

**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
NOTIFICATION OF ASSISTANCE APPROVAL  
(COOPERATIVE AGREEMENT)**

Agreement Number: DTMA1H10010

Title: West Coast Marine Highway Market Analysis

Effective Date: 30 September 2010

Total Amount of the Agreement: \$275,000

Estimated Total Federal Funding: \$275,000

Current Federal Obligation: \$275,000

Obligation Date: 30 September 2010

MARAD Appropriation Data: 2010.70101750PE.1PRE00M5CP.0000152000241010.61006600  
11N10481

This agreement is entered into between the United States of America, hereinafter called the "government," represented by the Maritime Administration, and for Whatcom Council of Governments on Behalf of the West Coast Corridor Coalition (the Recipient), and parties pursuant to and under U.S. Federal law.

The Recipient and parties to this Agreement shall execute it by signing in the spaces provided on the last page (before Appendix One), as evidence, and in acknowledgement, of their intention to observe all the provisions hereof.

## TABLE OF CONTENTS

<u>ARTICLE</u>	<u>TITLE</u>
1	PARTIES
2	AUTHORITY
3	SCOPE OF THE AGREEMENT
4	DEFINITIONS
5	MODIFICATIONS
6	AGREEMENT ADMINISTRATION
7	PERIOD OF PERFORMANCE
8	CONSIDERATION OF THE PARTIES
9	AGREEMENT OFFICER'S TECHNICAL REPRESENTATIVE (AOTR)
10	FINANCIAL ACCOUNTABILITY REQUIREMENTS
11	METHOD OF PAYMENT
12	INDEMNITY
13	SUSPENSION OR TERMINATION
14	DISPUTES
15	DATA RIGHTS
16	INSPECTIONS
17	RETENTION AND CUSTODIAL REQUIREMENTS FOR RECORDS
18	OFFICIALS NOT TO BENEFIT
19	COVENANT AGAINST CONTINGENT FEES
20	PAYMENT OF INTEREST ON RECIPIENT(S)' CLAIMS
21	EQUAL OPPORTUNITY
22	DRUG-FREE WORKPLACE
23	DEBARMENT AND SUSPENSION
24	ENVIRONMENTAL IMPACT REVIEW
25	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

Appendix One - Scope of Work

## Article 1 - PARTIES, ROLES AND RESPONSIBILITIES

This COOPERATIVE AGREEMENT (Agreement) is entered into by and between the United States of America, represented by the Maritime Administration (MARAD), who will contribute funds not to exceed \$275,000 to the Project, and the following parties:

1. The Parties are all signatories to this Agreement. Each party will designate, in writing, a person to serve on the Management Committee, as described herein. All Parties have an equal weight in deliberations and discussions throughout the course of the Project, within the parameters set forth in this Agreement. Parties will also share equally the workload, drafting, review, approval and other functions necessary to develop requests for proposals, statements of work, solicitations for bids, source selection panels and the review, redirection and acceptance of contractor work products.
2. The Recipient: Whatcom Council of Governments on behalf of The West Coast Corridor Coalition will receive all funds allocated for the Project, manage the finances, allocations, expenditures and invoicing and provide all reports and audits as required herein and by all applicable laws and regulations.

Address:  
James G. Miller  
Executive Director  
Whatcom Council of Governments  
314 E. Champion Street  
Bellingham, WA 98225

## Article 2 - AUTHORITY

MARAD enters into this Agreement on the authority contained in 49 USC § 109(H)(1)(A)&(B), cooperative agreements.

## Article 3 - SCOPE OF THE AGREEMENT

The objective of this agreement is to provide the market information and analysis to validate a contiguous West Coast Marine Highway network and service among the states of California, Oregon and Washington along the M-5 Marine Highway Corridor. The project follows on the designation by the Department of Transportation of the M-5 as a Marine Highway Corridor and the recognition by the Department of the West Coast Hub Feeder (Humboldt Bay Harbor Recreation and Conservation District) Project and Golden State Marine Highway Initiative (Ports of Redwood City, Hueneme, Humboldt Bay Harbor Recreation and Conservation District, and San Diego) as Marine Highway Initiatives.

