

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No. 5A
Date of Meeting April 7, 2020

DATE: February 17, 2020

TO: Managing Members

FROM: John Wolfe, CEO

Sponsor: Governance Committee of Managing Members (Calkins, Keller, McCarthy, Steinbrueck)

Project Manager: Carolyn Lake, NWSA Counsel, Port of Tacoma
General Counsel

SUBJECT:

A Resolution of the Northwest Seaport Alliance delegating administrative authority to the Chief Executive Officer from the Alliance Managing Members and superseding prior Alliance Resolution No. 2018-01

SYNOPSIS

Annual approval of proposed revisions to the Master Policy Resolution, Delegation of Authority as submitted by the Governance Committee ("Committee"). Redlined and Clean versions of the proposed revisions are attached as Exhibits A and B, respectively; a Chart comparing the two versions side by side, with reasoning for the change is attached as Exhibit C.

A. BACKGROUND

In the fall of 2019, Managing Members (MM) undertook review of the Master Policy Resolution, Delegation of Authority. The Committee consisting of four Commissioners, two from each of the Homeports, was formed to review changes and bring recommendations back to the Managing Members. Committee action included the following:

- 9/3 -Committee meeting
- 9/4 - Staff shared an E-version of the Revised Policy, with redlines reflecting changes suggested by both Staff and Commission- originated changes. The comment sections to each proposed change identified the amendment "sponsor," and provided a brief description of/rational for the amendment

- Throughout September, Committee members exchanged comments on the proposed changes.
- On November 5th, Staff shared a Draft Master Policy which incorporated all Committee edits to date and included Staff questions and or comments on the changes.
- On November 12th, the Committee resolved an outstanding question on the claim settlement limit, by retaining the current \$300,000 limit, and the November 14th committee meeting was canceled.
- On November 13th, Staff updated the Draft Resolution (11.13.2019 version) and shared that version with the Committee. A few changes were highlighted and flagged for a suggested discussion so that Staff could better understand and comply with Commissioners' intent.
- On January 23, 2020, a revised version of the Draft Resolution was shared with the Committee that included staff requests that the committee evaluate its proposed changes on a number of items. These included: delegation of authority to the CEO for initial expenditures on projects that may ultimately exceed the CEO's \$300,000 contracting authority; retention of the current practice of project management approvals instead of seeking independent MM approval of individual contracts within a project absent a change in budget, time or scope; managing delinquent accounts; grant applications and associated expenses; and approval and reporting on tariff changes.
- On February 10, 2020, the Committee met to discuss staff's perspective on the impact of the proposed changes and agreed to the suggested language from staff on all but one issue. The remaining issue for discussion was the extent of CEO authority to make initial expenditures on projects that may exceed \$300,000 (Section 8.c.iii.1).
- On February 17, 2020, staff circulated to the Committee and to impacted staff an updated redlined version of the Draft Master Policy Resolution, Delegation of Authority that included changes made and accepted by the Committee on February 10, 2020.
- The Committee was again convened on February 20, 2020 to address the remaining issue on of the extent of CEO authority to make initial expenditures on projects that may exceed \$300,000 (Section 8.c.iii.1) and determined that this level should remain as long as any individual commissioner could review a project worth less than \$300,000 to the Audit Committee for review; this language was incorporated into the document.

An overview of the proposed revisions is best found in Exhibit C, but the high level changes by section are as follows:

- 2.b.i – MM are responsible for establishing Strategic Business Plan.
- 3.b.8 – CEO is responsible for overall fiscal management, financial accountability and budget.
- 6.a.i and 6.c.i – Overall relate to prioritization of expenditures and overlay with Homeports' Capital Investment Plans; Annual MM review of Strategic Business Plan for prioritization of programs, projects, and spending.
- 7.a.i – leases over one year require MM authorization and two readings.
- 7.a.ii – limit CEO authority over Operating Agreements and Vessel Service Agreements to reserve such authority to MM; CEO may enter into amendments up to \$300k.
- 8.c.iii.1 - Clarifies that if Project grows to exceed CEO's \$300k authority, MM approval needed. Adds new section that upon at individual commissioner request, a project with cost under \$300,000 will be audited by the audit committee.
- 8.c.viii – Sets CEO mediation authority on claims from public works projects at \$300k.
- 8.g – Brings down CEO authority to sign amendments to Personal Services Contracts from 50% to 25% of authorized amount.
- 9.a.iii – Sets cash reserve policy at 3-6 months of operating expenses except for temporary reduction (max of 60 days) for pending reimbursements to Homeports.
- 9.d.ii – Requires MM notice prior to grant applications that may incur a NWSA obligation in excess of \$300k.
- Section 10 – Increases MM oversight on claims and litigation, and accounts for NWSA GC concurrence on counsel and settlements.
 - Adjusts CEO settlement authority to \$150k from \$300k.
 - Requires MM approval of any non-monetary settlement (consent decree)
 - Sets timing and procedures for MM settlement authority
 - Increases reporting
- Section 11 – requires notice to MM of any tariff amendments

B. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS

- **No Action Alternative:** Retain the existing Master Resolution, Delegation of Authority in place, with no changes.
- **Additional alternatives:** As a full board, the Managing Members could:
 - Reject selected changes to the Master Resolution, Delegation of Authority as proposed in Exhibits A and B, and direct the Committee to return to the Managing Members with alternate language on certain points or issues; or
 - Reject selected changes to the Master Resolution, Delegation of Authority as proposed in Exhibits A and B, and Managing Members adopt alternate language on certain points or issues.
- **Recommended Action:** Adopt the proposed changes to the Master Resolution, Delegation of Authority as proposed in Exhibits A and B.

C. ATTACHMENTS TO THIS REQUEST

- Slide presentation.
- Exhibit A, Redlined version of proposed changes to Master Resolution, Delegation of Authority
- Exhibit B, Clean version of proposed changes to Master Resolution, Delegation of Authority
- Exhibit C, Chart of proposed changes.

D. PREVIOUS ACTIONS OR BRIEFINGS

- Resolution 2016-04
- Resolution 2018-01



DRAFT

RESOLUTION NO. 2020-02

A Resolution of the Northwest Seaport Alliance delegating administrative authority to the Chief Executive Officer from the Alliance Managing Members and superseding prior Alliance Resolution No. 2018-01.

WHEREAS, the Port of Seattle (“POS”) and Port of Tacoma (“POT”), (collectively, “Ports”), are public port districts, organized under provisions of the laws of the State of Washington, codified under Title 53 RCW; and

WHEREAS, the Ports, pursuant to Federal law (46 USC Section 40301(b) (1-2)), have filed a discussion agreement (“Discussion Agreement”) with the Federal Maritime Commission (“FMC”) for permission to operate certain marine cargo facilities jointly under as The Northwest Seaport Alliance (“Alliance”), and the Discussion Agreement became effective on July 23, 2015; and

WHEREAS, the Ports have formed the Alliance, pursuant to the Discussion Agreement and subject to FMC oversight, and entered into an Interlocal agreement with delegated powers exercised pursuant to the port joint powers statute (RCW 53.08.240) which expressly permits joint operation and investment outside of a port’s district, and pursuant to RCW 39.34.030, the Interlocal Cooperation Act, and pursuant to ESHB 1170, WA Session Laws of 2015-6, (Chapter 53.57), which authorizes the Ports to create a Port Development Authority (“PDA”) to operate certain marine facilities jointly as the Alliance; and

WHEREAS, the operations and affairs of the PDA are managed by the port districts as members of the PDA and the charter (“Charter”) for the PDA and each port district member (“Managing Member”) acts in such capacity through its own elected commissioners; and

WHEREAS, the Managing Members previously adopted Resolution 2016-04 and 2018-01 which delegated certain administrative authority to the Chief Executive Officer from the Alliance Managing Members; and

WHEREAS, the Managing Members now seek to amend those Delegations of Authority and supersede prior Alliance Resolutions No. 2018-01 and any preceding resolutions.

NOW, THEREFORE, be it resolved by the Managing Members of the Alliance:

THAT the Delegation of Authority Master Policy, as set forth in Exhibit “A” attached to this Resolution and by this reference incorporated herein, is adopted for the purpose of delegating from the Managing Members to the Chief Executive Officer (“CEO”) the administrative authority of the CEO.

ADOPTED by the Managing Members of The Northwest Seaport Alliance at a regular meeting held on the ___th day of _____ 2020 a majority of the Managing Members being present and voting on this resolution and signed by its Co-Chairs and attested by its Co-Secretaries under the official seal of said Managing Members in authentication of its passage this __ day of _____ 2020.

