

**Town of Yacolt**  
**Special Council Meeting Agenda**  
**Monday, August 05, 2024**  
**6:00 PM**  
**Town Hall**

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**Call to Order**

**Flag Salute**

**Roll Call**

**New Business**

- [1.](#) 2024 Transportation Improvement Board Grant Funding Commitment
- [2.](#) Slateco Right-of-Way Agreement
- [3.](#) RES 627 re: Limited Right-of-Way Construction Agreements

**Executive Session** to discuss potential Real Estate Purchase

**Adjourn**



## Town of Yacolt Request for Council Action

### CONTACT INFORMATION FOR PERSON/GROUP/DEPARTMENT REQUESTING COUNCIL ACTION:

**Name:** Clerk Fields

**Group Name:**

**Address:** 202 W. Cushman  
Yacolt, WA 98675

**Phone:** (360) 686-3922

**Email Address:** [clerk@townofyacolt.com](mailto:clerk@townofyacolt.com)

**Alt. Phone:**

### ITEM INFORMATION:

**Item Title:** 2024 Transportation Improvement Board Grant Funding Commitment

**Proposed Meeting Date:** August 5, 2024

**Action Requested of Council:** Approve the financial commitment for the TIB Grant the Town has applied for.

**Proposed Motion:** "I move the Town approves the funding commitment for the 2024 TIB Grant for the Amboy Ave Improvements."

**Summary/ Background:** In an effort to prevent bad actors from continuously tearing up the grassy strip along N. Amboy Avenue, and also to protect anyone on the sidewalk, the Town wishes to install a curb along the west side of N Amboy Avenue, going north from W Yacolt Rd. The Transportation Improvement Board has expressed that we are almost guaranteed to qualify for a grant from them if we also incorporate a bike line in the project, to extend from the north end of Town on N Amboy Ave, south to W Yacolt Rd, then east to Central Park. The width of these roads would accommodate the bike lane. TIB would cover 95% of the cost (estimated around \$303,551), with the Town required to cover only 5% (estimated to be around \$15,178).

*\*Note: The Town's recent adoption of the "Complete Streets Ordinance" (ORD #598) on May 13<sup>th</sup> of this year enables the Town to qualify for grants such as this.*

**Staff Contact(s):** Clerk Stephanie Fields  
[clerk@townofyacolt.com](mailto:clerk@townofyacolt.com)

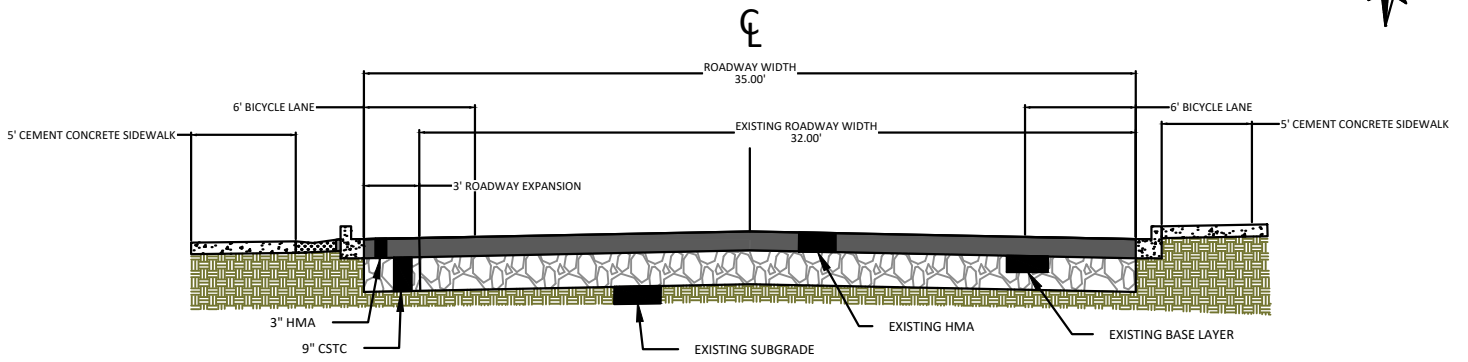
Mayor Ian Shealy  
[mayor@townofyacolt.com](mailto:mayor@townofyacolt.com)

(360) 686-3922



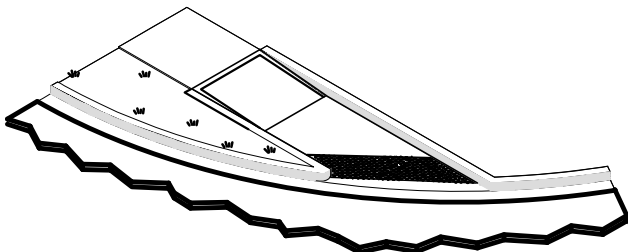
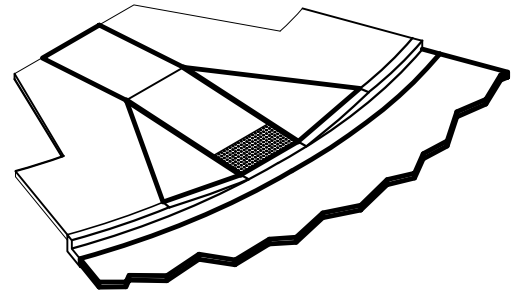
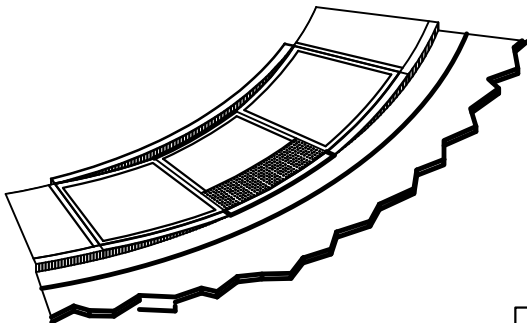
**VICINITY MAP**

SCALE: NTS



**CROSS SECTION - N AMBOY AVE IMPROVEMENTS**

SCALE: NTS



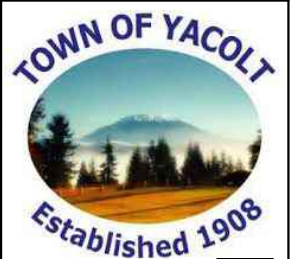
CITY OF YACOLT  
ADA RETROFIT IMPROVEMENTS

**JACKSONCIVIL**

704 E MAIN, STE 103  
PO BOX 1748  
BATTLE GROUND, WA  
98604-4687

P: (360) 723 - 0381  
WWW.JACKSONCIVIL.COM

DATE: 07/24/2024



**C000**



July 25, 2024

Washington State Transportation Improvement Board  
CSP Application Review Committee  
P.O. Box 40901  
Olympia, WA 98504-0901

**RE: Town of Yacolt Complete Streets Program Local Match**

Dear Review Committee,

The Town of Yacolt is seeking funding assistance through the Washington State Transportation Improvement Board's (TIB) Complete Streets Program (CSP).

I am committing the Town of Yacolt to provide a match of **\$15,178** which is five [5] percent of the submitted Engineer's estimate of **\$303,551** for a total project cost.

