RESOLUTION NO. 2437

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, AUTHORIZING A SECOND AMENDMENT TO THE AGREEMENT WITH THE TRANSPO GROUP FOR THE SR 410 – VETERANS MEMORIAL DRIVE INTERSECTION IMPROVEMENTS PROJECT TO UPDATE PLANS FOR ADVERTISEMENT.

WHEREAS, the City Council approved Resolution 1494 on September 27, 2005 to the Transpo Group to design the SR 410 – Sumner Buckley Intersection Improvements; and

WHEREAS, the City Council approved Resolution 2357 on January 28, 2014 to purchase the last remaining right of way parcel for the SR 410 – Veterans Memorial Drive Intersection Improvement Project (Phase 2); and

WHEREAS, the City per Resolution 2397 passed on August 26, 2014 has accepted payment in lieu of NASH designing and building the improvements for the SR 410 – VMD Improvements Project; and

WHEREAS, the City Council approved Resolution 2383 on May 13, 2014 for the update to the SR 410 – Veterans Memorial Drive Intersection Improvement plans for contract advertisement with Transpo Group; and

WHEREAS, the City Council approved Resolution 2417 on September 23, 2014 for the update to the SR 410 – Veterans Memorial Drive Intersection Improvement plans to address the undergrounding of utilities with Transpo Group; and

WHEREAS, due to the additional design work required to meet WSDOT changes from recent reviews and modifications to the project design required from changes to the undergrounding of the utilities within the intersection the city will amend the current Transpo Group Contract for $41,413; and

WHEREAS, the costs for these expenditures to design and construct the improvements will be covered from the developers mitigation funds and the PSRC grant;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, WASHINGTON HEREBY RESOLVES AS FOLLOWS:
That the City of Bonney Lake Council does hereby authorize the Mayor to sign the attached amendment to the agreement with the Transpo Group.

PASSED BY THE CITY COUNCIL this 10th day of February, 2015.

[Signature]
Neil Johnson, Jr., Mayor

AUTHENTICATED:

[Signature]
Harwood T. Edvalson, MMC, City Clerk

APPROVED AS TO FORM:

[Signature]
Kathleen Haggard, City Attorney
PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 10th day of February, 2015 by and between the City of Bonney Lake ("City") and Transpo Group USA, Inc. ("Consultant").

The parties hereby agree as follows:

1. **Scope of Work.** The Consultant shall perform all work and provide all materials described in the Scope of Work set out in Exhibit A attached hereto and incorporated herein by this reference. Such work shall be performed using facilities, equipment and staff provided by Consultant, and shall be performed in accordance with all applicable federal, state and local laws, ordinances and regulations. The Consultant shall exercise reasonable care and judgment in the performance of work pursuant to this Agreement. The Consultant shall make minor changes, amendments or revisions in the detail of the work as may be required by the City, such work not to constitute Extra Work under this Agreement.

2. **Ownership of Work Product.** Documents, presentations and any other work product produced by the Consultant in performance of work under this Agreement shall be tendered to the City upon completion of the work, and all such product shall become and remain the property of the City and may be used by the City without restriction; *provided*, that any such use by the City not directly related to the particular purposes for which the work product was produced shall be without any liability whatsoever to the Consultant.

3. **Payment.** The Consultant shall be paid by the City for completed work and services rendered under this Agreement pursuant to the rates and charges set out in Exhibit B, attached hereto and incorporated herein by this reference. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. All billings for compensation for work performed under this Agreement shall list actual time and dates during which the work was performed and the compensation shall be figured using the rates set out in Exhibit B; *provided*, that payment for work within the Scope of Work (Exhibit A) shall not exceed the fee/hour estimate set out in Exhibit B without written amendment to this Agreement, agreed to and signed by both parties.

Acceptance of final payment by the Consultant shall constitute a release of all claims, related to payment under this Agreement, which the Consultant may have against the City unless such claims are specifically reserved in writing and transmitted to the City by the Consultant prior to acceptance of final payment. Final payment shall not, however, be a bar to any claims that the City may have against the Consultant or to any remedies the City may pursue with respect to such claims.

The Consultant and its sub consultants shall keep available for inspection, by the City, for a period of three years after final payment, the cost records and accounts pertaining to this Agreement and all items related to, or bearing upon, such records. If any litigation, claim or audit is started before
the expiration of the three-year retention period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The three-year retention period shall commence when the Consultant receives final payment.

4. **Changes in Work.** The Consultant shall make all revisions and changes in the work completed under this Agreement as are necessary to correct errors, when required to do so by the City, without additional compensation.

