.0%
<i>Contractual Services</i>	21,219	9,939	11,280	46.8%	9,691	248	2.6%
<i>Engineering Services</i>	23,000	0	23,000	0.0%	0	0	0.0%
<i>Printing/Copying</i>	400	0	400	0.0%	0	0	0.0%
<i>Equipment Repair</i>	4,850	4,460	390	92.0%	830	3,630	437.5%
<i>Land/Pier/Building Repair</i>	100,000	17,995	82,005	18.0%	12,931	5,063	39.2%
<i>Insurance</i>	13,440	12,600	840	93.7%	12,805	(206)	-1.6%
<i>Supplies</i>	13,500	4,489	9,011	33.2%	2,061	2,428	117.8%
<i>Electricity</i>	15,000	6,521	8,479	43.5%	4,252	2,269	53.4%
<i>Stormwater</i>	12,437	19,584	(7,147)	0.0%	0	19,584	0.0%
<i>Capital</i>	40,000	0	40,000	47.0%	0	0	0.0%
<i>Debt Service</i>	58,436	18,783	21,217		18,223	560	3.1%
Total Expenditures	342,733	110,161	214,136	32.1%	78,012	32,148	41.2%
Net Revenues Over(Under) Expenditures	179,314	200,127	(2,377)		220,235	(20,108)	-9.1%



PORTLAND MAINE

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Agenda 5 Facilities Update

Public Buildings Administrative Offices 212 Canco Road Portland, Maine 04103 (207)808-5400

To: Portland Fish Pier Authority Board
From: Dianne Gagnon, Facilities Project Manager
Date: February 13, 2017
RE: Facilities Update
CC: Kathy Alves, Facilities Director
Aaron Shields, Facilities Director of Project Management

Please find below a listing of the monthly improvements to the Portland Fish Pier Facilities:

Updates for February 2017:

- Aaron Shields will provide an update on the electrical upgrade. A decision will be made soon if the project will move forward.
- Repairs made on east side Vessel Services due to damage to new camel bracket & chain.

Updates for January 2017:

- The electrical upgrade bid is still pending.
- Minor maintenance work at the Fish Pier- replaced damaged chock West Side Service Pier 3, straightened bent ladder (In December).
- Installed (15) concrete jersey barriers in Fish Exchange net yard per Bert's request- to help clarify the net repair area from the truck loading area. (In December).

Updates for December 2016:

- No Meeting.

Updates for November 2016:

- The electrical upgrade bid is still pending.

Updates for October 2016:

- Electrical upgrade bid results came back, however there are some issues with the specifications in the bid.

Updates for September 2016:

- 3 new piles installed on West side across from Marine Trade Center.
- Camel chain replacement completed on east side of Service Pier 1
- Cleaned all camels on east side of Service Pier 1
- Cleaned up Fish Exchange net yard
- The main electrical upgrade is out to bid.

Updates for August 2016:

- Installed 3 new composite camels
- Installed 4 new ladders, repaired 3 ladders
- Replaced some timber wales and chocks
- Replaced 2 piles

**LEASE AGREEMENT BETWEEN
PORTLAND FISH PIER AUTHORITY
AND WATERFRONT MAINE BT LLC**

THIS AGREEMENT made this 5th day of March, 2015, by and between the **PORTLAND FISH PIER AUTHORITY**, a Maine non-profit local development authority, having a place of business in the City of Portland, County of Cumberland, and State of Maine, and acting pursuant to the terms of a Lease between the City of Portland and the Portland Fish Pier Authority (hereinafter "AUTHORITY"), dated April 30, 1990, and **WATERFRONT MAINE BT LLC**, a limited liability company organized under the laws of Maine and having a place of business in said Portland (hereinafter "TENANT").

W I T N E S S E T H:

WHEREAS, AUTHORITY operates the Portland Fish Pier Complex pursuant to the terms of a Management Agreement between it and the City of Portland, dated September 24, 1990; and

WHEREAS, TENANT owns property that is adjacent to Parcel 12 of the Fish Pier Complex and desires to lease Parcel 12 for substantially the same uses allowed in the current month to month lease between LANDLORD and Browne Trading Co.; and

WHEREAS, the parties hereto wish to enter into a one-year Lease Agreement for Parcel 12 under the terms described herein.