Sincerely,

Ian Shealy  
Mayor, Town of Yacolt



# Town of Yacolt

## Request for Council Action

### CONTACT INFORMATION FOR PERSON/GROUP/DEPARTMENT REQUESTING COUNCIL ACTION:

**Name:** Stephanie Fields, Town Clerk  
David W. Ridenour, Town Attorney

**Group Name:** Staff

**Address:** 202 W. Cushman St.  
P.O. Box 160  
Yacolt, WA 98675

**Phone:** Town Clerk (360) 686-3922

**Email Address:** clerk@townofyacolt.com

**Alt. Phone:** Town Clerk (360) 686-3922

### ITEM INFORMATION:

**Item Title:** Ratification of Right of Way Agreement with Slateco, LLC.

**Proposed Meeting Date:** August 5, 2024 (Special Meeting).

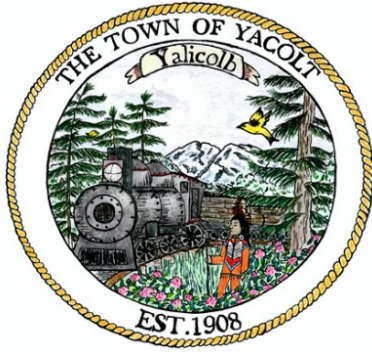
**Action Requested of Council:** Approve Right-of-Way Use Agreement with Slateco, LLC for driveway and sidewalk improvements at Lot #6 and Lot #7 of the RR Avenue Subdivision.

**Proposed Motion:** "I move that the Council approve the proposed Right-of-Way Use Agreement with Slateco, LLC for Right-of-Way improvements to benefit the property owners at Lot #6 and Lot #7 of the Railroad Avenue Subdivision.

**Summary/ Background:** The property owners of Lot #6 and Lot #7 in the Railroad Avenue Subdivision propose to hire Slateco, LLC to construct the sidewalks and driveway approaches for their lots. Staff has prepared a Right-of-Way Use Agreement to describe proposed terms for this work in the right-of-way. The plans for this work and the proposed agreement have been reviewed and will be approved by appropriate consultants for the Town prior to issuance of the permits.

**Attachments:** 1). Proposed Agreement.

**Staff Contact(s):** Stephanie Fields, Town Clerk.



**Town of Yacolt  
Building & Land Use Department**

202 W. Cushman Street  
Yacolt, WA 98675

Tel: (360) 686-3922

**Ian Shealy**  
Mayor

**PROJECT:** ROW Improvements in the Railroad Avenue Subdivision  
**APPLICANT:** Slateco, LLC  
**APPLICATION DATE:** July 10, 2024

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**RIGHT-OF-WAY USE AGREEMENT**

THIS AGREEMENT is made and entered into on this 6<sup>th</sup> day of August, 2024, by and between the Town of Yacolt, a Washington municipal corporation, (“Town” or “Yacolt”), and Slateco, LLC d/b/a Slateco, (“Slateco” or “Permittee”).

Whereas, Yacolt is the owner / holder of certain roadways and rights-of-way within its municipal boundaries; and,

Whereas, Slateco desires a permit from Yacolt to construct improvements in Yacolt’s rights-of-way, (specifically those rights-of-way located at Lot #6 and Lot #7 in the Railroad Avenue Subdivision):

Now therefore, in consideration of the covenants and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. **Authority Granted:** Yacolt hereby grants to Permittee the right, privilege, and authority to enter and use the specified rights-of-way for the purpose of maintaining, repairing, removing and/or installing the identified facilities subject to the terms and conditions set forth herein. The general intent of the Parties is to allow the Permittee to construct driveway drops, driveways, sidewalks, and any related improvements located in the rights-of-way at Lot #6 and Lot #7 of the Railroad Avenue Subdivision for the benefit of residential property owners in the Subdivision.

2. **Information to be Provided by Permittee:**

- 2.1. Plans for the proposed work. The Application for the work permitted under this Agreement shall include all submittals required by the Town’s Building Official or his agents. The Application should include a narrative and illustrative plans that describe the plans and specifications for the project, including the proposed start date and the estimated time to complete the work. A site plan should show the precise location of any and all facilities work under this Agreement. The site plan should include street names, property addresses, fire hydrants, curb cuts and driveways, and other significant physical features in the vicinity. The plans should also include a detailed construction schedule showing an accurate timeline of all work activities and the expected durations of those activities. The Town may waive these requirements to the extent they are deemed unnecessary by the Town Engineer.
- 2.2. Traffic control plans. Traffic control plans should be consistent with the most recent edition of the Manual of Uniform Traffic Control Devices (MUTCD).
- 2.3. Contractor information. Information about the Permittee should include contact information for onsite supervisor(s) of the project, (email and cell phone numbers).

3. **Right-of-Way Use Requirements:** Unless otherwise directed or approved by the Town or the Town Engineer, the Permittee’s rights under this Permit / Agreement are subject to the following requirements:

- 3.1. Compliance with applicable laws and regulations. Comply with the Town of Yacolt Engineering Standards for Public Works Construction, (“*Engineering Standards*”), including all updated and current versions of standard specifications referenced therein. Comply with applicable ordinances, construction codes, regulations, standards, and all other applicable local, state and federal laws and regulations, including safety laws and standards. Comply with orders of the Town and the Town Engineer relating to the performance of the work performed under and pursuant to this Agreement.
- 3.2. Business license. The Permittee’s contractor shall have or obtain a Yacolt Business License.
- 3.3. Traffic Control. The Permittee shall maintain at least one lane of traffic at all times unless approval for a road closure permit has been obtained. Place traffic signs in accordance with the latest edition of the MUTCD or as directed by the Town Engineer. Erect, maintain, and provide proper lighting on such barriers and warning signs during the progress of the work as may be necessary or as may be directed by the Town Engineer for the protection of the traveling public. Make no excavation and place no obstacle within the limits of a County road in such a manner as to unreasonably interfere with the travel over said road.
- 3.4. General use of right-of-way. Permittee shall ensure that facilities are installed, maintained, repaired, and removed within the right-of-way in such a manner and at such points so as not to unreasonably inconvenience the public use of the right-of-way or to adversely affect the public health, safety, and welfare.
- 3.5. Notices. The Permittee shall provide at least one (1) business days’ prior notice of the work and reasonably coordinate with North County Fire District 13; North County EMS; and all affected residents and business. Provide copies of all written notices to the Town.

- 3.6. Working hours. Perform the work only between the hours of 7:00 a.m. to 6:00 p.m. on non-holiday weekdays, Monday through Saturday, except for emergencies or as otherwise approved by the Town Engineer. Requests for working after hours shall be submitted to the Town Engineer at least one week before the after-hours work is scheduled to begin.
- 3.7. Responsibility for and Supervision of Construction. The Permittee shall be solely responsible for all construction under this Agreement, including the techniques, sequences, procedures, and means, and for coordination of all work. The Permittee shall supervise and direct the work to the best of its ability, and give the project all attention necessary for such proper supervision and direction.
- 3.8. Safety precautions and programs. The Permittee has an overall duty to provide and oversee all safety orders, precautions, and programs necessary to the reasonable safety of the work, except that the Permittee's contractors shall also be responsible for the safety of persons or property in the performance of their work, and for compliance with the provisions of applicable laws and regulations. In this regard, the Permittee shall take reasonable precautions for the safety of all employees and other persons whom the work might affect, all work and materials incorporated in the project, and all property and improvements on the construction site and adjacent to the construction site, complying with all applicable safety laws, ordinances, rules, regulations, and orders.
- 3.9. Financial responsibility for work. The Permittee shall install, operate, and maintain its facilities at its expense.
- 3.10. Trenching, pavement cuts, temporary steel plating, and general restoration requirements. The Permittee shall conduct its work in accordance with the specifications described in the approved plans and submittals for the work.
- 3.11. Clean-up and restoration. The Permittee shall keep the work premises and adjoining ways free of waste material and rubbish caused by its work or that of its contractors. The Permittee further agrees to remove all such waste material and rubbish on termination of the project, together with all tools, equipment, machinery, and surplus materials. The Permittee shall place crushed rock on any roadway shoulders that are disturbed during construction. The Permittee shall restore the right-of-way as near as possible to its original condition before the permitted work began at the Permittee's sole expense.
- 3.12. Inspections. The Permittee shall request and obtain inspection approvals from the Town where required by the Town Engineer or the Engineering Standards.
4. **Right-of-Way Use Conditions:** Unless otherwise directed or approved by the Town or the Town Engineer, the Permittee's rights under this permit and Agreement are conditioned upon the following:
  - 4.1. Approval of Application submittals. Approval of the Permittee's Application submittals described in Section 2 above by the Town and/or the Town Engineer. [The Application and approved submittals shall be considered part of the contract documents for the project.]
  - 4.2. Insurance. The Permittee shall not begin work under this Agreement until the Permittee's insurance policies have been approved by the Town.



