

## SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered among the City of Shoreline, a Washington municipal corporation (City, or respondent); King County, a home rule charter county and political subdivision of the State of Washington by and through its Metro Transit Department (KC Metro); and MV Public Transportation, Inc., a California corporation (MV). The City, KC Metro, and MV are also collectively referred to as the “parties” and individually as “party.”

### RECITALS

- A. MV provides public paratransit transportation services to eligible riders within King County on behalf of and by contract with KC Metro, under King County’s Access program.
- B. MV uses property located at 16325 5<sup>th</sup> Avenue NW, Shoreline (Property) to store, park, maintain, repair, operate, and dispatch Access paratransit vehicles. The Property is currently leased by KC Metro on behalf of MV.
- C. The Property is owned by Black Brandt, LLC, (Black Brandt), which is not a party to this Agreement. In 2019, MV accepted the assignment of a lease dated May 30, 2012, by and between Development Services of America (predecessor to Black Brandt) and Veolia Transportation Services, Inc. In March 2024, MV assigned the lease to KC Metro and in December 2024 KC Metro and Black Brandt executed a lease amendment to the original 2012 lease for the Property, effective December 1, 2024, that allows KC Metro to operate on the property, contingent on the City enforcement action, until June 30, 2027.
- D. On September 25, 2023, the City issued a Notice of Violation and Order to Correct to MV in Code Enforcement Case No. CE23-0262 (MV NOV). The MV NOV stated that MV was operating a “Transit Bus Base” contrary to former SMC 20.40.110 and former SMC 20.40.140, which required such a use to have a Special Use Permit when operating in the Community Business zoning district. The City issued a Notice of Violation and Order to Correct, under the same case number, to Black Brandt (BB NOV). The City did not issue a Notice of Violation and Order to Correct to KC Metro.
- E. On October 9, 2023, MV filed an appeal of the MV NOV to the City Hearing Examiner which was assigned Case No. HE23-05. On this same day, KC Metro filed an appeal of the BB NOV to the City Hearing Examiner which was assigned Case No. HE23-04. Black Brandt also filed an appeal, which was assigned Case No. HE23-06.
- F. On January 22, 2024, the City adopted Ordinance No. 999, which eliminates the zoning classification “Transit Bus Base” and provides two new zoning classifications: “Fleet Base-Major” and “Fleet Base - Minor.” On March 22, 2024, KC Metro filed a petition for review of Ordinance No. 999 with the Growth Management Hearings Board (GMHB), which was

assigned Case No. 24-3-0002.

- G. In March 2024, the City and KC Metro filed cross motions for summary judgement with the City Hearing Examiner. MV joined in KC Metro's motion. Black Brandt also filed a motion for summary judgement.
- H. In May 2024, the City filed a motion to dismiss most of the issues set forth in KC Metro's petition for review with the GMHB. On June 12, 2024, the GMHB issued its Order granting the City's Motion and on July 8, 2024, KC Metro appealed the Order to the King County Superior Court, which was assigned Case No. 24-2-15190-7 SEA. Since the filing of the appeal, the Court granted several stipulated motions to stay the appeal while the parties pursue settlement, with the last stay expiring in October 2024. On November 13, 2024, the GMHB issued an order dismissing the remainder of Case No. 24-3-0002 in its entirety.
- I. To allow the City, KC Metro, MV, and Black Brandt time to engage in settlement discussions, the City Hearing Examiner granted several stipulated motions for stay of the proceedings and the issuance of a decision on the motions for summary judgement. On February 3, 2025, the City Hearing Examiner issued a decision on the motions for summary judgement, finding, among other things, that King County did not have standing to appeal the Black Brandt NOV.
- J. To resolve the disputes between the parties regarding continued use of the Property for KC Metro's Access program and related litigation, the Parties enter into this agreement and KC Metro and MV will dismiss the appeals filed by KC Metro and MV against the City in all venues.

## **AGREEMENT**

1. **Dismissal of Cases.** Within three (3) business day of execution of this Agreement, KC Metro and MV shall withdraw and dismiss with prejudice their respective appeals to the City Hearing Examiner regarding Code Enforcement Case No. 23-062, captioned as Hearing Examiner Case Nos. HE 23-04 (KC Metro), for which the Hearing Examiner's February 3 Decision found KC Metro did not have standing to file, and HE 23-06 (MV). In addition, KC Metro will withdraw and dismiss with prejudice its appeal to King County Superior Court, Case No. 24-2-15190-7 SEA of GMHB Case No. 24-3-0002. These dismissals shall be with no cost or fees against the City.
2. **Classification of Use.** Pursuant to Ordinance 999, codified at SMC Table 20.40.140, 20.20.020F, 20.30.300, and 20.30.330, the City classifies KC Metro/MV's Access program property use as a Fleet Base – Minor. A Fleet Base – Minor is defined as a location where vehicles less than 30 feet in length are stored, repaired, maintained, and dispatched. Ordinance 999 prohibits a Fleet Base – Minor on the Property. The Appellant Parties agree that the KC Metro Access program use is a Fleet Base – Minor.