## Article 4 - DEFINITIONS

As used throughout this Agreement, the following terms shall have the meaning set forth below:

1. "Agreement Officer" and or "Agreement Grants Officer" means the person executing this Agreement on behalf of MARAD, and any other employee who is a properly warranted Federal Grants Officer.
2. "Covered Federal action," means any of the following Federal actions: the awarding of any Federal grant; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; the extension, continuation, renewal, amendment, or modification of any Federal grant, grant, loan, or cooperative agreement
3. "Data," means recorded information regardless of form or the medium on which it may be recorded. The term includes technical data and computer software (including computer programs, computer data bases, and documentation thereof). The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.
4. "Head of the Agency" or "Administrator" as used herein means the Maritime Administrator or Deputy Maritime Administrator of the Maritime Administration; and the term "duly authorized representative" means any person or persons or board (other than the Agreement Officer) authorized to act for the head of the agency.
5. "Influencing or attempting to influence," means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.
6. "Indian tribe" and "tribal organization," have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.
7. "Government" refers to the U.S. Federal Government including its agencies and departments.
8. "Government purpose license rights" (GPLR), means rights to use, duplicate, or disclose data, in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. Government purposes include competitive procurement, but do not include the right to have or permit others to use technical data for commercial purposes.

9. "Local government," means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.
10. "Management Committee" refers to the representative(s) specifically designated in writing by the parties who are responsible for development, oversight, progress and completion of the activities described in the Scope of the Agreement and Appendix One.
11. "MARAD" means the Maritime Administration.
12. "Parties" refers to the organizations which sign this Cooperative Agreement.
13. "Officer or employee of an agency," as used in this article, includes the following individuals who are employed by an agency:
  - a. An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.
  - b. A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.
  - c. A special Government employee, as defined in section 202, title 18, United States Code.
  - d. An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.
14. "Person," means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.
15. "Reasonable compensation," means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

16. "Reasonable payment," means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.
17. "Recipient" or "Recipient(s)" means the organization(s) participating in and legally responsible for accepting and managing the federal funds for this Agreement.
18. "Regularly employed," means, with respect to an officer or employee of a person requesting or receiving a Federal grant, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such grant. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.
19. "State," means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.
20. "Technical Data", , means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). The term does not include computer software, or data incidental to agreement administration, such as financial and/or management information.
21. "Unlimited Rights", , means rights to use, duplicate, release, or disclose, technical data or computer software in whole or in part, in any manner and for any purposes whatsoever, and to have or permit others to do so.

#### Article 5 – MODIFICATIONS

1. As a result of meetings, reviews, or at any time during the term of the Agreement, research progress or results indicate that changes would be beneficial to program objectives, these changes require approval of the Management Committee. (Minor initiative changes do not require prior approval of the Management Committee). The following are changes that would require Management Committee approval by written modification:

- a. Major changes to the Statement of Work that effect Task Sub-Task Deliverable

Milestones.

- b. Changes to the budget that affects Payable Milestones.
- c. Changes to the schedule that would necessitate an extension to the Period of Performance.
- d. Changes to the Cooperative Agreement, if such changes substantially alter the relationship or responsibilities between the Recipient(s) and parties originally agreed upon when the Agreement was executed. This includes the replacement of any Initiative parties.
- e. Changes that would substantially affect either party's contributions to the initiative from that which was originally agreed upon when the Agreement was executed.

2. Recommendations for modifications, including justifications to support any changes to the Statement of Work and or the Payable Milestones, will be documented in a letter and submitted to the Management Committee by the Consultant who performs the Scope of Work. This documentation letter will detail the technical, chronological, and financial impact of the proposed modification to the research program.

#### Article 6 - AGREEMENT ADMINISTRATION

Administrative matters under this Agreement that involve the federal government shall be referred to the following representatives of the parties:

MARAD: Delores Bryant, Granting Agreement Officer  
DOT/ Maritime Administration  
Office of Acquisition, MAR-380  
1200 New Jersey Avenue, SE -W26-420  
Washington, DC 20590  
(202) 366-2660

Technical matters under this Agreement that involve the federal government shall be referred to the following representatives:

MARAD: John Hummer  
Gateway Director, Northern California, Mid Pacific  
U.S. Department of Transportation, Maritime Administration  
201 Mission Street, Suite 1300

San Francisco, CA 94105  
(415) 744-2924  
[john.hummer@dot.gov](mailto:john.hummer@dot.gov)

For administrative and technical matters from non federal government parties to this agreement, the following contact information is provided:

James G. Miller  
Executive Director  
Whatcom Council of Governments  
314 E. Champion Street  
Bellingham, WA 98225

(360) 676-6974

David Hull  
Chief Executive Officer  
Humboldt Bay Harbor, Recreation and Conservation District  
P.O. Box 1030  
601 Starfire Drive  
Eureka, CA 95502-1030  
(707) 443-0801

Mike Giari  
Executive Director  
Port of Redwood City  
675 Seaport Blvd.  
Redwood City, CA 94063-5568  
(650) 306-4150

Each party may change its representatives named in this Article by written notification to the other party.

