

Resolution #567

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YACOLT,
WASHINGTON, APPROVING AN AGREEMENT FOR ENGINEERING SERVICES
WITH JACKSON CIVIL ENGINEERING, LLC, AND AUTHORIZING THE MAYOR
TO SIGN THE AGREEMENT WITH JACKSON CIVIL ENGINEERING, LLC, TO SERVE AS
THE TOWN ENGINEER FOR THE BALANCE OF CALENDAR YEAR 2018**

Whereas, the Town of Yacolt, (hereafter “Town” or “Yacolt”), desires to retain the services of an engineer to provide professional engineering services as needed by the Town over the balance of calendar year 2018;

Whereas, the Town advertised a Request for Qualifications, (hereafter “RFQ”), pursuant to RCW 39.80 to identify an engineer that best meets the Town’s forecasted engineering needs;

Whereas, the Town’s Mayor and Public Works Director have reviewed the responses to the RFQ and interviewed the candidates for Town Engineer;

Whereas, the Town’s Mayor and Public Works Director determined that Jackson Civil Engineering, LLC, is qualified and able to perform the duties of Town Engineer for the Town of Yacolt, and have recommended that the firm of Jackson Civil Engineering, LLC, be selected by the Town Council to serve as the Town Engineer for the balance of calendar year 2018;

Whereas, the Town has negotiated an Agreement for Engineering Services with Jackson Civil Engineering, LLC, and that Agreement has been reviewed and approved by the Town Attorney; and,

Whereas, the Town Council of the Town of Yacolt is in regular session this 21st day of May, 2018, and all members of the Town Council have had notice of the time, place, and purpose of said meeting:

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

Section 1: That the Agreement for Engineering Services, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference, is hereby accepted and approved by the Town Council. The Mayor of the Town of Yacolt is hereby authorized to execute the Agreement for Engineering Services for and on behalf of the Town of Yacolt.

Section 2: This Resolution shall be effective upon passage, approval and signatures hereon in accordance with law.

Resolved by the Town Council of the Town of Yacolt, Washington, at a regular meeting thereof this 21st day of May, 2018.

TOWN OF YACOLT


Amy Boget, Mayor Pro Tem

Attest:

Katie Younce
Katie Younce, Assistant Clerk

Approved as to Form:

David W. Ridenour
David W. Ridenour, Town Attorney

Ayes: Bryant, Noble, Moseley, Rowe-Tice
Nays: None
Absent: None
Abstain: None

TOWN CLERK'S CERTIFICATION

I hereby certify that the foregoing Resolution is a true and correct copy of Resolution #567 of the Town of Yacolt, Washington, entitled "A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YACOLT, WASHINGTON, APPROVING AN AGREEMENT FOR ENGINEERING SERVICES WITH JACKSON CIVIL ENGINEERING, LLC, AND AUTHORIZING THE MAYOR TO SIGN THE AGREEMENT WITH JACKSON CIVIL ENGINEERING, LLC, TO SERVE AS THE TOWN ENGINEER FOR THE BALANCE OF CALENDAR YEAR 2018" as approved according to law by the Yacolt Town Council on the date therein mentioned.

Attest:

Katie Younce
Katie Younce, Assistant Clerk

Published: 5/30/18
Effective Date: 5/21/18
Resolution Number: 567

EXHIBIT 'A' TO RESOLUTION #567
AGREEMENT FOR ENGINEERING SERVICES

THIS AGREEMENT is by and between the Town of Yacolt, a municipal corporation located in the County of Clark, State of Washington, (hereinafter referred to as the "Town"), and Jackson Civil Engineering, LLC, a Washington licensed limited liability company, (hereinafter referred to as the "Engineer").

The parties recite and declare that:

1. The Town is in need of an engineer to perform and render engineering services to the Town.
2. The Engineer employs persons who, through education and experience, possess the requisite skills to provide competent engineering services for the Town.
3. The Town is, therefore, desirous of engaging the services of the Engineer.
4. The Town performed a qualifications-based public competitive bidding and procurement process pursuant to RCW 39.80, and found the Engineer best met the qualifications required by the Town for the Town's forecasted engineering needs.

For the reasons set forth above and in consideration of the mutual covenants and promises of the parties hereto, the Engineer and the Town agree as follows:

Section One – Acceptance of Contractual Relationship:

The Town hereby retains the Engineer as its Town Engineer to perform and render engineering services as described in Section Five, below.