NOW, THEREFORE, in consideration of their mutual promises, covenants and agreements, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the said parties agree, as follows:

1. **DESCRIPTION OF PREMISES.** The premises which are the subject of this lease contain 23,922 square feet, more or less, and are more fully described on the plan designated "Amended Recording Plat 'Portland Fish Pier Complex'," dated January 9, 2001, and recorded in the Cumberland County Registry of Deeds in Plan Book 201, Page 18, on January 18, 2001, as Parcel 12 (the "Premises"). A copy of the Plat is attached hereto as Exhibit A.

2. **TERM.** This lease shall commence on April 1, 2015 and shall terminate on March 31, 2016. Any holding over by TENANT after the expiration of the lease term shall be treated as a month-to-month tenancy terminable upon 30 days notice by either LANDLORD or TENANT to the other and otherwise on the terms and conditions set forth in this Lease.

3. **RENT.** The rental amount for the premises will be One Thousand Five Hundred Ninety-five Dollars (\$1,595.00) per month. TENANT will pay the AUTHORITY the rental amount without offset or deduction, without demand, and in advance of the first (1st) day of each month. The parties acknowledge that the first payment due under this Lease shall be made on or before April 1, 2015.

4. **PERMITTED USES.** TENANT may use and occupy the premises which are the subject of this lease only for the uses which are described below:

- (a) a right of access across the paved areas of Lot 12a as shown on Exhibit A, for vehicles and pedestrians who are either employees of

- Tenant or business invitees, other than retail customers;
- (b) use and improvement of the existing gravel road that crosses the property for vehicular traffic;
 - (c) parking for Tenant's vehicles and Tenant's employees' vehicles; and
 - (d) placement of a trash receptacle.

5. APPROVAL OF AUTHORITY. Notwithstanding any other provisions of this lease to the contrary, TENANT may not make any improvements to the premises, including, but not limited to, those described in Paragraph 4 above, without the prior written approval of the AUTHORITY. TENANT will be responsible for procuring all approvals and permits necessary to make any improvements to the premises.

6. INSURANCE. As a condition of this lease, TENANT agrees to maintain, at its own expense, from the time it begins exercising the rights granted by this lease until its termination, a policy of commercial general liability insurance, written on an occurrence basis, and including broad form contractual liability coverage, insuring against all claims for injury to or death of persons or destruction of or damage to property, on or about the licensed area, or arising out of the use of the license by TENANT, its officers, agents, employees or invitees, as well as fire legal liability insurance. Such policies will name the Fish Pier Authority and the City of Portland as additional insureds. The minimum limits of liability of for the commercial general liability insurance will be a combined single limit of One Million Dollars (\$1,000,000.00), and

the minimum limits of liability for the fire legal liability insurance will be a combined single limit of One Hundred Thousand Dollars (\$100,000.00).

Such insurance coverage will be effected upon terms reasonably available from insurers authorized to do business in Maine and having a Best's rating of A or better, and under valid and enforceable policies which shall be non-amendable and non-cancelable without thirty (30) days prior notice to the AUTHORITY.

Certificates or other evidence of insurance coverages required of TENANT in this Section, in amounts no less than those stipulated herein or as may be in effect from time-to-time, shall be delivered to the AUTHORITY prior to use of the Premises.

7. **LESSEE'S INDEMNITY.** TENANT will indemnify, defend, and hold harmless both the AUTHORITY and also the City of Portland, their officers, agents, and employees, from and against all claims, expenses, losses, or liability of whatever nature, arising, directly or indirectly, from any accident or injury, however caused, to any person on or about the area which is the subject of this Lease, where such accident or injury results from any act, omission, or negligence on the part of TENANT or TENANT's contractors, licensees, agents, servants, employees, customers, or anyone claiming by or through TENANT; provided, however, that in no event shall TENANT be obligated under this Section to indemnify AUTHORITY, its officers, agents and employees, to the extent that such claim, expense, loss, or liability results from any omission, fault, negligence, or other misconduct of AUTHORITY or its officers, agents or

employees, on or about the area which is the subject of this revocable license.

