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January 14, 2022

VIA HAND DELIVERY

Chairman Daniel T. Haley, Jr.
Harbor Commission for the Port of Portland
2 Portland Fish Pier, Suite 105
Portland, Maine 04101

Dear Chairman Haley and Members of the Harbor Commission:

This office represents Portland Pilots, Inc., as to its recent request to increase the pilot unit rate and the capital construction fee applicable to compulsory-pilotage vessels in the Port of Portland. We respond to your letter of January 6, 2022, asking for certain information to support the rate increase as follows.

The requested rate increase is to move from $11.99 to $12.95 per pilot unit (an 8%) increase and from $150 to $175 per trip for the capital construction fund at the next opportunity. The reasons for the requested increase include a recent spike in the cost of living (COLA = 5.9% at the most recent adjustment); increases in the consumer price index (ranging from 5.5% to 29.3%, depending on the sector, over the past 12 months); rising costs and increased debt load on Portland Pilots, Inc.; and, by way of corroboration with the instant request, recent increases in pilotage rates in the comparable ports in the New England region as a whole (8% in Boston and Narragansett Bay, R.I., as of January 1, 2022), which would still remain higher than Portland even with the requested increase.

The last rate increase went into effect just as the pandemic began, thanks to prompt action by the Harbor Commission to respond to a public health emergency. This means that, if approved, a rate increase will not have occurred in over two years (given that the earliest a rate increase could be implemented would be on or about June 1, pursuant to notice requirements). Needless to say, a lot has changed since then, including a wholesale closure of the Portland Ocean Terminal and Ocean Gateway to cruise ship traffic (a loss of over $2.1 million alone to Portland Pilots over the two seasons); the continued mothballing of the Portland Pipeline (only four ships in 2021); and the addition of deckhands to the roster to accommodate both the Pilots' and the Harbor Commission's concern for pilot safety.

In support of this request, Portland Pilots offers certain confidential documents, which are provided under seal to the Commission for *in camera* review. As stated in prior correspondence, Pilots considers the enclosed information to be a "trade secret" pursuant to the Maine Uniform Trade Secrets Act (10 M.R.S. § 1542). Further, Pilots is an independent, for-profit business whose employees' and owners' salaries are not publicly accessible under the Freedom of Access Act ("FOAA"). *See also Bryant v. Town of Wiscasset*, 2016 Me. Super. LEXIS 306, *20 ("[W]here the public has had full and fair opportunity to comment on an application, a municipal agency does not violate due process by permitting the applicant to submit additional ex parte comments to the municipal agency without providing further opportunity to the public to comment." Citing *Duffy v. Town of Berwick*, 2013 ME 105, ¶ 1, 82 A.3d 148, 151 ("ex parte communication between the [town's] Planning Board and permit applicant did not require the Court to vacate the Board's decision") and *Cunningham v. Kittery Planning Bd.*, 400 A.2d 1070, 1073-79 (Me. 1979). Accordingly, we offer the following documents in confidence and under seal:

- 2021 Pilot Units per Ship (**Exhibit A**) CONFIDENTIAL
- 2021 Ships by Pier (**Exhibit B**) CONFIDENTIAL
- 2021 Invoice List (**Exhibit C**) CONFIDENTIAL
- 2020 Ships by Pier (**Exhibit D**) CONFIDENTIAL
- 2020 Invoice List (**Exhibit E**) CONFIDENTIAL
- Portland Pilots 2022 Rate Request Vessel Category Summary (**Exhibit F**) CONFIDENTIAL
- Portland Pilots 2020 Port Comps. 12.95 Rate – 175CCF.Worsheet (**Exhibit G**) CONFIDENTIAL
- 2022 Board of Commission Template 2020 & 2021 Actual, 2022 Projected $12.95 Rate – 175CCF.Worksheet (**Exhibit H**) CONFIDENTIAL
- 2019 Board of Harbor Commission Template for 2022 Review (**Exhibit I**) CONFIDENTIAL
- Portland Pilots 2020 1120S Tax Returns (**Exhibit J**) CONFIDENTIAL
- Portland Pilots 2020 1120S Signature Document (**Exhibit K**) CONFIDENTIAL
- Portland Pilots 2020 1120S Filing Instruction (**Exhibit L**) CONFIDENTIAL
- Portland Pilots Charter Corp. 2020 1120S Tax Returns (**Exhibit M**) CONFIDENTIAL
- Portland Pilots Charter Corp. 2020 1120S Signature Document (**Exhibit N**) CONFIDENTIAL
- Portland Pilots Charter Corp. 2020 1120S Filing Instruction (**Exhibit O**) CONFIDENTIAL

Portland Pilots also offers the following documents that, in addition to this letter, can be publicly disseminated:

- Yacht Visits 2019, 2020, 2021 (**Exhibit P**) PUBLIC
- Port Comparison with Sample Ships Projected 2022 (**Exhibit Q**) PUBLIC
- Current Pilot Unit Rate Sheet (**Exhibit R**) PUBLIC
- Summer Deadweight Reports 2019, 2020, and 2021 (**Exhibit S-1; S-2; S-3**) PUBLIC

It is important that the Commission considers several additional details regarding the submissions and how to interpret them.

