RESOLUTION NO. 2397

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, AUTHORIZING A ROAD MITIGATION AGREEMENT WITH NASH CASCADIA VERDE LLC ("NASH") FOR THE SR410 AND VETERANS MEMORIAL DRIVE INTERSECTION IMPROVEMENT PROJECT.

WHEREAS, NASH is the owner and developer of an Employment-Based Planned Community (EBPC) now known as Tehaleh, located in Pierce County, Washington, that was previously known as Cascadia; and

WHEREAS, Tehaleh is located on the south side of the City and, at full build out, will construct up to 6,500 homes, several schools, and various commercial businesses that will generate several thousand vehicle trips using City streets and SR410 each day; and

WHEREAS, due to impact from this traffic increase, Tehaleh is obligated through the State Environmental Policy Act, which is administered by Pierce County, to mitigate the impact of this additional traffic on City streets and SR410; and

WHEREAS, part of these mitigation requirements include making improvements to the intersection formed by SR410 and Veterans Memorial Drive, which was previously identified as Sumner-Buckley Highway; and

WHEREAS, the City is willing to accept payment in lieu of NASH designing and building these improvements in the amount of $4,063,813; and

WHEREAS, the City is willing to accept responsibility for ensuring that these road improvements are made as approved by the Hearing Examiner; and

WHEREAS, the City will add work to this project that is not a mitigation requirement for sidewalks, street lights, and landscaping; and

WHEREAS, Washington State Department of Transportation and Pierce County support the City taking the lead and finishing the SR410 and Veterans Memorial Drive Intersection Improvements;

NOW THEREFORE, BE IT RESOLVED; that the City Council of the City of Bonney Lake, Washington, does hereby authorize the Mayor to sign the attached agreement with NASH Cascadia Verde LLC.

PASSED by the City Council this 26th day of August, 2014.

[Signature]
Neil Johnson Jr., Mayor
ATTEST:

Harwood T. Edvalson, MMC, City Clerk

APPROVED AS TO FORM:

Kathleen Haggard, City Attorney
ROAD MITIGATION AGREEMENT

This Agreement is made the 26th day of August, 2014 between NASH Cascadia Verde LLC, a Delaware limited liability company ("NASH"), and the City of Bonney Lake, a Washington municipal corporation ("City").

1. BACKGROUND

1.1 NASH is the owner and developer of an Employment-Based Planned Community now known as Tehaleh, located in Pierce County, Washington. The Tehaleh property plus additional areas were previously known as Cascadia. The term “Project” here is used to refer to both Tehaleh and Cascadia.

1.2 The City is located in the vicinity of the Project and certain transportation corridors providing access to the Project are located within the City limits. The City has actively participated in the review and approval process for the Project and has a particular interest in certain traffic mitigation measures that are conditions of the approval of the Project, including the mitigation measure that is the subject of this Agreement.

1.3 The original approval of the Project by Pierce County included obligations for the owners to complete traffic improvements at the intersection of SR-410 and the Sumner-Buckley Highway, now known as Veterans Memorial Highway. That obligation was set forth in the original June 18, 1999, Hearing Examiner’s Decision approving the Project and in Exhibit H to the Project Development Agreement dated September 8, 1999.

1.4 In 2005, in connection with the approval of four subdivisions within the Project, the Hearing Examiner approved a modification to this mitigation requirement. That modification, which had been agreed to by the City and the Washington State Department of Transportation ("WSDOT"), was approved by the Hearing Examiner as Condition 30 and now reads:

"30. Exhibit 23 was a draft condition involving traffic improvements at the intersection of SR-410 and Sumner-Buckley Highway. With the agreement of Bonney Lake and WSDOT, the following language should be substituted for Exhibit 23:

