

Item No.: 9C

Date of Meeting: November 1, 2022

Proposed Charter Revisions and Additions

Re: Addition or Removal of Properties (3.1.c.ii); Litigation Management (6.6); Insurance (new); and Contributed Capital (new)



THE NORTHWEST
SEAPORT ALLIANCE
SEATTLE + TACOMA

Proposed Revisions from: Internal Governance Work Group
Presenter: Dana Henderson
Title: NWSA General Counsel

Action Requested

Internal Governance Work Group requests Managing Members' approval of proposed changes and additions to the NWSA Charter on the following topics: Addition or Removal of Properties Licensed to NWSA (Section 3.1.c.ii); Litigation Management (6.6); Contributed Capital (new section); and Insurance (new section) in substantially the same form as presented

What gave rise to these proposed edits?

- Internal Governance Work Group (IGWG) is mid-stream on a comprehensive Charter review, including issues referred to IGWG for evaluation by the Managing Members, and issues brought forward by staff stemming from day-to-day work resulting in recommendations for proposed edits.
- Issues before the MMs today have been completed by IGWG and should be ready for MM review and approval.
- Edits have been vetted and agreed by staff and counsel of all 3 entities.

NWSA Charter

Issue	Proposed Change	Notes
Addition or Removal of Properties Licensed to NWSA	3.1.c.ii Addition or Removal of any Property Licensed to the PDA. From time to time, upon recommendation of the CEO, the Managing Members may approve by vote to add or remove Licensed Properties from the PDA, specifying the effective date of such addition or removal. Revenues of each Licensed Property so removed or so added as a Licensed Property shall may be valued consistently using the methodology used to calculate the initial Membership Interest, and the Membership Interests shall be adjusted accordingly.	<p>Intent is to provide flexibility on how to value properties added or removed from NWSA portfolio.</p> <p>At formation, methodology used for valuation of the properties licensed to the NWSA was based on a ten-year forecast of revenues anticipated for the properties.</p> <p>Prior method will not work for newly-acquired properties, which will need an analysis of any purchase price, FMV, environmental remediation, needed capital expense, etc.</p> <p>Recommended by finance staff to allow for an alternative valuation to take into account the value of the assets being purchased and developed, and the future cash flows for a new growing business.</p>

NWSA Charter

Issue	Proposed Change	Notes
Litigation Mgmt	<p>6.6 Litigation Management Involving PDA and or Homeports. When the PDA or a Homeport is sued or notified of a potential claim related to acts, omissions, assets or operations with potential liability reasonably anticipated to be in excess of \$100,000, and the Homeport reasonably identifies such claim as a PDA responsibility, or the PDA reasonably identifies such claim as a Homeport responsibility, the Executive recipient of the suit or claim shall notify the other affected Executive and its Legal Counsel(s) of such claim as soon as practicable. The PDA CEO and Homeport Executive Director and their Legal counsel(s) shall promptly advise Managing Members of such claim and of the Executives' determination of which entity shall assume lead responsibility <u>and whether and to what extent one entity will defend and/or indemnify the other</u>. If the Executives cannot reach agreement, the matter shall be referred to the Managing Members <u>for a vote</u>. Thereafter, litigation shall be managed in accordance with the requirements the Delegation of Authority Master Policy Resolution of the entity assuming lead responsibility.</p>	<p>Existing language is not clear on what is meant by “assume lead responsibility” for litigation and whether or not lead responsibility includes assumption of defense and indemnity.</p> <p>Also does not specify what the Managing Members should do upon referral of an issue from the Executives.</p> <p>Revisions seek to clarify that Executives should seek to reach agreement on defense and indemnity, and if unable to do so, the Managing Members will vote to determine the correct path forward</p>

Contributed Capital – new concept

Issue: Flow of funds to NWSA from Homeports

- From time to time, certain funds should equitably flow to NWSA from Homeports, and there is no existing mechanism in the Charter to do so.
- Concept of Contributed Capital introduces a way of contributing cash for an expense mirroring the capability for one home port to pay extra for a project or expense.
- Currently using ILAs and Annual Service Agreements (clunky)



Examples where Contributed Capital concept would have been or will be helpful

- Recent Actual examples:
 - Temp Construction Easement payments to homeports as owners of property, but impact to NWSA licensed properties and NWSA tenants;
 - \$2M paid for shuttles in N Harbor by Port of Seattle as part of overall NWSA settlement with SSA.
- A homeport could, for strategic or political reasons, seek to pay for something in its respective harbor that the other homeport would not be supportive of – this concept would allow for that contribution.

NWSA Charter

Issue	Proposed NEW Language	Notes
Contributed Capital	<p><u>Contributed Capital. Separate from Working Capital and Capital Construction, Contributed Capital is additional cash or property, but not including real property, paid by one or both of the homeport(s) to the PDA and may be paid in amounts other than based on each Managing Member’s pro rata respective Member Interests (“Contributed Capital”). Contributed Capital may only occur after a vote of each Managing Member, and may be authorized subject to conditions, if any, specified in the authorization. Contributed Capital does not impact or change either homeport’s Membership Interest.</u></p>	<p>New Concept per Finance request. Thought is that there may be funds that come to Homeport that should actually be paid to NWSA and to address how that would be approved.</p> <p>Vote requirement to be consistent with Section 3.9 on “No Additional Contributions Without Managing Member Vote”</p>

Insurance – new concept

Issue: Tracking responsibility for placing coverage and making sure all entities appropriately insure the others

- Not a new approach – proposed language is how the issue is being handled.
- Intent is that homeport (in the best position as real property owner) makes sure to place coverage for first party losses of NWSA-owned assets and improvements on licensed properties and that NWSA be loss payee.
- Also: where casualty policy will allow and as appropriate, each entity should name the others as additional insureds.

NWSA Charter

Issue	Proposed NEW Language	Notes
Insurance	<p><u>(a) Property Insurance. Each Homeport shall have an obligation to purchase first-party property insurance policies for the improvements and assets owned by the PDA within the respective Homeport. The insurance policies shall be for replacement value, and the individual Homeport shall be the first Named Insured with the PDA designated as Insured and included as a loss payee as its interests may appear.</u></p> <p><u>(b) Casualty Insurance. To the extent policy terms and conditions permit, each casualty policy purchased by the PDA and the individual Homeports shall list the remaining two entities as Additional Insureds.</u></p>	<p>Suggested by both homeport risk managers. This works well with provision on how the homeports and NWSA will handle litigation amongst ourselves.</p>

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