

PORTLAND FISH PIER AUTHORITY
BOARD OF DIRECTORS
August 8, 2022, 3:00 PM

Class A Director: Member of the Portland City Council - Tae Chong
Class B Director: Representing the fishing industry - Meredith Mendelson, Department of Marine Resources, Vice President
Class C Director: Representing the Commissioner of the Maine DOT - Matthew Burns, Treasurer
Ex-Officio Director: Representing the City Manager - Brendan O'Connell, Finance Director
Ex-Officio Director: President of the Board of Directors of the Portland Fish Exchange - Rob Odlin

VIA ZOOM

This meeting will be held remotely pursuant to the Remote Meeting Policy adopted by the Portland Fish Pier Authority and as authorized under 1 M.R.S. 403-B because of the existence of an emergency or urgent issue that requires the Board to meet by remote methods. Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live, a recording will be available in the [Agenda Center](#) following the meeting.

Please click the link below to join the webinar:

<https://portlandmaine-gov.zoom.us/j/89401219850?pwd=NHduTFRuc29EN0x0OXA4QXQ5UEhrQT09>

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1. Approval of May 16 and May 31, 2022, draft meeting Minutes.

- a. Draft minutes attached.

Action Item - Public Comment

- 2. Update on infrastructure and program funding through CARES Act funding - Bill Needelman, Waterfront Coordinator; Meredith Mendelson, Maine DMR Deputy Commissioner**
- 3. Financial update - Statement produced by Tonya Mitchell, Senior Admin Officer II, Finance Department. Presented by Bill Needelman.**
- a. See attached financial update.
- 4. Facilities Update - Staff Kathy Alves, Facilities Director, and Phil DiPierro, Project Manager**

- a. Facilities Project Reports
Public Restroom Installation along Commercial Street

See attached Report.

5. Portland Fish Exchange Update - Rob Odlin, PFE President; Bert Jongerden, Interim PFE General Manager; Bill Needelman, Waterfront Coordinator

- a. PFE Monthly Landings Report, July 2022
PFE General Manager's Status Report, request for \$80,000 in Financial Assistance

See attached Reports/Request

Action Item - Public Comment

- b. PFE Past Rent Forgiveness Request for \$30,908.30

See attached Request

Action Item - Public Comment

- c. Update on Request for Qualifications and Expressions of Interest process for seeking alternative management.

See attached notice.

6. Marine Trade Center Lease Amendments - Update on Status - Bill Needelman, Waterfront Coordinator

7. Lot 12 and Lot 12A Property Line Survey - Bill Needelman, Waterfront Coordinator

- a. Bristol Seafood requests a survey to be completed to place lot line pins in the ground between Lot 12 and Lot 12A to enable a physical understanding of the boundaries on the PFP.

Owen Haskell has provided Bristol with an estimate of \$400 with work to be completed in approximately four weeks.

With the Board's agreement, staff will use the Engineering line item in the current budget to fund this request. No action required.

See attached map.

8. Homeport Fleet Berthing Agreement Revisions

- a. Prompted by a recent turnover in vessel ownership, Corporation Counsel is recommending revising the standard berthing agreement form for monthly homeport vessel tenants. Staff is seeking feedback on specifics from the Board, as well as from berthing tenants. Issues to discuss will include the treatment of rafted vessels and access to parking in the rear lot.

See attached draft Agreement.

9. Adjournment

Agenda 7

Line Requiring Survey and Monumentation

Lot 12

Lot 12-A

Portland Fish Pier, Survey Request

Lots 12 and 12-A



30 Feet

0

15

30

AGREEMENT FOR FISHING VESSEL BERTHING
BETWEEN PORTLAND FISH PIER AUTHORITY AND

_____(Owner)
FOR _____(Vessel Name)

This AGREEMENT FOR FISHING VESSEL BERTHING is made this _____ day of _____, 2022 (“Effective Date”), by and between the Portland Fish Pier Authority, a Maine non-profit local development authority, having a mailing address of 389 Congress Street, Portland, Maine 04101 (“PFPA” or “Landlord”), and _____, a Maine _____ with a mailing address of _____ (“Tenant”).

