

**FISCAL AGREEMENT BETWEEN  
PIERCE TRANSIT AND MULTICARE HEALTH SYSTEMS**

THIS AGREEMENT is entered into by and between **Pierce County Public Transportation Benefit Area Corporation** (subsequently referred to as "PT"), and **MULTICARE HEALTH SYSTEMS**, a Washington nonprofit corporation (subsequently referred to as "MHS") (together, "Parties").

NOW, THEREFORE, in consideration of the terms and conditions contained herein, it is mutually agreed by and between PT and MHS as follows:

**SECTION 2. PURPOSE and RECITALS**

PT and MHS are both members of the Pierce County Coordinated Transportation Coalition (PCCTC). A mandate created by SHB 2072 by the Washington State Legislature through the Agency Council on Coordinated Transportation (ACCT) resulted in the creation of a pilot transportation project known as "Adult Day Health Express" (ADHE). This project has proven cost effective and efficient for the Parties in meeting the need of targeted stakeholders. MHS receives payment for transportation services for the ADHE from Department of Social & Health Services (DSHS) Aging and Disabilities Services Administration (ADSA), which MHS credits as a set off for payments to be made by PT to defray the costs of ADHE. It is to PT's benefit to pay the difference between ADSA's contribution towards transportation services and the cost of such services that are ultimately provided by a third party transportation vendor (not a party hereto) because the cost of ADHE services pursuant to PCCTC are significantly less expensive than other transportation services if provided by PT. This agreement seeks to continue the ADHE with PT as the fiscal agent for the program.

MHS will continue to act as the lead agency for the ADHE, whose intent is to continue to provide an economical and efficient form of Special Needs Transportation through shared funding, contracting with private transportation vendors, and structuring the service to maximize productivity. Estimated Participantship is 175 persons; 85 Medicaid eligible and 90 non-Medicaid.

The Parties have previously entered into an agreement in effect from August 11, 2011 through June 30, 2015 in substantially the same form as this agreement. The parties have operated according to the terms and conditions of this Agreement and the terms of this Agreement shall cover the period of July 1, 2015 to December 31, 2016, unless extended further by the parties in writing.

**SECTION 2. ACTIVITIES**

MHS will act as the lead agency for the ADHE. PT will have the role of fiscal agent and primary funder of services but will not provide transportation services for ADHE. The ADHE program will continue to provide coordinated transportation for Adult Day Health (ADH)

clients in Pierce County to MultiCare ADH, located at 6442 S. Yakima Avenue in Tacoma, WA. Transportation services provided will continue to adhere to specifications defined in the Transportation Services Agreement (See Exhibit A) and will be offered a third-party transportation services provider for both morning and afternoon programs, Monday through Thursday. Hours of operation are also specified in the Transportation Services Agreement. MHS may expand the ADHE to include Friday programming if financial conditions permit this expansion, upon agreement of parties to this agreement.

MHS solicited and will continue to solicit competitive proposals for the ADHE transportation services from qualified Special Needs Transportation firms, subsequently referred to as "vendors." All vendors shall be subject to the requirements and terms of the Transportation Services Agreement, Exhibit A. MHS will be responsible to ensure that any contract between MHS and its transportation vendors will contain the service description, hours of operation, reporting, and billing requirements specified below, as well as compensation requirements from the Washington State Department of Transportation for subcontractors, sections 8 through 25. (Exhibit B) MHS will provide to PT a copy of all contracts awarded between MHS and any transportation vendor.

- Multicare and the vendor shall comply with the requirements of a subcontractor as specified in Exhibit B in reference to the WSDOT Agreement provisions.
- MHS will bill the Department of Social & Health Services (DSHS) Aging and Disabilities Services Administration (ADSA) at the rate of \$15 per person per day for transportation, for each of the Medicaid eligible participants. This amount will be noted on the transportation vendor's billing, and the amount will be deducted before the invoice is sent to PT.
- PT will pay the \$15 per day co-pay for non-Medicaid patients when other funding is unattainable.
- Pierce Transit will pay MHS the remaining cost for ADHE services provided beyond the available DSHS/ADSA match, and as otherwise specified by this agreement.

### SECTION 3. REPORTING

By the 20<sup>th</sup> day of the following month, MHS will submit monthly reports to PT including:  
Participant name; Participant address;  
Participant pick up time; Participant drop off time;  
Vehicle miles; Vehicle hours;  
Participant pick up/drop off Zone

PT will act as the fiscal agent for this transportation services agreement. PT provides a data specialist utilizing PT resources to review driver manifests creating an electronic

record, ensuring correct address, arrival and departure time, escort time and odometer entries. This process ensures data integrity for possible National Transit Database (NTD) reporting, and possible future funding partners. PT reviews the transportation vendor's billing for correct zone assignment, no-shows, late cancels and special transports. PT approves the client master file.

Funding is provided by Pierce Transit, DSHS/ADSA, and other sources that may be developed during the course of this agreement.

MHS will provide information as needed to PT for program evaluation, reporting and assessment.

#### **SECTION 4. TERM OF THE AGREEMENT**

This Agreement shall commence on January 1, 2016, applied retroactively to July 1, 2015, and end on December 31, 2016. This Agreement may be extended for three additional one year contracts if both parties agree in writing, and in any event, only after MHS provides satisfactory evidence of its contract with a transportation vendor who meets the requirements of Exhibit B and has completed a contract in substantially the same form as Exhibit A if any new transportation vendor(s) is or are added to the ADHE program.

#### **SECTION 5. COMPENSATION**

PT agrees to reimburse MHS the cost of the rides for ADHE as determined through the RFP process - a per person per zone rate, currently billed as follows:

Zone 1 - \$25.13

Zone 2 - \$32.78

Zone 3 - \$39.34

Zone 4 - \$43.18

These rates to re-evaluated based on the current CPI yearly each January beginning with January 2016 and in accordance with Exhibit A.

The \$15 per person per day reimbursement MHS receives directly from Medicaid for Medicaid eligible Participant transportation will be deducted from PT's payment to MHS.

Special transportation rates will apply in circumstances described in the Transportation Services Agreement.

PT shall monitor and finalize requests for reimbursement to determine correctness.

Reimbursement to MHS of the costs it pays for transportation will be made via monthly billing submitted to PT by the 20<sup>th</sup> of the following month. Billing shall be submitted to:

Senior Planner – Paratransit  
Cherry Thomas  
Pierce Transit  
3701 96<sup>th</sup> St SW  
Lakewood, WA 98499-0070

**SECTION 6. INDEMNIFICATION**

To the fullest extent permitted by law, MultiCare agrees to defend, indemnify and hold harmless Pierce Transit, the Washington State Department of Commerce, the Washington Department of Transportation, all other agencies of the state and all officers, agents and employees from and against all claims or damages for injuries to persons or property or death arising out of or incident to this agreement. Multicare's obligation to indemnify, defend and hold harmless includes any claim by Multicare's agents, employees, representatives, or any subgrantee or its agents or employees or representatives.

Multicare's obligation to indemnify, defend and hold harmless shall not be eliminated by any actual or alleged concurrent negligence of Pierce Transit, or the state or their agents, agencies, employees and officers.

Subgrants shall include a comprehensive indemnification clause agreeing to defend and holding harmless: Pierce Transit; the Washington State Department of Transportation; the Washington State Department of Commerce; the State of Washington; and any and all of their officers, employees and authorized agents.

**SECTION 7. DEBARMENT AND SUSPENSION CERTIFICATION**

Both PT and MHS certify that to the best of their respective knowledge and belief, they and their principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the County and/or the municipal corporation are unable to certify to any of the statements in this certification, they shall attach an explanation to this agreement.

**SECTION 8. INSURANCE**

MHS and all transportation vendors shall, at their expense, maintain, with an insurance carrier licensed to do business in the State of Washington, with minimum coverage as outlined below, commercial automobile liability insurance, and either commercial general liability insurance, or, if any services required by the contract must be performed by persons licensed by the State of Washington, professional liability insurance:

- |  |   |
|--|---|
| <p><u>Commercial Automobile Liability</u></p>  | <p>Bodily Injury Liability and Property Damage Liability Insurance \$1,000,000 each occurrence <u>OR</u> combined single limit coverage of \$2,000,000, with not greater than a \$1,000.00 deductible.</p>    |
| <p><u>Commercial General Liability</u></p>     | <p>Bodily Injury Liability and Property Damage Liability Insurance \$1,000,000 each occurrence <u>OR</u> combined single limit coverage of \$2,000,000, with not greater than a \$1,000.00 deductible.</p>    |
| <p><u>Professional Liability Insurance</u></p> | <p>Shall include errors and omissions insurance providing \$1,000,000.00 coverage with not greater than a \$5,000.00 deductible for all liability which may be incurred during the life of this contract.</p> |

Self-Insured Liability Insurance

MHS may provide the coverage above under self-insured/liability pool or self-insured risk management program. MHS shall provide to PT: (1) a description of its self-insurance program, and (2) a certificate and/or letter of coverage that outlines coverage limits and deductibles.

Pierce Transit, and the Washington State Department of Commerce shall be named as an additional insured on all required MHS and sub-contractor policies except professional liability insurance, and such insurance as is carried by MHS shall be primary over any insurance carried by Pierce Transit, the Washington State Department of Transportation and the Washington State Department of Commerce. MHS shall provide a certificate of insurance reflecting such coverage and additional insured status prior to contract execution, which shall be attached to the contract.

**SECTION 9. NON-DISCRIMINATION**

PT and MHS certify that they are Equal Opportunity Employers.

**SECTION 10. ASSIGNMENT**

Neither the PT nor MHS shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party.

**SECTION 11. NOTICE**

Any formal or informal notice or communication to be given for this Agreement shall be deemed properly given, if delivered, or if mailed postage prepaid and addressed to:

Senior Planner-Paratransit  
Cherry Thomas  
Pierce Transit  
3701 96<sup>th</sup> St SW  
PO Box 99070  
Lakewood, WA 98496-0070

Manager  
MultiCare Adult Day Health  
6442 South Yakima Avenue  
Tacoma, WA 98408

**SECTION 12. MULTICARE AS INDEPENDENT CONTRACTOR.**

MHS is, and shall at all times be deemed to be, an independent contractor. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between MHS and PT or any of MHS's agents or employees.

Nothing in this Agreement shall make any employee of MHS a PT employee or any employee of PT an MHS employee for any purpose, including, but not limited to, for withholding of taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges accorded PCCS or employees by virtue of their employment.

**SECTION 13. SUB CONTRACTING**

MHS shall maintain written procedures related to subcontracting as well as copies of all subcontracts and records related to subcontracts. For cause, PT in writing may: (a) require MHS to amend its subcontracting procedures as they relate to ADHE; (b) prohibit MHS from subcontracting with a particular person or entity; or (c) require MHS to rescind or amend a subcontract.

Every subcontract shall bind the subcontractor to follow all applicable terms of this Agreement. MHS is responsible to PT if the subcontractor fails to comply with any applicable term of condition of this Agreement. PT shall appropriately monitor the activities of the subcontractor to assure fiscal conditions of this Agreement. In no event shall the existence of a subcontractor operate to release or reduce the liability of MHS to PT for any breach in the performance of MHS duties.

Every subcontract shall include a term that PT is not liable for claims or damages arising from a subcontractors' performance of the subcontract.

**SECTION 14. WAIVER.** No waiver by either party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of this Agreement.

**SECTION 15. ENTIRE AGREEMENT.** This Agreement and Exhibits listed below contains all of the Agreements of the Parties and sub-contractor or vendor with respect to any matter covered or mentioned in this Agreement and no prior agreements shall be effective for any purpose:

Exhibit A. Transportation Services Agreement, form;

Exhibit B. WSDOT Agreement requirement

**SECTION 16. AMENDMENT**

Provisions within this Agreement may be amended with the mutual consent of the parties hereto. No additions to, or alteration of, the terms of this Agreement shall be valid unless made in writing, formally approved, and executed by duly authorized agents of both parties.

**SECTION 17. SEVERABILITY**

If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

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IN WITNESS WHERE OF, the parties have caused this Agreement to be executed on this 25<sup>th</sup>  
day of February, 2016, to be in effect retroactively to July 1, 2015.

**MULTICARE HEALTH SERVICES:**

Bob Brunt  
Signature

Sr. VP - Community Services  
Title:

Jane Hanson  
Contact Name:

Multicare Adult Day Health  
Address:

6442 S. Yakima Ave

Tacoma WA 98408

253-459-7222  
Contact Phone:

253-473-3117  
Contact Fax:

UBI #: \_\_\_\_\_

**PIERCE TRANSIT**

Sue Dreier  
Sue Dreier  
Chief Executive Officer

2/10/16  
Date

Wayne Fanshier  
Wayne Fanshier,  
Chief Financial Officer

2/10/16  
Date

Deanne Jacobson  
Deanne Jacobson, CMC

2-11-16  
Date



**Exhibit A Transportation Services Agreement**

**FIRST AMENDMENT TO  
SERVICES AGREEMENT**

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THIS FIRST AMENDMENT ("First Amendment") to the Services Agreement ("Agreement") is made and entered into by and between MultiCare Health System, a Washington non-profit corporation, and Local Motion, LLC ("Contractor"). MHS and Contractor are sometimes referred to in this First Amendment individually as "Party" or, collectively, as the "Parties."

WHEREAS the Parties have previously entered into a Services Agreement dated January 1, 2015;

WHEREAS the Parties wish to revise the Agreement to add additional language;

Now, therefore, in accordance with Exhibit A, Section 4, Service Fees, the fees will increase to reflect the current year's Seattle-Tacoma-Bremerton Consumer Price Index ("CPI") increase as reported by the United States Department of Labor, Bureau of Labor Statistics or five percent (5%), whichever is lower.

FA-1. Exhibit A-1, SERVICE FEES is hereby deleted and replaced with the attached Exhibit A-1, SERVICE FEES Effective January 1, 2016.

FA-2. Except as set forth in this First Amendment, all terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment effective as of the last date shown below.

**MultiCare Health System**

**Local Motion, LLC**

By: LOIS BERNSTEIN  
Lois Bernstein  
Title: Sr. V.P. Community Services  
Date: 1/5/16

By: Shelley Bates  
Shelley Bates  
Title: managing member  
Date: 12/31/15

**EXHIBIT A-1**  
**SERVICE FEES – Effective January 1, 2016**

**Standard Zone Rates**

Distance to/from ADHC	Zone 1 0-5.9 Miles	Zone 2 6-99.11.9 Miles	Zone 3 12-19.9 Miles	Zone 4/4T 20-45 Miles
Per Trip Cost	\$26.27	\$34.21	\$41.46	\$44.74
Number of ADH Participants Per Hour	3.31	3.18	3.07	2.89
Number of Revenue Hours	381.53	331.53	133.68	34.32
Number of Vehicles in Service	See Appendix A	See Appendix A	See Appendix A	See Appendix A

**Special Transport Rates. Complete attached matrix sheets for each zone**

Distance to/from ADHC	Zone 1 0-5.9 Miles	Zone 2 6-99.11.9 Miles	Zone 3 12-19.9 Miles	Zone 4/4T 20-45 Miles
Per Trip Cost	\$15.81 + \$3.42 per mile	\$16.87 + \$3.42 per mile	\$20.43 + \$3.42 per mile	\$22.38 + \$3.42 per mile

**Standby Rates. Complete attached matrix sheets for each zone.**

Distance to/from ADHC	Zone 1 0-5.9 Miles	Zone 2 6-99.11.9 Miles	Zone 3 12-19.9 Miles	Zone 4/4T 20-45 Miles
Per Trip Cost	\$29.38 hr.	\$29.38 hr.	\$29.38 hr.	\$29.38 hr.