This indemnity, defend, and hold harmless provision includes indemnity against all reasonable expenses and liabilities incurred by or in connection with any claim or proceeding brought thereon, as well as the defense thereof with counsel reasonably acceptable to AUTHORITY and to the City of Portland.

8. **NO ASSIGNMENT.** The rights granted to TENANT herein may not be assigned, transferred, encumbered or sublet in whole or in part by it.

9. **REMOVAL OF IMPROVEMENTS MADE BY TENANT.** TENANT agrees, at its own expense, to remove any improvements or structures which it may place in the leased premises within thirty (30) days after the termination of this Lease and to restore the area to the same condition it was in prior to the granting of the lease. Should TENANT fail to so remove such improvements, the AUTHORITY may at any time after said thirty (30) days have passed caused such improvements to be removed, and TENANT shall thereafter to liable for all costs related to such removal.

10. **SURVIVAL OF CERTAIN PROVISIONS.** The provisions of Article 7 (indemnification) and Article 9 (removal and restoration) shall survive termination of this lease and remain enforceable against TENANT in regard to events which occurred prior to the date of termination and TENANT's surrender of the premises to AUTHORITY.

11. **MAINTENANCE.** TENANT is responsible for all maintenance of the leased premises, including, but not limited to, snowplowing and sanding, as circumstances may require, and, further, agrees to keep them in a neat and orderly condition to the satisfaction of the City of Portland Director of Public Buildings.

12. **LAWS AND REQUIREMENTS.** During the term, TENANT shall, at its own cost and expense, promptly observe and comply with all existing and future laws of the federal, state, and county and city governments, including the Fish Pier rules, and of all other governmental authorities affecting the Fish Pier Complex or appurtenances thereto, to the extent that such laws or regulations are directly related to the Premises, while such laws or regulations are in force, regardless of when enacted.

13. **DEFAULT.** The AUTHORITY may cancel and terminate this Lease in the event any monthly rental payment is in arrears, and remains unpaid for a period of fifteen (15) days after the payment is due, upon the giving of fifteen (15) days written notice to TENANT of its intention to so terminate, at the end of which time all the rights of TENANT shall terminate unless the rental payment owed shall have been tendered to the AUTHORITY within such fifteen (15) day period.

Upon thirty (30) days' prior written notice, either party may cancel and terminate this Lease in the event of any default of the other unless the default, which shall be specified in such written notice, is cured within the said thirty (30) days or, if said default cannot reasonably be cured within said 30 days, the defaulting party has

diligently begun to cure said default and continues to do so, in which case such termination shall not take effect.

14. OPTION TO LEASE AND DEVELOP. During the term of this Lease, Tenant intends to study the feasibility of future development of the Premises. If, after conducting such study, Tenant desires to erect a building or a structure on the Premises, Tenant shall have the option to lease and develop the Premises subject to such terms and conditions that the parties hereto agree upon in writing. Tenant shall exercise the option set forth in this paragraph by giving Landlord at least 60 days written notice prior to the termination date in paragraph 2 of this Lease. Upon Tenant's provision and Landlord's receipt of such notice, the parties agree to negotiate in good faith the terms and conditions of a future lease. If Tenant does not notify Landlord that it is exercising this option at least 60 days prior to the termination date in paragraph 2 of this Lease, the option set forth in this paragraph shall expire.

15. INVALIDITY OF PARTICULAR PROVISIONS. If any term or provision of this Lease, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, 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 Lease shall be valid and be enforced to the fullest extent permitted by law.

16. PROVISIONS BINDING. Except as herein otherwise expressly provided, the terms hereof shall be binding upon

and shall inure to the benefit of the successors and assigns, respectively, of Landlord and Tenant. Each term and each provision of this Lease to be performed by Tenant and Landlord shall be construed to be both a covenant and a condition.

17. WAIVERS. Failure of the Landlord or Tenant to complain of any act or omission on the part of the other party no matter how long the same may continue, shall not be deemed to be a waiver by said party of its rights hereunder. No waiver by the Landlord or Tenant at any time, expressed or implied, of any breach of any provision of this Agreement shall be deemed an waiver or a breach of any other provision of this Agreement or a consent to any subsequent breach of the same or any other provision.