#### Article 7 - PERIOD OF PERFORMANCE

September 30<sup>th</sup>, 2010 to January 31, 2012



## Article 8 - CONTRIBUTION OF THE PARTIES

To the extent possible, the parties to this agreement will share with the Study participants and the Consultant(s) appropriate data to enable the Consultant to complete the Scope of Work. The parties to this agreement will form a "Management Committee" to direct (by consensus) the work of the consultant and oversee progress in a timely manner.

The Management Committee will direct the study by consensus. If an overall consensus cannot be reached then the Management Committee will vote on the matter. There are a total of four (4) votes among the parties. Each party's vote represents 1/4 of the total vote. The passage of a decision or motion by vote of the Management Committee shall require a majority vote which shall be considered as three (3) votes.

Roles of the parties:

DOT Maritime Administration shall serve as the lead for Federal Government and provide guidance and assistance as it relates to the guidelines and policy mandates of the AMH Program. This shall include obligating federal funds and providing technical support from within MARAD.

West Coast Corridor Coalition shall serve as the "Recipient" for the Cooperative Agreement and shall serve as a party representing the development of Marine Highway service among the parties to this agreement and other potential marine service along the M-5 Corridor. The single point of contact for the Management Committee is James Gosnell for the purpose of coordinating with MARAD and the Management Committee. The Maritime Committee of the West Coast Corridor Coalition shall constitute a Technical Advisory Committee (TAC) for this study. Members of the TAC shall advise the Management Committee on technical elements of the study materials and products, but shall not, as members of the TAC, have voting rights on the Management Committee.

The Humboldt Bay Harbor, Recreation and Conservation District shall serve as party to this Cooperative Agreement representing the development of Marine Highway service among the parties to this agreement and other potential marine service along the M-5 Corridor.

Port of Redwood City shall serve as party to this Cooperative Agreement representing the development of Marine Highway service among the parties to this agreement and other potential marine service along the M-5 Corridor.

Article 9 - AGREEMENT OFFICER'S TECHNICAL REPRESENTATIVE (AOTR)

1. John Hummer (MARAD) is hereby designated as the AOTR for this Agreement, for the federal government and is located at the address given above.
2. The AOTR is responsible for the technical aspects of the initiative and technical liaison with the Recipient(s) and parties.
3. The AOTR is not authorized to make any commitments or otherwise obligate the Government or authorize any changes which affect the price, terms or conditions of this Agreement. Any Recipient(s) and/or party who requests changes shall be referred to the Agreement Grants Officer directly or through the AOTR. No such changes shall be made without the expressed prior authorization of the Agreement Grants Officer. The AOTR may designate assistant AOTR(s) to act for him by naming such assistants in writing and transmitting a copy of such designation through the Agreement Officer to the Recipient(s).

ARTICLE 10 – FINANCIAL ACCOUNTABILITY REQUIREMENTS

For information purposes:

1. The Recipient(s), shall have and maintain an established accounting system which complies with Generally Accepted Accounting Principles, and with the requirements of this Agreement, and shall ensure that appropriate arrangements have been made for receiving, distributing, and accounting for Federal funds. OMB Circular A-110 is incorporated herein by reference and establishes the requirements for financial management and financial reporting to the Government. If the Recipient(s) is a Consortium, the Consortium shall not incur or allocate any direct or indirect costs of its own pursuant to this Agreement.
2. In no case shall the Government's financial liability exceed the amount obligated under this Agreement. No legal liability on the part of the Government for any payment may arise for performance under this Agreement beyond the funds obligated unless and until funds are made available to the Agreement Officer for performance and until the Recipient(s) receives written notice of availability from the Agreement Officer.
3. The Recipient(s) shall maintain adequate records to account for Federal funds received under this Agreement, as well as Recipient(s) or other party funds contributed under this Agreement. The Recipient(s)' relevant financial records are subject to examination or audit by the Government. The Agreement Officer or designee shall have direct access to

sufficient records and information of the Recipient(s), to ensure full accountability for all funding under this Agreement. Such audit, examination, or access shall be performed during normal business hours on normal business days.

#### Article 11 - METHOD OF PAYMENT

Payments under this Agreement to the Recipient(s) will be made either by check or by wire transfer through the Treasury Financial Communications System at the option of the Government.

#### Article 12 - INDEMNITY

The Recipient(s) agrees to hold the Government harmless from all liability for the Recipient(s)'s own acts and omissions and the results thereof. The Recipient(s) assumes all risk, responsibility, and liability for itself, its agents, staff, employees and research personnel for monetary or other losses to persons, properties or entities resulting in any manner from the conduct of its operations in which the products and services identified herein are utilized and/or furnished to others.