John McCarthy, Co-Chair
The Northwest Seaport Alliance

Peter Steinbrueck, Co-Chair
The Northwest Seaport Alliance

ATTEST:

Sam Cho, Co-Secretary
The Northwest Seaport Alliance

Don Meyer, Co-Secretary
The Northwest Seaport Alliance

EXHIBIT A

Delegation of Authority Master Policy

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1. DEFINITIONS

a. Alliance

Refers to the joint management of marine cargo operations by the Port of Tacoma (POT) and Port of Seattle (POS) pursuant to interim joint operating and management agreement, created by POS and POT and the Interlocal agreement with delegated powers exercised pursuant to the port joint powers statute (RCW 53.08.240) which expressly permits joint management, operation and investment outside of a port's district, and pursuant to RCW 39.34.030, the Interlocal Cooperation Act for the purposes outlined in the Preamble, Section 2.a.i, below.

b. Approval

A recommendation to move work forward for analysis and development of data and documents to support potential authorization. Approval does not denote authority to expend funds (see "Authorization" below).

c. Authorization

Authorizes spending, entering agreements, administrative actions, and real estate actions, and other items as outlined in this resolution. Authorization is given by the Managing Members to the CEO per the Delegation of Authority Master Policy. Authorization implies an action item in public session if the required level is beyond CEO delegation level per the Delegation of Authority Master Policy.

d. Capital Investment Plan

Means the five-year projection of capital and major expense projects and associated expenditures which is developed and maintained as a planning tool for Alliance capital investment which sets the priority for Alliance funding and which is reviewed by the Managing Members annually as part of the five-year plan of finance and budget review process, or as subsequently amended by the Managing Members during the budget year. Capital project funding should be prioritized to address non-discretionary projects first. "Non-discretionary" for purposes of this section includes but is not limited to environment projects carried out pursuant to regulatory or other binding commitment, and maintenance projects needed to maintain the operational capacity of the Alliance and/or which are carried out pursuant to lease obligation or other binding commitment. In recommendations to the Managing Members, Staff should identify which proposed capital projects are Non-discretionary.

e. Chief Executive Officer (CEO)

The person hired by the Managing Members to manage and oversee day-to-day

operations of the Alliance.

f. Claim

“Claim” means the assertion of any position, right or responsibility by or against the Alliance, excluding “uncollectible accounts” and any claims asserted by or against the Alliance that have or may reasonably become the subject of litigation.

g. Emergency

Unforeseen circumstances beyond the control of the Alliance that either presents a real, immediate threat to the proper performance of essential functions; or may result in a material loss or damage to property, bodily injury, or loss of life if immediate action is not taken (see RCWs [39.04.020](#), [39.04.280](#) and [53.19.010\(04\)](#)). Emergencies allow for the waiver of state procurement requirements.

h. Filed with the Managing Members

Delivered to the Executive Assistant to the Managing Members for retention and distribution to the Managing Members.

i. Goods and Services

Means natural resources; equipment; materials; supplies; or other finished goods or products, utilities and utilities-related services (including services provided by public agencies); maintenance; security; and other miscellaneous services.

j. Homeport

For the purposes of this Delegation of Authority Master Policy “Homeport,” when used in connection with specific Alliance assets, means the port where the asset is located.

k. Unit Priced Contract

A competitively bid contract in which public works are anticipated on a recurring basis to meet the business or operational needs of a port district, under which the contractor agrees to a fixed period indefinite quantity delivery of work, at a defined unit price, for each category of work..

l. Interlocal Agreement

A binding agreement between the Alliance and other local governmental agencies, including the Managing Members, that allows for the provision of services or facilities between those agencies.

m. Management Services Agreement

Means an interlocal agreement between the Port of Tacoma and the Alliance for the Alliance to provide leadership personnel that will directly manage day to day work of Port of Tacoma staff who provide support to the Alliance.

n. Managing Members

The Ports of Seattle and Tacoma, acting through their own elected commissioners.

o. Material Scope Change

Work that was not previously included in the Project authorization or substantially changes the intent of the Project.

p. Municipal Research and Services Center (MRSC)

The Municipal Research and Services Center (MRSC) is a nonprofit organization that serves all cities and towns in Washington, all counties, and hundreds of special purpose districts, state agencies, and other government partners. MRSC has operated as a private nonprofit since 1969 under the auspices of RCW 43.110.030. Firms can register their businesses by following the instructions at <https://mrscrosters.org/businesses/registration-instructions/>.

q. Normal Alliance Operations

Administration of day-to-day Alliance operations and the regular day-to-day business transactions involving personnel, materials, facilities, money and other assets.

r. Normal Operating Expense

Means the Alliance budgeted operating and non-operating revenues and expenses reviewed, approved, and authorized by the Managing Members as part of the budget process, or as subsequently amended by the Managing Members during the budget year.

s. Operating Agreement

Means an agreement between the Alliance and a third party to provide operating services as part of Alliance business activity.

t. Personal Services

Personal services are generally professional or technical expertise that are necessary to accomplish a specific study, project, task or other work statement, which may not reasonably be required in connection with a public works project

meeting the definition of RCW 39.04.010(4). Personal services do not include purchased services as defined in RCW 53.19.010(8) or professional services procured using the competitive selection requirements in Chapter 39.80 RCW (A&E).

u. Project

- i. For the purposes of this Delegation of Authority Master Policy, a “Project” creates or modifies a capital asset or creates a cost outside of Normal Operating Expenses. A Project may be classified as a capital or expense.
 1. Public Works Projects – As defined in RCW 39.04.010, public work projects include construction, alteration, repair or improvement other than ordinary maintenance executed at the cost of the Port. Work associated with public work projects includes planning, scoping, engineering, design, permitting, environmental assessment, construction and contract solicitation and administration.
 2. Non-Public Works Projects – Generally includes defined work that the CEO has determined will be managed as a Project. Projects do not, however, include regular, recurring or routine work associated with normal Alliance operations. This category also includes projects by the information and technology departments that may require a major upgrade or replacement of an information or communication hardware or software system.
 3. Environmental Projects – Include pollution investigations, cleanups, and habitat restoration. Environmental projects may also involve regulatory direction, oversight, and agreements, extended periods of investigation and study prior to construction, and continuing monitoring and maintenance after clean-up and construction.

v. Professional Services

Those services within scope of RCW 39.80.020(5) or professional or technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement which is reasonably required in connection with public works projects.

w. Public Work

Construction, alteration, repair and improvement other than ordinary maintenance meeting the definition of RCW 39.04.010.

x. Service Agreements

An agreement, such as an Interlocal agreement between the Alliance and one or more Homeport(s) that allows for the provision of services related to normal Alliance or port operations or Projects.

y. Vessel Service Agreements

An agreement between the Alliance and vessel steamship lines or their subsidiaries.

2. PREAMBLE

a. Roles and Responsibilities of the Alliance

- i. The primary mission of the Alliance is to act as the exclusive operator and manager of Alliance cargo and terminal properties for the Ports of Seattle and Tacoma (Homeports). The purpose of the Alliance is to promote and assist economic development of the Homeports' marine cargo operations, acting through its Managing Members, with an emphasis on unified business retention and recruitment, coordinated enhancement of the value of marine cargo assets, improved intermodal rail service, improved freight capabilities, and the general promotion of maritime economic development and other related port business activity.
- ii. The Alliance operates and manages licensed properties; oversees capital investments; optimizes the value of marine cargo assets; grows cargo volumes and protects market share for the benefit of the region and state; manages overall terminal capacity, through coordinated investment strategies; provides enhanced job prospects for the Managing Members' labor and business partners; and achieves overall financial returns that not only enable reinvestment but also provide additional financial returns for each Managing Member.

b. Relationship between the Alliance Managing Members and the Alliance Executive (CEO)

- i. It is the Managing Members' responsibility to: (a) establish Alliance policies; (b) adopt the Strategic Business Plan as well as review and modify those policies on a regular basis; (c) hold the CEO responsible for the implementation of such policies, (d) to approve capital budgets; and (d) to authorize the expenditures of public funds to implement those policies. It is the CEO's responsibility to implement the policies and to inform the Managing Members on how the policies will be implemented.
- ii. The operations and affairs of the Alliance are managed by the two port districts as members of the Port Development Authority ("PDA") and via the Charter for the Alliance. Each port district member shall act in such capacity through its own elected commissioners.

- iii. All statutory powers and authority of the Alliance not delegated herein are retained by the Managing Members.
- iv. The Managing Members and the CEO shall regularly inform and consult each other on the execution of Alliance policies, operations, and information relevant to Managing Members oversight. Public oversight is inherent in the Managing Members' role. Oversight cannot be delegated away, and nothing in this Delegation of Authority Master Policy shall be construed as doing so.
- v. The Managing Members may at any time waive any portion of the delegated authority conferred upon the CEO under this Resolution by vote or action as described in their By-Laws.
- vi. The Managing Members may at any time rescind or suspend all or any portions of the delegated authority conferred upon the CEO under this Resolution by further resolution passed in a public meeting.