IN WITNESS WHEREOF, the **PORTLAND FISH PIER AUTHORITY** has caused this Agreement to be signed by Robert D. Elder, its President; and **WATERFRONT MAINE BT LLC**, has caused this Agreement to be signed by Christopher Pachios, its Vice President thereunto duly authorized, all as of the day and date first above-written.

Signed, Sealed and
Delivered in presence of:



PORTLAND FISH PIER AUTHORITY

By: 
Robert D. Elder
Its President

WATERFRONT MAINE BT LLC

Melissa Santiago

By: [Signature]
Christopher Pachios
Its: Vice President

STATE OF MAINE
Kennebec, ss.

March 11, 2015

Personally appeared before me the above-named Robert D. Elder, and acknowledged the foregoing instrument to be his free act and deed in his capacity as President of the Portland Fish Pier Authority, and the free act and deed of said corporation.

Before me,
[Signature]
Notary Public/Attorney at Law

NANCY L. ENGLISH
Notary Public, Maine
My Commission Expires October 19, 2017

STATE OF NEW YORK
New York, ss.

March 5, 2015

Personally appeared before me the above-named Christopher Pachios, and acknowledged the foregoing instrument to be his free act and deed in his capacity as Vice President of Waterfront Maine BT LLC, and the free act and deed of said LLC.

Before me,

Melissa Santiago
Notary Public/Attorney at Law

Melissa Santiago
Notary Public, State of New York
No. 01596220456
Qualified in New York County
Commission Expires on
April 12, 2018

**FIRST AMENDMENT TO
LEASE AGREEMENT BETWEEN
PORTLAND FISH PIER AUTHORITY
AND
WATERFRONT MAINE BT LLC**

This **FIRST AMENDMENT TO LEASE AGREEMENT** is made as of the ____ day of January 2016, to the March 5, 2015 Lease Agreement Between Portland Fish Pier Authority And Waterfront Maine BT LLC.

W I T N E S S E T H:

WHEREAS, the Portland Fish Pier Authority (“Landlord”) and Waterfront Maine BT LLC (“Tenant”) entered into a certain March 5, 2015 Lease Agreement (the “Lease”) to use certain space at the Portland Fish Pier Complex in Portland, Maine (the “Leased Premises”) for parking and other uses for a term of one year; and

WHEREAS, the term of the Lease expires on March 31, 2016; and

WHEREAS, pursuant to the terms of the Lease, Tenant has an option to develop and further lease the Leased Premises as set forth in the Lease (the “Option”), provided that Tenant notifies Landlord of its intention to exercise the Option at least 60 days prior to the March 31, 2016 termination date; and

WHEREAS, Tenant has requested and Landlord has agreed to a twelve-month extension of the term of the lease and a six-month extension of the time in which Tenant may notify Landlord that Tenant wishes to exercise the Option.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to amend the Lease as follows:

1. The termination date of the Lease, which, pursuant to paragraph 2 of the Lease is currently March 31, 2016, is hereby extended by 12 months to March 31, 2017.
2. The third sentence in paragraph 14 of the Lease is hereby deleted in its entirety and replaced with the following: “Tenant shall exercise the option set forth in this paragraph by notifying Landlord of its intent to do so on or before July 31, 2016.”

3. The last sentence in section 14 of the Lease is hereby deleted in its entirety and replaced with the following: "If Tenant does not notify Landlord that it is exercising this option on or before July 31, 2016, the option set forth in this paragraph shall expire."
4. Any and all terms and conditions of the Lease not herein amended shall remain in full force and effect for the duration of the Lease as amended hereby.

IN WITNESS WHEREOF, the said **PORTLAND FISH PIER AUTHORITY** has caused this Agreement to be signed and sealed by Robert D. Elder, its President, thereunto duly authorized, and **WATERFRONT MAINE BT LLC** has caused this Agreement to be signed and sealed by Christopher Pachios, its Vice President, thereunto duly authorized, the day and year first above written.

WITNESS:

CITY OF PORTLAND



By: 
Robert D. Elder
Its President

WITNESS:

WATERFRONT MAINE BT LLC



By: 
Christopher Pachios
Its Vice President

Approved as to form:


Corporation Counsel's Office