#### Article 13 - SUSPENSION OR TERMINATION

As prescribed by OMB Circular A-110, the following definitions apply under this Article:

Termination. The termination of a grant or other agreement means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

Suspension. The suspension of a grant or other agreement is an action by a Federal sponsoring agency that temporarily suspends Federal sponsorship under the grant or other agreement, pending corrective action by the Recipient(s) or pending a decision to terminate the grant or other agreement by the Federal sponsoring agency.

When the Recipient(s) has failed to comply with the terms of this agreement, MARAD may, on reasonable notice to the Recipient(s), suspend the grant or other agreement, pending corrective action by the Recipient(s), or a decision by MARAD or the Recipient(s) to terminate in accordance with the provisions listed below for termination for cause or termination for convenience. MARAD shall allow all necessary and proper costs that the Recipient(s) could not reasonably avoid during the period of the suspension provided that they meet the provisions of the applicable Federal cost principles.

MARAD's provisions for the systematic settlement of terminated grants or other agreement include the following:

#### Article 14 - DISPUTES

All disputes of fact or of interpretation under this Agreement, not disposed of by mutual agreement, shall be decided by the Agreement Grants Officer who shall reduce the decision to writing and mail a copy thereof to the Recipient(s). Within thirty (30) days of receipt of such written decision, the Recipient(s) may appeal in writing to the Associate Administrator for Administration, MARAD. The Associate Administrator for Administration will fix a date for written submissions or oral presentations, or both, by the Recipient(s) and the Agreement Grants Officer, or their representatives. The Associate Administrator for Administration shall hand down a written decision which shall be final and conclusive upon the parties as to questions of fact. The Grant Disputes Act of 1977 does not apply to this Agreement. Compliance with this Article does not preclude use of any other legal remedies by the Parties.

#### Article 15 - Rights in Data

##### Definitions

1. Unlimited rights to data first produced under this agreement. Performance under this agreement shall be accomplished using government funding. The Parties agree that in consideration of the government's funding of this Agreement, the government shall have unlimited rights to all data first produced under this agreement.
2. Government purpose rights at a minimum. For all other data not first produced under this Agreement but incorporated into performance under this Agreement, the government shall at a minimum possess government purpose rights.
3. Paid-up, royalty-free, non-transferrable, non-exclusive, irrevocable worldwide copyright license. For all data generated under this Agreement, the Recipient(s) acknowledges that the Government has for itself and others acting on its behalf, a paid-up, royalty-free, non-transferable, non-exclusive, irrevocable worldwide Copyright license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, all Copyrightable works produced in the performance of this Cooperative Agreement, subject to the restrictions this Cooperative Agreement places on publication of Proprietary and or Protected Cooperative Agreement Information.
4. Agreement Officer's written permission. The contractor chosen to complete the Work Study project may not assert a claim to copyright, publish or release to parties outside this agreement any data first produced in the performance of this Cooperative Agreement without the agreement of the Management Committee.

5. No publication of Publication of Proprietary and or Protected Cooperative Agreement Information. The parties agree to not publish, release, reproduce, divulge, divest or otherwise allow any third-party access to proprietary and or protected cooperative agreement information under this Cooperative Agreement.
6. Conspicuous and Legible Markings Required. All proprietary and or protected Cooperative Agreement information MUST be properly, conspicuously and legibly marked in both electronic and physical form to reflect their protected status under this agreement. Information that is not properly marked shall be presumed to not be proprietary and or protected.
7. Work not first produced in performance of this agreement. The Recipient(s) shall not, without prior written permission of the Management Committee, incorporate work not first produced in the performance of this Cooperative Agreement unless the Recipient(s) (a) identifies and appropriately marks the work and (b) grants to the Government, or acquires on its behalf, at a minimum government purpose rights for the Government.
8. Drawings and other data are property of the government. All designs, drawings, specifications, notes and other works developed in the performance of this Cooperative Agreement shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Recipient(s). The Government shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under 17 U.S.C. 201(b). With respect thereto, the Recipient(s) agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Recipient(s) for a period of three (3) years after completion of the project agrees to furnish all retained works on the request of the Agreement Officer. The Recipient(s) shall have the right to retain copies of all works beyond such period.
9. Deferred Ordering of Data. The Government may, at any time during the performance of this Agreement or within a period of three (3) years after acceptance of all items (other than technical data or computer software) to be delivered under this Cooperative Agreement or the termination of this Cooperative Agreement, order any data, technical data or computer software generated in the performance of this contract or any subcontract hereunder. When the technical data or computer software is ordered, the Recipient(s) shall be compensated for converting the data or computer software into the prescribed form, for reproduction and delivery. The Government's rights to use said data or computer software shall be consistent with rights conveyed in Article 15.