- 4.3. Approval of performance. The Town's acceptance of the Permittee's work shall be subject to and conditioned upon the satisfaction of the Town Engineer with the Permittee's performance of the Work. Any of the work not completed according to the provisions set forth in this permit and Agreement may be completed by the Town and charged to the Permittee.
- 4.4. Nuisances. If complaints are received regarding nuisances caused by the Permittee's use of the right-of-way, (e.g. noise, odors, etc.), further reasonable conditions may be added to the project by the Town or the Town Engineer to mitigate the nuisance.
- 4.5. Transferability. This Agreement is not transferrable by Permittee to other utilities, contractors, or locations.
- 4.6. Changes to facilities. The Permittee recognizes and agrees that it is responsible for and will make at its own expense any changes that may be required in the right-of-way improvements constructed under this Agreement due to any reconstruction, improvement, or maintenance of the roadway and/or other appurtenances including drainage facilities within the right-of-way and/or any damage that may be done the roadway or right-of-way or user of the road that may in any way be attributed by the Town Engineer to the Permittee's work under this Agreement.
- 4.7. Non-exclusive rights. This Permit or privilege shall not be deemed or held to be an exclusive one and shall not prohibit the Town from granting other permits or franchise rights to public or private utilities, nor shall it prevent the Town from using any of its roads, streets, or public places, or exercise its right to full supervision and control over all or any part of them, none of which is hereby surrendered.
- 4.8. Town remedies. The Town or the Town Engineer may revoke, annul, change, amend, amplify, or terminate this Agreement or any of the terms hereof if the Permittee fails to reasonably comply with any or all of its requirements, conditions and agreements as set forth herein.
- 4.9. Permittee's financial responsibility. In accepting this permit and Agreement, the Permittee agrees that any damage or injury done to the property of the Permittee or any expense incurred by the Permittee through the operation of a contractor working for the Permittee, or of any employee of the Permittee, shall be at the sole expense of the Permittee.
- 4.10. Permittee's responsibility for negligence of employees and contractors. The Permittee assumes full responsibility for the acts, negligence, or omissions of all its employees on the project, for those of its contractors and their employees, and for those of all other persons doing work under a contract with the Permittee's contractor. Nothing in this Agreement and its related documents shall create a contractual relationship between any contractor and the Town, or any obligation on the part of the Town to pay or be responsible in any way for the payment of any moneys due any contractor or subcontractor, unless otherwise required by law.
- 4.11. Other conditions. None.

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5. **Yacolt's Authority and Responsibilities:**

- 5.1. Yacolt's primary contacts. Yacolt may provide instructions to the Permittee through its Mayor. Yacolt also delegates authority to its Town Clerk and/or Town Engineer to give any instructions to the Permittee and the Permittee's contractor during the course of the project.
- 5.2. Inspection points. The Town Clerk, Town Engineer and/or Public Works Director will identify and provide to Permittee a list of all inspection points prior to the commencement of work, or with reasonable advance notice prior to any component of the work that the Town Engineer desires to inspect.
- 5.3. Agreement interpretations and directions. Written interpretations of or directives under this Agreement and the related contract documents, may be made from time to time by the Town or the Town Engineer. Requests for interpretations, direction, or change orders may be directed by the Permittee to the Town Engineer.
- 5.4. Worksite information. Upon written request from the Permittee or its contractor, the Town shall, with reasonable promptness, provide information under the Town's control sufficient to enable the Permittee and its contractor to fully perform the work. The Permittee and its contractor are entitled to rely upon any information furnished by the Town or the Town Engineer.

6. **Starting and Completion Dates of the Work:** Construction under this Agreement may begin upon the execution of this Agreement by all Parties and the issuance of a notice to proceed by the Town or the Town Engineer. Construction shall be completed within the time-frame proposed by the Permittee and approved by the Town Engineer.

7. **Cost Recovery Agreement:** The Permittee agrees that their Cost Recovery Agreement with the Town for the work contemplated by this Agreement covers the cost of preparing this Right of Way Use Agreement.

8. **Notices and Contact Information:** All notices and other communications between the Parties shall be in writing and shall be either hand-delivered, emailed, or mailed by first class mail, postage prepaid, as follows:

If to the Town:

Town of Yacolt  
Attn: Town Clerk or Mayor Listek  
202 W. Cushman Street  
P.O. Box 160  
Yacolt, WA 98675

Telephone: (360) 686-3922  
Email: [clerk@townofyacolt.com](mailto:clerk@townofyacolt.com)  
Email: [mayor@townofyacolt.com](mailto:mayor@townofyacolt.com)

If to the Town Engineer:

Jackson Civil Engineering, LLC  
Attn: Devin Jackson  
704 E. Main Street, Suite 103  
P.O. Box 1748  
Battle Ground, WA 98604

Telephone: (360) 723-0381  
Cell: (360) 901-6031  
Email: [devin@jacksoncivil.com](mailto:devin@jacksoncivil.com)

If to the Permittee:

Slateco, LLC  
Attn: Royce Lindberg  
Address: P.O. Box 1921  
Woodland, WA 98674  
Telephone: (360) 903-1808  
Cell: 360-903-1808  
Email: [royce@slateco.net](mailto:royce@slateco.net)  
Email: [jennifer@slateco.net](mailto:jennifer@slateco.net)

All notices shall be deemed given on the day such notice is personally served or emailed, or on the third day following the day such notice is mailed in accordance with this section. The name and address to which notices shall be directed may be changed by a Party by giving the other Party notice of such change as provided in this section.

9. **Dispute Resolution:** If a dispute arises out of or relating to this Agreement, or the breach of this Agreement, and if the dispute cannot be settled through direct discussions, the Parties agree to first endeavor to settle the dispute in an amicable manner by mediation. If the Parties do not agree on a mediator or resolve their dispute within a period of 45 days, then all disputes, claims, questions, or differences may be finally settled by action in a judicial or quasi-judicial tribunal. Nothing in this Agreement shall be construed to limit the Parties' choice of a mutually acceptable alternative resolution method such as a dispute hearing, a dispute resolution board, or arbitration. The Town and the Permittee agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Agreement that are not affected by the dispute.
10. **Indemnification:** The Permittee shall indemnify, hold harmless and defend the Town, its elected and appointed officials, its employees, agents, consultants, representatives, volunteers and others working on behalf of the Town, from and against any and all claims, losses, costs, attorney's fees, damages, or injury including death and/or property loss, expense claims or demands arising out of the Permittee's use of the public right-of-way, including all suits or actions of every kind or description brought against the Town, either individually or jointly with Permittee, for or on account of any damage or injury to any person or persons or property, caused or occasioned or alleged to have been caused by, or on account of, any of the activities conducted by or caused to be conducted by Permittee, or through any negligence or alleged negligence in safeguarding the public right-of-way, participants, or members of the public, or through any act, omission or fault or alleged act, omission or fault or alleged act, omission or fault of the Permittee, its employees, agents, volunteers, subcontractors or others under the direction, control or under any contractual relationship with the Permittee.