3. **Amortized Continued Operations Period.** The City will not take any enforcement action of or related to the use at the Property against KC Metro and/or MV, or their successors or assigns, and KC Metro and/or MV, or their successors or assigns, may use the Property for the use until 11:59 PM Pacific Local Time, June 30, 2027, so long as KC Metro and/or MV, or their successors or assigns, comply with the terms and conditions of this Agreement. This period of use is referred to as the Amortized Continued Operations Period throughout this Agreement.

- a. During the Amortized Continued Operations Period the City will treat the use as nonconforming in relation to the regulations adopted by Ordinance No. 999, and KC Metro and MV agree this period of limited nonconforming use constitutes a reasonable and constitutionally sufficient amortization period for their use.
- b. The Amortized Continued Operations Period shall end at 11:59 PM Pacific Local Time, June 30, 2027, and KC Metro and/or MV, or their successors or assigns, must remove all vehicles, materials, equipment, and supplies related, directly or indirectly, to the use from the Property.
- c. KC Metro and MV do not currently own, hold or possess any such ownership interest or rights of any kind in or to the Property, including without limitation any fee title ownership, leasehold, right of first refusal, option to lease or purchase, easement, or license, except for the first lease amendment, effective December 1, 2024, and the original 2012 lease (collectively, the Lease).
- d. Except for the Lease referenced in 3(c), KC Metro and/or MV, or any successor or assign, shall not acquire any ownership or real property interest in or to the Property, including without limitation any fee title ownership, leasehold, right of first refusal, option to lease or purchase, easement, or license, nor shall they seek any amendment or extension of the existing Lease to allow for use beyond June 30, 2027. Should any such interests be discovered or be acquired by or conveyed to either of them, or any successors or assigns, the Amortized Continued Operations Period shall automatically terminate, and the City may seek abatement of the use in accordance with Section 6(b). Nothing herein relieves KC Metro and/or MV, and any successor or assign, from compliance with other code provisions nor does it preclude the City from taking any code enforcement actions for other code violations.

4. **Limitations on Amortized Continued Operations.**

- a. During the Amortized Continued Operations Period, KC Metro and MV agree, individually and jointly, that they or either of them:
  - i. Shall not store, park, maintain, repair, and/or dispatch more than 100 Access program vehicles on or from the Property at any time.
  - ii. Shall comply with all applicable federal, state, city, and other local laws, rules, and

regulations for activities on the Property.

- iii. Shall not, nor cause any third party to, institute any legislative, administrative, or judicial proceedings to acquire any interest in or to the Property or permit continuation of the use beyond June 30, 2027. This includes but is not limited to, exercising any power of eminent domain, seeking a rezone or Comprehensive Plan designation for the Property, reclassification of the use(s), or text amendment of City development regulations applicable to the Property.
  - b. KC Metro and/or MV shall not, nor cause any third party to, pursue, institute, or provide support for any legislative, administrative, or judicial proceedings to alter or expand the current use allowed by this Agreement on the property or alter, shorten or lengthen the Amortized Continued Operations Period set forth in this Agreement. The City will not take any legislative action to shorten the Amortized Continued Operations Period for the use set forth in this Agreement.
  - c. KC Metro and/or MV shall not support, compensate, or reimburse Black Brandt, or any other entity, for any attorney's fees, expenses, and other costs related to, directly or indirectly, the Black Brandt NOV or MV NOV and any litigation related to KC Metro's use of the property in relation thereto after the date of full execution of this Agreement.
  - d. Any new or amended lease KC Metro and/or MV enters for the Property shall include all of the following:
    - i. A termination date for the use of no later than June 30, 2027, with cessation of all operations and removal of all vehicles, materials, equipment, and supplies related directly or indirectly to the use from the Property no later than 11:59 PM Pacific Local Time, June 30, 2027.
    - ii. A clause that precludes KC Metro or MV from subleasing or assigning the lease.
5. **Express Breach of Agreement.** Failure by KC Metro, MV, or any of their lessees, sublessees, successors, or assigns, to terminate any storage, parking, maintenance, repair, or dispatch of Access vehicles and any removal of all vehicles, materials, equipment, and supplies on or before June 30, 2027, shall be an express breach of this Agreement.
6. **Remedies.** If KC Metro and/or MV, or any successor or assign, does not comply with any of the terms and conditions of this Agreement the City has the following remedies.
- a. *Specific Performance.* If KC Metro or MV breaches any term or condition of this Agreement, the City has the right to seek specific performance of any term or condition of this Agreement after giving KC Metro and/or MV, or any successor or assign, at least

ten (10) business days prior written notice.