5. **Extra Work.** The City may desire to have the Consultant perform work or render services in addition to or other than work provided for by the expressed intent of the Scope of Work. Such work will be considered Extra Work and will be specified in a written supplement which will set forth the nature and scope thereof. Work under a supplement shall not proceed until authorized in writing by the City. Any dispute as to whether work is Extra Work or work already covered by this Agreement shall be resolved before the work is undertaken. Performance of the work by the Consultant prior to resolution of any such dispute shall waive any claim by the Consultant for compensation as Extra Work.

6. **Employment.** Any and all employees of Consultant, while engaged in the performance of any work or services required by the Consultant under this Agreement, shall be considered employees of the Consultant only and not of the City, and any and all claims that may or might arise under the Workman's Compensation Act on behalf of said employees, while so engaged; any and all taxes arising out of Consultant's or Consultant's employees' work under this Agreement; and any and all claims made by a third party as a consequence of any acts, errors, or omissions on the part of the Consultant's employees, while so engaged, shall be the sole obligation and responsibility of the Consultant, except as provided in Section 12 of this agreement. The Consultant's relation to the City shall at all times be as an independent contractor.

7. **Nondiscrimination and Legal Compliance.** Consultant agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, gender, age or handicap except for a bona fide occupational qualification with regard to, but not limited to, the following: employment upgrading; demotion or transfer; recruitment or any recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and rendition of services. The consultant represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Reform and Control Act of 1986, including but not limited to the provisions of the Act prohibiting the hiring and continued employment of unauthorized aliens and requiring verification and record keeping with respect to the status of each of its employees' eligibility for employment. The consultant shall include a provision substantially the same as this section in any and all contracts with sub consultants performing work required of the contractor under this contract. The consultant agrees to indemnify and hold the City harmless from any and all liability, including liability for interest and penalties, the City may incur as a result of the consultant failing to comply with any provisions of the Immigration Reform and Control Act of 1986. Consultant understands and agrees that if it violates this section, this Agreement may be terminated by the City, and that Consultant shall be barred from performing any services for the
City in the future unless and until a showing is made satisfactory to the City that discriminatory practices have terminated and that recurrence of such action is unlikely.

8. **Term.** This Agreement shall become effective upon the day of its execution by both parties, and shall terminate upon completion of the work and delivery of all materials described in Exhibit A.

9. **Termination by City.** The City may terminate this Agreement at any time upon not less than ten (10) days written notice to Consultant, subject to the City’s obligation to pay Consultant in accordance with subsections A and B below.

   A. In the event this Agreement is terminated by the City other than for fault on the part of the Consultant, a final payment shall be made to the Consultant for actual cost of work complete at the time of termination of the Agreement. In addition, the Consultant shall be paid on the same basis as above for any authorized Extra Work completed. No payment shall be made for any work completed after ten (10) days following receipt by the Consultant of the termination notice. If the accumulated payment(s) made to the Consultant prior to the termination notice exceeds the total amount that would be due as set forth in this subsection, then no final payment shall be due and the Consultant shall immediately reimburse the City for any excess paid.

   B. In the event the services of the Consultant are terminated by the City for fault on the part of the Consultant, subsection A of this section shall not apply. In such event the amount to be paid shall be determined by the City with consideration given to the actual costs incurred by the Consultant in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or of a type which is usable by the City at the time of termination, the cost to the City of employing another person or firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the City of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made if subsection A of this section applied.

   C. In the event this Agreement is terminated prior to completion of the work, the original copies of all work products prepared by the Consultant prior to termination shall become the property of the City for its use without restriction; provided, that any such use by the City not directly related to the particular purposes for which the work product was produced shall be without any liability whatsoever to the Consultant.

10. **Termination by Consultant.** Consultant may terminate this Agreement only in response to material breach of this Agreement by the City, or upon completion of the work set out in the Scope of Work and any Extra Work agreed upon by the parties.

11. **Applicable Law; Venue.** The law of the State of Washington shall apply in interpreting this Agreement. Venue for any lawsuit arising out of this Agreement shall be in the Superior Court of the State of Washington, in and for Pierce County.
12. **Indemnification / Hold Harmless**

Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees arising out of or resulting from the negligent acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant’s liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant’s negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant’s waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

**Insurance**

The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

**A. Minimum Scope of Insurance**

Consultant shall obtain insurance of the types described below:

1. **Automobile Liability** insurance covering all owned non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. **Commercial General Liability** insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the Consultant’s Commercial General Liability insurance policy with respect to the work performed for the City.

3. **Workers’ Compensation** coverage as required by the Industrial Insurance laws of the State of Washington.