**No Show Rates. Complete attached matrix sheets for each zone.**

Distance to/from ADHC	Zone 1 0-5.9 Miles	Zone 2 6-99.11.9 Miles	Zone 3 12-19.9 Miles	Zone 4/4T 20-45 Miles
Per Trip Cost	\$13.14	\$17.11	\$20.43	\$22.38

## SERVICES AGREEMENT

This SERVICES AGREEMENT (the "Agreement") is effective as of the 1st day of January, 2015 (the "Effective Date"), by and between MultiCare Health System ("MHS"), a nonprofit corporation formed under the laws of the State of Washington and Local Motion, LLC a Washington limited liability company ("Contractor"). MHS and Contractor are sometimes referred to in this Agreement individually as "Party" or, collectively, as the "Parties."

WHEREAS, MHS receives funding from third party organizations (which are not a party to this Agreement) to provide transportation services for its Adult Day Health Program ("ADH") participants; and

WHEREAS, Contractor provides custom NEMT passenger transportation services; and

WHEREAS, MHS has determined that it requires the services of Contractor with respect to transportation of its ADH participants; and

WHEREAS, Contractor is experienced, knowledgeable, and available to provide the foregoing services for MHS;

NOW, THEREFORE, in consideration of the mutual promises contained in and the mutual benefits contemplated by this Agreement, MHS and Contractor agree as follows:

1. Services. Contractor shall provide coordinated transportation for all MHS ADH participants in Pierce County. Participants must be safely accessible by Contractor's vehicle in order for Contract to provide Services. If participant is located in an area which is inaccessible for Contractor's vehicle, Contract and MHS ADH will work together to arrange alternative pick-up/drop off accommodations for the participant. ADH participants will be picked up in a timely manner at their established pickup location and transported to MHS ADH facility located at 6442 S. Yakima Avenue in Tacoma, Washington. Transportation will be offered during Service Schedule. At the conclusion of the program, the ADH participants will be transported from MHS ADH facility to their established drop off location in a timely manner. Detailed services are specifically described on Exhibit A ("Services"). In the event there is any conflict between the terms on Exhibit A and the terms in this Agreement, the terms in this Agreement shall govern.

2. MHS' Obligations Under This Agreement. MHS shall pay Contractor as set forth on Exhibit A. Payment shall be due forty-five (45) days from MHS' receipt of Contractor's invoice. Interest on payments not received within forty-six days from MHS' receipt of invoice shall accrue at one percent (1%) per month. Interest shall not accrue on overdue payments if MHS has submitted a written notice to Contractor disputing such payment. Invoices shall be processed in accordance with Exhibit A, Section 10 as follows:

- (a) Contractor will send the invoices to the Fiscal Agent (Pierce Transit) before the 5th day of each month.
- (b) The Fiscal Agent reviews the invoices for accuracy and works with Contractor to finalize a complete and accurate invoice.
- (c) The Fiscal Agent accepts and approves the invoice with the Contractor.

- (d) By the 10th of each month the Contractor forwards the approved invoice along with supporting documents to MHS at the following addresses:

MultiCare Health System  
Accounts Payable  
P.O. Box 5299, M/S: 737-4-AP  
Tacoma, WA 98415-0299  
Email: [donna.halos@multicare.org](mailto:donna.halos@multicare.org)  
or assigned successor

MultiCare Adult Day Health  
Attn: Jane Hanson, Supervisor 6442  
S. Yakima Avenue  
Tacoma, WA 98408  
Email: [jane.hanson@multicare.org](mailto:jane.hanson@multicare.org) or  
assigned successor

- (e) MHS reviews the invoice and then releases to MHS Accounts Payable for payment.

3. Events of Default. In the event Contractor's Services are terminated for cause under this Agreement, MHS shall have no further obligation to make any payment in connection with this Agreement except for those Services already rendered in conformity with this Agreement until date of notice of termination. Contractor shall immediately repay to MHS any amounts prepaid but unearned.

4. Term; Termination. The term of this Agreement shall commence on January 1, 2015 and end December 31, 2017 (the "Initial Term"), unless sooner terminated pursuant to the provisions set out below. Thereafter, this Agreement may be extended for two (2) additional one (1) - year extension terms by a signed written extension agreement between the parties as funding, the success of the ADH program, and Contractor's performance permit.

In addition to any other termination rights set forth elsewhere within this Agreement, this Agreement may be terminated in the following events:

- (a) Mutual written agreement of Contractor and MHS;
- (b) Immediately, at MHS' option, upon: the refusal to perform the terms of this Agreement, or dissolution of Contractor;

On 30 days written notice in the event of any material breach of this Agreement, and the failure of the party in breach to remedy such breach within 30 days after receiving written notice of the existence of the breach. Contractor's breach shall include, but is not limited to, Contractor's loss of its license or certification or failure to meet a requirement to deliver the services under this Agreement for any reason.

- (c) Upon 90 days advance written notice, by either Party, with or without cause; or
- (d) Immediately on written notice for cause, based upon the Contractor's engaging in actions tending to impair the health and safety of ADH participants, or the imposition of disciplinary sanctions against an officer of Contractor by any governmental agency having jurisdiction over the Contractor being sanctioned which shall include the institution of proceedings against Contractor that could lead to conviction of any of its officers of a crime.
- (e) Upon written notice, containing an effective future termination date, to Contractor if MHS ADH ceases to exist or the transportation funding ceases to exist.

(f) If:

- 1) Contractor becomes insolvent;
- 2) Contractor makes a general assignment for the benefit of creditors;
- 3) Any proceeding be instituted by or against Contractor for any relief under bankruptcy or insolvency laws;
- 4) A receiver is appointed for Contractor property or assets; or
- 5) Contractor risks ADH participant safety in a way that cannot be cured, MHS may, by delivery of written notice of termination to Contractor, immediately terminate this Agreement in its entirety without further liability to Contractor other than for payment of Services rendered by Contractor and not previously paid by MHS.

MHS agrees to pay for all Services properly rendered in accordance with this Agreement prior to the effective date of any termination.

5. Independent Contractor. Contractor is an independent contractor. Nothing in this Agreement shall be construed to create an employer-employee relationship between MHS and Contractor, or to create a relationship of joint venturers, partners, landlord and tenant, or any relationship other than one of independent parties contracting for their own benefit. MHS shall have no right or power to control or direct the manner or method by which Contractor fulfills its obligations under this Agreement, except as set forth herein. Contractor shall be fully responsible to ensure that all services provided by it under this Agreement are rendered in a manner consistent with the standards governing such services and in accordance with reasonable standards of care. Contractor acknowledges that MHS is routinely surveyed by The Joint Commission (TJC) and as such, Contractor shall comply with all applicable TJC provisions pertinent to the services provided by Contractor to MHS under this Agreement.

6. Federal Tax Form 1099. As required by law, MHS shall provide Contractor with a Federal Tax Form 1099 indicating payment to Contractor of compensation, remuneration or other fixed or determinable income in amounts annually aggregating \$600 or more.

7. Insurance/Bond. Contractor shall provide MHS a certificate of such insurance from its insurance provider upon signing of this Agreement covering the term of this Agreement. MHS and Pierce Transit shall be listed as additional named insureds as to any Services performed by the Contractor. Contractor shall, at minimum, comply with all insurance and industrial insurance requirements of the Medicaid Non Emergency Medical Transportation ("NEMT") Standards. Contractor shall at its sole expense, maintain in effect at all times during the performance of work, insurance coverage with limits not less than those set forth below and with insurers and under forms of policies satisfactory to MHS:

- a. Commercial General Liability Insurance (CGL): The Contractor shall maintain Commercial General Liability Insurance, including coverage for bodily injury, property damage, and contractual liability, with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The policy shall include liability arising out of premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured

contract. MHS, its elected and appointed officials, agents, and employees shall be named as additional insured.

- b. Business Auto Policy (BAP): The Contractor shall maintain Business Automobile Liability Insurance on all vehicles used to transport ADH participants, including vehicles hired by the Contractor or owned by the Contractor's employees, volunteers or others, with the following minimum limits: \$1,000,000 per accident.

The Contractor's carrier shall provide MHS with a waiver of subrogation to prevent the insurer from attempting to recover loss payments from MHS if the Contractor caused the loss.

For subcontracted transportation providers, where their rates and operations are publicly regulated, the Contractor must require the same types of insurance, but may require lesser limits of coverage as specifically provided herein.

- c. Professional Liability Insurance (PL): If the Contractor provides professional services, either directly or indirectly, the Contractor shall maintain Professional Liability Insurance, including coverage for losses caused by errors and omissions, with the following minimum limits: Each Occurrence - \$1,000,000; Aggregate - \$2,000,000.
- d. Worker's Compensation: The Contractor shall comply with all applicable worker's compensation, occupational disease, and occupational health and safety laws and regulations. And the Contractor will hold MHS harmless for claims filed by the Contractor or its employees under such laws and regulations.
- e. Employees and Volunteers: Insurance required of the Contractor under the Agreement shall include coverage for the acts and omissions of the Contractor's employees and volunteers. In addition, the Contractor shall ensure that all employees and volunteers who use vehicles to transport ADH participants or deliver services have personal automobile insurance and current driver's licenses.
- f. Subcontractors: The Contractor shall ensure that all subcontractors have and maintain insurance with the same types and limits of coverage as required of the Contractor under the contract, except as provided under paragraph b of this section.
- g. Separation of Insured's: All insurance policies shall include coverage for cross liability and contain a "separation of insured's" provision.
- h. Insurers: The Contractor shall obtain insurance from insurance companies authorized to do business within the State of Washington, with a "Best's Reports" rating of A-, Class VII or better. MHS must approve any exception. Exceptions include placement with a "Surplus Lines" insurer or an insurer with a rating lower than A-, Class VII.
- i. Evidence of Coverage: The Contractor shall submit a Certificate of Insurance to MHS for each coverage required of the Contractor under the Agreement. A duly authorized representative of each insurer, showing compliance with the insurance requirements specified in this Agreement, shall execute each Certificate of Insurance. The Contractor shall maintain copies of Certificates of Insurance for each subcontractor as evidence that each subcontractor has and maintains insurance as required by the Agreement.
- j. Material Changes: The insurer shall give MHS forty-five (45) days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the insurer shall give MHS ten (10) days advance notice of cancellation.

- k. **General:** By requiring insurance, MHS does not represent that the coverage and limits specified will be adequate to protect the Contractor. Such coverage and limits shall not be construed to relieve the Contractor from liability in excess of the required coverage and limits and shall not limit the Contractor's liability under the indemnities and reimbursements granted to MHS in this Agreement. All insurance provided in compliance with this Agreement shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State. The Contractor waives all rights against MHS for the recovery of damages to the extent they are covered by insurance.
1. **Fidelity Bond:** MHS may at its option, require Contractor to furnish a fidelity bond, to insure against theft or other dishonesty by Contractor's employees, satisfactory in form and substance to MHS in the minimum amount of \$50,000.00.
- ~~m. **Industrial Insurance Coverage:** The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, MHS may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. MHS may deduct the amount due to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.~~
8. **Workforce Practices/Screening.** Contractor shall abide by the practices set forth in Exhibit B and screen its workforce as set forth in Exhibit B. If any Contractor personnel are on MHS premises at any time, such Contractor personnel shall abide by all MHS policies and procedures, including but not limited to MHS' Vendors Representatives policy and Non-Employee On and Off-Boarding policy (copies of which are available upon request).
9. **Warranty.** Contractor expressly warrants to MHS that all services provided under this Agreement will be performed in a manner consistent with that level of care and skill ordinarily exercised by members of the same profession currently practicing in the same locality under similar circumstances and all materials and equipment furnished under this Agreement, if any, will be functioning in a manner commensurate with use and consistent with industry standard, unless otherwise specified, and of good quality, free from all material faults and material defects and in conformance with requirements of this Agreement. Services not conforming to these requirements may be considered defective.
10. **Indemnification.** Contractor shall, at minimum, comply with all indemnification and hold harmless requirements as listed in the Medicaid Non Emergency Medical Transportation ("NEMT") Standards as set forth in Exhibit C. Contractor shall defend, indemnify and hold MHS, its directors, officers, agents, and employees harmless from any and all claims for loss or liability arising out of or related to any alleged act or omission by any employee, shareholder or agent of Contractor. Without limiting the generality of the foregoing, Contractor shall indemnify, defend and hold harmless MHS from allegations that MHS is vicariously liable for negligent acts of Contractor, or that MHS negligently granted staff privileges or failed to supervise Contractor. MHS shall defend, indemnify, and hold Contractor harmless from any and all claims for loss or liability arising out of or related to any alleged act or omission by MHS employees. Without limiting the generality of the foregoing, MHS shall defend, indemnify and hold Contractor harmless from claims against Contractor based on the quality of the hospital facilities or equipment or the acts of MHS employees.



Contractor specifically and expressly waives its immunity and limitation of liability under any industrial insurance, RCW 51, or other employee benefit act of any jurisdiction that otherwise would be applicable in the defense of such claim, and Contractor acknowledges that this waiver was mutually negotiated in accordance with RCW 4.24.115.

In the event of an incident involving the performance of Services that could lead to a potential liability, Contractor agrees to work cooperatively with MHS in its investigation and mitigation efforts and Contractor shall make its employees available to MHS immediately. Contractor shall not take any action to obstruct MHS' investigation efforts. A breach of this Section shall be a material breach of the Agreement giving MHS the right, at its option, to terminate the Agreement.

**11. HHS / Comptroller General Access to Records.** If services valued at over ten thousand dollars (\$10,000.00) per year will be provided under the terms of the Agreement and §42 USC §1395x(v)(1)(I), as amended, and any written regulations pursuant thereto (Section 1861 (v)(1)(I) of the Social Security Act) is applicable to this Agreement, this Section shall apply to both parties. In accordance with the Omnibus Reconciliation Act of 1980, each party agrees that their books and records will be available to the Secretary of Health and Human Services and the Comptroller General of the United States, or their duly authorized representatives, for four (4) years after termination of this Agreement. (Contractor agrees to retain all such books and records for not less than six (6) years after termination.) In the event that any of the services to be performed under this Agreement are performed by any subcontractor of either party at a value or cost of \$10,000.00 or more over a 12 month period, such party shall assure said contractor complies with the provisions of the Omnibus Reconciliation Act of 1980.

**12. Conversion.** In the event that any payment made to Contractor hereunder is determined by the parties or a court, an instrumentality of the federal or any state or local government agency, a body having the power to exercise disciplinary authority over one or more of the parties, or the Office of the Attorney General, to be improper for any reason, or are found to threaten the tax exempt status of MHS then, if capable of reformation, this Agreement shall be reformed by agreement of the parties negotiating in good faith so as not to violate any such law or be improper for any reason. If the parties are unable to agree on the terms of such reformation, they shall engage in mediation in good faith at the request of either party, with Washington Arbitration and Mediation Services, Inc. (other such mediation service or mediator as the parties shall mutually agree).

