

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

THIS FISCAL AGREEMENT (the "Agreement") for the Provision of Adult Day Health Express ("ADHE") is entered into by and between **Pierce County Public Transportation Benefit Area Corporation d/b/a Pierce Transit, municipal subdivision formed under the laws of the State of Washington** (subsequently referred to as "PT"), and **MULTICARE HEALTH SYSTEM, a nonprofit corporation formed under the laws of the State of Washington** (subsequently referred to as "MHS"). PT and MHS are sometimes referred to in this Agreement individually as "Party" or, collectively, as the "Parties."

WHEREAS, MHS has determined that it requires to contract with a third-party qualified special needs transportation provider vendor ("Vendor") to provide the ADHE services;

WHEREAS, PT desires to serve as the fiscal agent and primary funder of services for the ADHE program;

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

SECTION 1. 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 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 agreements in effect from August 11, 2011 through December 31, 2016 in substantially the same form as this Agreement.

SECTION 2. ACTIVITIES AND RESPONSIBILITIES OF THE PARTIES

A. RESPONSIBILITIES OF MHS

MHS will act as the lead agency for the operation and administration of the ADHE transportation program. The ADHE program shall continue to provide coordinated transportation for MHS Adult

Day Health (**ADH**) clients in Pierce County to MHS ADH, currently located at 6442 S. Yakima Avenue in Tacoma, WA. Transportation services provided shall meet or exceed the specifications defined in the Transportation Services Agreement (See Exhibit A) and will be offered by Vendors selected and managed by MHS for both morning and afternoon programs, Monday through Thursday. Hours of operation are also specified in the Transportation Services Agreement between MHS and Vendor. MHS may expand the ADHE to include Friday programming if financial conditions permit this expansion, upon agreement of Parties to this Agreement.

MHS is responsible to solicit competitive proposals (as necessary) for the ADHE transportation services from qualified Special Needs Transportation firms, referred to herein as "Vendors." All potential 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.

MHS will provide to PT a copy of all contracts awarded between MHS and any ADHE transportation vendor.

- MHS will bill the Department of Social & Health Services (**DSHS**) Aging and Disabilities Services Administration (**ADSA**) at the rate of \$15.00 per person per day for transportation, for each of the Medicaid eligible participants. This amount will be noted on the Vendor's billing, and the amount will be deducted before the invoice is sent to PT.

B. RESPONSIBILITIES OF PT

PT will have the role of fiscal agent and primary funder of services but will not provide transportation services for ADHE. PT will provide a data specialist to review paperwork and/or electronic manifests to create an electronic record to ensure that data collected and reported as set forth in Section 3 herein has the correct addresses, arrival and departures times, escort time and odometer entries and to ensure data integrity for possible National Transit Database (**NTD**) reporting guidelines, and possible future funding partners.

PT will corroborate and review the transportation records for MHS ADH with Vendor's invoices, to verify that all no show charges are appropriate. PT will audit both MHS ADH and Vendor's electronic files.

PT will pay the \$15.00 per day co-pay for non-Medicaid patients when other funding is unattainable.

- PT 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 20th 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;
Revenue Hours; Medicaid eligible trips

SECTION 4. TERM AND TERMINATION OF THE AGREEMENT

This Agreement shall be retroactively applied to have an effective date of January 1, 2017 and shall end on December 31, 2017. This Agreement may be extended for two (2) additional one year terms if both Parties agree in writing, and in any event, only after MHS provides satisfactory evidence of its Transportation Services Agreement with a Vendor who meets the requirements of Exhibit A 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.

This Agreement may be terminated in the following events:

- (a) Mutual written agreement of PT and MHS;
- (b) Immediately, at either Party's option, upon: the refusal or inability to perform the terms of this Agreement, or dissolution of the other Party;
- (c) On fifteen calendar (15) 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 seven (7) calendar days after receiving written notice of the existence of the breach;
- (d) Upon sixty (60) days advance written notice to the other Party; or
- (e) Immediately on written notice for cause, which shall include the institution of proceedings against either party that could lead to conviction of any of its officers of a crime, either party engaging in actions tending to impair the health and safety of patients, or the imposition of disciplinary sanctions against an officer of either party by any governmental agency having jurisdiction over the party being sanctioned.