10. Indemnity. The Recipient(s) shall indemnify the Government and their officers, agents, and employees acting for them against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this agreement; or any libelous or other unlawful matter contained in such data.
11. Disputes. All Disputes involving data rights under this agreement or Article 15 shall first be attempted to be settled between the Recipient(s) and the Agreement Officer.
12. Gap-Filling. To the extent an occurrence is not covered by the express language of Article 15, the parties shall rely on the Federal Acquisition Regulation, FAR Data Rights Clauses contained in FAR 52.227-1 through 23 for guidance as applicable.
13. Flow-down to Sub-recipients. The Recipient(s) shall include Article 15, suitably modified to identify the Parties, in all lower tier agreements, regardless of tier, for experimental, developmental or research work.

#### Article 16 – INSPECTIONS

The Government, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder and the premises on which it is being performed. If any inspection or evaluation is made by the Government on the premises of the Recipient(s) or consultant, the Recipient(s) shall provide and shall require all consultants to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as to not unduly delay the work.

#### Article 17 - RETENTION AND CUSTODIAL REQUIREMENTS FOR RECORDS

1. Financial records, supporting documents, statistical records, and all other records pertinent to this Agreement including those of the Recipient(s) and any consultant shall be retained for a period of 3 years, following expiration of this Agreement. If any litigation, claim or audit is started before the expiration of the 3-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.
2. The retention period starts from the date of the submission of the final expenditure report.
3. The head of the Federal sponsoring agency and the Comptroller General of the United

States, or any of their duly authorized representatives shall have access to any pertinent books, documents, papers, and records of the Recipient(s) and its consultant(s) to make audits, examinations, excerpts and transcripts.

4. Unless otherwise required by law, MARAD shall not place restrictions on the Recipient(s) that will limit public access to the records of the Recipient(s) that are pertinent to this Agreement;

5. Except when MARAD can demonstrate that such records must be kept confidential and would have been accepted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. §552) if the records had belonged to the Federal sponsoring agency.

#### Article 18 - OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or public official, shall be admitted to any share or part of this Agreement, or to any benefit arising from it. However, this provision does not apply to this Agreement to the extent that this Agreement is made with a corporation for the corporation's general benefit.

#### Article 19 - COVENANT AGAINST CONTINGENT FEES

The Recipient(s) warrants that no person or agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Recipient(s) for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this Agreement without liability or in its discretion to recover the full amount of such commission, percentage, brokerage or contingent fee.

#### Article 20 - PAYMENT OF INTEREST ON RECIPIENT(S)' CLAIMS

If an appeal is filed by the Recipient(s) from a final decision under the Disputes Article, above, denying a claim arising under this Agreement, interest on the amount of the claim finally determined by the Associate Administrator for Administration to be owed by MARAD shall be payable to the Recipient(s). Such interest shall be at the rate determined pursuant to Public Law 103-160 and shall be computed from the date of the request for decision by the Associate Administrator for Administration.

#### Article 21 - EQUAL OPPORTUNITY

During performance of this Agreement, the Recipient(s) agrees as follows:

1. The Recipient(s) shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
2. The Recipient(s) shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, a. employment, b. upgrading, c. demotion, d. transfer, e. recruitment or recruitment advertising, f. layoff or termination, g. rates of pay or other forms of compensation, and h. selection for training, including apprenticeship.
3. The Recipient(s) shall, in all solicitations or advertisement for employees placed by or on behalf of the Recipient(s), state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
4. The Recipient(s) shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
5. The Recipient(s) shall permit access to its books, records, and accounts by the Government for the purposes of investigation to ascertain the Recipient(s)' compliance with the applicable rules, regulations, and orders.
6. If the Government determines that the Recipient(s) is not in compliance with this Article or any rule, regulation, or order of the Secretary of Labor, this Agreement may be canceled, terminated, or suspended in whole or in part and the Recipient(s) may be declared ineligible for further Government assistance, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Recipient(s) as provided in Executive Order 11246, as amended the rules, regulations, and orders of the Secretary of Labor or as otherwise provided by law.

#### Article 22 - DRUG-FREE WORKPLACE

The Recipient(s) shall abide by the rules set forth in 49 CFR Part 29 Subpart F, incorporated herein by reference, with regard to maintaining a drug-free workplace and shall implement this requirement in all sub-awards under this Agreement.