- b. *Summary Abatement.* In addition to specific performance if KC Metro and/or MV fail to remove the use in accordance with Section 3(b) by October 1, 2027, or within ninety (90) calendar days after another default that automatically terminates the Amortized Continued Operations Period, the City may summarily abate the use. After giving KC Metro and/or MV, or any successor or assign, at least fifteen (15) calendar days prior written notice the City may undertake summary abatement actions without first filing an abatement action in Superior Court. The City is entitled to all its costs and expenses related to abatement and said costs and expenses shall be paid within sixty (60) calendar days from the date the invoice is submitted to KC Metro and/or MV. Any outstanding amounts not paid within the sixty (60) days will be subject to a 5% penalty accruing weekly to be applied retroactively and the City shall be entitled to any related attorney fees.
  - c. Notwithstanding the foregoing, the City expressly reserves all rights to exercise any and all remedies at law and equity to enforce this Agreement.
  - d. Any remedy set forth is cumulative and the exercise of one remedy does not preclude the City from exercising any other remedy, whether individually or jointly. A determination that one remedy is void or not available does not preclude enforcement of the Agreement or the other available or agreed to remedies.
7. **Binding on Successors.** This Agreement is binding on the City, KC Metro, MV, and all their successors in title or interest, including tenants, heirs, and assigns, regardless of the type of interest obtained.
  8. **No Waiver of City Rights.** Except as specifically provided with respect to the Amortized Continued Operations Period, the City does not waive any of its enforcement rights to terminate and/or abate other potential violations of any applicable federal, state, City or other local law or regulations that may arise in the future on the Property. All applicable building, zoning, licensing, and health regulations remain in effect during the term of this Agreement.
  9. **Recording.** The City may record this Agreement in the property records of King County so that all future owners or tenants of the Property are made aware of the restrictions on the Property regarding KC Metro's or MV's uses of the Property.
  10. **Expenses.** Each party shall be responsible for their expenses, costs, and attorneys' fees relating to the making and execution of this Agreement. Consistent with this section of this Agreement, payment by either party of any disputed fees related to this Agreement or transaction is not an admission of any particular characterization of those fees, or of responsibility for payment of those fees, in future transactions.

11. **Evidence.** This Agreement may be admitted in evidence in any court proceeding between the parties to abate any illegal uses or code violations occurring on the Property, to collect fines, costs, penalties, or other amounts due, and to enforce any provision of the Agreement, including but not limited to, enforcement of the Section 6 remedies.
12. **No Automatic Assignment of Interests, Rights, and Obligations.** This Agreement binds and inures to the benefit of the parties. No party may assign its rights under this Agreement without first receiving the written consent of the other parties.
13. **Claims Not Assigned and Are Non-Assignable.** The parties have not assigned or transferred any claims of any kind for violation of law or for damages to any other party in any way. Parties to this Agreement are precluded from assigning any claims to any other entity.
14. **Governing Law and Venue.** Any and all claims relating to this Agreement shall be governed by and construed in accordance with the substantive and procedural laws of the State of Washington without giving effect to its conflicts of law rules or choice of law provisions. The sole and exclusive venue for any legal action arising from or related to this Agreement shall be in the Superior Court of King County, Washington; and the parties hereby agree to the personal jurisdiction of such court.
15. **No Additional Third-Party Beneficiaries.** This Agreement is for the benefit of the parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a signatory to this Agreement shall have any third-party benefit or other right whatsoever under this Agreement. Only the parties to this Agreement may enforce this Agreement's terms.
16. **Entire Agreement.** This Agreement represents the entire agreement of the parties with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein. This Agreement may only be amended in writing and agreed to by all parties.
17. **Effective Date.** This Agreement commences when all parties have signed it.
18. **Severability.** The provisions of this Agreement are separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion or the invalidity of the remainder of this Agreement, or the validity of its application to other persons or circumstances, shall not affect the validity of the remainder of this Agreement, or the validity of its application to other person or circumstances
19. **Notices.** Notices, demands, or correspondence to the parties are sufficiently given if dispatched by pre-paid first-class mail to the addresses provided by the executing parties below.

