

MEMORANDUM OF AGREEMENT  
BETWEEN  
FEDERAL TRANSIT ADMINISTRATION  
AND  
KITSAP COUNTY PUBLIC TRANSPORTATION BENEFIT AREA AUTHORITY (dba)  
KITSAP TRANSIT  
PURSUANT TO 23 U.S.C. § 139(j)

I. PURPOSE

The purpose of this Memorandum of Agreement (Agreement) between the Federal Transit Administration (FTA) and Kitsap Transit is to set forth the responsibilities and agreements for FTA to receive consultant support to expedite and improve environmental compliance, planning, preparation, consultation, and review processes for public transportation projects or programs sponsored by Kitsap Transit. FTA and Kitsap Transit may each hereinafter be referred to as a "Party" and collectively as the "Parties."

II. RECITALS

1. Pursuant to 23 U.S.C. § 139(j), the U.S. Secretary of Transportation may allow a public entity receiving financial assistance from the U.S. Department of Transportation (USDOT) under chapter 53, title 49 of the United States Code to provide funds to a Federal agency, including an agency of USDOT, that is participating in the environmental review process for the project or program receiving financial assistance. Such funds may be provided only to support activities that directly and meaningfully contribute to expediting and improving transportation project planning and delivery for projects. Section 139(j) activities include: transportation planning activities that precede the initiation of the environmental review process, dedicated staffing, training of agency personnel, information gathering and mapping, and development of programmatic agreements. The environmental review processes required by the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the National Historic Preservation Act (NHPA), and Section 4(f) of the Department of Transportation Act, and all other environmental review processes are governed by 23 U.S.C. § 139.
2. FTA is an operating administration of USDOT and is delegated authority under 49 CFR § 1.91(c) to carry out the provisions of 23 U.S.C. § 139 regarding public transportation projects.
3. Kitsap Transit is a public agency engaged in sponsoring public transportation projects or programs for which FTA may be the lead Federal agency for conducting environmental reviews.
4. The Parties have determined that supplemental staffing and liaison positions would expedite and improve the project environmental review process, enhance coordination, and streamline consultation and permit review on certain public transportation projects and programs.

5. Providing funds to FTA, pursuant to 23 U.S.C. § 139(j), shall directly and meaningfully contribute to expediting and improving the planning and delivery of transportation projects by facilitating the environmental compliance, planning, preparation, consultation, and review processes for public transportation projects and programs sponsored by Kitsap Transit.
6. The purpose of funding assistance addressed in this Agreement is to facilitate environmental review processes for public transportation projects sponsored by Kitsap Transit through the assignment of consultant employee(s) paid for by Kitsap Transit.
7. The acceptance of funds by FTA shall not impact FTA's impartial decision making with respect to environmental reviews or approvals, either substantively or procedurally.
8. The acceptance of funds by FTA shall not adversely affect the timeline of environmental review of other entities that have not contributed funds to FTA.
9. Nothing in this Agreement abrogates the Parties' obligations or duties to comply with their respective statutes, regulations, or policies.

### III. GENERAL TERMS AND AGREEMENTS OF THE PARTIES

In light of the foregoing, the Parties agree to the following:

1. Kitsap Transit will contract for services with one or more firms (the Section 139(j) Consultant) to assist FTA with environmental reviews of public transportation projects sponsored by Kitsap Transit, as needed by FTA. The Section 139(j) Consultant may work on any such activities, as contemplated by 23 U.S.C. § 139(j).
2. The Section 139(j) Consultant shall work for the benefit and in the interests of FTA. However, the Section 139(j) Consultant shall not serve as a contractor of the Federal Government and shall have no contractual relationship with FTA through its contract award from Kitsap Transit. The Section 139(j) Consultant employee is not a Federal employee, does not have employment rights of a Federal employee, and will not be paid by FTA.
3. FTA shall neither direct nor allow the Section 139(j) Consultant to issue approvals, endorse or ratify agreements, or perform any other inherently governmental functions on behalf of FTA.
4. FTA shall retain responsibility for consulting with federally recognized tribes, State Historic Preservation Officers and Tribal Historic Preservation Officers, Federal resource agencies, the United States Coast Guard, and all other parties participating in an environmental review to which the Section 139(j) Consultant is assigned.
5. This Agreement shall become effective upon the last signature date set below (the Effective Date). This Agreement will expire upon the end of authority granted by 23 U.S.C. § 139(j) or 5 years from Effective Date, whichever is earlier. The Parties may extend this Agreement by signed mutual consent.
6. FTA and Kitsap Transit may amend this agreement in writing by mutual agreement at any time through the execution of an addendum.