3. OVERVIEW OF THE ADMINISTRATIVE AUTHORITY OF THE ALLIANCE CEO

- a. This policy is adopted by the Managing Members of the Alliance for the purpose of establishing the administrative authority of the CEO, who is responsible for Normal Alliance Operations. The statutory provision for the administrative authority in this Resolution is RCW 53.57.030 and this Resolution is expressly subject to provisions governing port development authorities and port district operations.

b. Roles and Responsibilities of the CEO

- i. The CEO derives authority from the Managing Members and is responsible for carrying out the Managing Members' policies.
- ii. The CEO serves as primary spokesperson for Alliance operations and management.
- iii. The CEO retains professional staff, and will promulgate policies and procedures that create administrative, monetary, and contractual delegations of Managing Members-granted authority as may be appropriate.
- iv. Subject to the limitations identified in this Delegation of Authority Master Policy, the CEO shall be responsible for:
 - 1. Operation, maintenance, administration, and use of the Alliance's terminals, properties, and facilities;
 - 2. Implementation of construction work and alterations, repairs and improvements to real estate and physical facilities controlled and operated by the Alliance;

3. Administration of day-to-day Normal Alliance Operations which may include personnel administration, task and project assignments, hiring, firing, discipline, and training;
 4. Execution of contracts and other documents related to Normal Alliance Operations that are related to or pursuant to a Project or matter authorized by the Managing Members, or otherwise authorized in this Resolution;
 5. Applying for permits associated with Alliance facilities or projects;
 6. Application for and acceptance of grants or other funds from federal, state, or local governments, subject to the approval of Managing Members if required per Sections 9.d. herein; and
 7. Delivery of services essential to the Alliance's mission; financial and accounting related matters; legal matters; and all other administrative matters.
 8. Responsible fiscal management, financial accountability, and budgeting.
- v. In the absence of the CEO, a Deputy Chief Executive Officer or the CEO's designee has full delegation of the CEO.

4. CEO POWERS DELEGATED BY CHARTER.

Pursuant to the below-referenced Articles/sections of the Charter, the Managing Members acknowledge the following delegations to the CEO. In the event of any lawful modification to the Charter which affects the Articles/sections below, the applicable Charter provision shall take precedence and this Delegation of Authority Master Policy shall be amended to be consistent with such Charter revisions.

a. Article 2.6(e) Filing of Certificates

The Managing Members shall authorize, and the CEO shall execute, deliver, and file, any certificates (and any amendments and/or restatements thereof) necessary for the PDA to qualify to do business in any jurisdiction in which the PDA may wish to conduct business.

b. Article 2.6(e) Actions Required to Do Business

The Managing Members shall authorize, and the CEO shall cause, the PDA to be qualified, formed, or registered in any jurisdiction in which the PDA transacts business in which such qualification, formation, or registration is required or desirable.

c. Article 4.1(a) Distributions

The PDA through the CEO will make distributions of all Distributable Cash to the Managing Members as soon as practicable after each Calculation Period. Prior to executing any distribution, the CEO shall provide a report of the planned distribution to the Managing Members.

d. Article 5.2(a) Accounting, Tax, and Record Keeping

The Managing Members through the CEO shall oversee the accounting, tax, and record keeping matters of the PDA, which shall be kept in compliance with GAAP and applicable laws and regulations.

e. Article 5.7 Tax Reports

All tax returns and reports of the PDA shall be prepared at the direction of the CEO.

f. Article 5.9 Elections

Except as otherwise provided in the Charter, all decisions as to accounting principles, whether for the PDA's books or for tax purposes (and such decisions may be different for each such purpose) and all elections available to the PDA under applicable tax law, shall be made by the CEO.

g. Article 5.10 Tax Audits and Litigation

- i. **Designation of Tax Matters Person.** The CEO is hereby designated as the tax matters person ("Tax Matters Person") with respect to the PDA. In such capacity the Tax Matters Person shall have all of the rights, authority, and power, and shall be subject to all of the obligations, analogous to those of a tax matters partner to the extent provided in the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated there under; provided, that the exercise of such rights, authority, and power shall be consistent with all PDA elections and provided further that if any exercise of such rights has an adverse impact on a Managing Member, the consent of Managing Member, the consent of such Managing Member shall be required.
- ii. **Foreign, State, and Local Tax Law.** If any foreign, state, or local tax law provides for a tax matters partner or person having similar rights, powers, authority, or obligations as described in Section 5.10(a), the CEO shall also serve in such capacity and shall represent the PDA in all tax audit contest or settlement matters to the extent allowed by law.

h. Article 6.5 CEO Authority

- i. The CEO is the principal executive officer of the PDA, has general charge and supervision of the business of the PDA, and shall see that all orders, actions, and resolutions of the Managing Members are carried out. The CEO will be

responsible for the executive management of the PDA, and shall report directly to the Managing Members acting in their governing capacity. The CEO has the authority to establish the reporting structure within the PDA and to take such actions, subject to the Charter, as are in accordance with the Delegation of Authority Master Policy, and shall have such other authority and shall perform such other duties as set forth in the Charter or the Delegation of Authority Master Policy, or, to the extent consistent with the Charter, such other authorities and duties as prescribed by the Managing Members.

i. Article 10.3(b) Dissolution/Termination.

- i. Before any distribution of any PDA-Owned Personal Property to the Managing Members or the distribution of any proceeds from the sale of any PDA-Owned Personal Property to the Managing Members pursuant to this Section 10.3, the PDA shall first pay the debts and liabilities of the PDA and the expenses of liquidation and establish any reserve that the Managing Members shall deem reasonably necessary for any anticipated liabilities or obligations of the PDA, including liabilities pursuant to PDA agreements not otherwise transferred in connection with the winding up of the PDA (collectively, "Contingencies").

5. GENERAL PROVISIONS

- a. Regardless of the provisions and delegations contained in this Resolution, the CEO shall bring forward to the Managing Members for consultation or approval any action of a sensitive nature as identified by the Managing Members or the CEO.
- b. The CEO shall provide financial, economic and environmental analysis for real estate transactions and planned investments to Alliance managed properties.
- c. This Delegation of Authority Master Policy shall be reviewed annually by the Managing Members.

6. PLANNING AND BUDGET IMPLEMENTATION

a. Long-Range Business Plans

The Managing Member-approved Strategic Business Plan shall be the basis for the development of all Alliance programs, Projects, initiatives, the Capital Investment Plan, and Annual Operating Budgets, and further is used to prioritize Alliance spending, and which shall be coordinated with the Homeports' Capital Investments Plans. The Managing Member-approved Strategic Business Plan

shall be reviewed not less than annually by the Managing Members to include prioritization of Alliance programs, Projects, initiatives, and capital spending.

b. Administering Normal Alliance (Day-to-Day) Operations

In administering day-to-day Alliance operations, the CEO may reallocate amounts within and otherwise incur variances from the annually approved Operating Budget so long as such reallocations are consistent with the Managing Members' established policies, financial limits and delegated authorities.

c. Funding of Projects

When seeking the Managing Members' authorization for any Project, the CEO shall clearly indicate whether such Project was within the Capital Investment Plans and or the Managing Member-approved Strategic Business Plan and, if not, how it is to be funded, and why the proposed Project has reached a higher priority over other approved Projects.

7. POLICIES GOVERNING REAL PROPERTY

The CEO is authorized to take all necessary actions in connection with agreements or transactions for use of all real property owned by the Ports and leased to the Alliance as designated herein. The Managing Members' delegation of authority to the CEO extends to the following types of transactions and agreements including rental agreements, leases, operating agreements, easements, franchises, permits, rights of entry and other user agreements as provided herein. Except where otherwise provided in this Delegation of Authority Master Policy, all real property transactions will be subject to an appropriate written agreement authorized by the Managing Members and executed by the CEO.

i. General Provisions for Real Property and Operating Agreements

1. Lease agreements with a term longer than one year require Managing Member authorization and will be subject to a first and second reading in public session. The Managing Members reserve the right to waive first reading, by a vote in public session.
2. The CEO is delegated the authority to:
 1. Enter into amendments to Operating agreements, including Vessel Service agreements, with a value up to and not exceeding \$300,000 cumulatively; the Managing Members having reserved to themselves the authority to approve any initial Operating Agreement and Vessel Service Agreements,
 2. Accept a bond, secure CD or other rental security for real property agreements in compliance with RCW 53.08.085 and Alliance policy. Other acceptable rental security may be cash or cash equivalent such

as Letter of Credit, Lease Bond, or other prior approved rental security instruments in a form approved by the Alliance Legal Counsel; provided however, no security is required for real property agreements entered into with certain governmental entities as provided in RCW 53.08.140.