The indemnity provided by the Permittee in this Section shall not apply to the extent losses are caused by the negligence or willful misconduct of the Town, its elected and appointed officials, officers, employees, agents and representatives.

This indemnity and hold harmless agreement by the Permittee shall include any claim made against the Town by an employee of the Permittee, Permittee's contractor, subcontractor or agent of the Permittee, even if the Permittee is thus otherwise immune from liability pursuant to the workers'

compensation statute, Title 51 RCW. For this purpose, the Permittee, by mutual negotiation, hereby waives any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51, RCW.

11. **Insurance:** The Permittee shall procure and maintain the insurance described herein, written on an “occurrence” basis, from Washington-licensed insurers with a current A.M. Best rating of not less than A-, with limits of not less than described herein.

<u>Coverages</u>	<u>Limits of Liability</u>
Commercial General Liability Insurance	
1. Bodily Injury Liability	\$1,000,000 each occurrence
	\$2,000,000 aggregate
2. Property Damage Liability	\$1,000,000 each occurrence
	\$2,000,000 aggregate
Commercial Automobile Liability Insurance	
1. Bodily Injury Liability	\$1,000,000 each person
	\$2,000,000 each occurrence
2. Property Damage Liability	\$2,000,000 each occurrence

Workers’ Compensation. The Permittee shall comply with Workers’ Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

- 11.2. Policy terms. The Permittee shall keep this insurance in force without interruption from the commencement of the work and for thirty (30) days after the completion or termination date, whichever is later.

- 11.3. Verification and continuation of coverage. Upon request, the Permittee shall deliver to the Town a Certificate of Insurance and endorsements for each policy of insurance meeting the requirements set forth herein before the Permittee gives notice for the commencement of the work. Failure of the Town to demand such verification of coverage with these insurance requirements or failure of the Town to identify a deficiency from the insurance documentation provided shall not be construed as a waiver of the Permittee’s obligation to maintain such insurance. In the event of nonrenewal, cancellation, or material change in the coverage provided, forty-five (45) days written notice shall be furnished to the Town prior to the date of nonrenewal, cancellation or change.

12. **Bond / Financial Security:** None required.

13. **Warranty:** The Permittee shall be responsible for all re-construction and repair costs occasioned by any settlement or subsidence of any excavation or construction for a period of one (1) year from the date final restoration work is completed. The Town’s Engineer shall have final authority to determine whether or not settlement or subsidence exists, and whether or not repairs are needed.

14. **Termination:**

- 14.1 Permittee’s termination. The Permittee may, on five days written notice to the Town, terminate this Agreement.

- 14.2 Yacolt’s termination. The Town may terminate this Agreement for good cause shown. The Town agrees to provide five days written notice of its intent to terminate the

Agreement for the Permittee's material breach of its responsibilities, and such notice shall describe the breach with reasonable particularity. The Town may withdraw its notice of termination if the Permittee satisfies or corrects the breach condition to the reasonable satisfaction of the Town and/or the Town Engineer.

- 14.3. Obligations arising before termination. Even after termination, the provisions of this Agreement still apply to any work performed, payments made, events occurring, costs charged or incurred, or obligations arising before the termination date.
- 14.4. Automatic termination. Unless this Agreement is amended to extend the term, this Agreement shall terminate without notice by the Parties on November 30, 2024.
15. **Survival of Terms:** All rights and obligations set out in this Agreement and arising hereunder will survive the termination of this Agreement (a) as to the parties' rights and obligations that arose prior to such termination and (b) as is necessary to give effect to rights and obligations that arise after such termination but derive from a breach or performance failure that occurred prior to the termination. The terms of this Agreement that survive termination of the Agreement specifically include, without limitation, Sections 3, 7, 9, 10, 11, 12 and 13.
16. **Additional Provisions:**
  - 16.1. Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Washington. Venue for any matter arising out of this Agreement shall be in Clark County, Washington.
  - 16.2. Attorney Fees. The prevailing party in any legal proceeding related to this Agreement shall be entitled to payment of reasonable attorney's fees, costs, and expenses, including reasonable attorney's fees, costs, and expenses incurred on appeal.
  - 16.3. Waiver and Strict Performance. No act or omission of any party to this Agreement shall at any time be construed to deprive such party of a right or remedy hereunder, or otherwise, or be construed so as to at any future time estop such party from exercising such right or remedy. The failure of any Party hereto to insist upon strict performance of any of the promises and agreements herein contained, or to exercise any option or right herein conferred, in any one or more instances, shall not be construed to be a waiver or relinquishment of any such option or right, or of any other covenants or agreements, but the same shall be and remain in full force and effect.
  - 16.4. Entire Agreement. This Agreement shall constitute the entire agreement between the Parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon any party except to the extent incorporated in this Agreement.
  - 16.5. Severability. In the event that any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein, unless the deletion of such provision or provisions would result in such a material change so as to cause completion of the transactions contemplated herein to be unreasonable.

- 16.6. Modification of Agreement. Any modification of this Agreement or additional obligation assumed by any party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.
- 16.7. Assignment of Rights. The rights of each party under this Agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.
- 16.8. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.
- 16.9. Paragraph Headings. The titles to the paragraphs of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.
- 16.10. Construction. Each party intends that this Agreement in all respects shall be deemed and construed to be equally and mutually prepared by all Parties, and it is hereby expressly agreed that any uncertainty or ambiguity shall not be construed in favor of or against any party.
- 16.11. Further Assurances. The Parties to this Agreement each shall execute and deliver such other documents and instruments and take such further actions as may be reasonably necessary or required to consummate the transactions contemplated by this Agreement.
- 16.12. Authority of the Parties. The Parties hereby represent that each of the undersigned has authority to bind the respective party to this Agreement.
- 16.13. Sovereign rights. By entering into this Agreement, the Town does not waive or relinquish any rights afforded it as a sovereign, and specifically reserves to itself all such rights and defenses.
- 16.14. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile or e-mailed copies of signatures shall be treated as original signatures. On the request of a party, an original signature page will be delivered to the requesting party.

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

**Slateco, LLC**

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Royce Lindberg, Owner

**Town of Yacolt**

\_\_\_\_\_  
Ian Shealy, Mayor

Attest:

\_\_\_\_\_  
Stephanie Fields, Town Clerk

Approved as to Form:

\_\_\_\_\_  
David W. Ridenour, Town Attorney



## Town of Yacolt Request for Council Action

### CONTACT INFORMATION FOR PERSON/GROUP/DEPARTMENT REQUESTING COUNCIL ACTION:

**Name:** Clerk Fields

**Group Name:**

**Address:** 202 W. Cushman  
Yacolt, WA 98675

**Phone:** (360) 686-3922

**Email Address:** clerk@townofyacolt.com

**Alt. Phone:**

### ITEM INFORMATION:

**Item Title:** Building Permits and Right-of-Way Use Agreements for Minor Construction Activities

**Proposed Meeting Date:** August 5, 2024

**Action Requested of Council:** Decide if you wish to allow administrative approvals for minor construction work in the Town of Right-of-Way, such as driveway approaches and sidewalk construction.