#### Article 23 - DEBARMENT AND SUSPENSION

The Recipient(s) shall comply with the non-procurement debarment and suspension common rule implementing Executive Orders 12549 and 12689, "Debarment and Suspension." This common rule restricts sub-awards and grants with certain parties that are debarred, suspended or



otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

#### Article 24 – ENVIRONMENTAL IMPACT REVIEW

The Recipient(s) shall work with MARAD to develop a programmatic environmental impact review document that addresses the entire corridor, services, and necessary components. The environmental document must satisfy National Environmental Policy Act (NEPA) requirements. Associated with the development of the environmental document, regional public scoping meetings will be required, understanding that a corridor may require multiple meetings. The Recipient(s) and MARAD will be responsible for conducting the scoping meetings and ensuring adequate public outreach throughout the NEPA process.

#### Article 25 - LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

1. Prohibitions.

a. Section 1352 of title 31, United States Code ("the Act"), among other things, prohibits a Recipient of a Federal grant, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal grant; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal grant, grant, loan, or cooperative agreement.

b. The Act also requires Recipients to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal grant, grant, loan, or cooperative agreement.

c. The prohibitions of the Act do not apply under the following conditions:

(i) Agency and legislative liaison by own employees.

(A) The prohibition on the use of appropriated funds, in

subparagraph 1.a. of this article, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision 1.c.(i)(A) of this article, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action -

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision 1.c.(i)(A) of this article are permitted under this agreement.

(b) Professional and technical services.

(A) The prohibition on the use of appropriated funds, in subparagraph 1.a. of this article, does not apply in the case of -

(1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this article, professional and technical services shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable.

Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a grant is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section

unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award includes those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions 1.1. (ii) (A) (1) and (2) of this article are permitted under this article.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

## 2. Disclosure.

a. The Recipient(s) who requests or receives from an agency a Federal grant shall file with that agency a disclosure form, OMB Standard Form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph 1.a. of this article, if paid for with appropriated funds.

b. The Recipient(s) shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph 2.a. of this article. An event that materially affects the accuracy of the information reported includes -

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

e. The Recipient(s) shall require the submittal of a certification, and if required, a disclosure form by any person who requests or received any subgrant exceeding \$100,000 under the Federal grant.

d. Agreement. The Recipient(s) agrees not to make any payment prohibited by this article.

e. Penalties.

i. Any person who makes expenditure prohibited under paragraph 1 of this article or who fails to file or amend the disclosure form to be filed or amended by paragraph 2 of this article shall be subject to civil penalties as provided for by 31 U.S.C. §1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

ii. Recipients may rely without liability on the representation made by their consultant(s) in the certification and disclosure form.

3. Cost allowability. Nothing in this article makes allowable or reasonable any costs that would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this article will not be made allowable under any other provision.

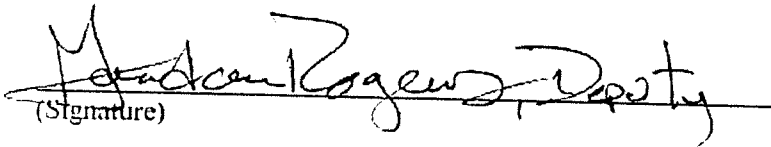
SIGNATURES


FOR THE UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
MARITIME ADMINISTRATION:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name & Title) (Date)

FOR THE WHATCOM COUNCIL OF GOVERNMENTS ON BEHALF OF THE WEST  
COAST CORRIDOR COALITION:

  
(Signature)

 James G. Miller, Executive Director  
(Name & Title) (Date) September 29, 2010

FOR THE HUMBOLDT BAY HARBOR RECREATION AND CONSERVATION DISTRICT:

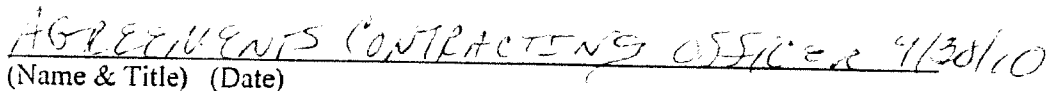
\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name & Title) (Date)

SIGNATURES

FOR THE UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
MARITIME ADMINISTRATION:

  
\_\_\_\_\_  
(Signature)

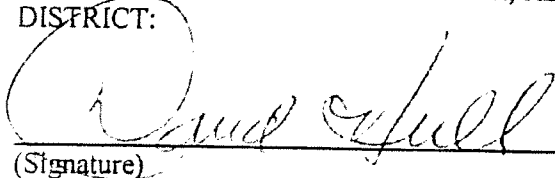
  
\_\_\_\_\_  
(Name & Title) (Date)