**13. Confidential and Propriety Information.** In performing their obligations under this Agreement, Contractor and/or its agents may be exposed to confidential information which includes but is not limited to protected health information, MHS' proprietary information, employees, research, development, business affairs, records, processes, techniques, types of equipment, and MHS' confidential business information ("Confidential Information"). Contractor its officers, employees, and subcontractors shall agree in writing to maintain confidentiality of all Confidential Information obtained during the term of this Agreement and shall be responsible for ensuring that its employees and agents abide by such obligations. Contractor and/or its employees or agents shall not disclose, distribute, copy, share, or otherwise use any Confidential Information (including the terms of this Agreement) except as expressly permitted by MHS in writing. Any patterns, samples, specifications, drawings, designs, documents, data and other information transmitted to Contractor by MHS in connection with the performance of this Agreement are the property of MHS and are disclosed in confidence upon the condition that they are not to be reproduced or copied or used for

furnishing information or equipment to others, or for any other purpose detrimental to the interest of MHS. Upon completion of work under this Agreement, Contractor and its employees and agents shall return to MHS all confidential information and all records or documents received from MHS, including, without limitation, any and all copies thereof. MHS shall be entitled to injunctive relief for any violation of this paragraph. Contractor agrees to instruct its employees and subcontractors regarding Confidential Information and to enter into written agreements protecting Confidential Information as set forth in this Section. Neither party, its employees, nor subcontractors shall engage in any practice that could compromise the confidentiality of patients, guests or staff, or information maintained at MHS. In the event of a breach of this Section, Contractor agrees to work cooperatively with MHS in its investigation and mitigation efforts and Contractor shall make its employees available to MHS immediately. Contractor shall not take any action to obstruct MHS' investigation efforts. A breach of this Section shall be a material breach of the Agreement giving MHS the right, at its option, to terminate the Agreement.

14. Business Associate Provisions. To the extent that Contractor's contact with individually identifiable health information, while performing services under this Agreement, is unanticipated and/or such contact would only be incidental to the performance of the services (such as passing through a patient care area) a Business Associate Agreement is not needed for these Services. However, for any party who is expected or intended to routinely encounter such information as part of this Agreement, the parties shall execute MultiCare's Business Associate Agreement.

15. Works Made For Hire. Contractor acknowledges that any written materials, photographs, drawings, mixed media, or other visual or graphic representations in any form or format, including digital media, film, audio or any other form of expression, produced by Contractor at the documented written request of MHS, shall constitute "works made for hire" and as such shall be deemed to be the property of MHS, free and clear of any claim of any kind or nature by Contractor or Contractor's heirs, successors or assigns. To the extent that any such item shall, for any reason, be deemed by a court of competent jurisdiction to be partially or completely owned by Contractor, Contractor hereby authorizes MHS and its heirs, successors and assigns to utilize such item(s) together with any derivative works in any manner within MHS' sole and absolute discretion, for a period of fifty (50) years, on a worldwide basis.

16. Infringement. Contractor warrants and represents that the services ordered herein and their sale, performance, use or disposal alone or in combination with other products will not infringe upon any U.S. or foreign patents, copyrights or trademarks or otherwise infringe upon any right of any third party, and Contractor agrees to indemnify, defend, protect and save harmless MHS, its successors, assigns, affiliates, customers and users of its products, against all suits and from all, claims, losses, expenses or damages of any kind resulting from any actual or alleged infringements; provided, however, that this indemnity shall not apply to any such claims, losses expenses or damages arising out of compliance by Contractor with specifications furnished by MHS.

17. Standards of Business Conduct. Contractor agrees to abide by the Standards for Business Conduct set forth by MHS which can be found on the internet at <http://www.multicare.org/files/library/61e56b29e11ea5e0.pdf> Printed versions are available upon request.

18. Entire Agreement; Modifications. This Agreement constitutes the entire agreement

between the parties regarding its subject matter and supersedes all prior contracts, agreements, understandings, and discussions, whether oral or written. Contractor acknowledges that it has relied solely on the covenants and representations set forth in this Agreement and no others. This Agreement, including Exhibits, may only be modified by a written document signed by both parties. No waiver of any provision of this Agreement shall be valid unless in writing and signed by or on behalf of the person waiving such provision, and no such waiver when executed shall constitute a waiver of any further failure to comply fully with this Agreement.

- a. Assignment. This Agreement and any duties or responsibilities under it may not be assigned by a party without the prior written consent of the other party.
- b. Time of the Essence. Time of the essence of this Agreement.

19. Arbitration. In the event of any dispute arising under this Agreement, the dispute shall be submitted to binding arbitration pursuant to RCW 7.04 and the substantially prevailing party shall be entitled to costs and reasonable attorneys' fees.

20. Exhibits. The following exhibits are incorporated into this Agreement as if set forth fully. In the event of any conflict between the terms of this Agreement and its Exhibits, the terms of the Exhibits shall control.

- Exhibit A – Services Description
- Exhibit B – Workforce Screening & Practices
- Exhibit C – Medicaid NEMT Standards for Drivers and Vehicles
- Exhibit D – MHS ADH Cancels/No Shows Policy
- Exhibit E – MHS ADH Inclement Weather Policy
- Exhibit F – MHS ADH No One Home to Receive Policy
- Exhibit G – MHS ADH Requesting Rides, Changing Rides, and Delayed Rides Policy
- Exhibit H – MHS ADH Special Transport
- Exhibit I – Definitions

21. Governing Law & Venue. This Agreement shall be governed by and construed under the laws of the State of Washington. In the event of any court action which may be allowed by this Agreement, the venue of such shall be in the Superior Court of Pierce County, Washington, unless the parties shall otherwise agree.

22. Contact. Each party shall appoint a representative to facilitate the Services contemplated by this Agreement ("Contact"). Each party's representative is authorized to receive notices regarding the Services rendered under this Agreement. Each party's initial representative is designated below their respective signatures below. Either party may change its representative by designating a new representative and providing contact information in writing to the other party.

23. Severability. If any provision of this Agreement or its application to any person or circumstance is held unenforceable, the remainder of this Agreement, or the application of the provision to other persons or circumstances, shall not be affected, provided, that the essential purpose of this Agreement is not thereby adversely affected or prevented.

24. Use of Name. Neither party may use the name, logo or any identifying symbol of the other party in connection with the services to be provided under this Agreement without the

other party's express prior permission, which may be given or withheld for any reason. Any permission granted under this Section shall be revoked automatically upon the expiration or termination of this Agreement.

**25. Debarment / Sanctions List.** Contractor represents and warrants to MHS that Contractor and all personnel providing services to MHS under this Agreement, as applicable, have not been placed on the sanctions list issued by the Office of the Inspector General of the Department of Health and Human Services pursuant to the provisions of 42 U.S.C. § 1320a (7), have not been excluded from government contracts by the General Services Administration ("GSA") and have not been convicted of a felony or any crime relating to health care. Further, if during any term of this Agreement, Contractor is placed on the sanctions list, excluded from government contracts or convicted of a felony or any crime relating to healthcare, Contractor immediately will notify MHS in writing of the event and such notice shall contain reasonably sufficient information to allow MHS to determine the nature of the sanction, exclusion or conviction. MHS will have the right to terminate this Agreement immediately by written notice to Contractor if Contractor is placed on the sanctions list, banned from government contracts by GSA or convicted of a felony or any crime relating to healthcare.

IN WITNESS WHEREOF, the Parties hereto have executed, or caused their authorized representatives to execute, this Agreement as of the dates set forth below.

**MultiCare Health System:**  
By: *Lois Bernstein*  
Print Name: LOIS BERNSTEIN  
Title: SC. VP, COMM. SVS.  
Date: 12-31-14

**Local Motion, LLC:**  
By: *Shelley Bates*  
Print Name: Shelley Bates  
Title: managing member  
Date: 12-31-14

**MultiCare's Contact Information:**  
Designated Representative: Jane Hanson  
Title: Supervisor - Adult Day Health  
Address: PO Box 5299; 6442-1-ADH  
Tacoma, Washington 98415  
Telephone: 253-459-7222  
Facsimile: 253-473-3117  
E-mail address: Jane.Hanson@multicare.org

**Local Motion's Contact Information:**  
Designated Representative: Lyle and Shelley Bates  
Title: \_\_\_\_\_  
Address: 17407 - 66<sup>th</sup> Ave Ct E  
Puyallup, WA 98375  
Telephone: (253) 539-8233  
Facsimile: 253 539-8234  
E-mail address: Localmo92@aol.com  
Contractor's EIN No.: 91-2022546

**EXHIBIT A**  
**SERVICES DESCRIPTION**

1. **Service.** Contractor will provide coordinated transportation for all MHS ADH participants in Pierce County. ADH participants will be picked up in a timely manner at their established pickup location and transported to The MHS ADH facility, located at 6442 S. Yakima Avenue in Tacoma, WA. Transportation will be offered during Service Schedule. At the conclusion of the program, the ADH participants will be transported from the MHS ADH facility to their established drop off location in a timely manner. By the very nature of the ADH participants who attend the ADH program, there will be some changes in ridership throughout the duration of this Agreement.
  
2. **Service Schedule.** Contractor will provide transportation services four (4) days a week, generally between the hours of 8:30 am and 8:30 pm, with allowance for variation due to delays, including but not limited to: participant medical delay of service or extended loading time at the ADH facility. However, Participant shall not be picked up before 8:30 am on any scheduled day. The current schedule is as follows:
  - a. **Monday**
    - i. **AM in**
    - ii. **AM out**
    - iii. **PM in**
    - iv. **PM out**
  - b. **Tuesday**
    - i. **AM in**
    - ii. **AM out**
    - iii. **PM in**
    - iv. **PM out**
  - c. **Wednesday**
    - i. **AM in**
    - ii. **AM out**
    - iii. **PM in**
    - iv. **PM out**
  - d. **Thursday**
    - i. **AM in**
    - ii. **AM out**

MHS ADH staff shall provide Contractor with scheduled days and program times for each ADH participant. MHS ADH Program trips provided will be exclusively for MHS ADH participants during designated (contracted) program session hours. The parties may increase or may decrease these hours by mutual written and signed Agreement at some time in the future, MHS ADH may request additional services by providing at least sixty (60) days advance written notice to Contractor in order to allow Contractor adequate time to make any necessary equipment purchases and/or staffing increases/adjustments.

3. **Service Area.** Contractor will transport ADH participants within Pierce County. ADH participants may be added to and removed from the transportation service during the term

of this Agreement. Changes to the transportation roster and/or transportation schedule will be documented in writing via email or other method(s) of communication as agreed in writing between the parties.

4. **Service Fees.** Service fees are set forth in Exhibit A-1. Pricing will be held firm for one year. Thereafter price increases will be limited to the current year's Seattle-Tacoma-Bremerton Consumer Price Index ("CPI") increase as reported by the United States Department of Labor, Bureau of Labor Statistics or five percent (5%), whichever is lower.
5. **Medicaid NEMT Requirement.** The Contractor must be a Medicaid Non Emergency Medical Transportation ("NEMT") contractor, and must provide high quality, door-to-door transportation services during the term of this Agreement. The Contractor will provide appropriate vehicles, communications equipment, navigation equipment, operations and maintenance facilities, and dispatching functions to accommodate this service for MHS. When applicable, vehicles and securements used in this Agreement shall comply with 49 CFR Part 38 specifications for vehicles and wheelchair securement systems complying with the Americans with Disabilities Act (ADA). The Contractor may sub-contract with other providers in order to meet all of these requirements.
6. **Allowable Adjustments.** Services may be adjusted at any time as determined by MHS. Modifications to Services to be provided by the Contractor may include, but are not limited to, extending, deleting or adding Service hours, expanding or reducing the geographic Service area.
7. **Driver and Vehicle Standards.** Contractor will ensure that all drivers and vehicles meet the Medicaid NEMT Standards listed in Exhibit C. Verification of driver and vehicle standards must be maintained by Contractor and be provided on request to MHS and MHS may share such information with third parties who provide funding for the Services.
8. **Incident and Accident Notifications.** In addition to the NEMT Standards listed in Exhibit C, the additional Incident and Accident Notification requirements apply during this Agreement:
  - a. **Incident Notification**
    - (1) Drivers are to report all incidents immediately from the scene directly to Contractor dispatch. The Contractor dispatch is responsible for notifying ADH via phone within one (1) hour. The Contractor will submit a detailed written report to ADH by the end of the next business day regarding any incident that involves vehicles and/or drivers providing service under this contract.
  - b. **Accident Notification**
    - (2) Drivers are to report all accidents immediately from the scene directly to Contractor dispatch. The Contractor dispatch is responsible for notifying ADH via phone within one (1) hour. The Contractor will submit a detailed written report to ADH by the end of the next business day regarding any accident that involves vehicles and/or drivers providing service under this contract.
9. **Billing and Reporting.** Contractor will submit a monthly invoice and a transportation report to MHS by the tenth (10<sup>th</sup>) day of the following month with the following information including but not limited to:
  - Rider name;
  - Rider address;
  - Rider Pick up time;
  - Rider drop off time;

- Revenue Miles;
- Revenue hours; and
- Rider pick/drop off Zone

10. Compensation. Contractor will invoice MHS by the tenth (10<sup>th</sup>) day of each month. Contractor will charge for services under the Service Fee Schedule in Ex. "A" including fuel surcharges. (Historical data is for informational purposes and is not to be considered). MHS agrees to pay Contractor within forty-five (45) days of receiving the invoice. Contractor invoices must be accurate, cite the contract number, and contain the name of the ADH participant showing actual applicable pick-up and/drop off times, revenue miles and revenue hours, and the appropriate zone. Invoices are to be sent to both:

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MultiCare Health System  
Accounts Payable  
P.O. Box 5299, M/S: 737-4-AP  
Tacoma, WA 98415-0299

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MultiCare Adult Day Health  
Attn: Jane Hanson, Supervisor  
6442 S. Yakima Avenue  
Tacoma, WA 98408

**EXHIBIT A-1  
SERVICE FEES**

**Standard Zone Rates**

Distance to/from ADHC	Zone 1 0-5.9 Miles	Zone 2 6-11.9 Miles	Zone 3 12-19.9 Miles	Zone 4/ 4T 20-45 Miles
1. Per Trip Cost Year One	\$25.93	\$33.77	\$40.33	\$44.17
2. Number of ADH Participants Per hour	3.31	3.18	3.07	2.89
3. Number of Revenue Hours	381.53	331.53	133.68	34.32
4. Number of Vehicles in Service	See appendix A	See appendix A	See appendix A	See appendix A

**Special Transport Rates. Complete attached matrix sheets for each zone.**

Distance to/from ADHC	Zone 1 0-5.9 Miles	Zone 2 6-11.9 Miles	Zone 3 12-19.9 Miles	Zone 4/4T 20-45 Miles
1. Per Trip Cost	\$15.61 + \$3.38 per mile	\$16.65 + \$3.38 per mile	\$20.17 + \$3.38 per mile	\$22.09 + \$3.38 per mile

**Standby Rates. Complete attached matrix sheets for each zone.**

Distance to/from ADHC	Zone 1 0-5.9 Miles	Zone 2 6-11.9 Miles	Zone 3 12-19.9 Miles	Zone 4/4T 20-45 Miles
2. Per Trip Cost	\$29.00 hr	\$29.00 hr	\$29.00 hr	\$29.00 hr

**No Show Rates. Complete attached matrix sheets for each zone.**

Distance to/from ADHC	Zone 1 0-5.9 Miles	Zone 2 6-11.9 Miles	Zone 3 12-19.9 Miles	Zone 4/4T 20-45 Miles
3. Per Trip Cost	\$12.97	\$16.89	\$20.17	\$22.09



Pricing Appendix A

ROUTE MATRIX PER ZONE

	Monday 04-04 04-07	Tuesday 04-05	Wednesday 04-06	Thursday
<b>Zone 1</b>				
am in	7	8	7	9
am out	7	10	7	10
pm in	8	7	8	8
pm out	8	7	8	7
<b>Zone 2</b>				
am in	9	7	8	11
am out	8	8	8	11
pm in	10	10	10	8
pm out	8	8	9	8
<b>Zone 3</b>				
am in	5	4	4	6
am out	5	4	3	6
pm in	5	6	5	6
pm out	5	6	5	6
<b>Zone 4</b>				
am in	2	1	2	0
am out	2	1	2	0
pm in	2	1	1	1
pm out	2	1	1	1