**Proposed Motion:** "I move that the Council approve Resolution #627 as presented, creating a process for the Mayor and staff to approve building permits and Right-of-Way Use Agreements for minor construction activities in a Town right-of-way."

**Summary/ Background:** The Railroad Avenue subdivision was approved with a stipulation that sidewalks and curbs be placed once development is complete. The sidewalks, curbs, and driveway drops (the portion of the driveways which cross over the sidewalks) were not a part of the building permits, as they are not part of the individual lots, but actually the Town's dedicated right-of-way. They must meet very strict specifications for Public Works construction that are described in Yacolt's Engineering Standards. Construction work in the Town's right-of-way must be performed by Washington-licensed contractor or a Washington utility company.

Currently, Council approval is required before the Town can issue a permit to perform work in the Town's Right-of-Way because the work takes place on Town property, and the Council's authority to approve contracts on behalf of the Town has not been delegated to the Mayor or staff.



A number of Occupancy Certificates have already been issued in the Railroad Avenue Subdivision, yet some of these folks do not have their sidewalks, curbs, and driveway drops poured yet because they have to wait for the Council's approval for each of these Right-of-Way Use Agreements. (The Council approved one of these Right-of-Way Use Agreements for the subdivision at its July regular meeting, with Rotschy acting as the contractor.)

The homeowners in the subdivision are each paying for the work to be done adjacent to their individual lots. Since that is the case, they have expressed that they don't wish to be obligated to use just a single company – they want a choice. Therefore, multiple Right-of-Way Permit applications have been pouring in, for companies to do one or just a few lots each.

With the number of Applications now coming in for more of the same sort of work, the Clerk is asking for Council to give their limited approval for the Mayor to sign Right-of-Way Use Agreements in limited situations like the improvements needed in the RR Avenue Subdivision. The Mayor's authority would be subject to approvals by the Town Staff (Engineer, Attorney, Public Works Director, and Clerk).

Staff has prepared Resolution #627 to describe this proposed delegation of authority. By approving the Resolution, the Town will be able to more quickly and efficiently issue permits and agreements for minor construction work in the right-of-way.

**Attachments:** DRAFT Ordinance #627, with Form of Agreement Attached as Exhibit A.

**Staff Contact(s):** Clerk Stephanie Fields  
[clerk@townofyacolt.com](mailto:clerk@townofyacolt.com)

Mayor Ian Shealy  
[mayor@townofyacolt.com](mailto:mayor@townofyacolt.com)  
(360) 686-3922

**DRAFT**

**Resolution #627**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YACOLT, WASHINGTON, ESTABLISHING REGULATIONS FOR THE ADMINISTRATIVE APPROVAL OF BUILDING PERMITS AND RIGHT-OF-WAY AGREEMENTS FOR MINOR CONSTRUCTION PROJECTS IN THE PUBLIC RIGHT-OF-WAY, AND PROVIDING FOR AN EFFECTIVE DATE**

**Whereas**, the Town of Yacolt, (hereafter “*Town*” or “*Yacolt*”), periodically issues building permits to Washington-registered contractors and utility companies to perform work or construct improvements on the Town’s streets and in the Town’s rights-of-way, (“ROW”);

**Whereas**, such construction activities must comply with State and local law including the Town’s Engineering Standards for Public Works Construction;

**Whereas**, the Town Council has historically approved unique contracts with private parties for public works construction, including minor construction activities in the Town’s rights-of-way;

**Whereas**, the Yacolt Council has adopted procedures for the administrative issuance of building permits without requiring formal Council approval, but those administrative procedures do not provide for administrative authority to enter contracts with the Town for public works construction;

**Whereas**, Yacolt’s Building Department is receiving numerous applications for minor construction activities in the Town’s rights-of-way, including the addition of driveway entrances, sidewalks, curbs and related improvements that are ancillary to the construction or improvement of private properties to be served by such improvements;

**Whereas**, the Town Council would like to provide an efficient procedure for processing and approving building permit applications for minor construction activities in Yacolt’s rights-of-way to include the administrative approval of Right-of-Way Use Agreements for such work;

**Whereas**, the Town Council has determined that the most efficient way to process permits for such work is to expand the application of Yacolt’s current Building Code regulations to include requests for minor construction activities in a Town right-of-way; and,

**Whereas**, the Town Council of the Town of Yacolt is in special session this 5<sup>th</sup> day of August, 2024, and all members of the Town Council have had notice of the time, place, and purpose of said regular meeting pursuant to RCW 42.30:

**NOW THEREFORE, be it Resolved by the Town Council of the Town of Yacolt, Washington, as follows:**

**Section 1 - Adoption of Recitals.** The foregoing Recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this Resolution upon adoption hereof.

**Section 2 – Application of Yacolt’s Building Code Regulations to Minor ROW Use Agreements.**

The Town Council hereby confirms that Yacolt’s Building Code regulations, currently described in Resolution #607, shall apply to building permit applications for minor construction activities in a Yacolt right-of-way as described herein.

**Section 3 – Administrative Authority to Approve and Sign ROW Use Agreements.** The Town Council hereby delegates authority to the Building Official and the Building Official’s delegates to draft, approve and execute Right-of-Way Use Agreements for minor construction activities in the Town right-of-way.

- 3.1 ROW Agreement Required. No building permit for work in a Yacolt public right-of-way shall be issued without a Right-of-Way Use Agreement between the parties describing the terms that govern such work.
- 3.2 Procedures for Review of Agreement. The process for administrative review of a Right-of-Way Use Agreement for minor construction activities under this Resolution shall follow the process described in Section 8 of Resolution #607.
- 3.3 Minor Construction Activities Defined. The authority granted by this Resolution shall be limited to applications for limited work in a Yacolt right-of-way that is ancillary to a building permit requested by an applicant seeking improvements for the benefit of private property adjacent to said right-of-way.
- 3.4 Form of ROW Use Agreement. Right-of-Way Use Agreements executed by the Town under the authority granted in this Resolution shall substantially follow the terms and format of the draft Agreement attached as Exhibit A. The Town Council grants authority to the Building Official to modify the terms of the Right-of-Way Use Agreement to suit the circumstances and to describe reasonable requirements for a specific application.

**Section 4 – Limited Scope of Administrative Authority.** Except as expressly authorized and delegated in this Resolution, the Town Council reserves its authority to approve contracts between the Town and third parties, including parties desiring or requested to perform work on the Town’s streets, on municipal property, or in the Town’s rights-of-way.

**Section 5 - Ratification and Confirmation of Prior Acts.** Any actions of the Town Council and of the Town’s Mayor, officers and agents prior to the date of this Resolution and consistent with the terms of this Resolution are hereby ratified and confirmed.

**Section 6 - Severability.** If any section, subsection, paragraph, sentence, clause, or phrase of this Resolution is declared unconstitutional or invalid for any reason by a court of competent jurisdiction, the remaining portion of this Resolution shall remain in full force and effect.

**Section 7 - Section Headings.** Section and subsection headings contained in this Resolution shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any section or part of this Resolution.