FOR THE WHATCOM COUNCIL OF GOVERNMENTS ON BEHALF OF THE WEST  
COAST CORRIDOR COALITION:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name & Title) (Date)

FOR THE HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION  
DISTRICT:

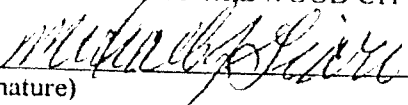
  
\_\_\_\_\_  
(Signature)

**David Hull, Chief Executive Officer**

**September 29, 2010**

\_\_\_\_\_  
(Name & Title) (Date)

FOR THE PORT OF REDWOOD CITY:

  
(Signature)

MICHAEL J. BARI, EXECUTIVE DIRECTOR  
(Name & Title) (Date) 9-29-10

Copy: Ron Popham, Port of San Diego, CA  
Anthony Taormina, Port of Hueneme, CA



## APPENDIX ONE

### United States of America Department of Transportation Notification of Assistance Approval (Cooperative Agreement)

#### PROPOSAL

#### Research and Analysis Framework and Objectives

This Appendix describes, in general terms, the framework and intentions of the proposed research effort along with the objectives it should achieve. This will serve as an outline for the subsequent acquisition documents (Requests for Proposals, Statements of Work, etc.) that will be developed by the Management Committee in the execution of the overall effort described in this Agreement.

#### Introduction

The West Coast Corridor Marine Highway (M-5) Market Analysis Project (referred to herein as "the Project") is intended to identify the potential opportunities that expansion of the Marine Highway could offer to the M-5 and adjacent Marine Highway Corridors, including, but not limited to the services proposed in the two "Initiatives" described below. The overall objective of this effort is to identify and describe the optimal services along the corridor that offer the greatest public benefit and external cost savings and are the most likely to become self-sufficient in a reasonable period of time. To do so, this effort must identify the freight that currently moves along the corridor and the circumstances under which it could move by water. The Project must also identify and describe the optimal service(s), including vessels, ports, terminals, operations, and door-to-door modeling for the operation. It must analyze and model, precisely, the entire operation, including expected revenues and expenses, capital investment, labor, etc., and compare it to the price point currently available (and potentially in the future) for the landside alternatives - this will ultimately result in a business model. Lastly, based on the results of the work thus far, the Project will conclude with an analysis of the environmental impacts, both positive and negative, likely to result from services identified. This will be corridor-wide for the M-5 Marine Highway Corridor and associated connectors and crossings.

The basis for this research is the designation of "Marine Highway Corridors" by U.S. Transportation Secretary Ray LaHood in response to recommendations submitted to the

Maritime Administration for funding under the America's Marine Highway Program. Subsequent to the Corridor designations, Secretary LaHood announced the designation of "Marine Highway Initiatives," following a competitive application process. Two of these "Initiatives," the West Coast Hub Feeder Initiative, and the Golden State Marine Highway Initiative, offer broad potential benefits to the M-5 Marine Highway Corridor, which received the Secretary's formal designation. These applications were submitted by the Humboldt Bay Harbor, Recreation and Conservation District and the Ports of Redwood City, Hueneume and San Diego. The application for the M-5 Marine Highway Corridor designation was submitted by the West Coast Corridor Coalition. Please refer to MARAD - 2010 - 0035 (Final Rule) for more complete program descriptions, definitions and specific components of public benefit, external cost savings, self-sustainability, etc.

The Department of Transportation, through the Maritime Administration, is prepared to lend financial assistance to a combined effort aimed at determining market and operational feasibility for increased utilization of waterborne freight transportation along the M-5 and adjacent Marine Highway Corridors. This analysis will include, but will not be solely limited to, the proposals contained in the above mentioned initiatives (to the extent that they conform to the letter and spirit of America's Marine Highway Program as described in the Final Rule). Therefore, the U.S. Maritime Administration, acting on behalf of the Department of Transportation enters into this Cooperative Agreement between itself and the West Coast Corridor Coalition. This Cooperative Agreement will result in a study that will adhere to the following framework and objectives.

### **Research Framework**

This effort should address both containerized (international) and trailerized (domestic) freight transportation markets. It is imperative that it include the concepts and information contained in the relevant Marine Highway Corridor recommendations and the applications by sponsors of the Marine Highway Initiatives named in this Agreement.

