

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

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

<b>Item No.</b>	<u>8D</u>
<b>Date of Meeting</b>	<u>November 7, 2023</u>

**DATE:** October 9, 2023

**TO:** Managing Members

**FROM:** Dana Henderson, NWSA General Counsel

**CC:** John Wolfe, NWSA CEO

**SUBJECT:** A Recommendation by the NWSA Audit Committee to revise the Audit Committee Charter Regarding Public Comment.

First Reading - Resolution 2023-10 Second Amended Audit Committee Charter (superseding 2013-06 and Managing Member action taken May 2, 2022).

**A. ACTION REQUESTED**

Upon recommendation of The Northwest Seaport Alliance (NWSA) Audit Committee (the "Committee"):

After first reading, request Managing Members advance Resolution 2023-10 (superseding 2013-06 and Managing Member action of May 2, 2022) and the associated Second Amended Audit Committee Charter (the "Charter"), as set forth in Exhibit "A" attached thereto, to a second reading.

**B. SYNOPSIS**

The NWSA Audit Committee met on October 6, 2023. A recommendation was made by Commissioner Keller, and agreed to by Committee members present, to recommend to the Managing Members an amendment to the Committee Charter to remove the provision that the Committee take public comment at its meetings. Even though the Committee has no decision-making authority, because it takes public comment at its meetings, the Committee is legally required to notice, manage, and conduct its meetings in accord with the Open Public Meetings Act (OPMA) Chapter 42.30 of the Revised Code of Washington. As such, the Committee cannot meet entirely virtually without providing for in-person attendance by the public.

By taking public comment, the Committee would be deemed a "governing body" per the following definition found in the OPMA at RCW 42.30.020(2), and therefore subject to the OPMA's requirements: "'Governing body" means the multimember

board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.” (Emphasis added). Once subject to the OPMA, the Committee is precluded from holding its meetings without a physical location, absent an emergency, and this is so regardless of existing technology to allow the public to also attend virtually.

Any recommendations or proposals of the Committee must be presented to and ultimately authorized by the Managing Members. At its October 6, 2023 meeting, Committee members discussed and noted that as the deciding body, the Managing Members’ meetings are the more appropriate forum to receive comments and written testimony from the public. When public comment is made at a Managing Members’ meeting, ten Commissioners have the benefit of such comments instead of just the four Commissioners comprising the Committee.

### **C. BACKGROUND**

The OPMA provides that certain committees of governing bodies that take testimony or public comment act as governing bodies and are subject to the OPMA. RCW 42.30.020(2). Meetings subject to the OPMA must be held in a physical location, unless a local, state or federal emergency has been declared and the public agency determines it cannot hold an in-person meeting with reasonable safety because of the emergency. RCW 42.30.070 and RCW 42.30.230 (see *also* 42.30.230 findings 2022 c 115).

When the Audit Committee Charter was originally adopted, it provided that all Committee meetings were “open public meetings,” presumably to be conducted in accord with the OPMA. Absent that reference in its Charter, the Audit Committee’s meetings would not have been subject to the OPMA.

On May 2, 2022, the Managing Members took action in public session to amend the Audit Committee Charter to allow the Committee to meet entirely virtually. At that May 2<sup>nd</sup> meeting, Commissioners noted that virtual meetings, even without an option for a physical location, represent a net positive in terms of transparency and accessibility for the public to attend. However, Commissioners remained concerned that the public should still have the opportunity to provide public comment to the Committee. Therefore, in addition to amending the Committee Charter to make meetings entirely virtual, the Managing Members added a provision that the Committee would take public comment.

Since the Committee Charter was amended in May, 2022, it has been confirmed by legal counsel that the Committee cannot legally be entirely virtual *and* also take public comment, since taking public comment renders the Audit Committee a “governing body” under RCW 42.303.020(2), cited above. Therefore, since May of 2022, to remain within the bounds of the OPMA, the Committee has been meeting

virtually and also continues to provide a physical location at which a staff and/or a Committee member attends in person to allow for in-person public attendance as is required by law.

Audit Committee members have recently expressed the view that Audit Committee meetings may not be the most appropriate forum for taking public comments as it is not a decision-making body, and that the taking of public comment at Managing Members' meetings is more effective and transparent. No member of the public has attended a virtual or an in-person Audit Committee meeting to make public comment since its formation in 2015.