Section Two – Character of Contractual Relationship:

The Engineer is an independent contractor and not a Town employee. As the Engineer is customarily engaged in an independently established trade which encompasses the specific services provided to the Town hereunder, no agent, employee, representative or sub-consultant of the Engineer shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the Town. In the performance of the work, the Engineer is an independent contractor with the ability to control and direct the performance and details of the work, the Town being interested only in the results obtained under this Agreement. None of the benefits provided by the Town to its employees, including, but not limited to, compensation, insurance, and unemployment insurance, are available from the Town to the employees, agents, representatives, or sub-consultants of the Engineer. The Engineer may not sign any contract on behalf of the Town, and may not obligate the Town in any way without the Town's express written consent.

Section Three – Duration and Scope of Relationship:

The term of this Agreement shall be from June 1, 2018, continuing thereafter through December 31, 2018, unless and until terminated pursuant to Section Eight, below. This Agreement may be extended for additional periods of time upon the mutual written agreement of the Town and the Engineer.

The Town reserves the right to contract with other engineers for project-specific engineering as required by Washington public contracting requirements, or as the Town deems appropriate.

Section Four - Place of Work:

It is understood that the Engineer's service will be rendered largely at the Engineer's office in Washougal, but that the Engineer will, on request and as work requires, come to the Yacolt Town Hall or such other places as designated by the Town, to work on Town projects and meet with the Town's representatives.

Section Five - Nature of Duties:

As Town Engineer, the Engineer shall perform engineering services as requested by the Town, manage and oversee construction contracts, prepare engineering and project estimates, prepare documents necessary and proper in connection with the business of the Town, and, in general, to render such engineering services of every kind and nature as the Town shall require or deem proper in its business. The Engineer shall exercise the degree of skill and diligence normally employed by professional engineers engaged in the same profession, and performing the same or similar services at the time such services are performed. The Engineer warrants that it has the requisite training, skill, and experience necessary to provide the engineering services and is appropriately accredited and licensed by all applicable agencies and governmental entities.

Section Six - Compensation:

The Town agrees to pay the Engineer:

- A. \$120.00 per hour for all services rendered by Devin Jackson Principal, in increments of ¼ hour.
- B. \$100.00 per hour for all services rendered by CAD designer, in increments of ¼ hour.
- C. Invoice amount plus 15% for all subcontractors rendering services on behalf of Jackson Civil Engineering, LLC.
- D. If Jackson Civil Engineering, LLC hires additional employees, the rate of compensation for services rendered by those employees shall be determined by mutual written agreement between the Town and Jackson Civil Engineering, LLC prior to the performance of work.
- E. In addition to the compensation set forth above, the Town shall reimburse the Engineer for all reasonable and necessary expenses which may be paid or incurred by Engineer on behalf of the Town, subject to Town review and audit of receipts in support thereof.

Section Seven - Other Employment:

The Engineer shall devote all time reasonably necessary to the business of the Town but shall not by this retainer be prevented or barred from taking other employment of a similar or other character by reason of the contractual services herein specified.

Section Eight - Termination:

This Agreement may be terminated by either party at any time on thirty (30) days' prior written notice to the other party.

Section Nine – Modification:

No modification or waiver of this Agreement or of any covenant, condition, or provision herein contained shall be valid unless in writing and duly executed by the party to be charged therewith.

Section Ten - Indemnification / Insurance:

The Engineer shall defend, indemnify and hold the Town, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Engineer in performance of this Agreement, except for injuries and damages caused by the sole negligence of the Town.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, 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 Engineer and the Town, its officers, officials, employees, agents and volunteers, the Engineer's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Engineer's negligence.

It is further specifically and expressly understood that the indemnification provided herein constitutes the Engineer'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.

A. Insurance Term:

The Engineer 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 Engineer, its agents, representatives, or employees.

B. No Limitation:

The Engineer's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Engineer to the coverage provided by such insurance, or otherwise limit the Town's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance:

The Engineer shall obtain insurance of the types and coverage 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.
2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The Town shall be named as an additional insured under the Engineer's

Commercial General Liability insurance policy with respect to the work performed for the Town using an additional insured endorsement at least as broad as ISO CG 20 26.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Engineer's profession.

D. Minimum Amounts of Insurance:

The Engineer 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.

E. Other Insurance Provision:

The Engineer's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain a provision that they are primary insurance with respect to the Town. Any Insurance, self-insurance, or self-insured pool coverage maintained by the Town shall be in excess of the Engineer's insurance and shall not contribute with it.

F. Acceptability of Insurers:

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

G. Verification of Coverage:

The Engineer shall furnish the Town 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 Engineer before commencement of the work.