BUS MATRIX

Per day buses cross into different zones continuously but not always crossing into all zones

	Monday 04-04	Tuesday 04-05	Wednesday 04-06	Thursday 04-07
am m	10	10	9	11
am out	9	10	9	11
pm m	12	12	10	11
pm out	11	11	10	10

**FUEL SURCHARGE**

	<b>Surcharge</b>	
	<b>Regular Unleaded Per Rev Mile</b>	<b>Diesel Per Rev Mile</b>
Pump price \$3.50-\$3.999	\$0.00	\$0.00
Pump price \$4.00-\$4.4999	\$0.05	\$0.05
Pump price \$4.50-\$4.9999	\$0.10	\$0.10
Pump price greater than \$5.00	\$0.18	\$0.18

Add \$.08 per \$.50 fuel cost rise starting at \$5.50

## EXHIBIT B

### CONTRACTOR'S WORKPLACE PRACTICES AND WORKFORCE SCREENING

- 1) **EEOC/Employee & Applicant Tracking.** During the performance of this Agreement, Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, gender, sexual preference, marital status, age, national origin, physical or mental handicap, disabled veteran or veteran status or any other reason prohibited by law including but not limited to the Code of Federal Regulations Chapter 41 60-1.4(a), 60-250.5(a), 60-300.5(a), 60-741.5(a) and Chapter 29 Part 471 Appendix A to Subpart A ("Federal EEO Laws"). Contractor will take affirmative action to assure that Contractor's employees and applicants are treated in accordance with all applicable state or federal laws during the processes of pre-hiring and/or employment by Contractor, without regard to their race, color, age, national origin, physical or mental handicap, disabled veteran or veteran status or any other reason prohibited by law including but not limited to Federal EEO Laws. Such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising; layoff or termination; establishment of rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor will maintain all documentation required by the Equal Employment Opportunity Commission (EEOC) and will make all aggregate data pertaining to Contractor's employment practices available to MHS to the extent that MHS is required, for any reason, to include Contractor's employment data in MHS' EEOC reports.
- 2) **Criminal Background Screenings.** Washington State law (RCW 43.43.830 through 43.43.845) prohibits the employment by health care entities including those operated by MHS of individuals who have been convicted of certain enumerated crimes against persons or other major felonies. As a contractor, Contractor agrees to perform criminal background checks on all Contractor personnel assigned to MHS by Contractor unless such requirement is specifically waived by MHS at the time of engagement of Contractor for a particular project that may not require such background screens.

All personnel assigned to MHS by Contractor shall pass a pre-employment background screen, updated annually thereafter, to include:

- A standard Washington State Patrol background check for all Contractor employees who have resided in Washington State for the most recent three (3) years; and
- An external criminal background report, in addition to the WSP check, for any states in which the Contractor employee has resided within the previous three years.

Candidates whose background checks include any felony convictions within the past ten (10) years or any crimes against persons will NOT be assigned to any MHS location.

MHS will have a right to review background screens of all personnel assigned by Contractor upon request. Contractor will retain all such screens for a minimum of ten (10) years after assignment of a person to MHS.

MHS recognizes that Criminal Background checks performed by Contractor (or any other agency) are inherently difficult to perform in many jurisdictions, due to the absence of a national criminal records database. MHS merely require that Contractor performs consistent criminal background checks where feasible to do so, and where a complete background check cannot be adequately performed, Contractor is expected to notify MHS of that fact, in advance of placement of any assigned personnel.

- 3) **Healthcare Background Screenings.** Contractor represents and warrants to MHS that Contractor and all personnel providing services to MHS under this Agreement, as applicable, have not been placed on the sanctions list issued by the Office of the Inspector General of the Department of Health and Human Services pursuant to the provisions of 42 U.S.C. § 1320a(7), have not been excluded from government contracts by the General Services Administration ("GSA") and have not been convicted of a felony or any crime relating to healthcare. Further, if during any term of this Agreement, Contractor is placed on the sanctions list, excluded from government contracts or convicted of a felony or any crime relating to healthcare, Contractor immediately will notify MHS in writing of the event and such notice shall contain reasonably sufficient information to allow MHS to determine the nature of the sanction, exclusion or conviction. MHS will have the right to terminate this Agreement immediately by written notice to Contractor if Contractor is placed on the sanctions list, banned from government contracts by GSA or convicted of a felony or any crime relating to healthcare.
- 4) **Drug Screenings.** As a contractor for MHS, Contractor agrees to perform drug screen checks on all Contractor personnel assigned to work in clinical care areas at MHS by Contractor.
  - Persons who test positive for non-prescribed controlled substances will not be allowed to work at any MHS facility.
  - **Prohibited Conduct:** Violation of any of these rules will result in a do not return status for Contractor personnel and may result in Contractor's contract status to be placed as a non-preferred vendor or up to the termination of Contractor's contract with MHS. The following conduct is strictly prohibited:
    - Being under the influence of alcohol or an unauthorized controlled substance while at work.
    - Contractor's employees taking prescribed controlled substances must review with their health care provider, whether use will affect ability to perform the essential functions of the job. Recommendations by the health care provider must be provided to MHS and Contractor must be informed, in advance, of the planned placement of any Contractor employee taking controlled substances during work assignments at MHS Facilities.
    - The unlawful manufacture, distribution, dispensation, diversion or possession of a controlled substance.
  - **Criminal Convictions:** Federal law requires that any employee convicted of a criminal drug statute for a violation occurring in the workplace must inform their employer in writing no later than five (5) days after such conviction (or if employee

pleads no contest or is sentenced). This information must be relayed to MHS by Contractor.

Contractor agrees to assist MHS in its efforts to comply with these regulations by performing drug screen checks on all Contractor personnel assigned to MHS by Contractor.

- 5) **Health Immunizations.** Contractor agrees to provide and maintain immunization records on all personnel assigned to work in any clinical care areas or inside any hospital or clinic facilities of MHS by Contractor as required in MHS' Non-Employee On and Off-Boarding policy (copies of which are available upon request).
-

## EXHIBIT C

### MEDICAID NEMT STANDARDS FOR DRIVERS AND VEHICLES

#### 1. Service and Safety Standards

a. The Contractor shall apply the following testing and safety standards to all non-privately-owned vehicles used to transport ADH participants.

(1) Drug and Alcohol Testing. The Contractor shall ensure that both the Contractor's and subcontractor's transportation operations are in compliance with:

(a) The Federal Transit Administration's (FTA) drug and alcohol regulations, and

(b) The Federal Highway Administration's drug and alcohol regulations, when applicable.

(2) Safety Standards. The Contractor and subcontractors shall

(a) Ensure that they are in compliance with all applicable federal, state and local regulations, and

(b) Be responsible for determining those Federal Transit Administration, Office of Safety and Security Standards that apply to their transportation activities.

#### b. Driver Accountability.

(1) The Contractor may add to the following recommended training for each driver:

- (a) Cardio-pulmonary resuscitation (CPR)/First Aid;
- (b) Passenger assistance training, such as ADAPT or PAT;
- (c) Fire suppression; and
- (d) Defensive driving.

(2) The Contractor and its transportation subcontractors shall:

- (a) Ensure that all drivers have a valid driver's license and insurance before providing ADH participant services;
- (b) Have ready access to all documents listed above.
- (c) Consult RCW 43.43.830, Background checks or successor, and local regulations if any, for disqualifying convictions that the Contractor should consider before allowing a driver to provide transportation services to an ADH participant.

(3) The Contractor shall not allow any driver or dispatcher to provide or facilitate any service under this contract if there is any indication that the driver may pose a risk to ADH participants.

- (4) If the Contractor receives complaints regarding a driver, the Contractor shall:
- (a) Immediately remove that driver from transporting ADH participants, pending further review;
  - (b) Investigate the matter further, to determine the level of risk, if any, to ADH participants posed by that driver;
  - (c) Determine further steps to be taken, which may include:
  - (d) Further Driver training,
  - (e) Selective assignments so that the Driver poses a lower risk to ADH participants,
  - (f) Temporary suspension of that driver,
  - (g) Termination of that driver's employment with the Contractor or subcontractor, and
  - (h) Referral to civil authorities, such as licensing or law enforcement as necessary; and
  - (i) If the Contractor then determines that the subcontractor's actions or lack of actions pose a risk to ADH participants, the Contractor shall immediately direct the subcontractor to immediately remove that driver from transporting or having any contact with ADH participants.

c. Driver Conduct. The Contractor shall:

- (1) Ensure that all drivers:
- (a) Act in a professional manner at all times, and
  - (b) Perform the required minimum levels of service as explained in all subcontracts;
- (2) The Contractor shall apply the following standards to all drivers. All drivers shall:
- (a) Interact in a professional manner. This includes at a minimum protecting ADH participant confidentiality, avoiding offensive language/topics, maintaining an appropriate professional relationship, and treating ADH participants with respect;
  - (b) Wear, or have visible, easy to read proper company identification;
  - (c) Exit the vehicle to open and close vehicle doors when ADH participants enter or exit the vehicle and provide assistance as necessary to or from the main door of the place of destination;
  - (d) Properly identify and announce their presence at the entrance of the buildings at the specified pick-up location if a curbside pick-up is not apparent, or with attending facility staff;
  - (e) Assist the ADH participants in the process of being seated, including the fastening of the seat belt when necessitated by

the ADH participant's condition;

- (f) Confirm, prior to allowing any vehicle to proceed, that:
    - (i) ADH participants are properly secured in their seat belts; and
    - (ii) Wheelchairs are properly secured to the vehicle, and
    - (iii) ADH participants in wheelchairs are properly secured in their chairs;
  - (g) Provide an appropriate level of assistance to ADH participants, when requested, or when necessitated by the ADH participant's mobility status and personal condition, including:
    - (i) Curb-to-curb,
    - (ii) Door-to-door,
    - (iii) Door-through-door (excluding personal residences, with the exception that Contractor may enter the lobby or common of a semi-private/communal residence), and
    - (iv) Hand-to-hand, or
    - (v) Passage up and down stairs, without placing the driver's personal health and safety in danger,
  - (h) Provide support and direction to ADH participants as required by the ADH participant's mobility status and physical condition, such as:
    - (i) Movement of wheelchairs and mobility-limited persons as they enter or exit the vehicle using the wheelchair lift, or
    - (ii) Stowage by the driver of mobility aids and folding wheelchairs; and
  - (i) Be clean and maintain a neat appearance at all times.
- (3) Drivers or escorts shall not:
- (a) Make sexually implicit or explicit comments, or solicit sexual favors, or engage in sexual activity. Drivers or escorts shall not respond to or encourage such behavior;
  - (b) Solicit or accept controlled substances, alcohol, or medications from ADH participants;
  - (c) Solicit or accept money or additional business from ADH participants;
  - (d) Use alcohol, narcotics, or controlled substances, or be under their influence, while on duty. Prescribed medication can be used by a driver as long as his/her duties can still be performed in a safe manner and the Provider has written



documentation from a medical provider licensed to prescribe that the specific medication will not impact the ability of the driver;

- (e) Eat food or consume any beverage, other than water in a closed container, while operating the vehicle or while involved in ADH participant assistance;
  - (f) Give food or beverages to ADH participants;
  - (g) Smoke in the vehicle when ADH participants are present. The no-smoking rule also applies to all ADH participants, including ADH participants;
  - (h) Wear any type of headphones while on duty;
  - (i) Be responsible for ADH participant's personal items; and
  - (j) Attempt to influence or restrain ADH participants, their families/guardians, or medical providers from making complaints or reports regarding transportation. This includes refusing to give contact information.
- d. Driver Verifications. The Contractor shall verify that drivers used for this contract meet the terms and conditions of this contract and applicable regulations. These verifications may be done simultaneous with Contractor's Vehicle Inspections.
- (1) List of Drivers. The Contractor shall keep a list of drivers used for this Contract. This list shall be updated monthly. For each driver, the last date that the driver met the qualifications required by this contract shall be noted. The Contractor shall assure that each qualification met can be verified by original documentation. The Contractor may add other requirements to this list as the Contractor sees fit.
  - (2) Initial Verification. The Contractor shall verify that each driver meets the requirements of this contract, including the appropriate regulatory requirements, before that driver may serve ADH participants for this contract.
  - (3) Annual Verifications. The Contractor shall annually verify that each driver used for this contract meets the terms and conditions of this contract, including but not limited to review of Abstract of Driving Record, training and testing as required by federal and/or state regulations, and criminal background check.
  - (4) Random Verifications. The Contractor staff shall independently and randomly verify the qualifications of five percent ( 5%) of the drivers used for this contract annually.
    - (a) Contractor's verification must include at a minimum both field-verifications involving face-to-face contact with drivers and also verifications of billings to ensure that the performing drivers are properly qualified under this contract.
    - (b) If, during the course of random inspection, more than ten

percent (10%) of inspected drivers do not meet requirements of regulations or this contract, the remainder of the drivers shall be verified.

- (c) Drivers not passing these verifications shall be immediately removed from serving ADH participants. Each driver shall be re-verified before she or he may serve ADH participants under this contract.

(5) **Complaint Initiated Verifications.**

- (a) When an ADH participant makes a complaint about the qualifications, safety or suitability of a driver, the Contractor is responsible for:

- (i) Verifying the qualifications of, and investigating the safety and suitability of the involved driver, and
- (ii) Complying with the requirements of Section 1. c. of this Exhibit,

- (b) Drivers not meeting the terms of this contract or applicable regulatory requirements shall be:

- (i) Immediately removed from serving ADH participants, and
- (ii) Remain so until deficiencies are documented, corrected, and the driver is re-verified.

2. **Transport Vehicle Standards.**

- a. The Contractor shall have the following with regard to transport vehicle standards:

- (1) **Maintenance.** The Contractor shall have written procedures to assure that all transportation providers maintain vehicles and equipment to meet the requirements of this Contract.
- (2) **Standards.** Vehicles and all components shall meet or exceed the manufacturers, state and federal safety and mechanical operating and maintenance standards for any and all vehicles and models used for transportation of ADH participants.
- (3) **Laws.** Contractors' vehicles shall comply with all applicable state and federal laws including, but not limited to, the Americans with Disabilities Act (ADA) and the Federal Transit Administration (FTA) regulations.
- (4) **Requirements.** The Contractor shall require that all vehicles used in the transport of ADH participants meet or exceed the following regulations and safety standards, including their successors:

- (a) Licensing requirements of the Washington Department of Licensing (DOL),
  - (b) Requirements of the Washington Utilities and Transportation Commission (WUTC),
  - (c) State and federal safety standards,
  - (d) Regulations of the Americans with Disability Act (ADA), and
  - (e) Contract requirements.
- (5) The Contractor shall require that vehicles used in the transport of ADH participants which fail to meet these standards:
- (a) Be immediately removed from service,
  - (b) Be re-inspected before they are eligible to be used to provide transportation services for ADH participants under this contract, for the specific mode for which they were removed. An example would be disallowing a vehicle for wheelchair use, but allowing that same vehicle for ambulatory use.

b. Vehicle Inspections.

- (1) Annual. All vehicles shall be inspected before they are used to provide transportation services. Inspections shall be done annually to ensure that all regulatory requirements, including the Washington State Department of Licensing's and the Washington Utilities and Transportation Commission's, are met.
- (a) The Contractor shall supply MHS with a preliminary schedule of inspections within the first thirty (30)-days the contract year.
  - (b) Documentation of inspections done by other agencies will suffice as long as the Contractor has access to it and this Contract's standards are met or exceeded.
- (2) Random. The Contractor shall perform random inspections on a minimum of five percent (5%) of the vehicles. If, during the course of random inspection, more than ten percent (10%) of the vehicles in the fleet do not meet regulatory requirements, the remainder of that fleet will be inspected. Vehicles not passing these inspections shall be immediately removed from service for ADH participants. Each vehicle shall be re-inspected before it is eligible to return to service for ADH participants.
- (3) Complaint Initiated. In the case of ADH participant complaints about the condition of specific vehicles, the Contractor is responsible for confirming the condition of the involved vehicle. Vehicles found deficient shall be immediately removed from service for ADH participants, and remain so until deficiencies are corrected and vehicle is re-inspected.

c. Vehicle Requirements. All vehicles shall meet or exceed the following requirements:

(1) The Contractor shall ensure that transportation providers use a two-way communication system linking all vehicles used in delivering the services under this Contract with the transportation provider's major place of business (dispatcher).