3. Sign, on behalf of the Managing Members, all harbor area and waterway leases between the Alliance and other public entities that have been authorized by the Managing Members.
4. Take all necessary actions on behalf of the Alliance and its officers in connection with lease surety bonds, lease surety, rental insurance, or other insurance coverage required pursuant to any leases of the Alliance.

b. Rental/Leasing Agreements

1. Container, Industrial, Cargo and Container Support Properties

The CEO is authorized to enter into real property rental/lease agreements with a term of month-to-month or with a term of one year or less when the associated expenditures of the Alliance for improvements that the rental/lease agreement expressly requires the Alliance to make to the Premises at the beginning of the rental/lease agreement do not exceed \$300,000. The intended use of rental/lease property must be expressly stated in writing. Lease Security Requirements:

Lease Term	Security Required
Month-to-Month up to One Year	3 Months plus LET
Term Agreements up to one year	3 Months plus LET
Over One Year to Three Years	3 Months plus LET
Three to Five Years	6 Months plus LET
Greater than Five Years	9 Months plus LET*

*Container Terminal agreements shall require a minimum security deposit of twelve months rental (plus leasehold tax amounts).

2. Adjustments or modifications which decrease the minimum required security deposit will require Managing Members authorization.
3. The Security Deposit shall be posted in advance of the occupancy, and to be held by the Alliance as a rental security for the full duration of term/occupancy and to insure compliance with the terms of the lease agreement.

4. All term agreements over one year shall require Managing Member authorization and are subject to the minimum security deposit requirements and/or exemptions as described above.

Where the Managing Members have approved a real property rental/leasing agreement, which contains one or more options to extend the lease term, the CEO is authorized to exercise that option when the associated expenditure of the Alliance does not exceed \$300,000 cumulatively.

5. All rental/lease rates shall be based upon market rates established for the specific use under consideration and the condition of such facility consistent with the strategic business plan.
6. A public briefing of available properties will be provided at least annually to include a summary of new leases, properties available, including how available properties are being marketed and those properties that have an expression of interest.
7. Payment of Real Estate Commissions.

1. The CEO is authorized to retain licensed real estate brokers for the purpose of marketing for lease of Alliance controlled properties.
2. Commissions may be paid to licensed real estate brokers that actually initiate bona fide leases for the Alliance upon satisfactory proof being submitted to the Alliance that the broker actually initiated and completed the lease transaction for which they claim commission. In addition, thereto, the broker shall file with the Alliance within ten days from broker's appointment as their client's agent for the purpose of aiding in the leasing of the real property a statement under oath that the broker actually initiated the bona fide transaction together with the name of the broker's client and the date of their first contact with said client. Unless this provision is strictly complied with, the Alliance will not pay a claimed commission.
3. For properties, the Alliance "exclusively lists" with brokers to lease, a commission based on market rates that consider transactions of similar size, but no more than five percent (5%) shall be paid of the net rental to the Alliance for up to five (5) years of the approved lease agreement. For approved leases initiated and completed by licensed brokers in compliance with this Master Delegation Policy a maximum of up to three percent (3%) commission shall be paid for properties not exclusively listed for lease with a broker. Net rent shall mean rent net to the Alliance with Lessee paying taxes, utilities, maintenance and insurance. Costs for Alliance paid tenant improvements, utilities, and other services specific to the lease will be subtracted from the net rent amount for calculations of commissions paid.

4. Commissions shall not be paid on leases involving existing tenants for new leases, expansions, new space rentals, renewals or options exercised or repayment to the Alliance for tenant improvements made by the Alliance on behalf of the Tenant, payments made to the Alliance from security deposits, or any escalation of the net rent.
5. Commissions shall be earned as the net rents are collected by the Alliance. A summary of all Real Estate commissions will be reported semi-annually.

c. Alliance Grants of Covenants and Easements

i. Easements, Licenses, Access Permits or Other Rights of Entry

1. The CEO is authorized to enter into agreements for easements and covenants up to two years in duration where the impairment does not substantially interfere with the Alliance's intended use or reasonably future intended use. "Substantially interfere" shall mean when Fair Market value is not reduced more than an estimated \$300,000 in any one year. The form of any easement and or covenant shall be approved by Alliance or Homeport legal counsel.

ii. Easements – Port Owned Property

1. Easements and covenant agreements beyond two years shall require respective Homeport Commission authorization. Routine utility easements required to provide service to Port-owned real property shall not require Managing Members or respective Homeport Commission approvals.

d. Easements for the Alliance Use of the Property of Others

- i. The CEO is authorized to enter into easements for the Alliance use of the real property owned by others for agreements up to one year and the Alliance paid cost for the use is up to \$300,000 annually.
- ii. Real property easements, excluding utility easements, for Alliance use that are greater than one year require the authorization of the Managing Members.

e. Agreements (Other than Easements) for the Alliance Use of Real Property Owned by Others

- i. The CEO is authorized to enter into agreements for the use of real property owned by others if the term of the use is one year or less and the Alliance paid cost for the use is up to \$300,000 annually.

8. POLICIES GOVERNING AUTHORIZATION FOR PROJECTS, CONTRACTING, PROCUREMENT AND EMERGENCIES

a. The CEO is authorized to control and direct all necessary activities that require contracting and procurement of goods and services associated with carrying out Normal Alliance Operations. Contracting and Procurement activities for the Alliance will be in compliance with applicable laws and regulations. Normal Alliance Operations generally include the following contracting and procurement activities: Public and non-public work-related projects and; utilizing personal and professional services and purchased goods and services, as provided herein. The Alliance shall endeavor to use a variety of firms, including small business firms, based on the nature of the work and the expertise of the firm.

b. Interlocal Agreements

1. The Managing Members' authorization is required for Interlocal Agreements with other public agencies. Interlocal Agreements shall comply with the requirements of RCW 39.34 except that the CEO is authorized to approve and authorize all Interlocal Agreements (Service Agreements) between the Alliance and the Homeport(s).
2. The CEO is authorized to enter into non-binding agreements with other governmental agencies and non-governmental entities in situations where the agreement does not create any financial obligation for the Alliance, any binding contractual obligation, or impair any Alliance or Port-owned assets, and has been reviewed by Alliance Legal Counsel.

c. Projects

1. Actions authorized by the Managing Members or delegated to the CEO by this Delegation of Authority Master Policy may be executed either directly by Alliance staff, by contract, or by agreement with either Homeport via Support Service Agreements with the Homeports.
2. The CEO may authorize Projects where the estimated Project cost, inclusive of all costs related to the work, does not exceed \$300,000.
3. Managing Members' authorization is required for Projects where the total estimated Project cost exceeds \$ 300,000 or when actual costs of a previously approved Project exceed \$300,000, including Projects previously authorized by the CEO.
 1. The CEO may authorize spending up to \$300,000 for Project work where the total estimated Project costs may exceed \$300,000.
 2. Any projects, including those under the \$300,000 limit, shall be subjected to further review by the Audit Committee upon any individual Commissioner's request, and the Audit Committee may recommend to the Managing Members that any project be audited. The form and scope of the audit shall be included in any audit recommendation by the Audit Committee to the Managing Members.

3. Presentations to the Alliance which request Managing Members' authorizations will disclose Project spending previously authorized by the CEO and spending previously authorized by the Managing Members or Homeport Commissions.
 4. Depending on the overall estimated Project costs and complexity the CEO may request authorization at key stages in the Project (i.e., design, execution of work, remediation, etc.).
 5. Projects shall not be broken into units or accomplished in phases to avoid Managing Members' authorization.
 6. Where personal, professional, or purchased goods and services are part of a Project, authorization of expenditures will be managed as part of the Project authorization and additional authorization is not required.
 7. Public works contracts not part of a Project and not a part of Normal Alliance Operating Expenses are subject to the same authorization process as Projects.
 8. For Small Public Works projects, up to \$300,000 in value, the Alliance may use the Municipal Research and Services Center (MRSC) Contractor Roster as authorized by RCW 39.04.155.
4. Authorization for Alternative Public Works Contracting Procedures. Managing Member authorization is required to perform public work under procedures alternative to design-bid-build, as defined in RCW 39.10, for design-build and general contractor/construction manager. For such contracts, staff will propose for Managing Members' approval a sequence of authorization steps.
 5. Unit Priced contracts for Public Works and job order contracts (authorized in RCW 53.08.120 and RCW 39.10) may be approved by the CEO and all work falling under the Unit priced or job order contract is to be authorized per the applicable Delegation of Authority Master Policy as a Project subject to the limits set-forth herein.
 6. Project Changes. Projects that have been authorized by the Managing Members and have a change in the scope, schedule or cost require the following actions:
 1. Managing Members' authorization will be required if a material scope change occurs in the Project.
 2. The Managing Members will be notified if a Project schedule delay has an anticipated financial impact on a customer or other affected stakeholders.