4. **Professional Liability** insurance appropriate to the Consultant’s profession.

**B. Minimum Amounts of Insurance**
Consultant shall maintain the following insurance limits:

1. **Automobile Liability** insurance with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.

2. **Commercial General Liability** insurance shall be written with limits no less than $1,000,000 each occurrence, $2,000,000 general aggregate.

3. **Professional Liability** insurance shall be written with limits no less than $1,000,000 per claim and $1,000,000 policy aggregate limit.

C. **Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant’s insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant’s insurance and shall not contribute with it.

2. The Consultant’s insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

D. **Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. **Verification of Coverage**

Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

13. **Subletting or Assigning.** The Consultant shall not sublet or assign any of the work covered by this Agreement without the express written consent of the City.

14. ** Entire Agreement.** This Agreement represents the entire Agreement between the parties. No change, termination or attempted waiver of any of the provisions of the Agreement shall be binding on any party unless executed in writing by authorized representatives of each party. The agreement shall not be modified, supplemented or otherwise affected by the course of dealing between the parties.
15. **Waiver.** Failure by any party to this Agreement to enforce any provision of this Agreement or to declare a breach shall not constitute a waiver thereof, nor shall it impair any party's right to demand strict performance of that or any other provision of this Agreement any time thereafter.

16. **Severability.** If any provision of this Agreement or its application is held invalid, the remainder of the Agreement or the application of the remainder of the Agreement shall not be affected.

17. **Execution and Acceptance.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The Consultant hereby ratifies and adopts all statements, representations, warranties, covenants, and agreements contained in the supporting materials submitted by the Consultant, and does hereby accept the Agreement and agrees to all of the terms and conditions thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY OF BONNEY LAKE

By: ______________________________
   Neil Johnson Jr., Mayor

CONSULTANT

By: ______________________________

Attachments:
Exhibit A: Scope of Work/Deliverables/Fee
Exhibit B: Rates
EXHIBIT A: SCOPE OF WORK

The Consultant shall perform the following services as directed by the City:
Amendment to Agreement for Services

Client Name: City of Bonney Lake
Project Name: SR 410 / Veteran's Memorial Drive
Original Agreement Dated: May 13, 2014
Amendment Dated: January 26, 2015

The existing Agreement for Services between Transpo Group (Transpo) and City of Bonney Lake (Client) is amended to include the following additional services, and revised fee projection. All terms and conditions described in the Agreement remain in force and are not modified by this Amendment.

Scope of Services

The requested amendment is due to the following changes from the original project scope:

Task 02—Update Base Mapping

Update base mapping required more effort than originally estimated due to complexity of as-built information. This task required extra effort to sort through electronic files provided by the City and other consultants. Verification of as-built information also required additional effort to verify storm sewer system elements including invert elevations, etc.

Task 03 – Channelization Plan for Approval

Several changes to the Plan for Approval resulted from WSDOT and City Review. These changes included:

- Change to right-turn lane length at Meyers intersection
- Change to dual right-turn only lanes for the VMD approach of the SR410/VMD intersection
- Change to median curb extents – using striping and RPM at ends near left-turn lanes

These changes also affected PS&E Documents as detailed below.

Task 04 – Review and Update Plans, Specifications, and Cost Estimate

4.1 Roadway Design Review

Several changes occurred to PS&E documents as a result of the PFA changes above, as well as the utility undergrounding work. These include:

- Removal and replacement of existing sidewalk along SR 410 and VMD to accommodate underground utility conversion. This revision impacted several sheets including plan, roadway sections, demolition, quantities, and cost estimate.
- Right turn lane lengthening at Meyers Road. Revisions were necessary on the plan sheets, quantities, drainage plan, and cost estimate.
- Additional scope of additive bid including curb, gutter, and pavement replacement. Original scope only included the sidewalk and wall in the bid additive.
- The change of c-curb to full-depth curbing required additional effort due to the amount of curb throughout the project. This required significant changes to the plan, roadway section quantities, and cost estimate.
- Plan for Approval comment resulted in changes to the median curb extents. This impacts removal, paving, roadway sections, quantities, and cost estimate.