7. Either Party may terminate this Agreement upon 15 days' written notice to the other Party.

#### IV. PROJECTS/PROGRAMS AND PRIORITIES

The Parties agree that the funding provided under this Agreement shall be used for the projects/programs and priorities described below:

Kitsap Transit's environmental management and compliance responsibilities related to FTA-funded projects identified in the Washington State Transportation Improvement Program, including the Passenger Only Ferry Terminal (Downtown Seattle), Marine Maintenance Facility, North Base Heavy Duty Maintenance Facility, Southworth Ferry Terminal Redevelopment Project, vehicle, vessel and land-side electrification projects, transit center projects, base and layover construction and improvement projects throughout the Kitsap Transit service area, and other significant Kitsap Transit public transportation projects as they may develop.

#### V. KITSAP TRANSIT'S RESPONSIBILITIES

1. Except as required by this Agreement, Kitsap Transit shall use its own procurement methods and resources to provide the Section 139(j) Consultant. Kitsap Transit shall include in all agreements with the Section 139(j) Consultant the federal contractual language and clauses necessary to effectuate the provisions of this Agreement.
2. Before Kitsap Transit makes an award to the proposed Section 139(j) Consultant pursuant to this Agreement, FTA must concur in writing that:
  - a. The scope of work in Kitsap Transit's procurement materials is consistent with FTA's requirements and satisfies the 139(j) statutory requirements;
  - b. The proposed Section 139(j) Consultant is technically qualified to execute the work required by FTA; and
  - c. The proposed Section 139(j) Consultant does not have a conflict of interest that could impair the proposed Section 139(j) Consultant's ability to act impartially and in the best interest of FTA when performing as the Section 139(j) Consultant.
3. Kitsap Transit shall require the Section 139(j) Consultant hired under this Agreement to follow the terms of this Agreement.
4. If FTA determines that the Section 139(j) Consultant is not making substantial contributions towards completing the 23 U.S.C. § 139(j) activities, FTA shall notify Kitsap Transit. At the discretion of Kitsap Transit, Kitsap Transit shall correct the performance deficiencies of the Section 139(j) Consultant within 30 days, replace the Section 139(j) Consultant, or inform FTA of the decision to not provide a Section 139(j) Consultant for the relevant project. An election by Kitsap Transit to replace the Section 139(j) Consultant will be subject to FTA's concurrence (as noted in V.2. of this Agreement).

## VI. COMMUNICATION PROTOCOL

1. Communication protocols to be followed include:
  - a. FTA shall exclusively direct the work of the Section 139(j) Consultant regarding 23 U.S.C. § 139(j) activities. The Section 139(j) Consultant shall not receive direction from Kitsap Transit regarding 23 U.S.C. § 139(j) activities; however, the Section 139(j) Consultant may receive instructions from Kitsap Transit related to the administrative aspects of the contract awarded pursuant to this Agreement.
  - b. FTA must be notified of all critical communications, contacts, coordination, meetings, and document reviews between the Section 139(j) Consultant and Kitsap Transit.
  - c. Any contacts from members of the public, states, tribes, or federal agencies, received by the Section 139(j) Consultant concerning its 23 U.S.C. § 139(j) activities shall be directed to FTA.
  - d. All records created by the Section 139(j) Consultant in performance of Section 139(j) activities shall become the exclusive property of the FTA.
  - e. The Section 139(j) Consultant shall not release to any party or the public any work product, drafts, deliberative records, non-public information, or communication with FTA, unless FTA directs such release.