3. **Project Cost Changes.** Managing Members will be notified before or at the next available public meeting as soon as it is determined that the Project cannot be completed for the previously authorized amount. When the value of the work has been determined or calculated Managing Member authorization will be requested for amounts that exceed the currently authorized amount, and Project costs incurred will be limited to the minimum amount necessary to allow the Project to proceed until Managing Member approval is obtained for the additional amounts.
7. On-going environmental stewardship, monitoring, and compliance activities, where the costs have been authorized as Normal Operating Expense through the budgeting process do not require an independent Project authorization.
8. The CEO may resolve all claims arising from public works contracts through the mediation phase up to a value of \$300,000. Managing Members will be notified of potential settlements which may exceed the authorized Project amount and additional authorization will be requested in accordance with the requirements for Project changes contained in this delegation of authority.

d. State and Federal Environmental Remediation Agreements

- i. Environmental Remediation Liability Projects
 1. For environmental projects, the CEO may authorize spending only to the same limits as outlined above in the Public Works Project section of this Delegation of Authority Master Policy.
 2. For environmental projects with a total estimated cost that exceeds \$300,000, staff will seek project-specific Managing Member authorization as soon as the cost for an environmental Project is anticipated to exceed \$300,000.
 1. An estimate or range of estimated costs for the overall future environmental remediation associated with the agreement and future anticipated agreements will be reviewed at the time of the request for authorization.

e. Project and Contract Reporting

- i. The CEO shall report semi-annually to the Managing Members for all Projects authorized by the Managing Members. The report shall include project schedule, current estimate, authorized amount, cost to date, summary of any changes to scope, contractual disputes, claims, and underpayments and any other significant developments with respect to the Project. Selected environmental Projects that have moved into long-term (5 years plus) monitoring (or maintenance) programs shall be exempt from Project reporting.

- ii. The CEO shall report quarterly to the Managing Members all project and contract authorizations equal to or greater than \$50,000 authorized through the delegated authority provided in this resolution up to \$300,000. The report shall include the type of authorization, a brief description of the authorization, and the amount of the authorization. All Professional and Personal Services contracts as well as Settlement of Claims, including litigation, regardless of the amount, will be reported quarterly.
- iii. At the Managing Members' direction, the CEO shall report on any Project of a sensitive or critical nature.

f. Professional Services Contracts

- i. The CEO is authorized to execute Professional Services Contracts associated with Normal Alliance Operations up to \$300,000 cumulatively.
- ii. Unit priced contracts for professional services may be authorized by the CEO and all work falling under the Unit priced contract is to be authorized per the applicable Delegation of Authority Master Policy as a Project or contract subject to the limits set-forth.
- iii. For Professional Services contracts, up to \$200,000 in value, the Alliance may use the MRSC Consultant Roster as authorized by RCW 39.80.

g. Personal Services Contracts

- i. The CEO is authorized to approve personal services contracts in the conduct of Normal Alliance Operations when the following conditions exist:
 - 1. The cost of the proposed personal service contract shall not exceed the amount of \$300,000 cumulatively with amendments.
 - 2. The specific contract or class of contract has been formally waived by resolution of the Managing Members from competitive solicitation process; or is exempt by RCW 53.19.020 or unrestricted by RCW 53.19.070.
- ii. When any amendment to a Personal Services Contracts, which was approved by the CEO pursuant to Section (g)(i) herein above, individually or cumulatively will exceed 25% of the authorized amount, and that amended cumulative amount remains less than \$300,000.00, then the amendment must be filed with the Managing Members and made available for public inspection prior to the proposed starting date of services under the amendments. Substantial changes in contract scope or substantial additions to the scope specified in the formal solicitation documents shall be authorized by the Managing Members. The Managing Members shall determine whether the change warrants the work be awarded as a new contract.

- iii. Any amendment to a Personal Services Contract must be both filed with and authorized by the Managing Members in via vote in public session and be made available for public inspection prior to the proposed starting date of services under the amendment if the Personal Services Contract:
 1. was approved by the CEO pursuant to Section (g)(i) herein above, and the amendment(s) individually or cumulatively will exceed 25% of the authorized amount and that amended cumulative amount exceeds \$300,000, or
 2. was previously authorized by the Managing Member because the contract's initial amount exceeded \$300,000.
- iv. All personal service contracts will be entered into pursuant to competitive solicitation as required by law, except for the following, provided however this procurement modification does not change the requirements for any applicable Managing Member or CEO approvals based on cost amounts as provided herein:
 1. Emergency contracts in compliance with section 8.j.i.below.
 2. Sole source contracts; provided however, that sole source service contracts, regardless of the amount, shall be filed with the Managing Members for three days and made available to the public prior to starting the work per RCW 53.19.040.
 3. Any other specific contract or classes as exempted by RCW 53.19.070 as it now exists or may be in the future amended, and which currently exempts the following:
 - a. Contracts specifying a fee up to fifty thousand dollars;
 - b. Contracts awarded to companies that furnish a service where the tariff is established by the utilities and transportation commission or other public entity;
 - c. Intergovernmental agreements awarded to any governmental entity, whether federal, state, or local and any department, division, or subdivision thereof;
 - d. Contracts awarded for services to be performed for a standard fee, when the standard fee is established by the contracting agency or any other governmental entity and a like contract is available to all qualified applicants;
 - e. Contracts for services that are necessary to the conduct of collaborative research if prior approval is granted by the funding source;

- f. Contracts for professional services which are entered into under chapter 39.80 RCW; and
 - g. Contracts for the employment of expert witnesses for the purposes of litigation or legal services to supplement the expertise of Alliance staff.
 - h. The CEO is authorized to approve competition waivers consistent with applicable federal and state laws and internal Port policies in accordance with RCW 39.04.280.
 - i. Notification of all such waivers shall be provided to the Managing Members prior to the proposed starting date of the contract or purchase and will include a written justification of the reason for the waiver.
4. Other specific contracts or classes or groups of contracts exempted from the competitive solicitation process by the Managing Members when the Managing Members have determined that a competitive solicitation process is not appropriate or cost effective per RCW 53.19.020.

h. Purchased Goods and Services

- i. The CEO is authorized to purchase goods and services associated with Normal Alliance Operations and for work not associated with Normal Alliance Operations up to \$300,000 cumulatively.
- ii. The CEO may authorize sole source contracts; provided however, that sole source contracts, regardless of the amount, shall be filed with the Managing Members for three days and made available to the public prior to starting the work.

i. Contracting Authority for Entering Agreements with Utilities and Annual Software Fees and Licenses

- i. The CEO is authorized to enter into contracts with utility providers in order to establish connections, conduct repair or maintenance and to purchase utility services that are Normal Operating Expenses.
- ii. The CEO is authorized to enter into contracts with providers for annual software fees and licenses as needed.

j. Authorization for Emergency Work

- i. The CEO is authorized to make a finding of the existence of an emergency, to authorize spending of Managing Member resources and funds, to waive competitive bidding requirements and to execute any contracts necessary to

respond to the emergency in accordance with RCWs 39.04.020, 39.04.280 and 53.19.030, and subject to the following.

1. The Managing Members shall be notified within 24 hours of the declaration of the emergency.
2. If a public works or purchased goods or services contract is awarded without competitive bidding due to an emergency, a written finding of the existence of an emergency shall be filed with the Managing Members and made public on the Alliance's website no later than two weeks following the award of the contract.
3. If a personal services contract is awarded without competitive bidding due to an emergency, a written finding of the existence of an emergency shall be filed with the Managing Members and made public on the Alliance's website within seven working days following commencement of the work or execution of the contract, whichever occurs first. Documented justification for emergency contracts shall be provided to the Managing Members when the contract is filed.

9. POLICIES GOVERNING FINANCIAL ACTIVITIES

The CEO is authorized to oversee the financial matters for the Alliance in accordance with applicable laws and subject to Managing Members' delegations in this section.

a. Management of Alliance Funds

- i. The CEO may designate one or more Deputy Treasurer(s) per RCW 53.36.010 without Managing Members' action. The Treasurer is accountable for all financial transactions executed by Deputy Treasurer(s).
- ii. The Alliance Treasurer and Deputy Treasurer(s) are authorized to oversee the investment of Alliance funds in accordance with applicable law relating to the type of investments authorized per RCW 39.59, RCW 43.84.080, and referenced RCW's within, including sale of such investments and necessary inter-fund transfers.
- iii. The Alliance Treasurer is authorized to oversee the management of the Alliance's cash reserves. A minimum cash reserve was established at the inception of the Alliance. The Alliance treasurer, in partnership with the Homeport Chief Financial Officers, will review the minimum cash annually and recommend changes as appropriate. The cash reserve will be managed to target three to six months of operating expenses, but will not fall below three months. Minimum cash reserve will be maintained except for temporary reductions for liquidity purposes associated with pending reimbursements to the Homeports per section 3.7 and 3.12 of the Charter. The temporary reduction will not exceed 60 days.