**Section 8 - Effective Date.** This Resolution shall take effect immediately upon adoption by the Town Council in accordance with law. The Town Clerk is directed to publish notice of the adoption of this Resolution in the Town’s official newspaper by publishing the following summary:

**Town of Yacolt - Summary of Resolution #627**

The Town Council of the Town of Yacolt adopted Resolution #627 at a regular meeting of the Town Council held on August 5, 2024. The content of the Resolution is summarized in its title as follows: “A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YACOLT, WASHINGTON, ESTABLISHING REGULATIONS FOR THE ADMINISTRATIVE APPROVAL OF BUILDING PERMITS AND RIGHT-OF-WAY AGREEMENTS FOR MINOR CONSTRUCTION PROJECTS IN THE PUBLIC RIGHT-OF-WAY, AND PROVIDING FOR AN EFFECTIVE DATE”.

The effective date of the Resolution is August 5, 2024. A copy of the full text of the Resolution will be mailed upon request to the undersigned at the Town of Yacolt Town Hall, P.O. Box 160, Yacolt, WA 98675: (360) 686-3922.

Published this 14<sup>th</sup> day of August, 2024.  
Yacolt Town Clerk.

Resolved by the Town Council of the Town of Yacolt, Washington, at a regular meeting thereof this 5<sup>th</sup> day of August, 2024.

TOWN OF YACOLT

\_\_\_\_\_  
Ian C. Shealy, Mayor

Attest:

\_\_\_\_\_  
Stephanie Fields, Town Clerk

Approved as to Form:

\_\_\_\_\_  
David W. Ridenour, Town Attorney

Ayes: \_\_\_\_\_  
Nays: \_\_\_\_\_  
Absent: \_\_\_\_\_  
Abstain: \_\_\_\_\_

## TOWN CLERK'S CERTIFICATION

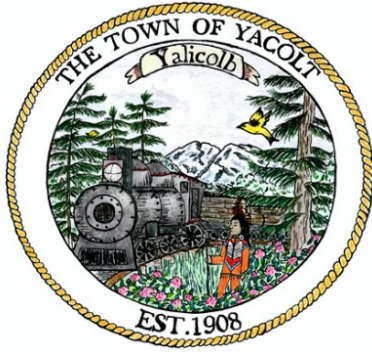
I hereby certify that the foregoing Resolution is a true and correct copy of Resolution #627 of the Town of Yacolt, Washington, entitled "A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YACOLT, WASHINGTON, ESTABLISHING REGULATIONS FOR THE ADMINISTRATIVE APPROVAL OF BUILDING PERMITS AND RIGHT-OF-WAY AGREEMENTS FOR MINOR CONSTRUCTION PROJECTS IN THE PUBLIC RIGHT-OF-WAY, AND PROVIDING FOR AN EFFECTIVE DATE" as approved according to law by the Yacolt Town Council on the date therein mentioned.

Attest:

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Stephanie Fields, Town Clerk

Published: August 14, 2024  
Effective Date: August 5, 2024  
Resolution Number: 627



**Town of Yacolt  
Building & Land Use Department**

202 W. Cushman Street  
Yacolt, WA 98675

Tel: (360) 686-3922

**Ian Shealy**  
Mayor

## EXHIBIT A TO RESOLUTION #627

**PROJECT:** \_\_\_\_\_  
**APPLICANT:** \_\_\_\_\_  
**APPLICATION DATE:** \_\_\_\_\_

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### RIGHT-OF-WAY USE AGREEMENT

THIS AGREEMENT is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between the Town of Yacolt, a Washington municipal corporation, (“Town” or “Yacolt”), and \_\_\_\_\_, (“\_\_\_\_\_” or “Permittee”).

Whereas, Yacolt is the owner / holder of certain roadways and rights-of-way within its municipal boundaries; and,

Whereas, Permittee desires a permit from Yacolt to periodically construct improvements in Yacolt’s rights-of-way, (specifically those rights-of-way located \_\_\_\_\_):

**NOW THEREFORE**, in consideration of the covenants and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. **Authority Granted:** Yacolt hereby grants to Permittee the right, privilege, and authority to periodically enter and use the specified rights-of-way for the purpose of maintaining, repairing, removing and/or installing the identified facilities subject to the terms and conditions set forth herein. The general intent of the Parties is to allow the Permittee to construct driveway drops, driveways, sidewalks, and any related improvements located in the Subdivision’s rights-of-way for the benefit of residential property owners in the Subdivision.

2. **Information to be Provided by Permittee:**

- 2.1. Plans for the proposed work. The Application should include a narrative and illustrative plans that describe the plans and specifications for the project, including the proposed start date and the estimated time to complete the work. A site plan should show the precise location of any and all facilities work under this Agreement. The site plan should include street names, property addresses, fire hydrants, curb cuts and driveways, and other significant physical features in the vicinity. The plans should also include a detailed construction schedule showing an accurate timeline of all work activities and the expected durations of those activities. The Town may waive these requirements to the extent they are deemed unnecessary by the Town Engineer.
- 2.2. Traffic control plans. Traffic control plans should be consistent with the most recent edition of the Manual of Uniform Traffic Control Devices (MUTCD).
- 2.3. Contractor information. Information about the Permittee should include contact information for onsite supervisor(s) of the project, (email and cell phone numbers).

3. **Right-of-Way Use Requirements:** Unless otherwise directed or approved by the Town or the Town Engineer, the Permittee's rights under this Permit / Agreement are subject to the following requirements:

- 3.1. Compliance with applicable laws and regulations. Comply with the Town of Yacolt Engineering Standards for Public Works Construction, ("*Engineering Standards*"), including all updated and current versions of standard specifications referenced therein. Comply with applicable ordinances, construction codes, regulations, standards, and all other applicable local, state and federal laws and regulations, including safety laws and standards. Comply with orders of the Town and the Town Engineer relating to the performance of the work performed under and pursuant to this Agreement.
- 3.2. Business license. The Permittee and/or Permittee's contractor shall have or obtain a Yacolt Business License as may be required.
- 3.3. Traffic Control. The Permittee shall maintain at least one lane of traffic at all times unless approval for a road closure permit has been obtained. Place traffic signs in accordance with the latest edition of the MUTCD or as directed by the Town Engineer. Erect, maintain, and provide proper lighting on such barriers and warning signs during the progress of the work as may be necessary or as may be directed by the Town Engineer for the protection of the traveling public. Make no excavation and place no obstacle within the limits of a County road in such a manner as to unreasonably interfere with the travel over said road.
- 3.4. General use of right-of-way. Permittee shall ensure that facilities are installed, maintained, repaired, and removed within the right-of-way in such a manner and at such points so as not to unreasonably inconvenience the public use of the right-of-way or to adversely affect the public health, safety, and welfare.
- 3.5. Notices. The Permittee shall provide at least one (1) business days' prior notice of the work and reasonably coordinate with North County Fire District 13; North County EMS; and all affected residents and business. Provide copies of all written notices to the Town.