4.2 Structural Review

Due to the lengthening of the turn lane at Meyers as a result of comments on the Plan for Approval, the soldier pile retaining wall beginning near the end of the turn lane was modified. Required update of design and changes to plans, quantities, and cost estimate.
4.3 Traffic Design Review
Several changes occurred to PS&E documents as a result of the PFA changes above, as well as the utility undergrounding work. These include:

- Changes to channelization sheets as a result of the modification to include dual right-turn lanes on the VMD approach of the SR410/VMD intersection. This also required changes to signal head displays for this approach which affected signal plan and wiring schematic sheets.
- Changes to conduit routing due to placement of joint utility trench for utility undergrounding. This required changes to signal plan and wiring schematics.
- The traffic control and staging plans required additional effort due to complexity of staging of construction for walls and underground utility conversion. Original scope assumed 3 plan sheets. Final plan will likely have in excess of 8 sheets.
EXHIBIT B: RATES
Pay rates are effective from June 29, 2013 through June 27, 2014, within the ranges shown in the attachment. Only key staff are shown and other staff may work on and charge to the project as needed by the project manager.

### Labor:

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**Total Hours:**

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**Labor Costs:**

$1,031.44

$1,077

$795

$3,094

$981

$0

**Total Labor Costs:**

$6,577.10

**Overhead Costs:**

$5,102.93

**Total Costs:**

$11,680.03

**Miscellaneous Expenses:**

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**Total Reimbursable Expenses:**

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**Total Subconsultants:**

$17,547

**TOTAL ESTIMATE:**

$41,413.00
### SR410 Wall/ VMD Review Services

#### Design Review and PS&E Services

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- **Profit at 30% of Direct Rate**: $1,130
- **Overhead at 1.6841 Times Direct Rate**: $7,464
- **Total Labor Cost**: $13,226

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- **Profit at 30% of Direct Rate**: $434
- **Overhead at 1.6841 Times Direct Rate**: $2,439
- **Total Labor Cost**: $4,321
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- **Prepare & Submit Updates Plans**

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- **Profit at 30% of Direct Rate** $0
- **Overhead at 1.6841 Times Direct Rate** $0
- **Total Labor Cost** $0

- **Direct Expenses (Production, Mileage, ...)** $0

- **Total** $17,547
Six Year Transportation Improvement Program

SR410 at Veterans Memorial Drive

Bonney Lake
City of Bonney Lake

Map 1

- **A-1**
  SR410 at Veterans Memorial Drive
  Dev/TIF/Grant
  $750,000
  Phase 2 - Signal upgrade and additional turn lanes.
  With Project B-1

- **B-1**
  SR410 and Veterans Memorial Drive
  Dev/TIF/Grant
  $4,150,000
  Phase 2 - Additional turn lanes on SR 410 and widen to 5 lanes on VMD. With Project A-1

May 28, 2014
City of Bonney Lake

City Council Agenda Bill (AB)

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<th>Ordinance/Resolution Number:</th>
<th>Councilmember Sponsor:</th>
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<td>Resolution</td>
<td>2437</td>
<td>Donn Lewis</td>
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**Agenda Subject:** Second Amendment to the Agreement with Transpo Group for the SR 410/VMD Intersection Improvements Contract to update plans for Advertisement.

**Full Title/Motion:**
A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Approving the Second Amendment to the Agreement with Transpo Group for the SR 410/VMD Intersection Improvements Contract to update plans for Advertisement.

**Administrative Recommendation:**

**Background Summary:**
The process to complete the current Plans, Specifications, and Engineering (PS&E) has required additional expenses due to the following unforeseen changes in the original Scope of Work: 1) PFA approvals through WSDOT reviews have created design changes in the channelization and structural wall lengths; 2) creating an additive bid item for future funding options for the sidewalk from Myers Road to VMD; 3) increased traffic control plans from initial proposal; 4) corresponding updates to the PS&E package; and 5) updates to base mapping.

**Attachments:** Resolution, SOW, Map

### BUDGET INFORMATION

<table>
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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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<tr>
<td>$50,000</td>
<td>$48,497</td>
<td>$41,413</td>
<td>$7,084</td>
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**Budget Explanation:** Revenue: Street – 301.045.042.595.10.63.0 Design- SR410 & VMD Intersection Improvements Revenue: TIF, PSRC Grant, Developer Mitigation

### COMMITTEE, BOARD & COMMISSION REVIEW

**Council Committee:** CDC

<table>
<thead>
<tr>
<th>Approvals:</th>
<th>Yes</th>
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**Committee Date:** February 3, 2015

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<th>Councilmember</th>
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<tr>
<td>Randy McKibbin</td>
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<td>James Rackley</td>
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**Forwarded to:**

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<th>Commission/Board Review:</th>
<th>Consent Agenda:</th>
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**Hearing Examiner Review:**

### COUNCIL ACTION

**Workshop Date(s):**

**Meeting Date(s):**

Tabled to:

### APPROVALS

**Director:** Dan Grigsby, P.E.

**Mayor:** Neil Johnson Jr.

**Date Reviewed by City Attorney:** (if applicable):

*Rev. January 2014*