- (a) The two-way communication system shall be used in such a manner as to facilitate communication and to minimize the time in which out-of-service vehicles can be replaced or repaired.
- (b) One-way pagers are not an acceptable substitute. A vehicle with an inoperative two-way communication system shall be placed out-of-service until the system is repaired or replaced.
- (c) The Contractor shall ensure that its Contractors have protocols to assure two-way communications. This can be useful for handling communication 'dead space' and may create opportunities for cost savings.

(2) The Contractor shall ensure that:

- (a) All vehicles used in the transport of ADH participants:
  - (i) Are equipped with climate control systems adequate for the heating and ventilation needs of both driver and ADH participants. Any vehicle with a non-functioning climate control system shall be placed out-of-service until repaired.
  - (ii) Have functioning, clean, and accessible seat belts for each ADH participant seat position. Seat belts shall be stored off the floor when not in use.
  - (iii) Have functional door handles on all doors.
  - (iv) Have an accurate speedometer and odometer.
  - (v) Have functioning interior light(s) within the ADH participant compartment.
  - (vi) Have adequate sidewall and ceiling covering.
  - (vii) Have two exterior rear view mirrors, one on each side of the vehicle.
  - (viii) Have one interior mirror for monitoring the ADH participant compartment.
  - (ix) Have clean exteriors that are free of broken mirrors or windows, excessive grime, rust, chipped paint or major dents that detracts from the overall appearance of the vehicle.
  - (x) Have clean interiors that are free from torn upholstery or floor covering, damaged or broken seats, protruding sharp edges and shall also be free

- of dirt, oil, grease or litter.
      - (xi) Have the transportation provider's name and vehicle number prominently displayed.
      - (xii) Must have a bottom seat cushion, with the exception of transit vehicles.
    - (b) Smoke-free vehicles will be used for every transport mode when providing services to ADH participants, and
    - (c) All vehicles used for this contract must be free of smoke residue.
- 3. Reporting Requirements. The Contractor shall document the following activities:
  - a. Within one (1) hour of the Contractor being notified, or the first hour of the next business day, the Contractor shall notify MHS of:
    - (1) Vehicle Accidents involving the transport of ADH participants, where either of the following has occurred:
      - (a) Personal injury, or
      - (b) Property damage in excess of two thousand dollars (\$2,000.00); and
    - (2) ADH participant Health and Safety Incidents.
  - b. By the end of the next business day, the Contractor shall submit written reports of accidents and incidents that:
    - (1) Uses the initial report form provided by MHS,
    - (2) Contains additional information to MHS as the Contractor becomes aware of that information. As follow-up, the Contractor shall within five (5) business days, submit to the MHS a written report that:
      - (a) Details the event, complete with actions taken, and
      - (b) Uses the report form provided by MHS; and
      - (c) Informs the MHS ADH Manager in writing of the final disposition of its investigation.
  - c. On a Daily basis, the Contractor shall:
    - (1) Make all documentation required by this Contract available for audit or review purposes to MHS or its designee.
    - (2) Maintain documentation of trips requested for ADH participants to and from approved medical services to include, at a minimum, the following:
      - (a) ADH participant name;
      - (b) Date and time of contact or request;
      - (c) Date and time for the provision of the requested

- transportation;
- (d) Level of transportation authorized;
- (e) Pick-up location;
- (f) Destination;
- (g) ADH participant's county of residence;
- (h) Each ADH participant's Personal Identification Code or Assistance Unit Number;
- (i) Each ADH participant's mobility status; and
- (j) Each ADH participant's personal capabilities. This does not usually mean diagnosis, procedure or treatment codes;

d. On a Monthly basis, the Contractor shall:

(1) Maintain monthly billing files that justify:

- (a) The number of transports and costs, and
- (b) Can be cross-referenced to actual trips with specific ADH participants transported.

**Exhibit D**  
**MHS ADH CANCELS / NO SHOWS POLICY**

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**Title: Cancels/Late Cancels/No Shows/Drop No Shows**

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**Scope: Adult Day Health Participants**

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**Policy Statement:** There are specific criteria to be met related to transportation cancellations and/or transportation "No Shows" for Adult Day Health (ADH) participants who ride the ADH Express.

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**Definition**

"No Show" (NS) occurs when an ADH Express bus arrives within the designated pick-up time and the participant is either not there, does not board the bus within five (5) minutes, or cancels at the door.

"No Show Provider Fault" (NSPF) occurs when the transportation provider attempts to pick up a participant despite having received prior communication from ADH that the ride was to be cancelled.

"Drop No Show" (DNS) occurs when a participant is transported to their residence and no one is at the destination to receive them causing the participant to continue on route for a later drop off.

"Cancel" (CX) occurs when a participant's transportation trip is cancelled before 8:30AM for AM participants and before 12:30PM for PM participants.

"Late Cancel" (CXL) occurs when a ride is not cancelled within the established time and mileage parameters.

Time "Deadlines": AM participant cancellations should be sent by ADH to the transportation provider by 7:45 AM; PM participant cancellations should be sent by ADH to the transportation provider by 11:45 AM each day.

"No Show Report": A daily e-mail that is sent by the transportation provider at the conclusion of each program's busing to the ADH supervisor and other individuals at ADH and Pierce Transit designees which provides a list of clients who have incurred a No Show or a Late Cancel.

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## **Procedures**

### **A. Cancels (CX)**

1. Cancellations do not require a 48-hour notice.
2. Participants or caregivers are requested to inform Adult Day Health of cancels by the established deadlines per the Riders Guide.
3. A voice message can be left 24-hours a day at the ADH main number.
4. ADH will communicate all cancels received via the Transportation Changes workbook by the established deadlines: 7:45 am for AM participants and 11:45 AM for PM participants.
5. If a cancel is called in past the deadline, ADH staff will immediately notify the transportation provider of the cancel by e-mail.
6. The transportation provider dispatcher will call and notify the driver in an effort to prevent the bus from incurring miles towards the cancelled participant's residence.
7. The driver must indicate on the manifest the time that the notification of the cancel was received from dispatch.
8. Next day cancels will be sent via e-mail by the close of business the day prior.

### **B. Late Cancels (CXL)**

1. Cancels received after 8:30 a.m. for the AM program or after 12:30 p.m. for the PM program, as per definition, are considered "Late Cancellations".
2. When a cancel call is received after these deadlines, ADH will immediately e-mail the cancel to the transportation provider in an effort to prevent mileage occurrence.
3. A Late Cancel fee may be assessed by the transportation provider at the current contracted rate when:
  - a. An e-mail notification of the cancel was received after 8:30 am for AM participants and after 12:30 pm for PM participants AND the driver receives notification of the cancel after mileage has already been incurred (e.g. the bus has left their prior pick-up address and are in route to the cancelled residence), or,
  - b. The cancelling participant is the first pick-up of the route and the driver receives notification of the cancel while in route to the residence.
4. All Late Cancels must be indicated on the manifest designating the time and mileage of when the notification of the cancel was received from dispatch in order to be paid.
5. The Transportation provider should include any Late Cancels on the daily "No Show" e-mail sent to ADH and should include the client's name and indication that it is a Late Cancel.
6. All Late Cancels must be authorized by the ADH supervisor, or designee. This authorization is communicated directly to Pierce Transit via e-mail with a c.c. to the transportation vendor.

### **C. No Shows (NS)**

1. A No Show is incurred when a participant/caregiver has not cancelled a scheduled ride, the driver arrives at the residence to pick up the participant, and the participant does not take the scheduled trip.



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2. All No Shows must be clearly indicated by the driver on the manifest in order to be paid.
  3. A valid No Show will be paid based upon the current contracted rate.
  4. The transportation provider will send a "No Show" e-mail listing the names of participants who have incurred a No Show at the conclusion of each program's busing.

**D. Drop No Shows (DNS)**

1. A Drop No Show is incurred when a bus driver attempts to deliver a participant to their residence or final destination and no one is at home or available to receive them.
2. The ADH supervisor, or designee, must verbally authorize a Drop No Show via phone with the dispatcher at the time it occurs followed up by e-mail authorization directly to Pierce Transit with c.c. to the transportation provider.
3. A Drop No Show will be paid based upon the current contracted No Show rate.
4. Stand-by rates can be assessed for minutes spent waiting at the residence beyond ten (10) minutes while attempts are made to contact the caregiver and coordinate an alternate plan.
5. The ADH supervisor, or designee, must verbally authorize Stand-by minutes via phone with the dispatcher at the time they are incurred followed up by e-mail authorization directly to Pierce Transit with c.c. to the transportation provider.
6. The driver must indicate the Drop No Show, any stand-by minutes, and all other details related to the failed delivery on the daily manifest in order to be paid.
7. All drop no shows will be included in the daily No Show Report identifying the ADH staff who gave authorization.

**E. Communication of No Shows and Late Cancellations to Clients**

The No Show and Cancellation guidelines are outlined in the Adult Day Health Express Riders Guide which is provided to every participant at enrollment. ADH will make every effort to contact participants/caregivers when there has been a No Show or Late Cancel to inform them of the incident and remind them of the policy. No shows that are incurred due to fault of the transportation provider or ADH will not count against the participant.

**F. Violations**

Participants who incur three (3) valid "No Shows" or Late Cancellations within a continuous 30-day period will incur a violation and may be suspended from service. Violations are counted within a rolling one (1) year period.

First violation ..... 1 week transportation suspension  
Second violation ..... 2 weeks transportation suspension  
Third violation ..... Discharged from transportation

**G. Suspension from Service**

Suspensions are progressive. A suspension will not take effect for a minimum of five days from the date of notice. Participants may still attend the Adult Day Health Center during transportation suspension if private transportation is provided by the caregiver.

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**H. Termination from Services**

Once a participant has incurred three (3) violations against the No Show/Late Cancel policy within a rolling one (1) year period, the participant is subject to termination from transportation services.

**I. Appealing Suspension/Termination**

Each participant has a right to appeal a decision to suspend or terminate services. All appeals must be submitted in written form to:

Supervisor, Adult Day Health  
PO Box 5200  
MS: 6442-1-ADH  
315 S. ML King, Jr. Way  
Tacoma, WA 98415

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The Supervisor will notify the participant/caregiver of the final decision in writing within five (5) ADH Program days of receiving the appeal.

**Point of Contact: Supervisor, Adult Day Health Center**

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<b>Approval By:</b> Supervisor and Quality Management	<b>Date of Approval:</b>
<b>Original Date:</b>	10/2012
<b>Revision Dates:</b>	8/2014; 10/2014; 12/2014
<b>Reviewed with no Changes Dates:</b>	X/XX; X/XX

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**Exhibit E**  
**MHS ADH Inclement Weather Policy**



*Adult Day Health  
Transportation*

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**Title: Adult Day Health Inclement Weather**

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**Scope: Adult Day Health Staff, Participants, and Contract Transportation Provider**

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**Policy Statement:** Bus service to and from the Adult Day Health Center may be limited and possibly cancelled when adverse weather creates conditions hazardous for participants, bus driver assistance, and vehicles.

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**Procedures:**

**A. Because Each Storm is Different, the Adult Day Health Center (ADHC) Supervisor will:**

1. Check the weather report beginning at 5:00 AM.
2. Listen to school closure reports on the radio or television and Pierce Transit service announcements.
3. Be in communication with transportation provider by 6:00 AM for recommendations on whether to operate a normal or modified schedule.
4. The Supervisor, in conjunction with the transportation provider, will make the final decision as to whether to operate the ADHC as usual, on a modified schedule, or to close by no later than 6:30 AM.

**B. If the Adult Day Health Center Closes Before AM Program Starts, the ADHC Supervisor will:**

1. Update the voice mail message no later than 7:00 AM informing participants and staff of a modified schedule or closure.

**C. If the Adult Day Health Center Closes After Program Has Started, the ADHC Supervisor will:**

1. Coordinate with transportation provider to arrange early rides home for participants.
  2. Contact participants' homes notifying caregivers/families of early program dismissal.
    - a. Some locations may require caregiver/family assistance from bus to door.
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**D. If the Adult Day Health Center Remains Open, the ADHC Supervisor will:**

1. Communicate with the transportation provider and make a decision by 6:45 AM that Center will be open.
2. Update the voice mail message no later than 7:00 AM informing participants and staff that the ADHC will be open as usual. The message will include:
  - a. Notice to caregivers:
    - i. It is the caregiver/family responsibility to notify the ADHC if the participant will not be attending the program.
    - ii. Every attempt will be made to continue wheelchair-accessible service, however, sand and salt can interfere with the lift mechanism.
    - iii. If the participant's trip starts or ends on a hill or side street, the transportation provider(s) van may not be able to get there if the street is not safe to travel.
    - iv. Sidewalks, driveways, and ramps must be cleared so bus drivers can safely assist participants.
    - v. Caregivers must remain home until bus driver picks up participant.
    - vi. Caregivers must be reachable by ADHC staff in case of early dismissal.
    - vii. Some locations may require caregiver/family assistance from bus to door.

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**Point of Contact: Director, Adult Day Health Center**

***Approval By:***

**Adult Day Health Director, Supervisor  
and Quality Management**

***Date of Approval:***

***Original Date:***

***03/2010***

***Revision Dates:***

***12/2010; 10/2012; 12/2012; 9/2014; 12/2014***

***Reviewed with no Changes Dates:***

***X/XX; X/XX***

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**Exhibit F**  
**MHS ADH No One Home to Receive Policy**

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**Title: No One Home To Receive Participant**

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**Scope: Adult Day Health (ADH) Staff, Participants, Caregivers, and Contract Transportation Provider**

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**Policy Statement:** There is a defined process to follow when an ADH Express bus arrives at the participant's home, no one is home to receive them, and alternate delivery plan is needed.

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**Procedures**

**A. When the Bus Driver Arrives at Destination after de-boarding, escorting participant to the residence and determining no one is at Home to Receive the Participant, the bus driver will:**

1. Notify dispatch.
2. Re-board the participant to ensure the participant's safety while waiting for instructions from dispatch.

**B. Prior to Contacting the Adult Day Health Supervisor, or designee, the Dispatcher will:**

1. Remain in contact with the bus driver.
2. Call the participant's address, primary telephone number and emergency telephone number(s) listed on the current Adult Day Health (ADH) master client file.
  - a. Time allowing and as appropriate, dispatcher will call Pierce Transit at 253.581.8100 and ask a SHUTTLE Customer Service Representative (CSR) to check the client files for additional emergency contact numbers. The SHUTTLE CSR line is staffed 6:00 AM through 7:30 PM daily.
3. Determine the status of the caregiver and their ability to receive the participant.
4. If unable to reach the caregiver or if determined that the caregiver would be unable to reach the home within a short, specified period of time, dispatcher will contact ADH to notify and discuss options.