By removing the provision for public comment to be taken by the Audit Committee, its meetings would no longer be subject to the OPMA and would be able to be conducted entirely virtually. The public would be able view and hear the Audit Committee meetings as they would continue to be webcast, and the public would continue to have the opportunity to be heard on Audit Committee recommendations to the Managing Members through oral or written public comment at Managing Member meetings. The provisions of the Audit Committee Charter that require advance notice to the public, posting of meeting agendas and related materials on the NWSA website, and streaming of meetings would remain unchanged.

**D. ATTACHMENTS**

Draft Resolution 2023-10 with Exhibit A Second Amended Charter redline and clean

**E. PREVIOUS ACTIONS OR BRIEFINGS**

May 2, 2022: Managing Members approve First Amended Audit Committee Charter

May 3, 2016: Managing Members adopt Audit Committee Charter (Res. 2016-03)

## RESOLUTION NO. 2023-10

A RESOLUTION of The Northwest Seaport Alliance (NWSA) Amending the Audit Committee Charter, superseding resolution 2013-06 and Managing Member action taken May 2, 2022.

**WHEREAS**, the Audit Committee was established by The Northwest Seaport Alliance (NWSA) Managing Members to represent the Commission and review and oversee matters relating to the NWSA's auditing process and procedures; and

**WHEREAS**, on May 3, 2016 by Resolution 2013-06, the Audit Committee Charter (the "Charter") was adopted describing the official role, responsibilities, composition, and procedural rules governing the workings of the Audit Committee; and

**WHEREAS**, the Audit Committee is solely a recommending body, charged with providing recommendations to, and at the request of, the Managing Members, it is not a governing or decision-making body; and

**WHEREAS**, on May 2, 2022 by Managing Member action in public session, the Charter was amended to allow the Audit Committee to meet entirely virtually and to allow for public comment; and

**WHEREAS**, to remain in compliance with legal requirements, rather than holding its meetings entirely virtually as intended by the First Amended Audit Committee Charter, the Audit Committee continued to provide a physical location for the purpose of accepting public comment, expending additional staff resources; and

**WHEREAS**, the Managing Members are committed to transparency and accountability to the public it serves, including the work of its committees; and

**WHEREAS**, the Audit Committee provides advance public notice of its meetings. Its agenda and related materials are posted publicly in advance of each meeting and its meetings are streamed on the NWSA's public website; and

**WHEREAS**, the Managing Members as the governing body, desire public comments and written testimony from the public on decisions before the body; and

**WHEREAS**, the Managing Members provide opportunity at or before every regular meeting at which final action by the Managing Members is taken for public comment both orally at the public meeting or by written testimony submitted before or at Managing Member meetings, including, those comments or written testimony related to its committees.

**WHEREAS**, the Managing Members wish to amend the Audit Committee Charter to allow its Audit Committee to meet entirely virtually, without public comment, and instead provide that any public comment or written testimony be provided to the Managing Members as a whole.

**NOW, THEREFORE, BE IT RESOLVED**, the NWSA Managing Members adopt the Second Amendment to the Audit Committee Charter as set forth in Exhibit "A" attached to this resolution.

**ADOPTED** by the Managing Members of The Northwest Seaport Alliance at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_ 2023 and signed by its Co-Chairs and attested by its Co-Secretaries in authentication of its passage this this \_\_\_\_day of \_\_\_\_\_ 2023.

\_\_\_\_\_  
Sam Cho, Co-Chair  
The Northwest Seaport Alliance

\_\_\_\_\_  
Deanna Keller, Co-Chair  
The Northwest Seaport Alliance

ATTEST:

\_\_\_\_\_  
Fred Felleman, Co-Secretary  
The Northwest Seaport Alliance

\_\_\_\_\_  
John McCarthy, Co-Secretary  
The Northwest Seaport Alliance

Exhibit A

**FIRSTSECOND AMENDED  
NORTHWEST SEAPORT ALLIANCE AUDIT COMMITTEE CHARTER**

**A. Purpose and Authority**

The Audit Committee is a standing committee created by the Managing Members of the Northwest Seaport Alliance (NWSA). Its general purpose is to represent the Managing Members and have review and oversight authority on matters relating to the NWSA auditing process and procedures. It will assist the NWSA Managing Members in fulfilling its oversight responsibilities for:

- The integrity of the NWSA's financial statements,
- The effectiveness of the NWSA's internal control system over financial reporting, compliance and operations,
- The independent financial auditor's qualifications and independence,
- The performance of the NWSA's independent financial auditor,
- The NWSA's internal compliance activities including internal audit activities
- The NWSA's compliance with Federal Grant rules and regulations, and
- The NWSA's compliance with state laws and regulations.