H. Notice of Cancellation:

The Engineer shall provide to the Town any written notice of any policy cancellation within two business days of its receipt of such notice.

I. Failure to Maintain Insurance:

Failure on the part of the Engineer to maintain the insurance as required shall constitute a material breach of this Agreement, upon which the Town may, after giving five business days' notice to the Engineer to correct the breach, immediately

terminate the Agreement, and/or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Town on demand, or at the sole discretion of the Town, offset against funds due the Engineer from the Town.

J. Full Availability of Engineer's Limits:

If the Engineer maintains higher insurance limits than the minimums shown above, the Town shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Engineer, irrespective of whether such limits maintained by the Engineer are greater than those required by this contract or whether any certificate of insurance furnished to the Town evidences limits of liability lower than those maintained by the Engineer.

Section Eleven - Notice:

Any notice required under this Agreement shall be deemed sufficient if made in writing and personally delivered or sent by certified mail to either party at the following addresses, or such other address as may hereafter be specified by either party in writing:

Mailing Addresses:	Town of Yacolt P.O. Box 160 Yacolt, WA 98675	Jackson Civil Engineering, LLC P.O. Box 1748 Battle Ground, WA 98601-4687
Physical Addresses:	202 W. Cushman St. Yacolt, WA 98675	32603 S.E. 27 th Street Washougal, WA 98671

Section Twelve – Title VI of the Civil Rights Act of 1964:

Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Section Thirteen - Access to Records Clause:

The Town and other authorized representatives of the state and federal governments shall have access to any books, documents, papers, and records of the Engineer which are directly pertinent to the Agreement for the purposes of making audit, examination, excerpts, and transcriptions.

The Engineer agrees to maintain such records and follow such procedures as the Town may prescribe. In general, such records will include information pertaining to the Agreement, obligations and unobligated balances, assets and liabilities, outlays, equal opportunity, labor standards (as appropriate), and performance.

All such records and all other records pertinent to this Agreement and work undertaken under this Agreement shall be retained by Engineer for a period of three (3) years, unless a longer period is required to resolve audit findings or litigation. In such cases, Town shall request a longer period of record retention.

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Section Fourteen – Section 109 of the Housing and Community Development Act of 1974, as amended:

No person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

Section Fifteen - Public Law 101-336, Americans with Disabilities Act of 1990:

Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

Section Sixteen – Age Discrimination Act of 1975, as amended:

No person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of age under any program or activity receiving federal funding assistance [42 U.S.C. 610 *et. seq.*]

Section Seventeen – Section 504 of the Rehabilitation Act of 1973, as amended:

No otherwise qualified individual shall, solely by reason of his or her handicap, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funds [29 U.S.C. 794]

Section Eighteen - Complete Agreement:

This written Agreement embodies the whole agreement between the parties and there are no inducements, promises, terms, conditions or obligations made or entered into by either the Town or the Engineer other than contained herein.

Section Nineteen – Confidentiality:

The Engineer may, from time to time, receive information which is deemed by the Town to be confidential. The Engineer shall not disclose such information without the prior express written consent of the Town or upon order of a court of competent jurisdiction.

Section Twenty - Applicable Laws and Standards:

The Parties, in the performance of this Agreement, agree to comply with all applicable federal, state, and local laws and regulations. The Engineer warrants that its designs, construction documents, and services shall conform to all applicable federal, state and local statutes and regulations.

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 Clark County.

Section Twenty-One - Binding Effect and Assignment:

This Agreement shall be binding upon and shall inure to the benefit of the Town and its successors and assigns. Neither this Agreement nor any rights hereunder may be assigned by the Engineer

without the written consent of the Town.

Section Twenty-Two - Saving Clause:

If any provision of this Agreement, or the application of such provision to any person or under any circumstances, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Section Twenty-Three - No Waiver:

The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

Section Twenty-Four - Costs and Attorney's Fees:

In the event of any claim or dispute arising out of this Agreement, the party that substantially prevails shall be awarded, in addition to all other relief, all legal fees and other costs and expenses incurred in connection with such claim or dispute.

Section Twenty-Five - Business License:

Prior to commencement of work under this Agreement, the Engineer shall register for a business license in the Town.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates of the signatures below.

TOWN OF YACOLT:

ENGINEER:

Amy Boget, Mayor Pro Tem Date
Town of Yacolt

Devin Jackson, P.E. Date
Principal

ATTEST:

Approved as to Form:

Katie Younce Date
Assistant Clerk

David Ridenour Date
Town Attorney