City of Portland
Remote Joint Board Meeting of the Portland Fish Pier Authority and the Portland Fish Exchange

NOTE: This joint meeting will start immediately following the 2:30 Board meeting of the Portland Fish Exchange.

Remote Meeting Format – ZOOM Platform

PFPA Board members
Class A Director: Member of the Portland City Council - Anna Bullett
Class B Director: Representing the fishing industry - Ben Martens, Maine Coast Fishermen's Association, Vice President
Class B Director: Representing the fishing industry - Vacant
Class C Director: Representing the Commissioner of the Maine DOT - Chris Mayo
Class C Director: Representing the Commissioner of Maine DMR - Meredith Mendelson, Department of Marine Resources,President
Ex-Officio Director: Representing the City Manager - Brendan O'Connell, Finance Director, Treasurer
Ex-Officio Director: President of the Board of Directors of the Portland Fish Exchange - Rob Odlin

PFEX Board members
Class A Directors: Rob Odlin, President
Mary Hudson, Maine Coast Fisherman's Association
Class B Directors: Tim Merrill, Merrill Seafood
Class C Directors: John Arnold, At Large
Lauren Hersey, At Large
Class D Director: Anna Bullet, City Council
Class E Director: Bill Needelman, Waterfront Coordinator

*********Meeting Link********

Please click the link below to join the webinar:
https://portlandmaine-gov.zoom.us/j/88332438346?pwd=cmtkRmRQQmgrTndIYmNsbTZncUY4QT09
Passcode: 693198
Or One tap mobile :
+13092053325,,88332438346# US
+13126266799,,88332438346# US (Chicago)
Or Telephone:
Dial(for higher quality, dial a number based on your current location):
+1 309 205 3325 US
+1 312 626 6799 US (Chicago)

1. **Review and Vote to Approve Plan of Merger between the Portland Fish Pier Authority and the Portland Fish Exchange**

   a. **<u>Suggested Motion:</u>** To recommend approval of the Plan of Merger to the City Council pursuant to Title 13.B, MRSA Section 901 (2).
   See attached Plan of Merger, Execution Draft

   Action Item - Public Comment

AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger ("**Plan of Merger**") is made and entered into this _____ day of May, 2024 ("**Effective Date**"), by and between the Portland Fish Pier Authority (**"Pier Authority"** or **"Surviving Corporation"**), a Maine nonprofit corporation, and the Portland Fish Exchange ("**Fish Exchange**" or **"Merged Corporation"**), a Maine nonprofit corporation (the Pier Authority and Fish Exchange collectively as the "**Constituent Entities**").

RECITALS

WHEREAS, the Pier Authority is a nonprofit corporation organized and existing under the laws of the State of Maine, including with its purpose as stated in its Articles of Incorporation to operate: "for the purposes of managing and marketing the premises known as the Portland Fish Pier for the benefit of the fishing and fishery-related business enterprises and the citizens of the City of Portland;"

WHEREAS, the Fish Exchange is a nonprofit corporation organized and existing under the laws of the State of Maine, including with its purpose as stated in its Articles of Incorpration to operate as: "a local development corporation exclusivley for the purpose of fostering, encouraging and assisting the physical location, settlement or resettlement of fishing and fishery-related business enterprises in the City of Portland;"

WHEREAS, the Board of Directors for each Constituent Entity has considered the importance of continuing to advance the purposes of each corporation, including through the effectiveness and efficiencies of adopting this Plan of Merger, and have adopted this Plan of Merger pursuant to Title 13-B M.R.S.A. Section 901(2) and by affirmative vote;

WHEREAS, the Pier Authority and the Fish Exchange have each provided a "Notice of Special Meeting of Corporator" (collectively "**Notice**") pursuant to the Bylaws of each corporation regarding this Plan of Merger, including posting the Notice in a conspicuous place at the principal office of each corporation, and with the Boards of Directors and members of the public entitled to attend, to ask questions, and to state their views;

WHEREAS, the sole member and corporator of the Constituent Entities is the City of Portland ("**Corporator**") and pursuant to the Artices of Incorporation for each of the Pier Authority and the Fish Exchange, the Corporator "shall have the sole and exclusive right to vote" to authorize a merger;

WHEREAS, following the Merger, the Articles of Incorporation and the purposes of the the Surviving Corporation will continue, including such that the Portland Fish Pier will be operated as a public fish pier for the purpose of landing or processing shellfish, finfish or other natural products of the sea or for other activities directly realted to the purpose of landing or processing shellfish, finfish or natural products of the sea, including fueling, loading or selling such products;

WHEREAS, considering the Fish Exchange has served the Maine groundfish industry since its formation on August 30, 1985, it is the intent of the merger that the "Portland Fish

Exchange" will continue to exist as an operational assumed name of the Pier Authority and based on the Pier Authority's reasonable commercial efforts to provide groundfish auction services;

WHEREAS, the Portland Fish Pier Authority and the Portland Fish Exchange each deem it advisable and in the best interests of each entity to merge the Portland Fish Exchange with and into the Portland Fish Pier Authority in accordance with the Maine Nonprofit Corporation Act and upon the terms and conditions set forth in this Plan of Merger, with the Portland Fish Pier Authority as the Surviving Corporation (the "**Merger**").