- 3.6. Working hours. Perform the work only between the hours of 7:00 a.m. to 6:00 p.m. on non-holiday weekdays, Monday through Saturday, except for emergencies or as otherwise approved by the Town Engineer. Requests for working after hours shall be submitted to the Town Engineer at least one week before the after-hours work is scheduled to begin.
- 3.7. Responsibility for and Supervision of Construction. The Permittee shall be solely responsible for all construction under this Agreement, including the techniques, sequences, procedures, and means, and for coordination of all work. The Permittee shall supervise and direct the work to the best of its ability, and give the project all attention necessary for such proper supervision and direction.
- 3.8. Safety precautions and programs. The Permittee has an overall duty to provide and oversee all safety orders, precautions, and programs necessary to the reasonable safety of the work, except that the Permittee's contractors shall also be responsible for the safety of persons or property in the performance of their work, and for compliance with the provisions of applicable laws and regulations. In this regard, the Permittee shall take reasonable precautions for the safety of all employees and other persons whom the work might affect, all work and materials incorporated in the project, and all property and improvements on the construction site and adjacent to the construction site, complying with all applicable safety laws, ordinances, rules, regulations, and orders.
- 3.9. Financial responsibility for work. The Permittee shall install, operate, and maintain its facilities at its expense.
- 3.10. Trenching, pavement cuts, temporary steel plating, and general restoration requirements. The Permittee shall conduct its work in accordance with the specifications described in the approved plans and submittals for the work.
- 3.11. Clean-up and restoration. The Permittee shall keep the work premises and adjoining ways free of waste material and rubbish caused by its work or that of its contractors. The Permittee further agrees to remove all such waste material and rubbish on termination of the project, together with all tools, equipment, machinery, and surplus materials. The Permittee shall place crushed rock on any roadway shoulders that are disturbed during construction. The Permittee shall restore the right-of-way as near as possible to its original condition before the permitted work began at the Permittee's sole expense.
- 3.12. Inspections. The Permittee shall request and obtain inspection approvals from the Town where required by the Town Engineer or the Engineering Standards.
4. **Right-of-Way Use Conditions:** Unless otherwise directed or approved by the Town or the Town Engineer, the Permittee's rights under this permit and Agreement are conditioned upon the following:
  - 4.1. Approval of Application submittals. Approval of the Permittee's Application submittals described in Section 2 above by the Town and/or the Town Engineer. [The Application and approved submittals shall be considered part of the contract documents for the project.]
  - 4.2. Insurance. The Permittee shall not begin work under this Agreement until the Permittee's insurance policies have been approved by the Town.



- 4.3. Approval of performance. The Town's acceptance of the Permittee's work shall be subject to and conditioned upon the satisfaction of the Town Engineer with the Permittee's performance of the Work. Any of the work not completed according to the provisions set forth in this permit and Agreement may be completed by the Town and charged to the Permittee.
- 4.4. Nuisances. If complaints are received regarding nuisances caused by the Permittee's use of the right-of-way, (e.g. noise, odors, etc.), further reasonable conditions may be added to the project by the Town or the Town Engineer to mitigate the nuisance.
- 4.5. Transferability. This Agreement is not transferrable by Permittee to other utilities, contractors, or locations.
- 4.6. Changes to facilities. The Permittee recognizes and agrees that it is responsible for and will make at its own expense any changes that may be required in the right-of-way improvements constructed under this Agreement due to any reconstruction, improvement, or maintenance of the roadway and/or other appurtenances including drainage facilities within the right-of-way and/or any damage that may be done the roadway or right-of-way or user of the road that may in any way be attributed by the Town Engineer to the Permittee's work under this Agreement.
- 4.7. Non-exclusive rights. This Permit or privilege shall not be deemed or held to be an exclusive one and shall not prohibit the Town from granting other permits or franchise rights to public or private utilities, nor shall it prevent the Town from using any of its roads, streets, or public places, or exercise its right to full supervision and control over all or any part of them, none of which is hereby surrendered.
- 4.8. Town remedies. The Town or the Town Engineer may revoke, annul, change, amend, amplify, or terminate this Agreement or any of the terms hereof if the Permittee fails to reasonably comply with any or all of its requirements, conditions and agreements as set forth herein.
- 4.9. Permittee's financial responsibility. In accepting this permit and Agreement, the Permittee agrees that any damage or injury done to the property of the Permittee or any expense incurred by the Permittee through the operation of a contractor working for the Permittee, or of any employee of the Permittee, shall be at the sole expense of the Permittee.
- 4.10. Permittee's responsibility for negligence of employees and contractors. The Permittee assumes full responsibility for the acts, negligence, or omissions of all its employees on the project, for those of its contractors and their employees, and for those of all other persons doing work under a contract with the Permittee's contractor. Nothing in this Agreement and its related documents shall create a contractual relationship between any contractor and the Town, or any obligation on the part of the Town to pay or be responsible in any way for the payment of any moneys due any contractor or subcontractor, unless otherwise required by law.
- 4.11. Other conditions. None.
5. **Yacolt's Authority and Responsibilities:**

- 5.1. Yacolt's primary contacts. Yacolt may provide instructions to the Permittee through its Mayor. Yacolt also delegates authority to its Town Clerk and/or Town Engineer to give any instructions to the Permittee and the Permittee's contractor during the course of the project.
  - 5.2. Inspection points. The Town Clerk, Town Engineer and/or Public Works Director will identify and provide to Permittee a list of all inspection points prior to the commencement of work, or with reasonable advance notice prior to any component of the work that the Town Engineer desires to inspect.
  - 5.3. Agreement interpretations and directions. Written interpretations of or directives under this Agreement and the related contract documents, may be made from time to time by the Town or the Town Engineer. Requests for interpretations, direction, or change orders may be directed by the Permittee to the Town Engineer.
  - 5.4. Worksite information. Upon written request from the Permittee or its contractor, the Town shall, with reasonable promptness, provide information under the Town's control sufficient to enable the Permittee and its contractor to fully perform the work. The Permittee and its contractor are entitled to rely upon any information furnished by the Town or the Town Engineer.
6. **Starting and Completion Dates of the Work:** Construction under this Agreement may begin upon the execution of this Agreement by all Parties and the issuance of a notice to proceed by the Town or the Town Engineer. Construction shall be completed within the time-frame proposed by the Permittee and approved by the Town Engineer.
  7. **Cost Recovery Agreement:** The Permittee agrees that their Cost Recovery Agreement with the Town for the work contemplated by this Agreement covers the cost of preparing this Right of Way Use Permit.
  8. **Notices and Contact Information:** All notices and other communications between the Parties shall be in writing and shall be either hand-delivered, emailed, or mailed by first class mail, postage prepaid, as follows:

If to the Town:	<p>Town of Yacolt          Attn: Town Clerk or Mayor          202 W. Cushman Street          P.O. Box 160          Yacolt, WA 98675</p> <p>Telephone: (360) 686-3922          Email: <a href="mailto:clerk@townofyacolt.com">clerk@townofyacolt.com</a>          Email: <a href="mailto:mayor@townofyacolt.com">mayor@townofyacolt.com</a></p>
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If to the Town Engineer:	<p>Jackson Civil Engineering, LLC          Attn: Devin Jackson          704 E. Main Street, Suite 103          P.O. Box 1748          Battle Ground, WA 98604</p>
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**EXHIBIT A TO RESOLUTION #627**

Town of Yacolt  
 Right-of-Way Use Agreement

Telephone: (360) 723-0381  
Cell: (360) 901-6031  
Email: [devin@jacksoncivil.com](mailto:devin@jacksoncivil.com)

If to the Permittee:

\_\_\_\_\_  
Attn: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Cell: \_\_\_\_\_  
Email: \_\_\_\_\_

All notices shall be deemed given on the day such notice is personally served or emailed, or on the third day following the day such notice is mailed in accordance with this section. The name and address to which notices shall be directed may be changed by a Party by giving the other Party notice of such change as provided in this section.