RECITALS

WHEREAS, PFPA operates the Portland Fish Pier Complex (the “Fish Pier”) pursuant to the terms of a Ground Lease Agreement between the City of Portland (the “City”) and the PFPA dated April 30, 1990 and a Management Agreement between the PFPA and the City dated September 24, 1990; and

WHEREAS, TENANT owns a _____-foot commercial fishing vessel named " _____ " (the “Designated Vessel”), and _____ (*add additional info as necessary for Rafted Vessels*), which it wants to berth at the Fish Pier, and has submitted the Berthing Registration Form that is attached hereto as Exhibit A and made a part hereof (the Designated Vessel and the Rafted Vessels, if any, are referred to herein as the “Vessels”); and

WHEREAS, PFPA is willing to permit TENANT to lease berthing space at the Fish Pier subject to the provisions of this Agreement.

NOW THEREFORE, in consideration of agreements expressed herein, the PFPA and TENANT do hereby agree as follows:

1. BERTHING; PARKING; ELECTRICITY. The PFPA hereby grants to the Tenant the following rights:

- a. The right to use Berth # _____ (the “Berth”), which is generally depicted on the diagram attached hereto as Exhibit B and made a part hereof, for the berthing of only the Vessels listed on the Berthing Registration Form, which may be amended from time to time with the written approval of the PFPA. Tenant and all Vessels using the Berth agree to the terms and conditions of this Agreement.
- b. The right, in common with others, to use one (1) unassigned parking space in the Rear Lot Parking Area depicted on Exhibit B to park one automobile only.

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If no spaces are available in the Rear Lot Parking Area, Tenant may park in the Front Lot depicted on Exhibit B. Parking is at your own risk and Landlord makes no guarantee as to winter maintenance of the parking space or area.

- c. Access to shore electrical power at the Fish Pier as needed for the operation or maintenance of the Vessels.
2. TERM. The term of this Agreement commences on the Effective Date and will continue thereafter on a month-to-month basis. Either party may terminate this Agreement for any reason and at any time upon 30 days' prior written notice to the other party. However, if said termination is due to Tenant's failure to comply with any provisions of this Agreement, PFPA may terminate this Agreement immediately.
3. PAYMENT.
 - a. On or before the first day of each month during the term of this Agreement, the Tenant shall pay to the FPA, in advance and without offset or demand, a nonrefundable rental fee of \$ _____ per month for the Designated Vessel. This rental fee is subject to adjustment upon 30 days' prior written notice to Tenant.
 - b. On or before the first day of each month during the term of this Agreement, the Tenant shall pay to the FPA, in advance and without demand, a nonrefundable rental fee of \$ _____ per month for each Rafted Vessel. This rental fee is subject to adjustment upon 30 days' prior written notice to Tenant.
 - c. The above rental fees will be prorated accordingly if the term of this lease begins on a day other than the first day of the month.
 - d. Within 30 days after receipt of an invoice for Tenant's electricity usage, Tenant shall pay to FPA all amounts due under such invoice.
4. COMPLIANCE. The Tenant and Registered Rafted Vessels shall comply with all applicable federal, state, and local laws, rules and regulations, including, but not limited to the rules, regulations, and orders of the FPA.
5. INSURANCE REQUIREMENTS.
 - (a) Amounts. Without expense to the **CITY or PFPA**, and with no lapse in coverage, **TENANT** shall procure and maintain, at its own cost, for each vessel, and show evidence to the **CITY and PFPA** of the following insurance to protect the **CITY and PFPA** from claims and damages which may arise from **TENANT's** operations under this **AGREEMENT**, whether such operations shall be performed by the **TENANT** or by anyone directly or indirectly employed by it, in the types and minimum amounts set forth below:

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Description	Coverage	Each Occurrence
(i) Commercial General Liability, including Broad Form Property Damage	B.I./P.D.	\$1,000,000
(ii) Protection & Indemnity insurance		\$1,000,000
(iii) Pollution coverage	Land to Sea/Land to Land	\$1,000,000
(iv) Employer's Liability including US Longshoremen & Harbor Workers; Federal Maritime and Jones Act Coverage, when required by law		\$1,000,000