If to the City:

Director of Planning and Community Development  
Shoreline City Hall - 3rd Floor  
17500 Midvale Ave N  
Shoreline, WA 98133  
Phone: (206) 801-2500

With copy to:

City Attorney  
Shoreline City Hall – 4<sup>th</sup> Floor  
17500 Midvale Avenue N  
Shoreline, WA 98133  
(206) 801-2221

If to Metro:

Director  
Capital Division  
KSC-TR-0412  
201 S. Jackson St.  
Seattle, WA 98104

Deputy Director  
Mobility Division  
201 S. Jackson St.  
Seattle, WA 98104

With a copy to:

King County Prosecuting Attorney's Office  
701 5th Ave. Suite 600  
Seattle, WA 98104

If to MV:

MV Public Transportation, Inc.  
2711 N. Haskell Ave., Suite 1500  
Dallas, Texas 75204  
Attn: Legal Department  
contractsreview@mvtransit.com

**20. Dispute Resolution.**

- a. If any dispute arises out of any aspect of this Agreement during the Amortized Continued Operations Period, the parties must first try in good faith to amicably resolve the dispute by elevating it to their respective agency directors. If that effort is unsuccessful, the parties will attempt to resolve the dispute through mediation. This mediation must commence within forty (40) calendar days after any party to the Agreement notifies the other party requesting mediation to resolve a dispute, unless a different amount of time is agreed to by the parties. The parties will mutually agree upon a mediator within fourteen (14) calendar days of such notice. This provision shall not extend the termination date set out in Section 3(b) or 3(d) above.
- b. The parties will bear the costs of retaining a mediator equally.

**21. Headings.** The headings in this Agreement are inserted for reference only and may not be construed to expand, limit, or otherwise modify the terms and conditions of this agreement.

**22. Counterpart Originals.** This Agreement may be executed in multiple counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by a party shall have the same force and effect as if that party had signed all other counterparts.

**23. Legal Representation.** This Agreement has been reviewed and revised by legal counsel for all parties and no presumption or rule that ambiguity shall be construed against the party drafting the document shall apply to the interpretation or enforcement of this Agreement. The parties represent that they have been advised by their attorneys concerning the legal consequences of this Agreement; that they have carefully read the foregoing Agreement and knows the contents thereof and sign the same as their own free acts; and that they fully understand and voluntarily accept the terms and conditions of this Agreement.

**24. Prevailing Party.** In the event any legal action is brought about by any party to enforce the terms of this Agreement, the non-prevailing party shall reimburse the prevailing party for all reasonable and applicable legal expenses including attorney fees and costs and any expert witness fees and costs associated with the action or as part of any order or judgment entered, including those incurred upon appeal.

**25. Public Record.** The City and KC Metro are public agencies subject to Washington's Public Records Act, Chapter 42.56 RCW, and this Agreement and documents related to this Agreement may be required to be disclosed under the Public Records Act.

**26. No Approval.** This Agreement does not constitute prior approval of any required permit. All permits must be submitted correctly and with any required plans and/or fees. Approval

from the City for any required permits will be processed in accordance with City and State code requirements.

27. **Force Majeure.** The performance under any provisions of this Agreement may be extended for periods of time during which the party's performance is prevented due to circumstances beyond such party's control, including, without limitation, fires, floods, earthquakes, lockouts, strikes, embargoes, acts of God, pandemics, war, or other strife.
28. **Authority.** Each person executing this Agreement on behalf of a party represents and warrants that they have legal authority to execute and are fully authorized to execute and deliver and be bound by this Agreement on behalf of the party for which they are signing. The parties hereby represent and warrant to each other that each has read and understands the provisions of this Agreement, has had the opportunity to consult with legal counsel, and that this Agreement is enforceable accordance with its terms.

This Agreement is executed by:

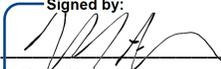
City of Shoreline

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

MV Public Transportation, Inc.

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

King County, by and through its Metro Transit Department

By:  \_\_\_\_\_  
Printed: Michelle Allison  
Its: General Manager, Metro Transit Department  
Date: 2/5/2025

This Agreement is executed by:

City of Shoreline

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

MV Public Transportation, Inc.

By:  \_\_\_\_\_  
Printed: Kevin Kluka  
Its: President  
Date: 2/6/2025

King County, by and through its Metro Transit Department

By:  \_\_\_\_\_  
Printed: Michelle Allison  
Its: General Manager, Metro Transit Department  
Date: 2/5/2025

This Agreement is executed by:

City of Shoreline

DocuSigned by:

By:

*Bristol Ellington*

Printed:

Bristol Ellington

Its:

City Manager

Date:

2/6/2025

MV Public Transportation, Inc.

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

King County, by and through its Metro Transit Department

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_