First, please note that at prior adjustment hearings, the Pilots suggested, and the Commission approved, not just a minimum rate level (150 pilot units) for smaller vessels but also a maximum rate level (790 pilot units) for larger vessels. This feature in the rate structure maintains a balance whereby Pilots' minimum expenses of running the vessels (and paying salaries and benefits) are met when piloting smaller vessels but considerably larger vessels are not penalized. Under this rubric, each Port customer contributes a fair share to maintaining a robust pilotage service without any one group (pilots or individual ship and yacht customers) receiving either a windfall or a penalty.

In reviewing the historical documents (2019 - 2021) we suggest that you consider the precipitous decline in pilot units as between 2019 and 2020, which has not recovered even three years later. *See* Public Exhibits S-1, S-2, and S-3 regarding annual deadweight tonnage from 2019 – 2020 (from 12.3 million DWT to 5.9 DWT) and Confidential Exhibit H showing the correlative drop in pilot units over the same period.) This is important because the rate that was set in 2019 was based on projections that did not materialize in 2020 (because of the pandemic's effect on cruise traffic). Accordingly, the current exercise is, at least in part, a correction of this anomaly. As the loss of cruise ships enters its third year, it seems clear this industry will not come roaring back, whether in 2023 or even beyond. It is not a stretch to suggest that when it comes back, which it will, it will be a slow, incremental return over several years.

Additionally, please keep in mind that the "compensation" budgeted for individual pilots (in CONFIDENTIAL submission 2022 Template) does not mean this is their salary. Rather, as the tax returns make clear, the individual pilots' compensation includes payment of the debt load that has been incurred by the two individual principals and the company. Portland Pilots, Inc. (and its sister corporation, Portland Pilots Charter Corp., which owns and operates the two pilot boats) have had to incur considerable debt to offset expenses of running the companies in recent years to keep the Port open. This situation that has only been exacerbated during the pandemic, with zero cruise ships calling, and deferred maintenance on the vessels has meant higher operational costs. As we noted in our letter to the Commission in July 16, 2019, "it is important to note for future discussions on pilotage rate-setting that this debt load remains, and will remain for some time, and the regular payments for these shares [and bank loans] are deducted from what might otherwise be deemed 'compensation'." In other words, while we do not offer the actual numbers in this letter, which is a public document, we suggest that in reviewing the submissions you bear this in mind.

As to the requested increase in the Capital Construction Fund charge (from $150 to $175), we ask for this in light of the considerable deferred maintenance on the pilot vessels. While this is not nearly enough to cover even one of the significant maintenance and repairs haulouts (for example, replacing the "D-ring" on *Portland Pilot*, which is approaching 52 years of age and remains Pilots' primary workhorse), it is important that this fund contribution is increased periodically to at least partially track inflation.

We also refer your attention to pilotage rates in comparable ports in New England. Two documents show the result of Pilots' due diligence. One, for public review, shows what Sample Ships A, B, and C would pay in each of the respective ports of Portland, Maine (if the rate increase is approved); and Boston, Mass.; and Narragansett Bay, R.I., both of which recently had 8% pilotage rate increases (as of January 1,

2022). The second document (submitted in confidence) shows the same exercise with rates compared for what actual ships would be charged in each of these three ports. While Portland's pilotage rates would still be lower (on average) than the comparable other ports, they would at least be somewhat comparable. This Commission has chosen in previous years to have Portland's rates remain at or below these other ports so Portland remains competitive but not so low as to endanger the solvency of Portland Pilots.

You also asked for reference to any "pandemic funding" that was both requested and / or received. *See* Para. 9 of your January 6, 2022, letter. While Portland Pilots did receive PPP and grant money in 2020 and 2021, which is reflected on the Harbor Commission's template for 2022 (*see* Confidential Exhibit H), it has not received any such funding since, although it has requested funds from numerous sources, including FEMA, the State of Maine Department of Transportation, the Maine Congressional Delegation, the cities of Portland and South Portland, and Cumberland County. Should any of these requests be actualized, such funding could partially bridge the projected shortfall. We would certainly inform the Commission if this occurs at any point in the coming months. Regardless, we are confident these potential sources are speculative and will not cover the projected shortfall.

We believe that this letter and the submissions respond to each of the specific requests you made in your letter of January 6, 2022, but not necessarily in the form that was described. For example, in Para. 1, you asked for a projected budget for 2022. This is now in the form of the 2022 Template, which shows a year-to-year comparison of pilot units and projected revenue and expenses if the new rate is adopted. Not surprisingly, given the continued lack of cruise ships, a significant shortfall is projected.

We trust that the above information, accompanied by both the public and confidential submissions, satisfies the Harbor Commission's requirements in support of this rate increase request. We plan to present an analysis of this request at the workshop in both a public and executive session at the Commission's pleasure. We look forward to seeing you there.

Meanwhile, Portland Pilots wishes to extend its sincere thanks for the Commission's hard work on this subject. Establishing a fair and reasonable pilotage rate is complicated and time consuming. We present the enclosed documents to the Commission with confidence in the Commission's abilities in achieving the shared goal of setting competitive rates yet maintaining a safe and robust pilotage system in Maine's largest port. Please let us know if you have any questions in the meantime.

Respectfully,

Thompson Bowie & Hatch, LLC

By: _____
Twain Braden, Esq.

Encl.
cc: Portland Pilots, Inc.