SECTION 5. COMPENSATION

PT agrees to reimburse MHS the cost of the rides for ADHE according to rates below. As used herein, "Revenue Hour" is defined as: time elapsed from the time a vehicle makes its first pickup until its last drop-off. Excludes time while on lunch break, to/from garage to fuel, etc. Does not include time from garage to first pickup, from last drop off to garage, from a drop off to an official break or established lunch (vehicle not available for service), nor from an official break or lunch to the next pick-up. In those instances where the transportation Vendor is in error or at fault for incurring revenue time, Pierce Transit will deduct the time associated with the Vendor's error or omission from its monthly reimbursement to MHS as otherwise provided herein.

Pierce Transit will pay for services rendered in December 2016 at a rate of \$75.50 per Revenue Hour. Beginning January 1, 2017, Pierce Transit will pay at the rate of \$70.13 per Revenue Hour. An annual escalation of these rates will be allowed and equal to the Seattle/Tacoma/Bremerton October Consumer Price Index (CPI). Annual escalation shall not exceed three percent (3%) per year.

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.

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 20th of the following month. Billing shall be submitted to:

Senior Planner — Paratransit
Cherry Thomas
Pierce Transit
3701 96th St SW
Lakewood, WA 98499-0070

SECTION 6. INDEMNIFICATION

MHS 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 MHS' alleged acts, omissions, or services under this Agreement. MHS' obligation to indemnify, defend and hold harmless includes any claim by MHS' agents, employees, representatives, or any subgrantee or its agents or employees or representatives.

MHS' obligation to indemnify, defend and hold harmless shall not be eliminated by any actual or alleged concurrent negligence of PT, 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.

PT 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 PT.

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. Further, if during any term of this Agreement, if either Party is placed on the sanctions list, excluded from government contracts or convicted of a felony or any crime relating to healthcare, the debarred/sanctioned Party immediately will notify the other Party in writing of the event and such notice shall contain reasonably sufficient information to allow the other Party to determine the nature of the sanction, exclusion or conviction. Either Party will have the right to terminate this Agreement immediately by written notice if the other Party is placed on the sanctions list, banned from government contracts by GSA or convicted of a felony or any crime relating to healthcare;
- (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 Section (7)(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.
- (e) Where either Party is 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:

<u>Commercial Automobile Liability</u>	Bodily Injury Liability and Property Damage Liability Insurance \$1,000,000 each occurrence OR combined single limit coverage of \$2,000,000, with not greater than a \$1,000.00 deductible
<u>Commercial General Liability</u>	Bodily Injury Liability and Property Damage Liability Insurance \$1,000,000 each occurrence OR combined single limit coverage of \$2,000,000, with not greater than a \$1,000.00 deductible
<u>Professional Liability Insurance</u>	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.

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.

PT, and the Washington State Department of Commerce shall be named as additional insureds 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. During the performance of this Agreement, neither Party will discriminate against any employee or applicant for employment because of race, color, religion, gender or gender identity, 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”). The Parties will take affirmative action to assure that each Party’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 the Party, 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. Both Parties will maintain all documentation required by the Equal Employment Opportunity Commission (EEOC) and will make all aggregate data pertaining to that Party's employment practices available to the extent that the other Party is required, for any reason, to include such employment data in its EEOC reports.

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

Each Party shall appoint a representative to facilitate the Services contemplated by this Agreement ("Contact"). 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 the Contacts listed here:

Senior Planner-Paratransit
Pierce Transit
3701 96th St SW
PO Box 99070
Lakewood, WA 98496-0070

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

Either Party may change its Contact by designating a new Contact and providing contact information in writing to the other Party.

SECTION 12. PARTIES AS INDEPENDENT CONTRACTORS.

The Parties are, and shall at all times be deemed to be, independent contractors. Nothing herein contained shall be construed as creating the relationship of employer and employee, or to create a relationship of joint venturers, principal and agent, partners, landlord and tenant or any other relationship other than one of independent parties contracting for their own benefit, between MHS and PT or any of MHS' 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 related to this Agreement. 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 providing services related this Agreement; or (c) require MHS to rescind or amend a subcontract related to this Agreement.

Every subcontract related to this Agreement 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 related to this Agreement 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. No waiver of any provision of this Agreement shall be valid unless in writing and signed by either the Contact listed in Section 11 or a representative of the Parties at a higher level of authority within the waiving Party's organization.

SECTION 15. ENTIRE AGREEMENT.

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. The Parties acknowledge that each has relied solely on the covenants and representations set forth in this Agreement and no others. 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

In the event of any conflict between the terms of this Agreement and its Exhibits, the terms of the Agreement shall control.