'Cascadia is obligated under paragraph 4.4.3.c. and Exhibit L-2 of the Development Agreement dated September 8, 1999 to make specified improvements ('the improvements') at the intersection of SR-410 and Sumner-Buckley Highway. These provisions are consistent with Conditions 34, 131, 132 and 133 of the Hearing Examiner’s Decision dated June 18,
1999 (the “Decision”). Bonney Lake, with the approval of the Washington State Department of Transportation, has already accepted cash in lieu of related improvements required of the Sky Island development. Condition 33(e) of the Hearing Examiner’s decision approving Cascadia dated June 18, 1999 (also set forth as Condition 33(e) of Exhibit H to the Development Agreement) allows traffic conditions be met by a variety of alternative means. One allowed method is payment to a jurisdiction that has a programmed improvement that includes the required improvements. Here, Bonney Lake has a project in its Capital Facilities Plan (Project No. 301.004.595.30.041) that includes the Improvements. Prior to the City putting the Project out to bid, Cascadia shall contribute to the City of Bonney Lake the estimated cost of the improvements required to be constructed by Cascadia at SR 410/Sumner-Buckley Highway (as specified by the PUD approval documents) based upon the then-most recent available cost estimates. If the actual costs of construction exceed the estimates, Cascadia shall contribute to the City of Bonney Lake the difference within 60 days of receiving a final cost accounting from the City of Bonney Lake. If the actual costs are less than the estimates, Bonney Lake shall refund the difference. Bonney Lake and Cascadia shall maintain regular communications during the design and construction phases so that Cascadia is kept informed of cost changes. Such contribution shall satisfy the Decision conditions described above. Any disputes concerning the scope of Cascadia’s obligation under such conditions of approval, as to the amount of the required contribution, or any other matter pertaining to these conditions shall be referred to the Hearing Examiner for resolution. Nothing in this paragraph shall prevent Cascadia from satisfying such conditions of approval in any other manner permitted by Condition 33 of the Development Agreement.”

1.5 The City and NASH have reached agreement as to how Condition 30 will be implemented. Because the improvements in the City's road project include work not required by the Project mitigation and the fact that time and background traffic have increased since the mitigation was imposed, it is difficult to determine each party’s share of responsibility with certainty. This Agreement reflects a good faith effort by the parties to determine the fair allocation of the responsibility.

1.6 This Agreement is only intended to satisfy the requirement for improvements at SR-410 and Veterans Memorial Highway, and is not intended to affect any other rights and obligations of the parties in connection with other required improvements.

NOW THEREFORE, IN LIGHT OF THIS BACKGROUND, THE PARTIES AGREE AS FOLLOWS:

2. CONSTRUCTION OF IMPROVEMENTS

As noted in Condition 30, the improvements required for the development of the Project are included in Bonney Lake City Project No. 301.004.595.30.041 (the “Improvements”). The City will be solely responsible for completing all aspects of the Improvements including, but not limited to, design, consultants, environmental documentation and review, securing all
permits, ROW acquisition, utility relocations, construction documents, advertising for bid, reviewing bids and awarding the contract to a contractor at its discretion, managing all aspects of the construction, inspection, and acceptance of the Improvements by appropriate governmental authorities.

3. **NASH'S OBLIGATION**

NASH's sole obligation with respect to the Improvements and the implementation of Condition 30 is to make the payments described in this paragraph.

NASH will contribute a total of $4,063,813 toward the design, permitting, right-of-way acquisition, construction and all other Improvement elements in accordance with the following schedule:

a. $523,813 within 30 days of the City providing written evidence to NASH that the City has executed a contract with the general contractor for the Improvements. If construction of the Improvements does not commence within 90 days after execution of the contract, the payment will automatically be returned to NASH.

b. $1,000,000 within 30 days of the City providing written evidence to NASH that construction of the Improvements is 25% complete.

c. $1,000,000 within 30 days of the City providing written evidence to NASH that construction of the Improvements is 50% complete.

d. $1,000,000 within 30 days of the City providing written evidence to NASH that construction of the Improvements is 75% complete.

e. $540,000 within 30 days after the following requirements have all been met: (1) the City has provided written evidence to NASH that construction of the Improvements is 100% complete; (2) the City and other appropriate agencies have accepted all work; (3) utility providers have accepted all work; and (4) all retainage has been released to the contractor.

4. **POSTING OF BOND**

NASH shall secure its payment obligation under Paragraph 3 with a Financial Payment Guarantee Bond (the "Bond") to the City, which will be posted with NASH's initial payment. The Bond amount shall be decreased concurrently with each of the NASH payments made to the City in accordance with the schedule in Paragraph 3. Upon NASH's posting of the Bond in compliance with this paragraph, the City within five (5) business days of such posting shall complete the attached Certificate of Mitigation evidencing NASH's satisfaction of its obligations under Condition 30 and return the completed Certificate to Pierce County at the following address:
Notwithstanding anything to the contrary, NASH shall not be obligated to extend the Bond beyond October 31, 2017 and City will take no action to prevent the release of same.

5. **TIMING OF CONSTRUCTION**

The City shall commence construction of the Improvements on or before June 1, 2015, and complete the Improvements on or before October 31, 2017.