NOW THEREFORE, in consideration of the mutual covenants, agreements and provisions hereinafter contained, the Constituent Entities hereby prescribe the terms and conditions of the Merger and mode for carrying the same into effect as follows:

AGREEMENT

ARTICLE I
THE MERGER

1.1 Merger. On the Effective Merger Date (as defined in Section 1.2), the Portland Fish Exchange shall be merged with and into the Portland Fish Pier Authority and the separate existence of the Portland Fish Exchange shall cease as a corporate entity. The Portland Fish Pier Authority shall be the surviving organization (the "**Surviving Corporation**") in the Merger and shall survive as a Maine nonprofit corporation. The Fish Exchange shall continue to exist as an operational assumed name of the Pier Authority as the "Portland Fish Exchange" and based on the purposes as set forth in the Recitals above.

1.2 Effective Date. The Merger shall become effective upon the date specifed in the Certificate of Merger to be filed with the Secretary of the State, State of Maine (the "**Effective Merger Date**").

1.3 Articles of Incorporation of the Surviving Corporation.The governing instruments of the the Portland Fish Pier Authority on file with the Secretary of State of the State of Maine (the "**Articles**"), as in effect on the Effective Date, shall continue in full force and effect as the Articles of the Surviving Corporation. The Surviving Corporation shall be governed by the laws of the State of Maine.

1.4 Bylaws of the Surviving Corporation. The Bylaws of the Portland Fish Pier Authority as they shall exist on the Effective Date shall be and remain the Bylaws of the Surviving Corporation until the same shall be altered, amended or repealed as therein provided.

1.5 Directors and Officers; Amendment of Articles to Increase Directors. The Directors and Officers of the Portland Fish Pier Authority in office as of the Effective Date of the Merger shall continue as the Directors and Officers of the Surviving Corporation, to hold office, subject to the applicable provisions of the Articles and Bylaws of the Surviving Corporation and the Maine Nonprofit Corporation Act, until their successors are elected. Concurrent with the Merger, the Articles of Incorportion of the Portland Fish Pier Authority will be amended to increase the number of Directors from seven (7) to eleven (11), including in anticipation of transitioning some of the Directors of the Portland Fish Exchange to the Surviving Corporation.

1.6 Adoption of Assumed Name. Concurrent with the Effective Merger Date, the Surviving Corporation shall be entitled to operate in name both as the "Portland Fish Pier Authority" and under the assumed name of the "Portland Fish Exchange" and the Surviving Corporation shall make appropriate filings with the State of Maine Secretary of State to effect the same.

1.7 Effects of the Merger. Upon the Effective Date, all property, rights, leases, subleases, accounts, privileges, franchises, patents, trademarks, licenses, registrations, and other assets of every kind and description of the Portland Fish Exchange shall be transferred to, vested in, and devolved upon the Surviving Corporation without further assignment, act or deed and all property, rights and every other interest of the Constituent Entities shall be the property of the Surviving Corporation. All rights of creditors of the Portland Fish Exchange and all liens upon any property of the Portland Fish Exchange shall be preserved unimpaired and all debts, liabilities and duties of the Portland Fish Exchange (except, unless otherwise required by law, for employee-related matters as shall be coordinated as set forth in Section 1.8 below) shall attach to the Surviving Corporation and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. From time to time after the Effective Date, and upon the written request of the Surviving Corporation, the last President and Secretary of the Portland Fish Exchange may, in the name of Portland Fish Exchange, execute, deliver, or cause to be executed and delivered, all such agreements, deeds, and instruments to the Surviving Corporation and to take or cause to be taken such further or other action as the Surviving Corporation may deem necessary or desirable in order to vest in the Surviving Corporation the rights in, title to, or other disposition of any property of the Portland Fish Exchange acquired or to be acquired by reason of or as a result of the Merger.

1.8 Transition of Employees. Concurrent with the Effective Merger Date, the Surviving Corporation shall make reasonable efforts to transition and hire the employees of the Portland Fish Exchange, including in a manner to preserve all legal rights of the employees.

ARTICLE II
FINAL TAX FILING OF THE MERGED CORPORATION

2.1 Tax Filing. With recogntion that both the Surviving Corporation and the Merged Corporation are nonprofit corporations with tax-exempt status from the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code, following the Merger the Portland Fish Exchange shall file a final income tax return evidencing its termination as a separate entity.

ARTICLE III
ABANDONMENT

3.1 Termination. At any time before the Effective Date of the Merger, this Agreement may be terminated and the Merger may be abandoned by either the Portland Fish Pier Authority or the Portland Fish Exchange, or both, including pursuant to Title 13-B M.R.S.A. Section 903(4).

ARTICLE IV
AMENDMENT

4.1 Amendment. The Agreement may not be amended at any time prior to the date that the requisite Articles of Merger are filed in the office of the Secretary of State, State of Maine.

ARTICLE V
GENERAL PROVISIONS

5.1 Governing Law. This Agreement and Plan of Merger and the legal relationships between the parties shall be governed by and construed in accordance with the laws of the State of Maine.

5.2 Further Assurances. The Constituent Entities each agree to execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be necessary or desirable in order to consummate or implement the transactions contemplated by this Agreement.

[*Signature page follows.*]

[*Signature Page – Agreement and Plan of Merger*]

IN WITNESS WHEREOF, the parties to this Plan of Merger, based on the approval and authority as represented through resolutions adopted by their Boards of Directors, have caused their officers to sign and to evidence their agreement below.

PORTLAND FISH EXCHANGE,
a Maine nonprofit corporation

By:________________________________
Name:
Title: President

PORTLAND FISH PIER AUTHORITY,
a Maine nonprofit corporation

By:________________________________
Name:
Title: President