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**C. The Dispatch Office Will Communicate with Adult Day Health Personnel**

1. Call main ADHC number during staffed ADH hours: Monday through Wednesday, 7:30 AM–7:00 PM and Thursdays, 7:30 AM–4:00 PM; outside of regularly staffed hours call the ADH Supervisor or on-call staff at the numbers provided.
2. Notify ADH of no one being home to receive the participant and inform ADH of steps taken to reach participant contacts.
3. Verify the drop-off address and phone numbers with staff as appropriate.
4. During the ten (10) minute grace period at the residence, and after consultation between dispatcher and ADH, two options are available:
  - a. If caregiver arrives prior to bus leaving residence, the driver will deliver participant to care giver.
  - b. If caregiver does not arrive prior to bus leaving residence, ADH will give verbal authorization to re-route and deliver remaining participants on board. Once a bus has left the residence there is no time guarantee as to what time the bus will return.
5. During the re-route period, dispatch will continue to attempt to reach the caregiver and coordinate with ADH so that by the conclusion of the route there will be a determination whether the bus returns to the participant's residence or to ADH.
6. Refer to the Drop No Show and Stand-by policies.
7. Ensure that the DNS and any stand-by minutes are noted on the manifest in order to be paid.
8. Transportation provider may bill for the drop no show (DNS) plus any stand-by time beyond the ten (10) minute grace period based upon the current contracted rates.

**D. If the Participant's Caregiver/Family Arrives Home, the Dispatcher will:**

1. Adjust the route drop off sequence as appropriate. Bus will proceed to end of the route if returning to the DNS residence is deemed disruptive to other participants.
2. Notify the ADH Supervisor, or on-call staff, of the trip completion.
3. Ensure that details including times and mileage incurred between the last drop and return to the residence are logged on the manifest by the driver in order to be paid.
4. Transportation vendor may bill for the return trip to the DNS residence at the standard zone rate based upon the current contracted zone rates.

**E. If the Participant's Caregiver/Family Does Not Arrive Home, the Dispatcher will:**

1. Notify the ADH Supervisor, or on call staff, of the trip status and obtain verbal authorization to initiate a special transport.
2. Instruct the bus driver to transport the participant back to ADH.
3. Communicate with the Supervisor or on-call staff to coordinate the drop off time so that proper staff can be available to receive the client.
4. In rare circumstances, the special transport may be to another address.

5. Once the participant is safely delivered, the driver will terminate the special trip and return to base making sure that the special transport, including times and mileage incurred between the last drop and return to ADH, are logged on the manifest in order to be paid.
6. Refer to the Special Transport policy.
7. The transportation provider may bill for the special transport based upon the current contracted special transport rates.

**F. ADH Staff Will Return to ADH and Will:**

1. Meet the bus driver and take responsibility for the participant.
2. Contact the caregiver and request that they pick up their participant. If they are unable to meet this request, other transportation options will be explored. Under no circumstance will a participant be transported in a private staff vehicle.
3. Wait with the participant until an authorized individual arrives to transport the participant home; or take appropriate action if caregiver/family cannot be contacted in a reasonable amount of time after consultation with Supervisor.
4. The ADH Supervisor or ADH Case Manager will follow up with the participant/caregiver to discuss the event and how to prevent a reoccurrence.
5. The ADH supervisor will determine if the special transport fee should be billed to the participant/caregiver.
6. Any recouped special transport fees will be adjusted on the following month's Pierce Transit invoice.

**Point of Contact: Supervisor, Adult Day Health**

<b>Approval By:</b> Adult Day Health Director, Supervisor and Quality Management	<b>Date of Approval:</b> 10/2012
<b>Original Date:</b>	03/2010
<b>Revision Dates:</b>	12/2010, 10/2012, 10/2014;
<b>Reviewed with no Changes Dates:</b>	12/2014 X/XX; X/XX

**Exhibit G**  
**MHS ADH Requesting Rides, Changing Rides, and Delayed Rides Policy**

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**Title: Requesting Rides, Changing Rides, and Delayed Rides**

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**Scope: Adult Day Health (ADH) Participants, Caregivers, ADH Staff, and Contract Transportation Provider**

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**Policy Statement:** There are specific procedures to follow related to requesting/changing rides to and from ADH and when transportation services are delayed.

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**Procedure**

**A. REQUESTING RIDES**

ADH staff will communicate all ride requests to the transportation provider:

1. A 48-hour notice is required to schedule a new ride.
2. Transportation provider will accommodate all ride requests as defined by current contract.
3. If a new ride or change is requested by the participant or caregiver less than 48-hours in advance of the ride, ADH will communicate the request by e-mail to the transportation provider. The transportation provider may accommodate the request, but are under no obligation to do so.

**B. CHANGING RIDES**

ADH staff will communicate all ride changes to the transportation provider:

1. A 48-hour notice is required when changing a ride and the change involves the creation of a new ride, a change of day, a different program, or different address.
2. Permanent and Temporary changes will be communicated via e-mail in the Transportation Changes Excel workbook under the "month" tab.
3. If a change is requested by the participant or caregiver less than 48-hours in advance of the ride, ADH will communicate the request by e-mail to the transportation provider. The transportation provider may accommodate the request, but are under no obligation to do so.

**C. DELAYED RIDES**

Notification of Delayed Rides will be communicated by the transportation provider:

1. When an inbound van will be delayed by more than 15 minutes due to equipment breakdown, traffic congestion, road work, weather conditions, medical emergency, or



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other circumstance, the transportation provider will communicate to ADH the cause of the delay, the names of the affected riders, and the anticipated amount of time delay.

2. When an outbound van will be delayed by more than 15 minutes due to any of the above circumstances the transportation provider will notify the caregivers of other riders to inform them of the delay and provide an anticipated delivery time for each participant. The transportation provider may request assistance from ADH staff to make these notification calls; ADH will assist if available.

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**Point of Contact: Supervisor, Adult Day Health Center**

***Approval By:*** \_\_\_\_\_ ***Date of Approval:*** \_\_\_\_\_

Director, Supervisor and  
Quality Management

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Original Date: 09/2014

Revision Dates: 12/2014;

Reviewed with no Changes Dates: X/XX; X/XX

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**Exhibit H**  
**MHS ADH Special Transport**

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**Title: Adult Day Health SPECIAL TRANSPORT AND STAND-BY**

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**Scope: Adult Day Health Center (ADH) Staff, Participants, Caregivers, and Contract Transportation Provider**

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**Policy Statement: Special transports may be scheduled for ADH participants in emergent situations.**

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**Definition**

Special transports are unexpected and last minute transportation arrangements that fall outside of the regular scope of service and made for a participant who needs to leave the ADH Center for an emergent reason or when the participant must be returned to ADH when there is no one home to receive.

**Procedures**

**A. Acute Emergency**

In the case of an acute medical emergency the 911 system will be activated and the participant transported by emergency services if deemed necessary.

**B. Non-Acute Emergencies**

Special transports may be required when a participant has a non-emergent medical issue, is too ill to remain at ADH, or has other issues which prevent him/her from being able to remain at the center. When one of these issues arises, ADH staff will contact the caregiver and request that they pick up their participant. If they are unable to meet this need a special transport will be requested.

**C. No One Home To Receive**

Refer to policy: No One Home to Receive Participant.

**D. Special Transports**

1. Special transports must be authorized by the ADH Supervisor, or designee, in advance of the ride on a case by case basis.
2. Special transport arrangements will be communicated via telephone between the transportation provider and the ADH supervisor, or designee.
3. Verbal authorization will be provided to the transportation provider with a subsequent e-mail authorization by ADH sent to the fiscal agent, with a c.c. to the transportation provider, within 2 days.
4. The details of all Special transports must be indicated by the driver on the manifest in order

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to be paid.

5. If no one is home to receive and there is a successful re-route back to the residence, the transportation provider may bill for the return trip to the residence based upon the current contracted zone rates (not a special transport fee).
6. All Special transports will have a follow up e-mail initiated by the transportation provider and sent to the "transportation changes distribution list" communicating the name of the ADH staff who authorized the Special Transport and a summary of the circumstances.

### **Special Transport Fees**

Special transport fees can be assessed:

1. In the case of a non-acute emergency when a new ride is scheduled that is not a part of the regular ADH daily scheduled pick up and/or drop off route. This does not include delivering a participant to their scheduled drop address after a Drop No Show.
2. When there is a return trip to ADH (e.g. when there is no one home to receive and there has been an unsuccessful re-route), special transport mileage will include the miles incurred between the starting point of the special transport and ADH, paid at the special transport rate set forth in Ex. A.
3. Mileage and times must be indicated on the manifest in order to be paid.
4. Costs incurred due to a special transport may be billed to the participant/caregiver by ADH. Any special transport payments received by ADH will be deducted by ADH on the following month's Pierce Transit Invoice.

### **Stand-by Fees**

Stand-by fees can be assessed:

1. For minutes spent coordinating a Drop No Show/No One Home to Receive beyond the ten (10) minute grace period.
2. When there is an incident on the bus, such as a medical emergency where the bus would need to pull off the road, return to ADH, or call 911.
3. The ADH supervisor, or designee, must be notified via telephone when a bus initiates stand-by time.
4. Verbal authorization will be provided to the transportation provider with a subsequent e-mail authorization by ADH sent to the fiscal agent, with a c.c. to the transportation provider, within 2 days.
5. All stand-by minutes must be indicated in detail on the daily manifest in order to be paid.

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### **Point of Contact: Supervisor, Adult Day Health Center**

***Approval By:***  
Director, Supervisor and  
Quality Management

***Date of Approval: 10/2012***

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***Original Date:***

***10/2012***

***Revision Dates:***

***8/2014; 10/2014; 12/2014***

***Reviewed with no Changes Dates:***

***X/XX; X/XX***

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## **Exhibit I Definitions**

**Adult Day Health (ADH):** refers to the Program operated by MHS where participants are to be transported to and from.

**Accident:** The term "Accident" is defined as ANY contact between a contractor vehicle and any other vehicle, person or object whether or not there is any damage or injury, this includes ADH participant falls, trips, etc. For the purposes of accident ANY contact is further defined as any unusual contact such as but not limited to trips, falls, seizures, and/or combative behavior.

**All Weather:** Refers to the contractor being able to provide transport in inclement weather conditions. An inclement weather policy is listed as Exhibit E.

**Americans with Disabilities Act of 1990 (ADA):** The term "Americans with Disabilities Act" or "ADA" means the statute enacted by the United States Congress as Public Law Number 10

**Contractor:** The term "Contractor" means the individual, firm, company, corporation, partnership, or association executing the Contract as an entity providing the services.

**Contractor Authorized Representative:** A representative designated by a contractor to represent their interests in this proposal.

**Days, Business:** The term "Business Days" means Monday – Friday, 8:00 AM – 5:00 PM, except MHS recognized holidays.

**Days, Calendar:** The term "Calendar Days" means Sunday through Saturday.

**Days, Program:** The term "Program Days" means days on which the Center sees Participants, currently Monday – Thursday except MHS recognized holidays.

**Dispatch:** The term "Dispatch" means the function of assigning, including through daily manifests, radio communication, revenue vehicles and Drivers to cover scheduled ADH trips.

**Daily Schedule:** The term "Daily Schedule" means the list of ADH participant trips provided by MHS staff to the Contractor for participant transport services. The daily schedule includes, at a minimum, the following information: customer name, pick-up and drop-off addresses, program schedule and mobility equipment used by the ADH participant.

**Federal Transit Administration (FTA):** The term "Federal Transit Administration" means the Federal Transit Administration of the United States Department of Transportation or its successor entity.

**Incident:** The term "incident" is defined as when the vehicle becomes immobile because of unforeseen surface conditions i.e. ground is soft, rain, etc., or any ADH participant related issues that would cause the bus to be immobile. For the purposes of incident ANY ADH participant related issues is further defined as any unusual contact such as but not limited to trips, falls, seizures, and/or combative behavior.

Late Trip: The term "Late Trip" means any trip performed outside of ADH's ninety (90) minute window. A trip performed any time before or ninety-one (91) minutes after the scheduled pick up window would be considered a late trip.

MultiCare Health System (MHS): refers to the network of health providers including hospitals, physician clinics, urgent care centers and Adult Day Health.

Non-Emergency Medical Transportation (NEMT): refers to all Medicaid funded medical transport that is not emergency.

On-Time Performance: The term "On-Time Performance" means the operator has the ADH participant "on board" the vehicle within the pick-up window as defined by MHS.

ADH participants: refers to MHS Adult Day Health participants, who are to be transported from their place of origin in Pierce County and the ADH center located at 6442 South Yakima Avenue, Tacoma.

Pick Up Window: The term "Pick Up Window" refers to the 90 minute pick up window for the AM or PM program for all Pierce County participants. If the vehicle arrives anytime during this window, it is considered on time.

Schedule: The term "Schedule" means the sequence of the daily pick-ups and drop-offs that instructs the vehicle operator regarding required times of ADH participants.

Service Hours: The term "Service Hours" means the time that begins when a revenue vehicle leaves the yard for the first pick-up on a manifest and that ends when the revenue vehicle returns to the yard after completion of the last trip on the manifest, provided, however, that service hours do not include those times when a revenue vehicle is out of service for vehicle operator's break, lunch, refueling, mechanical breakdown or other operational variation which would remove a vehicle from availability for revenue service.

Special Transport: The term Special Transport means the transportation of a participant outside the normal morning or evening program pick-up/on-time window: individual participant requesting early program dismissal, or individual participant requesting late program dismissal. Excludes early dismissal due to inclement weather.

Standby Time: The term Standby Time refers to the time an operator spends at a participant's destination and no one is there to receive the participant. The operator has notified Contractor dispatch and is awaiting instructions.

Support Vehicle: The term "Support Vehicle" means any vehicle needed to support the operation and maintenance of transportation services provided in accordance with the Contract, including but not limited to cars, vans, tow trucks, lift equipped vans, and service trucks.

Trip: The term "Trip" means the one-way movement of a ADH participant from that individual's origin to his or her destination.

Trip Time: The term "Trip Time" means the amount of time scheduled for one revenue vehicle to complete a trip.

Section 6  
Assignments and Subcontracts

A. Unless otherwise authorized in advance and in writing by WSDOT, the CONTRACTOR will not assign any portion of the Project or execute any contract, amendment, or change order thereto, or obligate itself in any manner with any assignee with respect to its rights and responsibilities under this AGREEMENT.

B. The CONTRACTOR agrees to include Sections 8 through 25 of this AGREEMENT in each subcontract financed in whole or in part with federal assistance provided by FTA; and in all contracts it enters into for the employment of any individuals, procurement of any materials, or the performance of any work to be accomplished under this AGREEMENT, subject to the limitations set forth in Sections 19, C.3 and D.3 of this AGREEMENT. It is further agreed that those clauses shall not be modified, except to identify the subcontractor or other person or entity that will be subject to its provisions. In addition, the following provision shall be included in any advertisement or invitation to bid for any procurement by the CONTRACTOR under this AGREEMENT:

*Statement of Financial Assistance:*

*This AGREEMENT is subject to a financial assistance contract between the Washington State Department of Transportation and the Federal Transit Administration and the appropriations of the State of Washington.*

Section 7  
Reports

The CONTRACTOR shall prepare reports regarding services provided pursuant to this AGREEMENT and other related information for such periods of time and with such frequency as prescribed in WSDOT's "Guide to Managing Your Transportation Grant". Reports include, but are not limited to:

- Passenger Trips provided
- Project Service Hours provided
- Project Service Miles provided
- Narrative Progress Report
- Financial status of the project
- Drug Abuse and Alcohol Abuse Testing compliance reports as required in this AGREEMENT
- Goods and services purchased from Disadvantaged Business Enterprises (DBE's)

Section 8  
General Compliance Assurance

The CONTRACTOR agrees to give reasonable guarantees that it and its subcontractors, lessees and any third party contractors under this AGREEMENT, will comply with all requirements imposed by, or pursuant to, the Federal Transit Act including any amendments thereto, and the Federal Regulations. The CONTRACTOR agrees to comply with the provisions of 49 CFR Part 18 or 49 CFR Part 19, whichever is applicable, and the "Common Rule" as defined in OMB Circular A-87. The CONTRACTOR agrees that the United States, any agency thereof, WSDOT and any of WSDOT's representatives, have not only the right to monitor the compliance of the CONTRACTOR with the provisions of this Assurance, but also have the right to seek judicial enforcement with regard to any matter arising under the Federal Transit Act, the Federal Regulations, and this Assurance.