The Audit Committee is empowered to seek any information it requires from the NWSA employees on audit matters, all of whom are directed to cooperate with the Committee's requests. The Committee shall keep the CEO apprised of all such requests.

If the committee determines that in order to meet its responsibilities it requires the independent services of an outside advisor, consultant or auditor having expertise in financial reporting, auditing and internal controls, it may propose the retention of such advisor, consultant or auditor to the Managing Members for approval.

In carrying out these responsibilities, the Audit Committee shall ensure that internal audits are conducted under the United States Government Accountability Office's Government Auditing Standards and the Institute of Internal Auditing standards.

**B. Composition**

The Audit Committee will be comprised of the two (2) Managing Members from the Port of Seattle and Port of Tacoma Commissions who reside on their respective homeport Audit Committees (four member committee). Commission members of the audit committee, as well as the committee chair, will be selected by the Presidents of the homeport Commissions at the beginning of each calendar year.

### C. Duties

Audit Committee responsibilities will include the following activities:

- Annually review and discuss the organization risks and recommend internal audit activities associated with compliance or operational performance to the Managing Members for approval.
- Review and recommend to the Managing Members, based on a competitive process, the independent financial auditor(s) to be selected to audit the financial statements and the Single Audit for any Federal Grants awards administered by the NWSA.
- Review the independent auditors' annual audit of the NWSA's financial statements, as well as related notes and management's discussion and analysis.
- Review the independent auditor's letter of recommendation and the schedule of unadjusted differences.
- Review the independent auditors' Single Audit of any federal grant awards administered by the NWSA.
- Review the independent auditors' judgments about the quality of the NWSA's application of industry prescribed accounting and financial reporting standards and effectiveness of internal controls.
- Review other independent financial and performance audits conducted on NWSA operations, programs, activities and business processes.
- Review results of the State Auditor's Office annual Accountability Audit on the NWSA.
- Clarify expectations of management in responding to audit findings and recommendations and affirm adequacy of corrective action taken.
- Recommend to the Managing Members the adoption of a statutory Port Auditor(s) per RCW 53.36.010.
- Oversee any work plans, including the review of findings and recommendations for improvements associated with internal auditing activities.
- Make recommendations to the Managing Members and CEO for the improvement of internal controls and operating procedures as warranted.

In carrying out these responsibilities, the Audit Committee shall:

- Encourage discussion between management, the Managing Members and other stakeholders in order to identify future potential areas of internal compliance or operational performance audit focus.
- Provide recommendations to the Managing Members regarding specific audit areas for consideration, including suggested audit objectives, scope and evaluation criteria.

- Report the results of such audits to the Managing Members when completed.
- Discuss with management the NWSA’s policies with respect to risk assessment and risk management.

#### **D. Internal Responsibilities**

The Audit Committee will:

- Assess as necessary the goals and objectives of the Audit Committee and monitor progress in achieving those goals and objectives.
- Provide an annual report to the Managing Members that describes how the Audit Committee has discharged its duties and met its responsibilities.

#### **E. Meetings**

The committee will meet at least two times a year, with authority to convene additional meetings, as circumstances require.

- ~~All~~ Committee meetings ~~will~~ may be held completely virtually, ~~and live-streamed~~. ~~To~~ allow transparency to the public, ~~provided that~~ advance notice of the audit committee agenda and materials ~~are provided~~ will be posted to the public website ~~and an opportunity for public comment is provided~~. Audit Committee meetings will be live streamed on the public website, provided in the event of technology difficulty or failure, the meeting may still occur.
- A quorum of the committee is required to conduct official committee business. A Quorum is defined as a majority of voting members.
- The committee will invite members of management, auditors or others to attend meetings and provide pertinent information, as necessary.
- Meeting agendas will be prepared and provided in advance to members, along with appropriate briefing materials. Minutes will be prepared and approved by the Audit Committee.