b. Alliance Expenditures for Travel, Hosting, and Memberships

- i. Travel Expenditures for Employees and Other Authorized Representatives of the Alliance.
 - 1. Pursuant to RCW 53.08.176, the CEO is authorized to establish Alliance policies and procedures to regulate and audit travel expense and reimbursement.
 - 2. The CEO may authorize travel and other reimbursable expenses, excluding Managing Members, incurred on behalf of the Alliance.
 - 3. The Alliance's Auditor will be responsible for ensuring the full compliance with applicable statutes, regulations and Alliance policies and procedures governing expense reimbursements by employees, Managing Member commissioners and representatives of the Alliance.
- ii. Expenditures for Trade Promotion and Promotional Hosting
 - 1. The CEO will report proposed expenditures covering trade promotion and promotional hosting as provided in RCW 53.36.120 to Managing Members as part of the annual budget adoption. Expenditures proposed for promotional hosting shall be limited as provided in RCW 53.36.130.
 - 2. Alliance staff and representatives holding positions responsible for trade promotion are authorized to make expenditures for promotional hosting of all appropriate Alliance activities subject to all of the provisions of the Promotional Hosting policy. Managing Member hosting, for Alliance related trade promotions, requires prior authorization by the Managing Members.
 - 3. The CEO may authorize memberships in port authority, economic development, regional trade, tourism, industrial associations, facility, trade promotions organizations, and professional organizations up to \$10,000 per organization or individual membership. Managing Members' authorization is required for membership greater than \$10,000. Memberships greater than \$10,000 shall be included in Normal Operating Expense as part of the annual budget process. A list of all memberships of the Alliance will be reported semi-annually to the Managing Members.

c. Managing Delinquent and Uncollectable Accounts

- i. The CEO is authorized to establish policies and procedures for managing delinquent accounts consistent with these provisions.
- ii. The Alliance aging account report and or list of delinquent and uncollectable accounts shall be provided to Managing Members quarterly

- iii. The CEO is authorized to establish policies and procedures for the write off of any uncollectible accounts consistent with these provisions.
- iv. Prior to writing off any account receivable the CEO shall be satisfied that every reasonable effort has been made by the Alliance to accomplish the collection of the account.
- v. If appropriate, the CEO shall authorize the Alliance's attorney to bring action in courts of law or, if more appropriate in the case of small amounts, to assign the same to collection agencies for the purpose of attempting to finally collect such accounts.
- vi. If after attempting all normal account collection procedures the account is still uncollectible after 180 days or more, the CEO is delegated the authority to write off such account, provided however, Managing Member approval is required if the amount of any one account to be written off exceeds \$50,000.

d. Acceptance of Grant Funding

- i. The CEO is authorized to apply for grant funds for the Alliance.
- ii. The CEO will provide notification to the Managing Members prior to submitting the application for any grants that may obligate the Alliance to a cash match greater than \$300,000, or if expected associated expenses exceed \$300,000.
- iii. The CEO is authorized to accept grants where the grant award obligates the Alliance to provide a cash match of no more than \$300,000.
- iv. In cases where the grant award obligates or has the potential to obligate the Alliance to provide a cash match greater than \$300,000, Managing Members' authorization is required prior to grant acceptance.
- v. The CEO is authorized to accept and manage any grant funding that is secured for projects that have previously been authorized by the Managing Members.

e. Insurance Programs

- i. The CEO shall be authorized to work with the Alliance's designated insurance broker(s) to negotiate and obtain appropriate policies of insurance to manage the Alliance's property and casualty risks, provide employee benefits, and other coverage appropriately included within a comprehensive insurance program. All related contracts shall be authorized consistent with the delegations included in this resolution.

f. Sale of Personal Property

- i. The CEO is authorized, pursuant to the RCW 53.08.090, to sell and convey post Alliance formation surplus personal property of the Alliance subject to the following conditions:
 1. When the net book value of such personal property does not exceed Nineteen thousand five hundred thirty-one dollars (\$19,531.00), the CEO will itemize the property to be sold and will certify that such property is no longer needed for Alliance purposes.
 2. Managing Members approval is required when the net book value of such personal property exceeds Nineteen thousand five hundred thirty-one dollars (\$19,531.00). The CEO will itemize the property to be sold and will certify that such property is no longer needed for Alliance purposes and seek Managing Members' authorization.
 3. Personal property will be disposed of in accordance with RCW 53.08.090.
 4. No large block or lot of personal property having a net book value in excess of Nineteen thousand five hundred thirty-one dollars (\$19,531.00), will be broken into components of lesser value. These items can be disposed of separately after Managing Members' authorization is obtained.
 5. The sale of surplus personal property to Alliance or Homeport officials or employees will be restricted to public auctions, or consignment for bid, where the process is managed by a third-party vendor and all interested parties have equal opportunity in the bidding process.

g. Payment of Statutory Expenditures

- i. The CEO may authorize statutory expenditures incurred during normal business operations. Types of expenditures include, but are not limited to, excise, payroll and leasehold taxes, and State Auditor's audit(s).

10. LEGAL SERVICES, CLAIMS AND OTHER REPRESENTATION

a. Litigation Policy and Procedures

- i. The CEO, together with Alliance General Counsel as appropriate, shall be responsible for the Alliance policies and procedures necessary to oversee all legal services and litigation, in which the Alliance has an interest, direct or indirect, provided however, the CEO shall first obtain Managing Member approval prior to the Alliance initiating litigation as a party plaintiff. For purposes of this section, "litigation" shall mean the assertion of any position, right or responsibility by or against the Alliance which may reasonably lead to

or has been filed in any court of general jurisdiction, be it state or federal, or any quasi-judicial or administrative forum.

- ii. Consistent with Section 8(g)(i)(1) herein, the Managing Members reserve to themselves the authority to approve Personal Services Contracts for Legal Services where the contract amount exceeds \$300,000, initially or as a result of any amendment. Any such request for Legal Services should include the concurrence of the Alliance General Counsel, who shall confirm to the Managing Members the basis for the request and provide such other information requested by the Managing Members, which consultation may be provided in Executive Session if consistent with state law, RCW 42.30.110(1)(i), provided however any Managing Member approval of that Contract shall take place by vote at a meeting open to the public.

b. Retaining Independent Counsel/Experts/Investigators

- i. The CEO may engage legal representation for the Alliance and such experts, investigators and/or independent counsel as may be necessary to the orderly preparation of potential and/or actual litigation in which the Alliance has a direct or indirect interest, without limitations otherwise prescribed in section 8 (Personal Services) of this Delegation of Authority Master Policy.

c. Settlement of Claims

- i. The CEO is delegated the authority to oversee Alliance policies and procedures for adjusting the final settlement of all claims either against or on behalf of the Alliance consistent with these policies.
- ii. Any claim arising from Normal Alliance Operations and not exceeding \$150,000 paid by the NWSA for a single claim may be adjusted and settled by the CEO, provided however any settlement that imposes upon the Alliance any affirmative duty (non-monetary obligation), injunctive relief, and or which is memorialized by a federal Consent Decree or other regulatory enforceable Order shall require Managing Member approval.
 - a. Regular Updates. At any stage of litigation where the potential claim by or against the Alliance is greater than three hundred thousand dollars (\$300,000), the Managing Members shall receive regular and substantive updates on the status of any proposed settlement discussion and terms no later than three business days prior to the date of any Managing Member Executive Session briefing.
 - b. Timing. The Managing Members shall be informed of any proposed final litigation settlement terms no later than seven business days prior to the date Managing Member approval is sought.

- c. Form of Request. The request for final litigation settlement approval shall be reduced to writing and include the concurrence of the Alliance General Counsel, who shall confirm to the Managing Members the basis for the request and provide such other information requested by the Managing Members. Consistent with state law, RCW 42.30.110(1)(i), Litigation Settlement consultation between the Managing Members and Legal Counsel(s) may be provided in Executive Session; provided however any Managing Member litigation settlement approval shall take place by vote at a meeting open to the public.
- iii. The Alliances' attorney(s) shall be consulted prior to settlement of any claim in excess of \$50,000 paid by the NWSA.
- iv. Claims exceeding \$150,000 to be paid by the NWSA shall be approved by Managing Members; claims exceeding \$50,000 paid by the NWSA shall be reported to the Managing Members.
- v. Nothing herein contained shall preclude administrative approval of settlements made by the Alliances' insurers of claims by or against the Alliance, where such settlement is payable by such insurer.

d. Settlement of Litigation

- i. The CEO is authorized to oversee any matter which is the subject of litigation, including reaching settlement, without prior Managing Member review under the following conditions:
 - 1. The amount in controversy as stated in the pleadings or as reasonably estimated by Alliance General Counsel does not exceed \$150,000, provided however any settlement that imposes upon the Alliance any affirmative duty (non-monetary obligation), injunctive relief, and or which is memorialized by a federal Consent Decree or other regulatory enforceable Order shall require Managing Member approval; and
 - 2. The Alliance's General Counsel concurs with the proposed settlement terms.
- ii. Settlement of litigation matters for a sum in excess of \$150,000 requires Managing Member authorization.

11. ISSUANCE OF TARIFFS

The CEO is authorized to issue tariff amendments as necessary. Changes to tariffs shall be publicly noticed 30 days prior to implementation. Managing Members and Homeport Executive Directors will be given a memorandum with specific notice of all proposed tariff amendments 30 days prior to the effective date of any proposed tariff amendment(s).