## VII. CONFLICTS OF INTEREST

Kitsap Transit shall require the Section 139(j) Consultant to have procedures and policies in place to prevent organizational and personal conflicts of interest, including the following:

1. The Section 139(j) Consultant shall certify in writing through execution of the Disclosure Statement on Conflict of Interests, Attachment 1 to this Agreement, that the Section 139(j) Consultant has no financial or other interest in the outcome of the environmental review with which they will be assisting FTA.
2. Each employee of the Section 139(j) Consultant that will be assisting FTA shall also certify in writing by signing the Disclosure Statement on Conflict of Interests that they have no financial or other interest in the outcome of the environmental review with which they will be assisting FTA.
3. Section 139(j) Consultant employees assigned to work with FTA shall be barred from discussing assigned FTA project(s) and programs with persons other than FTA staff or other Section 139(j) Consultant employees who have signed the Disclosure Statement on Conflict of Interests.
4. Upon completion of the work assigned by FTA to the Section 139(j) Consultant employees, post-employment rules normally applicable to federal government employees (5 CFR § 2641) will be applicable to the Section 139(j) Consultant employees.
5. The Section 139(j) Consultant will be permitted to compete for post-environmental decision work, but the individual Section 139(j) Consultant employees will be barred from participating in the procurement process or

subsequently working on the particular project he/she worked on unless FTA, in its sole discretion, waives this provision upon finding the Section 139(j) Consultant agrees to appropriate measures to mitigate any conflict of interest.

6. The Section 139(j) Consultant employees may participate in multiple projects as Section 139(j) Consultant employees, to include non-Section 139(j) Consultant work, but cannot serve the dual role of a Section 139(j) Consultant employee advising FTA and as a third-party contractor advising in a different capacity for the same project.
7. The Section 139(j) Consultant shall not provide services to Kitsap Transit, or any other entity, concerning a project for which the Section 139(j) Consultant is serving as a Section 139(j) Consultant to FTA. This prohibition is a lifetime ban unless FTA, in its sole discretion, waives this provision upon a finding that the Section 139(j) Consultant agrees to adequate measures to neutralize or mitigate any conflict of interest.

## FEDERAL TRANSIT ADMINISTRATION

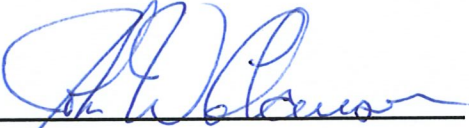
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Susan Fletcher  
Regional Administrator for FTA - Region 10

## KITSAP TRANSIT

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John W. Clauson  
Executive Director - Kitsap Transit

ATTACHMENT 1

**Disclosure Statement on Conflict of Interest  
for Environmental Contractor Employees Pursuant to 23 U.S.C. § 139(j)**

I, [Name], am an employee of [CONSULTING FIRM], a consulting firm which has entered into, or will enter into, a contract with Kitsap Transit to provide an environmental consultant pursuant to 23 U.S.C. § 139(j) to assist the Federal Transit Administration (FTA) with the environmental review process on public transportation projects sponsored by Kitsap Transit (Project(s)). The purpose of this document is to disclose the interest, if any, I, or my firm, have in the outcome of the environmental review process for the Projects.

Accordingly, I certify that I have no financial or other interest in the outcome of the National Environmental Policy Act (NEPA) process related to the Project(s). I will not acquire nor accept a financial or other interest in the outcome of the NEPA process for a Project until whichever event occurs first: (1) FTA has issued a NEPA determination on the Project; or (2) my/the firm's involvement in developing the NEPA documents for the Project has ended.

I affirm that as a Section 139(j) Consultant employee, I am prohibited from discussing Project work with other individuals who are employed by [CONSULTING FIRM], unless the other individual is also a Section 139(j) Consultant employee working on the Project. I also affirm that post-employment rules for Federal Government Executive Branch employees will apply to the firm's Section 139(j) Consultant employees after work is completed on the Projects. See generally 5 CFR § 2641. [CONSULTING FIRM] may compete for work after the completion of the final NEPA environmental decision for the Project or the authorized FTA official has rendered a final agency decision in writing; however, I, as a Section 139(j) Consultant employee, will not be able to work on any of the Projects' post- NEPA activities, including but not limited to post-NEPA procurement, design, engineering, construction management, technical advice, and any subsequent aspects of the Project. Section 139(j) Consultant employee may simultaneously participate in multiple FTA projects as a Section 139(j) Consultant employee, but I cannot simultaneously be a Section 139(j) Consultant employee and a third-party contractor preparing and drafting FTA NEPA documents on any projects for which I am a Section 139(j) Consultant employee.

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Employee Signature

\_\_\_\_\_  
Consulting Firm Name

\_\_\_\_\_  
Employee Name (Printed)

\_\_\_\_\_  
Consulting Firm Executive Signature

\_\_\_\_\_  
Employee Title

\_\_\_\_\_  
Consulting Firm Executive Name (Printed)/Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date