(b) The **CITY and PFPA** shall be named as additional insureds under items (i) and (ii) above, for coverage only in those areas where the CITY and/or PFPA does not have governmental immunity, including, without limitation, as set forth in 14 M.R.S.A. § 8104-A, as limited by § 8104-B, and § 8111. This provision shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages available to the CITY and/or PFPA under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the CITY and/or PFPA. The Protection and Indemnity insurance and the Pollution coverage required hereunder shall be for concurrent terms. All coverage shall include a waiver of subrogation against **CITY and PFPA**. To the extent that **TENANT** has any employees who are not covered by the Longshoremen & Harbor Workers, Federal Maritime and Jones Act coverages, **TENANT** shall provide evidence of Workers Compensation coverage in the statutory amounts, including a waiver of subrogation against **CITY and PFPA**. In the event that excess insurance becomes available at a reasonable cost to **TENANT**, **TENANT** agrees to increase the limits of liability under the items above.

(c) Notice to City. All policies of insurance required herein shall be in a form and issued by a company or companies satisfactory to the **CITY and PFPA**, and approved to do insurance business in the State of Maine. Each such policy shall provide that such policy may not be changed, altered or canceled by the insurer during its term without first giving thirty (30) days' notice in writing to the **CITY and PFPA**. Each liability policy required to be obtained hereunder shall be on an occurrence basis, with the exception of pollution coverage. In the event that policies are not available on an occurrence basis, **TENANT** shall purchase a "tail" which provides coverage hereunder for a minimum of six (6) years after termination of this Agreement. All policies required hereunder shall be primary

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and non-contributory to any insurance or self-insurance which **CITY or PFPA** may maintain for its own benefit. Liability insurance coverage shall also extend to damage, destruction, and injury to City and/or PFPA -owned or City and/or PFPA-leased property and City and PFPA personnel, and caused by, or resulting from negligent acts, operations, or omissions of **TENANT**, its officers, agents, employees, invitees, and/or contractors.

(d) **Certificates.** Certificates or other evidence of insurance coverages required of **TENANT** in this Article, in amounts no less than those stipulated herein or as may be in effect from time-to-time, shall be delivered to the **CITY and PFPA** prior to use of the Premises. Such certificate or certificates shall specify each of the required coverages. **TENANT** shall also provide a copy of any endorsement naming the CITY and PFPA as additional insured. **TENANT** shall at all times while this **AGREEMENT** is in effect provide **CITY** with at least thirty (30) days prior written notice of any change or modification in insurance coverage or insurance carrier.

(e) **Tenant Property Insurance.** **TENANT** shall be responsible for covering the Vessels and all of Tenant's personal property with such property and casualty insurance as it deems necessary, and **PFPA and CITY** shall have no responsibility therefor. Tenant assumes all risk of damage, loss or casualty to the Vessels and Tenant's property while located at the Berth or the Portland Fish Pier Complex, even if the cause of such damage is the result of the negligent act or omission of the City, the PFPA, or their officers, invitees or employees. Tenant shall defend, indemnify and hold the City and PFPA harmless from any claim based upon any damage, loss or casualty to the Vessels or any of Tenant's personal property while at the Berth or the Fish Pier Complex. Any property and casualty insurance obtained by Tenant for its Vessel or other personal property shall include a waiver of subrogation against the City and PFPA.

(f) **Revised Insurance.** From time to time, PFPA or the CITY may require revisions to the above insurance requirements. **TENANT** agrees to execute an Amendment as needed to accommodate such revisions.

6. **INDEMNITY.** To the fullest extent permitted by law, Tenant shall defend, indemnify and hold the City and PFPA, and their officers, agents, and employees harmless at all times from any claims, liability, losses, costs, expenses (including, without limitation, reasonable attorney's fees) fines, damages or judgments, just or unjust, that arise out of or are caused by any act or omission of Tenant, its agents, invitees, contractors, subcontractors, or employees (collectively, "Claims"), which Claims arise out of or result from Tenant's activities under this Agreement, said Claims to include, without being limited to Claims for personal injury, death, or property damage; and Claims for injury or damage to City or

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PFPA employees or property; and Claims based upon violation of any environmental law or regulation governing hazardous substances. TENANT's obligations under this paragraph shall survive the termination of this Lease.