## **Exhibit A**

### **SECOND AMENDED NORTHWEST SEAPORT ALLIANCE AUDIT COMMITTEE CHARTER**

#### **A. Purpose and Authority**

The Audit Committee is a standing committee created by the Managing Members of the Northwest Seaport Alliance (NWSA). Its general purpose is to represent the Managing Members and have review and oversight authority on matters relating to the NWSA auditing process and procedures. It will assist the NWSA Managing Members in fulfilling its oversight responsibilities for:

- The integrity of the NWSA's financial statements,
- The effectiveness of the NWSA's internal control system over financial reporting, compliance and operations,
- The independent financial auditor's qualifications and independence,
- The performance of the NWSA's independent financial auditor,
- The NWSA's internal compliance activities including internal audit activities
- The NWSA's compliance with Federal Grant rules and regulations, and
- The NWSA's compliance with state laws and regulations.

The Audit Committee is empowered to seek any information it requires from the NWSA employees on audit matters, all of whom are directed to cooperate with the Committee's requests. The Committee shall keep the CEO apprised of all such requests.

If the committee determines that in order to meet its responsibilities it requires the independent services of an outside advisor, consultant or auditor having expertise in financial reporting, auditing and internal controls, it may propose the retention of such advisor, consultant or auditor to the Managing Members for approval.

In carrying out these responsibilities, the Audit Committee shall ensure that internal audits are conducted under the United States Government Accountability Office's Government Auditing Standards and the Institute of Internal Auditing standards.

#### **B. Composition**

The Audit Committee will be comprised of the two (2) Managing Members from the Port of Seattle and Port of Tacoma Commissions who reside on their respective homeport Audit Committees (four member committee). Commission members of the audit committee, as well as the committee chair, will be selected by the Presidents of the homeport Commissions at the beginning of each calendar year.

## C. Duties

Audit Committee responsibilities will include the following activities:

- Annually review and discuss the organization risks and recommend internal audit activities associated with compliance or operational performance to the Managing Members for approval.
- Review and recommend to the Managing Members, based on a competitive process, the independent financial auditor(s) to be selected to audit the financial statements and the Single Audit for any Federal Grants awards administered by the NWSA.
- Review the independent auditors' annual audit of the NWSA's financial statements, as well as related notes and management's discussion and analysis.
- Review the independent auditor's letter of recommendation and the schedule of unadjusted differences.
- Review the independent auditors' Single Audit of any federal grant awards administered by the NWSA.
- Review the independent auditors' judgments about the quality of the NWSA's application of industry prescribed accounting and financial reporting standards and effectiveness of internal controls.
- Review other independent financial and performance audits conducted on NWSA operations, programs, activities and business processes.
- Review results of the State Auditor's Office annual Accountability Audit on the NWSA.
- Clarify expectations of management in responding to audit findings and recommendations and affirm adequacy of corrective action taken.
- Recommend to the Managing Members the adoption of a statutory Port Auditor(s) per RCW 53.36.010.
- Oversee any work plans, including the review of findings and recommendations for improvements associated with internal auditing activities.
- Make recommendations to the Managing Members and CEO for the improvement of internal controls and operating procedures as warranted.

In carrying out these responsibilities, the Audit Committee shall:

- Encourage discussion between management, the Managing Members and other stakeholders in order to identify future potential areas of internal compliance or operational performance audit focus.
- Provide recommendations to the Managing Members regarding specific audit areas for consideration, including suggested audit objectives, scope and evaluation criteria.
- Report the results of such audits to the Managing Members when completed.
- Discuss with management the NWSA's policies with respect to risk assessment and risk management.

## **D. Internal Responsibilities**

The Audit Committee will:

- Assess as necessary the goals and objectives of the Audit Committee and monitor progress in achieving those goals and objectives.
- Provide an annual report to the Managing Members that describes how the Audit Committee has discharged its duties and met its responsibilities.

## **E. Meetings**

The committee will meet at least two times a year, with authority to convene additional meetings, as circumstances require.

- Committee meetings may be held completely virtually. To allow transparency to the public, advance notice of the audit committee agenda and materials will be posted to the public website. Audit Committee meetings will be live streamed on the public website, provided in the event of technology difficulty or failure, the meeting may still occur.
- A quorum of the committee is required to conduct official committee business. A Quorum is defined as a majority of voting members.
- The committee will invite members of management, auditors or others to attend meetings and provide pertinent information, as necessary.
- Meeting agendas will be prepared and provided in advance to members, along with appropriate briefing materials. Minutes will be prepared and approved by the Audit Committee.