The research contract should, at a minimum, contain review re-direct report milestones at the end of each of the five study parts outlined in this framework. The Management Committee should be convened to conduct these activities. The overall product should achieve a degree of specificity, analysis and modeling commensurate with a study titled "Operational Development of Short Sea Shipping to Serve the Pacific Coast<sup>1</sup>."

**Part I: Literature Review** – This should consist of a review of existing analysis, reports and studies of Marine Highway-related work conducted to date. The intention of this Phase is not to

<sup>1</sup> Produced by the Center for the Commercial Deployment of Transportation Technologies, California State University, Long Beach Foundation, 6300 State University Drive, Suite 220, Long Beach, CA 90815 (562) 985-7304.

re-state or repackage existing work, but rather to ensure due diligence in avoiding duplication of effort, or contradictory studies without prior knowledge of other work.

**Part II: Market Analysis** - A full understanding of the freight that is moving within the Corridor (both international and domestic), the nature of the freight, it's unique flows, and which cargo may be candidates for a Marine Highway shift is essential to any assessment of the opportunities. Analysis should include identification, understanding and the requirements of (at a minimum):

- Freight moving within the corridor, volumes, commodities, origins, destinations and unique flows (i.e. through distribution centers and other value added transfers), etc.
- Shippers, their perceptions, priorities and needs (price, speed, weight volume and reliability)
- Potential share of the freight that could shift to waterborne transportation
- Identify potential port pairs best suited for the freight and flows identified in this part. This must, at a minimum, include the ports identified by Corridor and Initiative sponsors in their applications to DOT.

**Part III: Operational Development** - This part of the project involves the development of operational plans to optimize the efficiency and competitiveness of Marine Highway service(s) that maximize opportunities identified in Part I. It is well known that, because of the highly competitive environment across surface transportation modes, a successful Marine Highway service must maximize efficiency and minimize cost. This Part must include analysis, modeling and development of plans to address the following:

- Optimal number, type and speed of vessels, taking all relevant factors (cost) into consideration.
- Door-to-door modeling, including drayage distance, cost, efficiencies, terminal operations, etc.
- Operational protocols and business partnerships necessary for successful operations
- Data, IT and tracking requirements
- Labor
- Capital and infrastructure requirements and costs.

**Part IV: Business Plan and Viability** - This part provides a thorough analysis of likely revenues, expenses and price points that result from the service(s) proposed in Part III. At a minimum, it must contain:

- Practical analysis of freight volumes that can be reasonably expected to shift to water services
- Thorough and fact-based revenue and expense analysis
- Price comparisons across all alternatives shippers have available (rail, truck, water)

**Part V: Conclusions and recommendations** – This part draws on the freight, operational and business analysis to identify whether services are viable, and make recommendations toward implementation of services.

**Part VI: Environmental Analysis** – A programmatic NEPA document will be required to analyze the direct, indirect, and cumulative impacts to the human and natural environment associated with new and existing marine highway services as well as landside support of those services through and along the M-5 Marine Highway region. The NEPA analysis should focus on both a local and regional corridor scale. NEPA analyses may require consultation with state and federal resources agencies. Public outreach and scoping meetings will be necessary for each corridor analyzed. Dependent upon corridor size, more than one scoping meeting may be required. The Recipient(s) shall make the necessary funds available to conduct the NEPA analyses and associated tasks involved with preparation of the NEPA documents, including but not limited to the securing of any contractors necessary to conduct the NEPA analysis. All NEPA work must be coordinated with and approved by the Maritime Administration Office of Environment. The NEPA analysis will be conducted in one geographic region as described below:

- The M-5 Marine Highway Corridor Region, including all M-5 coastal commercial ports and those adjacent or nearby Marine Highway Corridors, Connectors and Crossings, from San Diego to the Washington State / Canadian Border, including the Columbia River ports of Portland and those west to the Pacific Ocean.

**Final Report and Recommendations:** Each of the six major tasks (parts) in this framework will conclude in a clearly defined milestone with deliverables established in the contract. The contractor shall present these deliverables to the Management Committee who will review and evaluate each deliverable, provide redirection and guidance as necessary, and approve deliverables once they are satisfactory. The consultant will produce a final report on “Feasibility and Recommendations for Marine Highway Services along the I-5 Corridor” in general and recommendations for specifically identified services between port pairs identified during the research, including those highlighted in the West Coast Hub Feeder and Golden State Marine Highway Initiatives. The final report will be accepted upon consensus agreement by the Management Committee.

NEW ZEALAND CUSTOMS DEPARTMENT OF TRANSFORMATION THE CAUTION OF CONSISTENCY PROGRAM  
COOPERATIVE AGREEMENT - Viscous Media Highway Motor Study of Project