12. POLICIES AND PROCEDURES

The CEO is authorized to adopt any administrative policies and procedures necessary to implement the delegations contained in this Resolution.

13. ACTIONS PREVIOUSLY APPROVED BY THE COMMISSIONERS AND EXECUTIVES OF THE PORTS OF TACOMA AND SEATTLE

Actions related to property controlled by the Alliance or Alliance business that were previously approved by either Homeport and their respective Executives acting under the authority of the Port of Seattle's Resolution No. 3605, as amended, and the Port of Tacoma's Resolution 2014-05, or earlier versions of these resolutions, are exempt from the provisions of this Resolution and may be completed in accordance with the Resolutions and delegations that were in place when the actions were approved. Future actions on these previously authorized items will be completed in accordance with this resolution.

14. NON-DISCRIMINATION AND EQUAL OPPORTUNITY

It is the basic policy of the Alliance to provide equal opportunity to the users of all Alliance services and facilities and all contracting entities. Specifically, the Alliance will not tolerate discrimination against persons on grounds of age, race, color, national origin/ancestry, ethnicity, religion, disability, use of protected sick or family medical leave, pregnancy, sex/gender, sexual orientation, whistleblower status, marital status, workers' compensation use, gender expression or identity, political beliefs, military or veteran status, or any other protected status, as guaranteed by local, state and federal laws. The equal opportunity principles described in this policy shall apply to the Alliances' employees, customers, consultants, contractors, and vendors to the extent possible and as required by law. This policy is to be implemented by the CEO as specifically set forth in Alliance policies, equal employment opportunity and small business, women, minority and disadvantaged business participation in Alliance contracts. The CEO shall annually report on the implementation of this policy.

Section	Topic	Current language	Proposed Change	Reasoning and Impact
1.b	Definitions	Annual Capital Investment Plan Means the five-year projection of capital and major expense projects and associated expenditures which is developed and maintained as a planning tool for Alliance capital investment and which is reviewed by the Managing Members annually as part of the five-year plan of finance and budget review process, or as subsequently amended by the Managing Members during the budget year.	Title change: "Capital Investment Plan" Insertion of new language: "which sets the priority for Alliance funding" and "Capital project funding should be prioritized to address non-discretionary projects first. "Non-discretionary" for purposes of this section includes but is not limited to environment projects carried out pursuant to regulatory or other binding commitment, and maintenance projects needed to maintain the operational capacity of the Alliance and/or which are carried out pursuant to lease obligation or other binding commitment. In recommendations to the Managing Members, Staff should identify which proposed capital projects are non-discretionary."	Intent is to emphasize what the plan is used for. Title change because the plan covers 5 years by definition. Addition of language to be sure that mandatory projects are prioritized for Alliance funding of Business Capital Projects.
2.b.i	Relationship between the Alliance Managing Members and the Alliance Executive (CEO)	i. It is the Managing Members' responsibility to establish Alliance policies, hold the CEO responsible for the implementation of such policies and to authorize the expenditures of public funds to implement those policies. It is the CEO's responsibility to implement the policies and to inform the Managing Members	Adds sub-numbering/lettering Addition of "adopt the Strategic Business Plan, as well as review and modify those policies on a regular basis" and Addition of "to approve capital budgets"	Adds Strategic Business Plan, approval of capital budgets, and numbering for clarity

		on how the policies will be implemented.		
3.b.8	Roles and Responsibilities of the CEO		Addition of “Responsible fiscal management, financial accountability, and budgeting.” To CEO’s responsibilities.	Clarifying CEO responsibility for financial matters
6.a.i	Long Range Business Plans	a. Long-Range Business Plans i. The Managing Member-approved Strategic Business Plan shall be the basis for the development of all Alliance programs, Projects, initiatives, the Capital Investment Plan, and Annual Operating Budgets.	Addition to the end of this clause: “and further is used to prioritize Alliance spending, and which shall be coordinated with the Homeports’ Capital Investments Plans. The Managing Member-approved Strategic Business Plan shall be reviewed not less than annually by the Managing Members to include prioritization of Alliance programs, Projects, initiatives, and capital spending.”	From committee: How the Alliance prioritizes and spends its funds impacts the funds that are left over for Homeport use, hence the need for coordination.
6.c.i	Funding of Projects	i. When seeking the Managing Members’ authorization for any Project, the CEO shall clearly indicate whether such Project was within the Annual Plans and, if not, how it is to be funded.	Clarifying name from “Annual Plan” to “Capital Investment Plan” Adds “Managing Member-approved Strategic Business Plan” as another source that staff must consult Adds requirement for explanation of why a project has higher priority than other approved projects	Added to reinforce the need for prioritization and identification of impacts of project on current spending plan.
7.a.i (new)	General Provisions for Real Property and Operating Agreements		Adds: “Lease agreements with a term longer than one year require Managing Member authorization and will be subject to a first and second reading in public session. The Managing Members reserve the right to waive first reading,	Adds first and second readings; consistent with Port of Tacoma recent amendment

7.a. previously i.1 and 2 (proposed 7.a.ii)	General Provisions for Real Property and Operating Agreements	The CEO is delegated the authority to: 1. Enter into to operating agreements, including vessel service agreements, with a value up to and not exceeding \$300,000 cumulatively; 2. Enter into amendments to existing real property agreements previously authorized by the Managing Members, valued up to and not exceeding \$300,000 cumulatively;	The CEO is delegated the authority to: 1. Enter into amendments to Operating agreements, including Vessel Service agreements, with a value up to and not exceeding \$300,000 cumulatively; the Managing Members having reserved to themselves the authority to approve any initial Operating Agreement and Vessel Service Agreements, 2. Enter into amendments to existing real property agreements previously authorized by the Managing Members, valued up to and not exceeding \$300,000 cumulatively;	Intent is to increase transparency over Operating Agreements and Vessel Service Agreements, because they would be the primary vehicle for any customer discounts
8.c.iii.1	Projects	iii. Managing Members' authorization is required for Projects where the total estimated Project cost exceeds \$300,000. 1. The CEO may authorize spending up to \$300,000 for Project work where the total estimated Project costs may exceed \$300,000. 2. <u>Any projects, including those under the \$300,000 limit, shall be subjected to further</u>	Adds language at the end of iii: "or when actual costs of a previously approved Project exceed \$300,000, including Projects previously authorized by the CEO."	Clarifies that if Project grows to exceed CEO's \$300k authority, MM approval needed Adds new section that upon at individual commissioner request, a project with cost under \$300,000 will be audited by the audit committee.

		<p><u>review by the Audit Committee upon any individual Commissioner’s request, and the Audit Committee may recommend to the Managing Members that any project be audited. The form and scope of the audit shall be included in any audit recommendation by the Audit Committee to the Managing Members.</u></p>	
<p>8.c.vi.3 (new numbering; formerly 8.c.vii)</p>	<p>Projects</p>	<p>Under “Project Changes”: Managing Members will be notified before or at the next available public meeting as soon as it is determined that the Project cannot be completed for the previously authorized amount. When the value of the work has been determined or calculated Managing Member authorization will be requested for amounts that exceed the currently authorized amount.</p>	<p>New numbering Addition at end of clause: “and Project costs incurred will be limited to the minimum amount necessary to allow the Project to proceed until Managing Member approval is obtained for the additional amounts.”</p>
			<p>Places boundaries on cost overrun spending until MIM approval is given.</p>

8.c.viii (new numbering; formerly 8.c.ix)	Projects	The CEO may resolve all claims arising from public works contracts through the mediation phase. Managing Members will be notified of potential settlements which may exceed the authorized Project amount and additional authorization will be requested in accordance with the requirements for Project changes contained in this delegation of authority.	Adds new language limiting CEO mediation authority up to “a value of \$300,000.”	Specifies CEO mediation settlement authority consistent with other contracting approval levels. (though a higher level than settlement authority)
8.g	Personal Services Contracts	When any amendment to a Personal Services Contract, individually or cumulatively will exceed 50% of the authorized amount, then the amendment must be filed with the Managing Members and made available for public inspection prior to the proposed starting date of services under the amendments. Substantial changes in contract scope or substantial additions to the scope specified in the formal solicitation documents shall be authorized by the Managing Members. The Managing Members shall determine whether the change warrants the work be awarded as a new contract.	Specific insert that this section applies to circumstances when the CEO approved a personal services contract. Changes 50% to 25% and adds “and that amendment cumulative amount remains less than \$300,000” Adds new section: iii. Any amendment to a Personal Services Contract must be both filed with and authorized by the Managing Members via vote in public session and be made available for public inspection prior to the proposed starting date of services under the amendment if the Personal Services Contract: a) was approved by the CEO pursuant to Section (g)(i) herein above, and the amendment(s) individually or cumulatively will exceed 25% of	Modifies the level at which amendments to Personal Services Contracts impacting costs must be filed with MM and/or approval by MMs from 50% to 25%. (state law requirement for filing is 50%, nothing prevents MM from adopting a lesser triggering amount) Clarifies that this must occur when CEO approved Personal Services