9. **Dispute Resolution:** If a dispute arises out of or relating to this Agreement, or the breach of this Agreement, and if the dispute cannot be settled through direct discussions, the Parties agree to first endeavor to settle the dispute in an amicable manner by mediation. If the Parties do not agree on a mediator or resolve their dispute within a period of 45 days, then all disputes, claims, questions, or differences may be finally settled by action in a judicial or quasi-judicial tribunal. Nothing in this Agreement shall be construed to limit the Parties' choice of a mutually acceptable alternative resolution method such as a dispute hearing, a dispute resolution board, or arbitration. The Town and the Permittee agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Agreement that are not affected by the dispute.
10. **Indemnification:** The Permittee shall indemnify, hold harmless and defend the Town, its elected and appointed officials, its employees, agents, consultants, representatives, volunteers and others working on behalf of the Town, from and against any and all claims, losses, costs, attorney's fees, damages, or injury including death and/or property loss, expense claims or demands arising out of the Permittee's use of the public right-of-way, including all suits or actions of every kind or description brought against the Town, either individually or jointly with Permittee, for or on account of any damage or injury to any person or persons or property, caused or occasioned or alleged to have been caused by, or on account of, any of the activities conducted by or caused to be conducted by Permittee, or through any negligence or alleged negligence in safeguarding the public right-of-way, participants, or members of the public, or through any act, omission or fault or alleged act, omission or fault or alleged act, omission or fault of the Permittee, its employees, agents, volunteers, subcontractors or others under the direction, control or under any contractual relationship with the Permittee.

The indemnity provided by the Permittee in this Section shall not apply to the extent losses are caused by the negligence or willful misconduct of the Town, its elected and appointed officials, officers, employees, agents and representatives.

This indemnity and hold harmless agreement by the Permittee shall include any claim made against the Town by an employee of the Permittee, Permittee's contractor, subcontractor or agent of the Permittee, even if the Permittee is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW. For this purpose, the Permittee, by mutual negotiation,

hereby waives any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51, RCW.

11. **Insurance:** The Permittee shall procure and maintain the insurance described herein, written on an “occurrence” basis, from Washington-licensed insurers with a current A.M. Best rating of not less than A-, with limits of not less than described herein.

11.1	<u>Coverages</u>	<u>Limits of Liability</u>
	Commercial General Liability Insurance	
	1. Bodily Injury Liability	\$1,000,000 each occurrence
		\$2,000,000 aggregate
	2. Property Damage Liability	\$1,000,000 each occurrence
		\$2,000,000 aggregate
	Commercial Automobile Liability Insurance	
	1. Bodily Injury Liability	\$1,000,000 each person
		\$2,000,000 each occurrence
	2. Property Damage Liability	\$2,000,000 each occurrence

Workers’ Compensation. The Permittee shall comply with Workers’ Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

- 11.2. Policy terms. The Permittee shall keep this insurance in force without interruption from the commencement of the work and for thirty (30) days after the completion or termination date, whichever is later.
- 11.3. Verification and continuation of coverage. Upon request, the Permittee shall deliver to the Town a Certificate of Insurance and endorsements for each policy of insurance meeting the requirements set forth herein before the Permittee gives notice for the commencement of the work. Failure of the Town to demand such verification of coverage with these insurance requirements or failure of the Town to identify a deficiency from the insurance documentation provided shall not be construed as a waiver of the Permittee’s obligation to maintain such insurance. In the event of nonrenewal, cancellation, or material change in the coverage provided, forty-five (45) days written notice shall be furnished to the Town prior to the date of nonrenewal, cancellation or change.

12. **Bond / Financial Security:** None required.

13. **Warranty:** The Permittee shall be responsible for all re-construction and repair costs occasioned by any settlement or subsidence of any excavation or construction for a period of one (1) year from the date final restoration work is completed. The Town’s Engineer shall have final authority to determine whether or not settlement or subsidence exists, and whether or not repairs are needed.

14. **Termination:**

- 14.1 Permittee’s termination. The Permittee may, on five days written notice to the Town, terminate this Agreement.
- 14.2 Yacolt’s termination. The Town may terminate this Agreement for good cause shown. The Town agrees to provide five days written notice of its intent to terminate the

Agreement for the Permittee's material breach of its responsibilities, and such notice shall describe the breach with reasonable particularity. The Town may withdraw its notice of termination if the Permittee satisfies or corrects the breach condition to the reasonable satisfaction of the Town and/or the Town Engineer.

- 14.3. Obligations arising before termination. Even after termination, the provisions of this Agreement still apply to any work performed, payments made, events occurring, costs charged or incurred, or obligations arising before the termination date.
- 14.4. Automatic termination. Unless this Agreement is amended to extend the term, this Agreement shall terminate without notice by the Parties on December 31, 2025.
15. **Survival of Terms:** All rights and obligations set out in this Agreement and arising hereunder will survive the termination of this Agreement (a) as to the parties' rights and obligations that arose prior to such termination and (b) as is necessary to give effect to rights and obligations that arise after such termination but derive from a breach or performance failure that occurred prior to the termination. The terms of this Agreement that survive termination of the Agreement specifically include, without limitation, Sections 3, 7, 9, 10, 11, 12 and 13.
16. **Additional Provisions:**
  - 16.1. Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Washington. Venue for any matter arising out of this Agreement shall be in Clark County, Washington.
  - 16.2. Attorney Fees. The prevailing party in any legal proceeding related to this Agreement shall be entitled to payment of reasonable attorney's fees, costs, and expenses, including reasonable attorney's fees, costs, and expenses incurred on appeal.
  - 16.3. Waiver and Strict Performance. No act or omission of any party to this Agreement shall at any time be construed to deprive such party of a right or remedy hereunder, or otherwise, or be construed so as to at any future time estop such party from exercising such right or remedy. The failure of any Party hereto to insist upon strict performance of any of the promises and agreements herein contained, or to exercise any option or right herein conferred, in any one or more instances, shall not be construed to be a waiver or relinquishment of any such option or right, or of any other covenants or agreements, but the same shall be and remain in full force and effect.
  - 16.4. Entire Agreement. This Agreement shall constitute the entire agreement between the Parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon any party except to the extent incorporated in this Agreement.
  - 16.5. Severability. In the event that any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein, unless the deletion of such provision or provisions would result in such a material change so as to cause completion of the transactions contemplated herein to be unreasonable.

- 16.6. Modification of Agreement. Any modification of this Agreement or additional obligation assumed by any party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.
- 16.7. Assignment of Rights. The rights of each party under this Agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.
- 16.8. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.
- 16.9. Paragraph Headings. The titles to the paragraphs of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.
- 16.10. Construction. Each party intends that this Agreement in all respects shall be deemed and construed to be equally and mutually prepared by all Parties, and it is hereby expressly agreed that any uncertainty or ambiguity shall not be construed in favor of or against any party.
- 16.11. Further Assurances. The Parties to this Agreement each shall execute and deliver such other documents and instruments and take such further actions as may be reasonably necessary or required to consummate the transactions contemplated by this Agreement.
- 16.12. Authority of the Parties. The Parties hereby represent that each of the undersigned has authority to bind the respective party to this Agreement.
- 16.13. Sovereign rights. By entering into this Agreement, the Town does not waive or relinquish any rights afforded it as a sovereign, and specifically reserves to itself all such rights and defenses.
- 16.14. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile or e-mailed copies of signatures shall be treated as original signatures. On the request of a party, an original signature page will be delivered to the requesting party.

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

**Town of Yacolt**

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Ian C. Shealy, Mayor

Attest:

\_\_\_\_\_  
Stephanie Fields, Town Clerk

Approved as to Form:

\_\_\_\_\_  
David W. Ridenour, Town Attorney

**Permittee**

\_\_\_\_\_  
\_\_\_\_\_  
(print name and title)