6. **FULL AND FINAL PAYMENT**

In calculating the amount to be paid by NASH under Paragraph 3, the parties included a 15% contingency ($536,400) above what would otherwise have been NASH’s share of the anticipated Improvement costs. The City and NASH agree that this is a reasonable and equitable estimate to account for typical change orders and unforeseen costs in a construction project such as this one. The parties agree that, because of this additional payment, the obligations under Paragraph 3 above constitute a full and final payment by NASH of all costs to satisfy Condition 30 and the traffic mitigation required at SR-410 and Veterans Memorial Highway. NASH’s obligations under Condition 30 are not subject to change based on the final cost of the Improvements, change orders, imputed interest, any unforeseen costs or any other reason or condition of any kind or description whatsoever. The City agrees not to seek any additional amounts from NASH, and NASH agrees not to seek any refund under Condition 30.

7. **GRANT FUNDS.**

The City is seeking grant funding for the Improvements. Any grant funds received will be applied towards the City’s cost of the Improvements. Notwithstanding Paragraph 6 above, if the grant funding received is greater than the City’s cost contribution to the Improvements, NASH’s obligation under Paragraph 3 of this Agreement shall be reduced or refunded by the amount above the City’s cost.

8. **ENTIRE AGREEMENT**

This Agreement represents the complete and final expression of the parties’ intentions and agreements on the matter. There are no other agreements. This Agreement supersedes
and cancels any prior negotiations or communications between the parties with respect to
the subject matter.

9. **CONSTRUCTION/INTERPRETATION**

This Agreement is being entered into and shall be construed and interpreted in accordance
with the laws of the State of Washington.

10. **VENUE**

Venue for any action covering this Agreement shall be the Pierce County Superior Court.

11. **ASSIGNMENTS**

Neither party may assign or delegate any right or duty under this Agreement without written
consent of the other party.

12. **SUCCESSORS OR ASSIGNS**

If either party to this Agreement ceases to exist by reason of merger, consolidation,
dissolution or any other corporate change of form, and if there is a successor corporation or
entity surviving the change of form or otherwise to which the duties of any contracting party
are assignable, then the terms and provisions of this Agreement are deemed to apply to that
successor or assign, so long as the applicable laws of the State of Washington allow such
corporation or entity to assume those duties and responsibilities.

13. **TIME IS OF THE ESSENCE**

Time is of the essence of this Agreement and every provision.

14. **NOTICE**

All communications, notices and demands of any kind that a party under this Agreement
requires or desires to give to the other party shall be in writing and either (a) delivered
personally; (b) sent by facsimile transmission with an additional copy mailed first class; or (c)
deposited in the U.S. Mail, certified mail postage prepaid return receipt requested and
addressed as follows:

If to:

NASH Cascadia Verde, LLC
Attention: Scott Jones
505 S. 336th Street #430
Federal Way, WA 98003

With a copy to:

William T. Lynn
Gordon Thomas Honeywell LLP
1201 Pacific Ave #2100
Tacoma, WA 98402
Notice by hand-delivery or facsimile shall be effective upon receipt. If deposited in the mail, notice shall be deemed delivered 48 hours after deposited. Any party at any time by notice to the other party may designate a different address or person to receive notice as described above.

15. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute on agreement with the same effect as if both parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart and re-attached to another counterpart. This Agreement shall be deemed executed and delivered upon each party's delivery of executed signature pages which may be delivered by facsimile or electronic mail with the same effect as delivery of the originals.

CITY OF BONNEY LAKE

By ____________________________

NEIL JOHNSON, JR.

Its ____________________________

MAYOR

NASH CASCADIA VERDE, LLC

By ____________________________

SASH JONES

Its ____________________________

Authorized Signatory
CERTIFICATE OF MITIGATION

This Certification is made this 26th day of August, 2014 by the City of Bonney Lake, a Washington municipal corporation ("City"), in recognition of the following:

BACKGROUND

1. NASH Cascadia Verde, LLC is the owner and developer of an Employment-Based Planned Community now known as Tehaleh, located in Pierce County, Washington ("NASH"). The Tehaleh property plus additional areas were previously known as Cascadia. The term “Project” is used herein to refer to both Tehaleh and Cascadia;

2. The original approval of the Project by Pierce County included obligations to complete traffic improvements at the intersection of SR-410 and the Sumner-Buckley Highway, now known as Veterans Memorial Highway, as set forth in the original June 18, 1999, Hearing Examiner’s Decision approving the Project and in Exhibit H to the Development Agreement dated September 8, 1999;

