

**THE NORTHWEST SEAPORT ALLIANCE**  
**MEMORANDUM**

**MANAGING MEMBERS**  
**ACTION ITEM**

<b>Item No.</b>	<u>9D</u>
<b>Date of Meeting</b>	<u>January 4, 2023</u>

**DATE:** December 19, 2022

**TO:** Managing Members

**FROM:** John Wolfe, CEO

**Sponsor:** NWSA Internal Governance Work Group

**Project Manager:** Dana Henderson, General Counsel

**SUBJECT:** Proposed Charter Revisions and Addition Re: Agreements with Federally-Recognized Tribes

**A. ACTION REQUESTED**

The Internal Governance Work Group (IGWG) Requests Managing Members' approval of an addition to the NWSA Charter on the following topic: Agreements with Federally-Recognized Tribes

**B. SYNOPSIS**

The IGWG has evaluated options for certain revisions to the NWSA Charter. While additional issues are forthcoming and will be discussed by the IGWG this year, the work group agrees that the below changes should be made and recommends adoption of these revisions and additions by the Managing Members.

**C. BACKGROUND**

The IGWG has been charged with periodic review and revision of various NWSA founding and governance documents, including the Charter. At its October 2021 meeting, the Managing Members specifically referred the question of whether the homeport(s) or the NWSA (or some combination thereof) should be responsible for negotiating and funding agreements with federally-recognized tribes arising out of treaty-protected fishing rights.

At the time, commissioner questions had come forth regarding the NWSA's role in negotiating and paying for the two primary kinds of tribal agreements: those necessary to gain tribal approval for NWSA projects ("Project Agreements") and those necessary to gain tribal approval for vessel traffic and operations associated

with NWSA-licensed properties (“Operational Agreements”). An example of a Project Agreement is the in-water work for the Terminal Modernization program. Similarly, the Maritime Access and Impact Mitigation Agreement between the Muckleshoot and Suquamish Tribes, the Port of Seattle, and the Northwest Seaport Alliance in the Seattle harbor is an example of an Operational Agreement.

### ***Proposed New Section***

The proposed new language for the Charter is the result of a number of discussions at the IGWG, whereby the members of that committee debated and considered the best way to approach tribal agreements. While the IGWG is still working its way through a comprehensive Charter review, it seeks to move interim revisions through for approval so staff and the NWSA may start benefiting from the direction provided and efficiencies created by the proposed new charter provision. The following is proposed as an addition to the NWSA Charter:

#### ***Agreements with Federally-Recognized Tribes (proposed NEW section)***

*1. Subject to the delegation of authority provisions herein and unless otherwise approved by the Managing Members, agreements with federally recognized tribes shall be funded as follows:*

- a) Agreements necessary to gain approval for PDA projects (i.e. “Project Agreements”) shall be fully funded by the PDA. The PDA will have primary responsibility for negotiations with the tribe(s) for such agreements but will coordinate with the Homeport(s).*
- b) Agreements necessary to gain approval for vessel traffic and operations associated with PDA Licensed Properties (i.e. “Operational Agreements”) shall be jointly and equally funded by the PDA and Homeport(s) and the PDA and Homeport(s) will share responsibility for negotiations with the tribe(s).*

*2. Alternatively, the Managing Members may agree on a different cost-share approach for Operational Agreements in the event of special, unforeseen or unexpected circumstances.*

*3. For any jointly funded agreements, the Homeport(s) will have primary responsibility for negotiations with the tribes, but will coordinate closely with the PDA. Both the PDA and applicable Homeport(s) shall be a signatory party to any jointly funded tribal agreements.*

### ***Reasoning for Language, Per IGWG***

Regarding Operational Agreements, it was important to the IGWG that there be some compromise in the approach to funding tribal agreements given that tribal agreements

are not necessary in the South Harbor, either for operations or projects, given the geographic location of Port of Tacoma's facilities in comparison to tribal fishing activity and the prior payment to under the Puyallup Tribe of Indians Settlement Act of 1989 (Land Claims Settlement). The compromise proposal on this point is that the Port of Seattle and the NWSA share the expenses of operational agreements equally. This is recommended by the IGWG as representing an acknowledgement of this added expense in the Seattle harbor that is otherwise not at play in the Tacoma harbor, and is also equitable given that Port of Seattle operations including cruise and other non-cargo vessel traffic contributes to the vessel activity in Elliott Bay giving rise to the need for the Seattle operational agreements.

With regard to project agreements, the internal governance work group is recommending that any project- driven agreement be paid for entirely by the NWSA. This is so because: the NWSA can budget for those Agreements in the course of planning for its projects; the subject project would not be occurring if the NWSA did not approve the work; and both homeports equally share in both the potential upside and expense of any NWSA project.

### ***Next Steps***

If approved by the Managing Members, this language will be incorporated into the Third Amendment to the NWSA Charter and submitted to the Federal Maritime Commission for publication and final approval. It should be noted that if the Managing Members approve this proposed language, from the date of the meeting at which Managing Members' approval is granted, any payments for operational agreements (including those already in place) will be shared equally by the homeport and NWSA. This is the recommendation and intention of the internal governance workgroup, even if there is a delay in submission or approval of the charter amendments by the Federal Maritime Commission.

## **D. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS**

- **No Action Alternative:** Do not adopt this proposed addition, in which case the proposed clarification(s) would not occur. Staff would not have the benefit of direction from the Managing Members on this issue and all future tribal agreements would be subject to ongoing discussion regarding which entity bears financial responsibility for same. Alternatively, the Managing Members could refer this issue back to the IGWG for further study.
- **Recommended Action:** Adopt the proposed Charter additions in substantially the same form as presented.

**E. ATTACHMENTS TO THIS REQUEST**

Presentation showing draft revision to Charter in redline

**F. PREVIOUS ACTIONS OR BRIEFINGS**

- Managing Members' meetings of July 7, 2021, May 4, 2021, April 6, 2021.
- Internal Governance Work Group, meetings on September 7, and December 7, 2022.