			<p>the authorized amount and that amended cumulative amount exceeds \$300,000, or b) was previously authorized by the Managing Member because the contract's initial amount exceeded \$300,000.</p>	<p>Contract under \$300,000.</p>
9.a.iii	<p>Management of Alliance Funds</p>	<p>iii. The Alliance Treasurer is authorized to oversee the management of the Alliance's cash reserves. A minimum cash reserve was established at the inception of the Alliance. The Alliance treasurer, in partnership with the Homeport Chief Financial Officers, will review the minimum cash changes as appropriate</p>	<p>Adds new language to the end of the prior clause: "The cash reserve will be managed to target three to six months of operating expenses, but will not fall below three months. Minimum cash reserve will be maintained except for temporary reductions for liquidity purposes associated with pending reimbursements to the Homeports per section 3.7 and 3.12 of the Charter. The temporary reduction will not exceed 60 days."</p>	<p>Clarifies cash reserve requirements.</p>
9.c	<p>Managing Delinquent and Uncollectable Accounts</p>		<p>New language: i. The CEO is authorized to establish policies and procedures for managing delinquent accounts consistent with these provisions. ii. The Alliance aging account report and or list of delinquent and uncollectable accounts shall be provided to Managing Members quarterly.</p>	<p>Intent is to provide greater visibility to MM of delinquent and or uncollectable accounts Also, section title change to add "Delinquent"</p>
9.d.ii (new provision)	<p>Acceptance of Grant Funding</p>		<p>New language: "i. The CEO will provide notification to the Managing Members prior to submitting the application for any grants that may obligate the Alliance to a cash match greater than \$300,000, or if expected associated</p>	<p>Requires notice prior to applying for grants that may incur an obligation by NWSA in excess of \$300k</p>

10.a.ii (new provision)	Litigation Policy and Procedures		expenses exceed \$300,000.”	Establishes MIM approval of outside legal services contracts in excess of \$300k, or if existing agreements may exceed that amount. Provides for Alliance GC’s concurrence in such hiring, and opportunity to discuss legal issues giving rise to the need to hire counsel in executive session if permitted by the OPMA.
		New language: “Consistent with Section 8(g)(j)(1) herein, the Managing Members reserve to themselves the authority to approve Personal Services Contracts for Legal Services where the contract amount exceeds \$300,000, initially or as a result of any amendment. Any such request for Legal Services should include the concurrence of the Alliance General Counsel, who shall confirm to the Managing Members the basis for the request and provide such other information requested by the Managing Members, which consultation may be provided in Executive Session if consistent with state law, RCW 42.30.110(1)(i), provided however any Managing Member approval of that Contract shall take place by vote at a meeting open to the public.”		
10.c.ii (new numbering)	Settlement of Claims	Any claim arising from Normal Alliance Operations and not exceeding \$300,000 paid by the Alliance for a single claim may be adjusted and settled by the CEO.	Adjusts down CEO settlement authority to \$150,000 Adds new language at end: “provided however any settlement that imposes upon the Alliance any affirmative duty (non-monetary obligation), injunctive relief, and or which is memorialized by a federal Consent Decree or other regulatory enforceable Order shall require Managing Member approval.”	Lowers limits of CEO authority in settlement of claims; increases MM oversight over claim settlements Requires MM approval of any non-monetary settlement, including injunctive relief or consent decree.

10.c.ii (new number; additional language)	Settlement of Claims	<p>New language: “a. Regular Updates. At any stage of litigation where the potential claim by or against the Alliance is greater than three hundred thousand dollars (\$300,000), the Managing Members shall receive regular and substantive updates on the status of any proposed settlement discussion and terms no later than three business days prior to the date of any Managing Member Executive Session briefing.</p> <p>b. Timing. The Managing Members shall be informed of any proposed final litigation settlement terms no later than seven business days prior to the date Managing Member approval is sought.</p> <p>c. Form of Request. The request for final litigation settlement approval shall be reduced to writing and include the concurrence of the Alliance General Counsel(s), who shall confirm to the Managing Members the basis for the request and provide such other information requested by the Managing Members. Consistent with state law, RCW 42.30.110(1)(i), Litigation Settlement consultation between the Managing Members and Legal Counsel(s) may be provided in Executive Session; provided however any Managing Member litigation settlement approval shall take place by vote at a meeting open to the public.”</p>	<p>Directs certain points of oversight on settlements by MM in litigation where exposure is over \$300k;</p> <p>Sets timing of updates and requests for settlement authority</p> <p>Establishes that settlement approval requests shall be in writing</p> <p>Re-states that settlement discussions may be held in executive session provided that discussions are in compliance with the OPMA.</p>
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10.c.iv (new numbering)	Settlement of Claims	iii. Claims exceeding \$150,000 shall be reported to the Managing Members upon receipt;	iv. Payment of claims exceeding \$150,000 to be paid by the Alliance shall be approved by Managing Members; claims exceeding \$50,000 paid by the Alliance shall be reported to the Managing Members.	Clarifying language, and new reporting requirement on payment of all claims settled for over \$50,000
11	Issuance of Tariffs	The CEO is authorized to request the Homeports to issue tariffs and tariff amendments as necessary provided the Managing Members will be provided notice of adjustments affecting Alliance-managed properties prior to implementation.	The CEO is authorized to issue tariff amendments as necessary. Changes to tariffs shall be publicly noticed 30 days prior to implementation. Managing Members and Homeport Executive Directors will be given a memorandum with specific notice of all proposed tariff amendments 30 days prior to the effective date of any proposed tariff amendment(s).	Sets notice requirements to the public and to all MMs before tariff amendments go into effect.



**THE NORTHWEST
SEAPORT ALLIANCE**
Gateway to Solutions

Item No.: 5A
Date of Meeting: April 7, 2020

Delegating administrative authority to the CEO from the Managing Members, and superseding Resolution No. 2018-01

Presenter: Carolyn Lake
Title: Port of Tacoma General
Counsel, NWSA Counsel

Action Requested

Approve Resolution No. 2020-02 of the Managing Members of the Northwest Seaport Alliance and the associated Delegation of Authority Master Policy, as set forth in Exhibit “B” attached thereto for the purpose of delegating from the Managing Members administrative authority to the Chief Executive Officer (“CEO”).



Background

- Master Policy on Delegation of Authority calls for annual review
- Governance Committee tasked with review, and has been working on the proposed changes since September, 2019 with staff input
- Proposed changes have been made to increase MM oversight in certain areas and to provide clarity for administration of policy.



Key Proposed Changes to Master Policy

- 2.b.i – MMs establish Strategic Business Plan
- 3.b.8 – CEO is responsible for fiscal management, financial accountability and budget.
- 6.a.i and 6.c.i – Overall relates to prioritization of expenditures and overlay with Homeports' Capital Investment Plans; Annual MM review of Strategic Business Plan for prioritization of programs, projects, and spending
- 7.a.i – leases over one year require MM authorization and two readings
- 7.a.ii – limit CEO authority over operating agreements and vessel service agreements to reserve such authority to MM; CEO may enter into amendments up to \$300k
- 8.c.iii.1 – Change initial spending authority of CEO to \$ _____ on projects that may exceed \$300k.
- 8.c.viii – Sets CEO mediation authority on claims from public works projects at \$300k



Key Proposed Changes to Master Policy

- 8.g – Brings down CEO authority to sign amendments to Personal Services Contracts from 50% to 25% of authorized amount
- 9.a.iii – Sets cash reserve policy at 3-6 months of operating expenses except for temporary reduction (max of 60 days) for pending reimbursements to Homeports.
- 9.d.ii – Requires MM notice prior to grant applications that may incur a NWSA obligation in excess of \$300k.
- Section 10 – Increases MM oversight on claims and litigation, and accounts for NWSA GC concurrence on counsel and settlements.
 - Adjusts CEO settlement authority to \$150k from \$300k
 - Requires MM approval of any non-monetary settlement (consent decree)
 - Sets timing and procedures for MM settlement authority
 - Increases reporting
- Section 11 – requires notice to MM of any tariff amendments



Alternatives Considered and Their Implications

- **No Action Alternative:** Retain the existing Master Resolution, Delegation of Authority in place, with no changes.
- **Additional alternatives:** As a full board, the Managing Members could:
 - Reject selected changes and direct the Committee to return to the Managing Members with alternate language on certain points or issues;
or
 - Reject selected changes and Managing Members adopt alternate language on certain points or issues.



Action Requested

Approve Resolution No. 2020-02 of the Managing Members of the Northwest Seaport Alliance and the associated Delegation of Authority Master Policy, as set forth in Exhibit “B” attached thereto for the purpose of delegating from the Managing Members administrative authority to the Chief Executive Officer (“CEO”).