Section 9  
Purchases

The CONTRACTOR shall make purchases of any incidental goods or supplies essential to this AGREEMENT through procurement procedures approved in advance by WSDOT and consistent with the following provisions:

A. **General Procurement Requirements.** The CONTRACTOR shall comply with third party procurement requirements of 49 USC chapter 53 and other applicable Federal laws in effect now or as subsequently enacted; with USDOT third party

procurement regulations of 49 CFR § 18.36 or 49 CFR § 19.40 through 19.48 and other applicable Federal regulations pertaining to third party procurements and subsequent amendments thereto. The CONTRACTOR shall also comply with the provisions of FTA Circular 4220.1F, "Third Party Contracting Guidance," November 1, 2008 and with any subsequent amendments thereto, except to the extent FTA determines otherwise in writing, which by this reference are incorporated herein; and any reference therein to "Grantee" shall mean CONTRACTOR.

B. **Full and Open Competition.** In accordance with 49 USC § 5325, the CONTRACTOR agrees to conduct all procurement transactions in a manner that provides full and open competition as determined by FTA.

C. **Preference for United States Products and Services.** To the extent applicable, the CONTRACTOR agrees to comply with the following U.S. preference requirements:

1. **Buy America.** The CONTRACTOR agrees to comply with 49 USC § 5323(j), with FTA regulations, "Buy America Requirements," 49 CFR Part 661, and any later amendments thereto.

2. **Cargo Preference—Use of United States-Flag Vessels.** The CONTRACTOR agrees to comply with 46 USC § 55305 and U.S. Maritime Administration regulations, "Cargo Preference—U.S.-Flag Vessels," 46 CFR Part 381, to the extent those regulations apply to the Project.

3. **Fly America.** The CONTRACTOR understands and agrees that the Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag air carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 USC § 40118, and with U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 CFR §§ 301-10.131 through 301-10.143.

D. **Preference for Recycled Products.** To the extent applicable, The CONTRACTOR agrees to comply with U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials", 40 CFR Part 247, which implements section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act as amended, 42 USC § 6962. Accordingly, the CONTRACTOR agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.

E. **Geographic Restrictions.** The CONTRACTOR agrees not to use any state or local geographic preference, except those expressly mandated or encouraged by federal statute or as determined by FTA.

F. **Government Orders.** In case any lawful governmental authority shall make any order with respect to the Project or Project Equipment, or any part thereof, or the PARTIES hereto or either PARTY, the CONTRACTOR shall cooperate with WSDOT in carrying out such order and will arrange its operation and business so as to enable WSDOT to comply with the terms of the order.

#### Section 10 Charter Service Operations

The CONTRACTOR agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142, will engage in charter service operations, except as authorized by 49 U.S.C. § 5323(d) and FTA regulations, "Charter Service," 49 C.F.R. Part 604, and any Charter Service regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. The Charter Service Agreement the CONTRACTOR has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. If the CONTRACTOR has failed to select the Charter Service Agreement in its latest annual Certifications and Assurances to FTA and does conduct charter service operations prohibited by FTA's Charter Service regulations, the CONTRACTOR understands and agrees that: (1) the requirements of FTA's Charter Service regulations and any amendments thereto will apply to any charter service it or its subrecipients, lessees, third party contractors, or other participants in the Project provide; (2) the definitions of FTA's Charter Service regulations will apply to the CONTRACTOR's charter operations, and (3) a pattern of violations of FTA's Charter Service regulations may require corrective measures and imposition of remedies, including barring the CONTRACTOR, subrecipient, lessee, third party contractor, or other participant in the Project operating public transportation under the Project from receiving Federal financial assistance from FTA, or withholding an amount of Federal assistance as set forth in Appendix D to those regulations.

#### Section 11 School Bus Operations

The CONTRACTOR agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142, will engage in school transportation operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as authorized by 49 U.S.C. §§ 5323(f) or (g), as applicable, and FTA regulations, "School Bus Operations," 49 C.F.R. Part 605 to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), in accordance with any School Transportation Operations

regulations or FTA directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing. The School Transportation Operations Agreement the CONTRACTOR has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. If the CONTRACTOR has failed to select the School Transportation Agreement in its latest annual Certifications and Assurances to FTA and does conduct school transportation operations prohibited by FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent those regulations are consistent with 49 U.S.C. §§ 5323(f) or (g), the CONTRACTOR understands and agrees that: (1) the requirements of FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), will apply to any school transportation service it or its subrecipients, lessees, third party contractor, or other participants in the project provide, (2) the definitions of FTA's School Bus Operations regulations will apply to the CONTRACTOR's school transportation operations, and (3) if there is a violation of FTA's School Bus Operations regulations to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), FTA will bar the CONTRACTOR, subrecipient, lessee, third party contractor, or other Project participant operating public transportation that has violated FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), from receiving Federal transit assistance in an amount FTA considers appropriate.

#### Section 12 Incorporation of Federal Terms

- A. **Purchasing.** This AGREEMENT's provisions include, in part, certain Standard Terms and Conditions required by FTA, whether or not expressly set forth in this AGREEMENT's provisions. All contractual provisions required by FTA, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this AGREEMENT. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any WSDOT request, which would cause WSDOT to be in violation of any FTA term or condition.
- B. **Federal Changes.** The CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, whether or not they are referenced in the AGREEMENT and to include any amendments promulgated by the FTA, during the term of this AGREEMENT. The CONTRACTOR's failure to so comply shall constitute a material breach of this AGREEMENT.

#### Section 13 No Obligation by the Federal Government

- A. WSDOT and the CONTRACTOR acknowledge and agree that regardless of any concurrence or approval by the Federal Government of the solicitation or award of this AGREEMENT, the Federal Government is not a party to this AGREEMENT unless it provides its express written consent. The Federal Government shall not be subject to any obligations or liabilities to the CONTRACTOR, subcontractor, lessee, or any other participant at any tier of the project (whether or not a PARTY to this AGREEMENT) pertaining to any matter resulting from this AGREEMENT.
- B. No contract between the CONTRACTOR and its subcontractors, lessees, or any other participant at any tier of the project shall create any obligation or liability of WSDOT with regard to this AGREEMENT without WSDOT's specific written consent, notwithstanding its concurrence in, or approval of, the award of any contract or subcontract or the solicitations thereof. The CONTRACTOR hereby agrees to include this provision in all contracts it enters into for the employment of any individuals, procurement of any materials, or the performance of any work to be accomplished under this AGREEMENT.

#### Section 14 Personal Liability of Public Officers

No officer or employee of WSDOT shall be personally liable for any acts or failure to act in connection with this AGREEMENT, it being understood that in such matters they are acting solely as agents of WSDOT.

#### Section 15 Ethics

- A. **Code of Ethics.** The CONTRACTOR agrees to maintain a written code or standards of conduct that shall govern the performance of its officers, employees, board members, or agents engaged in the award and administration of contracts, subagreements, leases, third party contracts, or other arrangements supported by federal assistance. The code or standards shall provide that the CONTRACTOR's officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from any present or potential subcontractor, lessee, sub-recipient, or participant at any



tier of the Project, or agent thereof. The CONTRACTOR may set *de minimis* rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. These codes or standards shall prohibit the CONTRACTOR's officers, employees, board members, or agents from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain. As permitted by state or local law or regulations, such code or standards shall include penalties, sanctions, or other disciplinary actions for violations by the CONTRACTOR's officers, employees, board members, or agents, or by subcontractors, lessees, sub-recipients, other participants, or their agents. The CONTRACTOR must fully comply with all the requirements and obligations of chapter 42.52 RCW that govern ethics in state and local governments.

1. **Personal Conflict of Interest.** The CONTRACTOR's code or standards shall prohibit the CONTRACTOR's employees, officers, board members, or agents from participating in the selection, award, or administration of a contract supported by Federal Funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the PARTIES set forth below has a financial or other interest in the firm or entity selected for award:

- a. The employee, officer, board member, or agent;
- b. Any member of his or her immediate family;
- c. His or her partner; or
- d. An organization that employs, or is about to employ, any of the above.

2. **Organizational Conflict of Interest.** The CONTRACTOR's code or standard of conduct must include procedures for identifying and preventing real and apparent organizational conflicts of interest. An organizational conflict of interest exists when the nature of the work to be performed under a proposed third party contract, subagreement, lease, or other arrangement at any tier may, without some restrictions on future activities, result in an unfair competitive advantage to the third party contractor or impair its objectivity in performing the work under this AGREEMENT.

B. **Debarment and Suspension.** The CONTRACTOR agrees to comply and assure the compliance of each sub-recipient, lessee, third party contractor, or other participant at any tier of the project with the requirements of Executive Orders Numbers 12549 and 12689, "Debarment and Suspension," 31 USC § 6101 notes and USDOT regulations, "Non-procurement Suspension and Debarment" 2 CFR Part 1200, which also includes and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)," 2 CFR Part 180. The CONTRACTOR agrees to, and assure that its subrecipients, lessees, third party contractors, and other participants at any tier of the Project will review the excluded Parties Existing System" at <http://epls.gov/> before entering into any third subagreement, lease, third party contract, or other arrangement in connection with the Project.

C. **Bonus or Commission.** The CONTRACTOR agrees that it has not paid, and agrees not to pay, any bonus or commission to obtain approval of its application for federal financial assistance for this Project.

D. **Relationships with Employees and Officers of WSDOT.** The CONTRACTOR shall not extend any loan, gratuity or gift of money in any form whatsoever to any employee or officer of WSDOT, nor shall the CONTRACTOR rent or purchase any equipment and materials from any employee or officer of WSDOT.

E. **Employment of Former WSDOT Employees.** The CONTRACTOR hereby warrants that it shall not engage on a full, part-time, or other basis during the period of this AGREEMENT, any professional or technical personnel who are, or have been, at any time during the period of this AGREEMENT, in the employ of WSDOT without written consent of WSDOT.

F. **Restrictions on Lobbying.** The CONTRACTOR agrees to:

1. Comply with 31 USC § 1352(a) and will not use Federal assistance to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a member of Congress, in connection with making or extending the Grant AGREEMENT or Cooperative Agreement; and

2. Comply, and assure compliance by each subcontractor at any tier, each lessee at any tier and each sub-recipient at any tier, with applicable requirements of USDOT regulations, "New Restriction on Lobbying," 49 CFR Part 20, modified as necessary by 31 USC § 1352; and

3. Comply with federal statutory provisions to the extent applicable prohibiting the use of Federal assistance Funds for activities designed to influence Congress or a state legislature on legislation or appropriations, except through proper, official channels.

G. **Employee Political Activity.** To the extent applicable, the CONTRACTOR agrees to comply with the provisions of the "Hatch Act," 5 USC §§ 1501 through 1508, and §§ 7324 - 7326, and Office of Personnel Management regulations, "Political Activity of State or Local Officers or Employees," 5 CFR Part 151. The "Hatch Act" limits the political activities of state and local agencies and their officers and employees, whose principal employment activities are financed in whole or in part with Federal Funds including a loan, grant, or cooperative agreement. Nevertheless, in accordance with 49 USC § 5307 (k)(2)(B) and 23 USC § 143(g), the "Hatch Act" does not apply to a non-supervisory employee of a public transportation system (or of any other agency or entity performing related functions) receiving assistance pursuant to the SAFETEA-LU provisions and/or receiving FTA assistance to whom the "Hatch Act" does not otherwise apply.

H. **False or Fraudulent Statements or Claims.** The CONTRACTOR acknowledges and agrees that:

1. **Civil Fraud:** The Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §§ 3801 et seq., and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its activities in connection with the Project. Accordingly, by executing this AGREEMENT, the CONTRACTOR certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project covered by this AGREEMENT. In addition to other penalties that may apply, the CONTRACTOR also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the CONTRACTOR to the extent the Federal Government deems appropriate.

2. **Criminal Fraud:** If the CONTRACTOR makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement in connection with this Project authorized under 49 USC Chapter 53 or any other federal law, the Federal Government reserves the right to impose on the CONTRACTOR the penalties of 49 USC § 5323(1), 18 USC § 1001 or other applicable Federal law to the extent the Federal Government deems appropriate.

1. **Trafficking in Persons.** To the extent applicable, the CONTRACTOR agrees to comply with, and assures the compliance of each subrecipient with, the requirements of the subsection 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 USC § 7104(g), and the provisions of this Subsection 3.g of FTA Master Agreement (15) dated October 1, 2008, which by this reference is incorporated herein as if fully set out in this AGREEMENT, and any amendments thereto, which is accessible at <http://www.fta.dot.gov/documents/15-Master.pdf> consistent with U.S. OMB guidance, "Trafficking in Persons: Grants and Cooperative Agreements," 2 CFR Part 175.

#### Section 16 Compliance with Laws and Regulations

The CONTRACTOR agrees to abide by all applicable state and federal laws and regulations including but not limited to, those concerning employment, equal opportunity employment, nondiscrimination assurances, Project record keeping necessary to evidence compliance, with such federal and state laws and regulations, and retention of all such records. The CONTRACTOR will adhere to all of the nondiscrimination provisions in Chapter 49.60 RCW.

#### Section 17 Civil Rights

The CONTRACTOR shall comply with all applicable civil rights laws, regulations and directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following:

- A. **Nondiscrimination in Federal Transit Programs.** The CONTRACTOR agrees to comply, and assures compliance by each third party contractor, lessee or other participant at any tier, with the provisions of 49 USC § 5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity;
- B. **Nondiscrimination—Title VI of the Civil Rights Act.** The CONTRACTOR agrees to comply, and assure compliance by each third party contractor at any tier, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 USC §§ 2000d et seq.; and USDOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act", 49 CFR Part 21. Except to the extent FTA determines otherwise in writing, the CONTRACTOR also agrees to follow all applicable provisions of FTA Circular 4702.1A, "Title VI and Title VI-Dependent Guidelines for Federal Transit Assistance Recipients," May 13, 2007 and any other applicable federal directives that may be issued;
- C. **Equal Employment Opportunity.** The CONTRACTOR agrees to comply, and assures compliance by each third party contractor, lessee or other participant at any tier of the Project, with all requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 USC § 2000e, and 49 USC § 5332 and any implementing Federal regulations and any subsequent amendments thereto. Except to the extent FTA determines otherwise in writing, the CONTRACTOR also agrees to comply with any applicable Federal EEO directives that may be issued. Accordingly:

1. The CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR shall also comply with any implementing requirements FTA may issue.

2. If the CONTRACTOR is required to submit and obtain Federal Government approval of its EEO program, that EEO program approved by the Federal Government is incorporated by reference and made part of this AGREEMENT. Failure by the CONTRACTOR to carry out the terms of that EEO program shall be treated as a violation of this AGREEMENT. Upon notification to the CONTRACTOR of its failure to carry out the approved EEO program, the Federal Government may impose such remedies, as it considers appropriate, including termination of federal financial assistance, or other measures that may affect the CONTRACTOR's eligibility to obtain future federal financial assistance for transportation projects.

D. Nondiscrimination on the Basis of Sex. The CONTRACTOR agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 USC §§ 1681 *et seq.* and with any implementing Federal regulations that prohibit discrimination on the basis of sex that may be applicable.