3. In connection with the approval of four subdivisions within the Project, the Hearing Examiner approved a modification to this mitigation requirement. That modification, which was agreed to by the City and the Washington State Department of Transportation, was approved by the Hearing Examiner as Condition 30;

4. Condition 30 provided that the Project owner could satisfy its obligations to undertake specified traffic improvements by paying a sum of money to the City to cover the estimated costs of the improvements;

5. The City and NASH agreed that NASH would satisfy the obligations in full under Condition 30 by contributing a total of $4,063,813 toward the design, permitting, right-of-way acquisition, construction and all other project elements, on an agreed contribution schedule; and

6. NASH commenced payment of its $4,063,813 contribution in accordance with the agreed-upon schedule and secured its contribution with a Financial Payment Guarantee Bond to the City;

In consideration of the above, the City declares and certifies to Pierce County and the Pierce County Examiner that NASH has satisfied in full all of its obligations under Condition 30 to complete traffic improvements at the intersection of SR-410 and the Veterans Memorial Highway.

CITY OF BONNEY LAKE

By  NEIL JOHNSON, Jr.

Its  MAYOR

[NASH-Bonney Lake Road Mit Agreement 07162014]   -7-
August 4, 2014

Daniel L. Grigsby, PE  
Public Works Director  
Bonney Lake Public Works  
8720 Main Street East  
PO Box 7380  
Bonney Lake, WA 98390-0944

Dear Daniel,

Enclosed are two copies of the Road Mitigation Agreement between NASH Cascadia Verde, LLC and the City of Bonney Lake.

I am planning to attend the hearing on August 28, and will see you there.

Sincerely,

Scott Jones

Enclosures
City of Bonney Lake, Washington

City Council Agenda Bill (AB)

Department/Staff Contact: PW / DAN GRIGSBY
Meeting/Workshop Date: 26 August 2014
Agenda Bill Number: AB14-106

Agenda Item Type: Resolution
Ordinance/Resolution Number: 2397
Councilmember Sponsor: DONN LEWIS

Agenda Subject: SR410 and Veterans Memorial Drive Intersection Improvement Mitigation Agreement

Full Title/Motion: A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Authorizing The Mayor To Sign The Sr410 And Veterans Memorial Drive Intersection Improvement Mitigation Agreement With Nash Cascadia Verde Llc, Owner Of The Tehaleh Development.

Administrative Recommendation: Recommend Approval

Background Summary: The TEHALEH development in Pierce County, formally known as CASCADIA, will add several thousand vehicle trips to City streets and SR410 each day. As partial mitigation of the impact these vehicles will have on these public roads, improvements to the SR410 & Veterans Memorial Drive (VMD) Intersection will be built. This mitigation agreement provides funding for the Tehaleh share of this intersection improvement to the City. It specifies the amount and timing of payment by the developer and actions by the City. In total, the amount paid to the City through this agreement is $4,063,813. To date, the City has expended over $850,000 on design and $390,000 on ROW acquisitions for this project beginning in 2005. The City completed Phase I construction of this project in 2010 with the Main Street and VMD Intersection Improvement contract at a cost of $2,400,000. The construction cost estimate for this, Phase II of this project, is estimated to be $5.3 million. Combining this $4 million with a PSRC grant of $638,000 and reduction in the scope of work of this contract, the City will have sufficient funds to advertise this construction contract in early 2015.

Attachments: Resolution 2397, Mitigation Agreement, Development Agreement Table 30, Phase I Summary

BUDGET INFORMATION

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<tr>
<th>Budget Amount</th>
<th>Current Balance</th>
<th>Required Expenditure</th>
<th>Budget Balance</th>
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Budget Explanation:

COMMITTEE, BOARD & COMMISSION REVIEW

Council Committee Review: Community Development
Date: 19 August 2014
Approvals:
- Chair/Councilmember DAN SWATMAN
- Councilmember RANDY MCKIBBIN
- Councilmember JIM RACKLEY

Forward to: Consent Agenda: [ ] Yes [ ] No

Commission/Board Review:

Hearing Examiner Review:

COUNCIL ACTION

Workshop Date(s):
Meeting Date(s):
Public Hearing Date(s):
Tabled to Date:

APPROVALS

Director: Dan Grigsby, P.E.
Mayor: Neil Johnson, Jr.
Date Reviewed by City Attorney: (if applicable):

Version Oct, 2010