7. SUBLETTING, ASSIGNMENT AND TRANSFER. The Tenant may not sublet, sell, transfer, assign, or otherwise dispose of this Agreement or any portion thereof, or of his right, title or interest therein, without the prior written consent of the PFPA.
8. IMPROVEMENTS; REMOVAL. Tenant shall make no improvements or modifications to the Berth or any portion of the Fish Pier Complex without PFPA's prior written approval. At the termination of this Agreement, Tenant must remove the Vessels and any other personal property from the Berth and the Portland Fish Pier Complex. If the Tenant fails to do so within seven (7) business days of said termination, the PFPA may move the Vessels with all costs associated with such move to be borne by the Tenant and the Vessel. In the event any Vessel sinks at the berth or otherwise within the Portland Fish Pier Complex, Tenant shall immediately commence salvage activities, and, in any event, not later than twenty-four (24) hours after receipt of notice from the PFPA that such sinking has taken place. If Tenant fails to commence such activities, the PFPA may salvage the vessel with all costs associated therewith to be borne exclusively by the Tenant and the Vessel.
9. NON-WAIVER. Failure of PFPA 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 PFPA or Tenant any time, express or implied, of any breach of any provision of this Agreement shall be deemed a 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.
10. FEDERAL AND STATE AGREEMENT. All terms and obligations under this Agreement are subordinate to the provisions of the existing agreement between the City of Portland and the State of Maine and United States Government and any future agreements between the same relative to the funding, construction, and operation of the Fish Pier Complex. Tenant agrees to execute any amendment to this Agreement whenever requested by PFPA which is required to bring either PFPA or the City into compliance with any law, rule, or regulation relating to the funding, development and operation of its Fish Pier Complex project.
11. VENUE, APPLICABLE LAW. This AGREEMENT and the performance thereof shall be governed, interpreted, construed, and regulated by the laws of the State of Maine and the United State. Any proceeding for interpretation or enforcement of this Agreement or arising out of performance of this Agreement shall be brought in the courts of the State of Maine or in the U.S. District Court for the State of Maine located in Cumberland County.

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12. NOTWITHSTANDING. Notwithstanding anything in this Agreement to the contrary, the CITY's and/or PFPA's obligations under this Agreement are subject to and limited by the defenses, immunities, and limitations of liability or damages available to the CITY and/or PFPA under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the CITY and/or PFPA.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

WITNESS

PORTLAND FISH PIER AUTHORITY

_____ by _____
Meredith Mendelson
Its President

[FISHING VESSEL]

_____ by: _____
Its

EXHIBIT A
BERTHING REGISTRATION FORM

Tenant

Boat Name _____

Boat Owner's Name _____

Boat Owner's Address _____

Boat Owner's Telephone _____

Boat Registration # _____

Boat Length (L.O.A.) _____ Draft _____ Beam _____

Hull Material: Steel _____ Wood _____ Glass _____ Other _____

Name of Boat Captain _____

Address _____

Telephone _____

Name of Boat Manager _____

Address _____

Telephone _____

Rafted Boat #1

Boat Name _____

Boat Owner's Name _____

Boat Owner's Address _____

Boat Owner's Telephone _____

Boat Registration _____

Boat Length (L.O.A.) _____ Draft _____ Beam _____

Hull Material: Steel _____ Wood _____ Glass _____ Other _____

Name of Boat Captain _____

Address _____

Telephone _____

Name of Boat Manager _____

Address _____

Telephone _____

Rafted Boat #2

Boat Name _____

Boat Owner's Name _____

Boat Owner's Address _____

Boat Owner's Telephone _____

Boat Registration _____

Boat Length (L.O.A.) _____ Draft _____ Beam _____

Hull Material: Steel _____ Wood _____ Glass _____ Other _____

Name of Boat Captain _____

Address _____

Telephone _____

Name of Boat Manager _____

Address _____

Telephone _____