E. Nondiscrimination on the basis of Age. The CONTRACTOR agrees to comply with applicable requirements of:

1. The Age Discrimination Act of 1975, as amended, 42 USC §§ 6101 *et seq.*, and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs and Activities Receiving Federal Financial Assistance", 45 CFR Part 90, which prohibits discrimination on the basis of age.

2. The Age Discrimination in Employment Act (ADEA) 29 USC §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act" 29 CFR Part 1625.

F. Disabilities-Employment. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 USC § 12112, the CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

G. Disabilities-Access. The CONTRACTOR agrees to comply with the requirements of 49 USC § 5301(d) which state the Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement said policy. The CONTRACTOR also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794, which prohibits discrimination on the basis of handicap; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC §§ 11912 *et seq.*, which requires the provision of accessible facilities and services to be made available to persons with disabilities; and the Architectural Barriers Act of 1968, as amended, 42 USC §§ 4151 *et seq.*, which requires that building and public accommodations be accessible to persons with disabilities and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations and any later amendments thereto, and agrees to follow applicable Federal directives except to the extent FTA approves otherwise in writing. Among those regulations and directives are the following: USDOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; USDOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27; Joint U.S. Architectural and Transportation Barriers Compliance Board USDOT regulations; "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38; U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35; U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36; U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19; U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630; U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Custom Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F; U.S. Architectural and Transportation Barriers Compliance Board (ATBCB) regulations, "Electronic and Information Technology Accessibility Standards" 36 CFR Part 1194; FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609; and Federal civil rights and nondiscrimination directives implementing the foregoing regulations, except to the extent the Federal Government determines otherwise in writing.

H. Drug or Alcohol Abuse. Confidentiality and Other Civil Rights Protections. The CONTRACTOR agrees to comply with the confidentiality and other civil rights provisions of the Drug Abuse Office and Treatment Act of 1972, as amended 21 USC §§ 1101 *et seq.*; with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended; 42 USC §§ 4541 *et seq.*; and comply with the Public Health Service Act of 1912, as amended, 42 USC §§ 201 *et seq.* and any amendments to these laws.

I. Access to Services for Persons with Limited English Proficiency. The CONTRACTOR agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 USC § 2000d-1 note, and with provisions of USDOT Notice "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005.

- J. **Environmental Justice.** The CONTRACTOR agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations", 42 USC § 4321 note, except to the extent that the Federal Government determines otherwise in writing.
- K. **Other Nondiscrimination Statutes.** The CONTRACTOR agrees to comply with all applicable provisions of other Federal laws, regulations, and directives pertaining to and prohibiting discrimination and other nondiscrimination statute(s) that may apply to the Project including chapter 49.60 RCW.

**Section 18**  
**Participation of Disadvantaged Business Enterprises**

The CONTRACTOR shall take the following measures to facilitate participation by disadvantaged business enterprises (DBE) in the Project:

- A. The CONTRACTOR agrees to comply with section 101(b) of SAFETEA-LU, 23 USC § 101 note, and USDOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 CFR Part 26; and
- B. The CONTRACTOR agrees that it shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any third party contract, or sub-agreement supported with federal assistance derived from the USDOT or in the administration of its DBE program or the requirements of 49 CFR Part 26. The CONTRACTOR agrees to take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of all third party contracts and sub-agreements supported with federal assistance derived from the USDOT. The CONTRACTOR's DBE AGREEMENT. Implementation of the DBE program is a legal obligation and failure to carry out its terms shall be treated as violation of this AGREEMENT. Upon notification to the CONTRACTOR of its failure to implement its approved DBE program, the USDOT may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC § 1001, and/or the Program Fraud Civil Remedies Act, 31 USC §§ 3801 et seq.

**Section 19**  
**Energy Conservation and Environmental Requirements**

- A. **Energy Conservation.** The CONTRACTOR shall comply with the mandatory standards and policies relating to energy efficiency standards and policies within the Washington State energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 USC §§ 621 et seq., and any amendments thereto.
- B. **Environmental Protection.** The CONTRACTOR agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 USC §§ 4321-4335; Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 USC § 4321 note; FTA statutory requirements at 49 USC § 5324(b); U.S. Council on Environmental Quality regulations imposing requirements for compliance with the National Environmental Policy Act of 1969, as amended, 40 CFR Part 1500 - 1508; joint Federal Highway Administration (FHWA)/FTA regulations, "Environmental Impact and Related Procedures," 23 CFR Part 771 and 49 CFR Part 622, and subsequent Federal environmental protection regulations that may be promulgated. The CONTRACTOR agrees to comply with 23 USC §§ 139 and 326 as applicable, and implement those requirements in accordance with the provisions of joint FHWA/FTA final guidance, "SAFETEA-LU Environmental Review Process (Public Law 109-59)," 71 Fed. Reg. 66576 et seq., November 15, 2006, and any applicable Federal directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing.
- C. **Clean Water.** In the event that the Federal Funds identified in the caption space header of this AGREEMENT entitled "Project Cost", exceeds \$100,000, the CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to Section 508 of the Clean Water Act, as amended, 33 USC § 1368, and other applicable requirements of the Clean Water Act, as amended 33 USC §§ 1251 through 1377.
1. The CONTRACTOR agrees to refrain from using any violating facilities.
  2. The CONTRACTOR agrees to report each violation to WSDOT and understands and agrees that WSDOT, in turn, shall report each violation, as required, to the FTA and to the appropriate EPA Regional Office.
  3. The CONTRACTOR also agrees to include these requirements in each subcontract that exceeds \$100,000 and is financed in whole or in part with Federal assistance provided by FTA.
- D. **Clean Air.** In the event that the federal share, identified in "Project Cost" of this AGREEMENT exceeds \$100,000, the CONTRACTOR shall comply with all applicable standards, orders or regulations issued pursuant to Section 306 of the Clean Air Act, as amended, 42 USC § 7414, and other applicable provisions of the Clean Air Act, as amended, 42 USC §§ 7401-7671q et seq.

1. The CONTRACTOR agrees to refrain from using any violating facilities.
2. The CONTRACTOR agrees to report each violation to WSDOT and understands and agrees that WSDOT will, in turn, report each violation to the FTA and to the appropriate EPA Regional Office.
3. The CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

#### Section 20 Accounting Records

- A. **Project Accounts.** The CONTRACTOR agrees to establish and maintain for the Project either a separate set of accounts or separate accounts within the framework of an established accounting system that can be identified with the Project, in accordance with applicable federal regulations and other requirements that FTA may impose. The CONTRACTOR agrees that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project shall be clearly identified, readily accessible, and available to WSDOT and FTA upon request, and, to the extent feasible, kept separate from documents not pertaining to the Project.
- B. **Funds Received or Made Available for the Project.** The CONTRACTOR agrees to deposit in a financial institution, all advance Project payments it receives from the Federal Government and record in the Project Account all amounts provided by the Federal Government in support of this Grant AGREEMENT or Cooperative AGREEMENT and all other funds provided for, accruing to, or otherwise received on account of the Project (Project funds) in accordance with applicable Federal regulations and other requirements FTA may impose. Use of financial institutions owned at least 50 percent by minority group members is encouraged.
- C. **Documentation of Project Costs and Program Income.** The CONTRACTOR agrees to support all allowable costs charged to the Project, including any approved services controlled by the CONTRACTOR or others, with properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. The CONTRACTOR also agrees to maintain accurate records of all program income derived from implementing the Project.
- D. **Checks, Orders, and Vouchers.** The CONTRACTOR agrees to refrain from drawing checks, drafts, or orders for goods or services to be charged against the Project Account until it has prepared and filed a properly signed voucher describing in proper detail the purpose for the expenditure.

#### Section 21 Audits, Inspection, and Retention of Records

- A. **Submission of Proceedings, Agreements, and Other Documents.** During the course of the Project and for six (6) years thereafter, the CONTRACTOR agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Project as WSDOT may require. Reporting and record-keeping requirements are set forth in 49 CFR Part 19, whichever is applicable. Project closeout does not alter these recording and record-keeping requirements. Should an audit, enforcement, or litigation process be commenced, but not completed, during the aforementioned six-year period then the CONTRACTOR's obligations hereunder shall be extended until the conclusion of that pending audit, enforcement, or litigation process.
- B. **General Audit Requirements.** The CONTRACTOR agrees to perform the financial and compliance audits required by the Single Audit Act Amendments of 1996, 31 USC §§ 7501 *et seq.* As provided by 49 CFR § 19.26, these audits must comply with OMB Circular A-133, Revised, "Audits of States, Local Governments, and Non-Profit Organizations," and the latest applicable OMB A-133 Compliance Supplement provisions for the USDOT, and any further revision or supplement thereto. The CONTRACTOR agrees that audits will be carried out in accordance with U.S. General Accounting Office "Government Auditing Standards". The CONTRACTOR agrees to obtain any other audits required by WSDOT. Project closeout will not alter the CONTRACTOR's audit responsibilities.
- C. **Inspection.** The CONTRACTOR agrees to permit WSDOT, the State Auditor, the United States Department of Transportation, and the Comptroller General of the United States, or their authorized representatives, to inspect all Project work materials, payrolls, and other data, and to audit the books, records, and accounts of the CONTRACTOR and its contractors pertaining to the Project. The CONTRACTOR agrees to require each third party contractor whose contract award is not based on competitive bidding procedures as defined by the United States Department of Transportation to permit WSDOT, the State Auditor, the United States Department of Transportation, and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that third party contract, and to audit the books, records, and accounts involving that third party contract as it affects the Project as required by 49 USC § 5325(g).

Section 23  
Labor Provisions

- A. **Contract Work Hours and Safety Standards Act.** The CONTRACTOR shall comply with, and shall require the compliance by each subcontractor at any tier, any applicable employee protection requirements for non-construction employees as defined by the Contract Work Hours and Safety Standards Act, as amended, 40 USC § 3701 *et seq.*, and specifically, the wage and hour requirements of section 102 of that Act at 40 USC § 3702 and USDOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)" at 29 CFR, Part 5; and the safety requirements of section 107 of that Act at 40 USC § 3704, and implementing USDOL regulations, "Safety and Health Regulations for Construction," 29 CFR Part 1926.
- B. **Fair Labor Standards Act.** The CONTRACTOR agrees that the minimum wage and overtime provisions of the Fair Labor Standards Act, as amended, 29 USC §§ 201 *et seq.*, apply to employees performing work involving commerce, and apply to any local government employees that are public transit authority employees. The CONTRACTOR shall comply with the Fair Labor Standards Act's minimum wage and overtime requirements for employees performing work in connection with the Project.
- C. **Overtime Requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- D. **Payrolls and Basic Records.** Payrolls and basic records relating thereto shall be maintained by the CONTRACTOR during the course of the work and preserved for a period of six (6) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the Project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act, Public Law 88-349 as amended by 40 USC §§ 3141 *et seq.*, and pursuant to 40 USC § 3142(a) *et seq.*, daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, Public Law 88-349, as amended by 40 USC § 3141 *et seq.*, and pursuant to 49 USC § 5333(a), the CONTRACTOR shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. CONTRACTOR's employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- E. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (A) of this section the CONTRACTOR and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such CONTRACTOR and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this section, in the sum of ten dollars (\$10) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (B) of this section.
- F. **Withholding for unpaid wages and liquidated damages.** The CONTRACTOR shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the CONTRACTOR or subcontractor under any such contract or any other federal contract with the same prime CONTRACTOR, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of such CONTRACTOR or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (E) of this section.
- G. **Public Transportation Employee Protective Agreement.** To the extent required by Federal Law, the CONTRACTOR agrees to implement the Project in accordance with the terms and conditions that the U.S. Secretary of Labor has determined to be fair and equitable to protect the interests of any employees affected by the Project and that comply with the requirements of 49 USC § 5333 (b), in accordance with the USDOL guidelines, "Section 5333(b), Federal Transit Law," 29 CFR Part 215 and any amendments thereto. These terms and conditions are identified in USDOL's certification of public transportation employee protective arrangements to FTA. The CONTRACTOR agrees to implement the Project in accordance with the

conditions stated in that USDOL certification, which certification and any documents cited therein are incorporated by reference and made part of this AGREEMENT. The CONTRACTOR also agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program that is most current as of the date of execution of this AGREEMENT and any alternative comparable arrangements specified by USDOL for application to the Project, in accordance with USDOL guidelines, "Section 5333(b), Federal Transit Law," 29 CFR Part 215, and any revision thereto.

### Section 23 Planning and Private Enterprise

**FTA Requirements.** The CONTRACTOR agrees to implement the Project in a manner consistent with the plans developed in compliance with the applicable planning and private enterprise provisions of 49 USC §§ 5303, 5304, 5306, and 5323(a)(1); Joint Federal Highway Administration (FHWA) FTA regulations, "Statewide Transportation Planning: Metropolitan Transportation Planning," 23 CFR Part 450 and 49 CFR Part 613; and any amendments thereto, and with FTA regulations, "Major Capital Investment Projects," 49 CFR Part 611, to the extent that these regulations are consistent with the SAFETEA-LU amendments to the public transportation planning and private enterprise laws, and when promulgated, any subsequent amendments to those regulations. To the extent feasible, the CONTRACTOR agrees to comply with the provisions of 49 USC § 5323(k), which afford governmental agencies and non-profit organizations that receive Federal assistance for non-emergency transportation from Federal Government sources (other than USDOT) an opportunity to be included in the design, coordination, and planning of transportation services. During the implementation of the Project, the CONTRACTOR agrees to take into consideration the recommendations of Executive Order No. 12803, "Infrastructure Privatization," 31 USC § 501 note, and Executive Order No. 12893, "Principles for Federal Infrastructure Investments," 31 USC § 501 note.

### Section 24 Substance Abuse

**A. Drug and Alcohol Abuse -** The CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations and WSDOT to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The CONTRACTOR agrees further to submit annually the Management Information System (MIS) reports to WSDOT by February 28<sup>th</sup> each year during the term identified in the caption space header above titled "the Terms of Project."  
**B. Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections** The CONTRACTOR agrees to comply with the confidentiality and other civil rights provisions pertaining to the Drug Abuse Office and Treatment Act of 1972, Pub. L. 92-255, March 21, 1972, as amended 21 U.S.C. §§ 1101 *et seq.*, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, Pub. L. 91-616, Dec. 31, 1970, as amended 42 U.S.C. §§ 4541 *et seq.*, and the Public Health Services Act of 1912, as amended 42 U.S.C. §§ 201 *et seq.*, 42 USC §§ 290dd-2, 290dd-3 and 290ee-3 including amendments to these acts. The CONTRACTOR understands the requirements of confidentiality concerning persons covered and/or receiving services and/or treatment regarding alcohol and drug abuse, as defined in the aforementioned acts as applicable, including any civil and criminal penalties for not complying with the requirements of confidentiality and that failure to comply with such requirements may result in termination of this AGREEMENT.

### Section 25 Federal "\$1 Coin" Requirements

To the extent required by the Federal Government, the CONTRACTOR agree to comply with the provisions of section 104 of the Presidential \$1 Coin Act of 2005, 31 USC § 5112(p), so that the CONTRACTOR's equipment and facilities requiring the use of coins or currency will be fully capable of accepting and dispensing \$1 coins in the connection with that use. The CONTRACTOR also agrees to display signs and notices denoting the capability of its equipment and facilities on its premises where coins or currency are accepted or dispensed, including on each vending machine.

### Section 26 Coordination of Special Needs Transportation

It is the policy of WSDOT to actively support coordination of special needs transportation in the State. As a condition of assistance, the CONTRACTOR is required to participate in local transportation coordination coalitions in their service area that are sponsored by the Agency Council on Coordinated Transportation (ACCT).