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 the Parties' Contacts listed in Section 11 or a representative of the Party at a higher level of authority within the Party's organization.

SECTION 17. 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.

SECTION 18. 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. 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.

SECTION 19. CONVERSION

In the event that any payment made to PT or MHS 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 dispute resolution as set forth herein.

SECTION 20. BUSINESS ASSOCIATE PROVISION.

To the extent that PT's contact with individually identifiable health information under this Agreement is unanticipated and/or such contact would only be incidental to funding and processing payment, a Business Associate Agreement is not needed.

SECTION 21. STANDARDS OF BUSINESS CONDUCT

<INTENTIONALLY OMITTED>.

SECTION 22. CONFIDENTIAL MATERIALS AND PUBLIC DISCLOSURE: This Agreement and all records provided to PT by MHS hereunder may be public records subject to disclosure under the Washington State Public Records Act and/or other laws requiring disclosure or discovery of records. In the event PT receives a request for such disclosure, PT will provide MHS with ten (10) days' written notice prior to release of responsive records. The Parties acknowledge that PT is not liable for any release of records pursuant to public disclosure or discovery laws.

MHS shall mark certain record(s) as "Confidential" or "Proprietary" as appropriate given the potential sensitive subject of MHS's work under this Agreement. If MHS fails to so mark record(s), then PT, upon request, may release said record(s) without the need to provide the notice set forth in this section.

SECTION 23. DISPUTE RESOLUTION

Any controversy or Claim arising out of or related to this Agreement, or the breach thereof, shall be subject to the dispute resolution set forth herein. Prior to the initiation of any action or proceeding to resolve disputes between MHS and PT, the Parties shall make a good faith effort to resolve any such disputes by negotiation between representatives with decision-making power, who shall not have substantive involvement in the matters involved in the dispute, unless the parties otherwise agree. Failing resolution, the parties shall attempt to resolve the dispute through a mediation conducted by a person(s) or organization experienced in mediation initiated within thirty (30) days from the date of the request unless extended by agreement of both Parties. The positions expressed and mediator's recommendations, if any, shall not be admissible as evidence in any subsequent proceeding. At all times during the course of any unresolved dispute between the parties, MHS shall supervise, direct and perform its work and continue to provide the MHS ADH service in a diligent and professional

manner and without delay. The good faith completion of negotiation efforts and mediation pursuant to this Article shall be a prerequisite to the filing of any litigation.

SECTION 24. 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.

SECTION 25. 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.

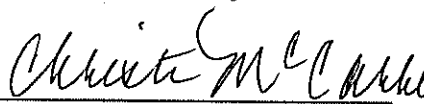
SECTION 26. ELECTRONIC DELIVERY/COUNTERPARTS

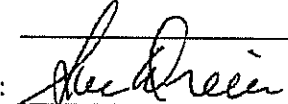
This Agreement may be executed by electronic or hard-copy signature and in any number of counterparts, each of which shall be deemed to be one and the same instrument. The exchange of executed copies of this Agreement by facsimile, scanner/e-mail or other electronic transmission will constitute effective execution and delivery of this Agreement for all purposes. Signatures of the Parties transmitted by such methods will be treated in all respects as having the same effect as an original signature.

IN WITNESS WHERE OF, the Parties have caused this Agreement to be executed on this ___ day of August, 2017.

MultiCare Health System:

Pierce Transit:

By: 
Print Name: Christi McCarren
Title: Sr. VP Retail Health & Community-Based Programs
Date: 8-21-17

By: 
Print Name: Sue Drier Dreier
Title: Chief Executive Officer
Date: 8/21/17

MultiCare's Contact Information:

PT's Contact Information:

Designated Representative: Jane Hanson
Designated Representative Title: Manager – Community Programs
Address: PO Box 5299; MS 6442-1-ADH
Tacoma, Washington 98415
Telephone: 253-459-7222; 206-200-4025
Facsimile: 253-473-3117
Email Address: Jane.Hanson@multicare.org
Copy to Email: ContractSupport@multicare.org

Designated Representative: Cherry Thomas
Designated Representative Title: Senior Planner - Paratransit
Address: 3701 96th St SW
PO Box 99070
Lakewood, WA 98499-0070
Telephone: 253-983-3699
Facsimile: cthomas@piercetransit.org
PT's Tax Reg No. & UBI No.: 600353691; 278035495

EXHIBIT A

See attached.