

**HUNTSVILLE TOWN  
RESOLUTION 2024-09-05  
AGREEMENT FOR WATER SYTEM CONTRACTOR**

**A RESOLUTION OF HUNTSVILLE TOWN, UTAH, ENTERING AN  
INTERLOCAL AGREEMENT BETWEEN THOM SUMMERS & SONS  
EXCAVATION AND HUNTSVILLE TOWN FOR WATER SYSTEM  
CONTRACTOR SERVICES**

**WHEREAS**, Huntsville Town (hereafter "Town") is a duly incorporated municipality under the laws of Utah;

**WHEREAS**, the Town operates a water system and has need for contractor and excavator services to support said water system;

**WHEREAS**, the Town has currently contracts with Thom Summers & Sons Excavating and desires to continue;

**WHEREAS**, the Town and Thom Summers & Sons Excavating have negotiated the attached updated Independent Contract Agreement (hereafter "Agreement") for excavation and contractor served for the water system;

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of Huntsville Town, Utah, that the Agreement set forth in the attached "A" is incorporated herein by this reference and is approved and adopted for the purposes contained therein. The Town Council hereby authorizes and directs the Mayor to execute the Agreement and any documents relating thereto for and on behalf of the Town.

PASSED AND ADOPTED by the Town Council this 5<sup>th</sup> day of September, 2024.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
Town Clerk



**INDEPENDENT CONTRACTOR AGREEMENT**

**THIS INDEPENDENT CONTRACTOR AGREEMENT** (the "Agreement") dated this 18<sup>th</sup> day of Sep, 2024

**BETWEEN:**

Huntsville Town, Inc of 7381 E 200 S, Huntsville, UT 84317, USA  
(the "Client")

**- AND -**

Thom Summers & Sons Excavating of 6212 E 2100 N, Eden, UT 84310, USA  
(the "Contractor").

**BACKGROUND:**

- A. The Client is of the opinion that the Contractor has the necessary qualifications, experience and abilities to provide services to the Client.
- B. The Contractor is agreeable to providing such services to the Client on the terms and conditions set out in this Agreement.

**IN CONSIDERATION OF** the matters described above and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the Client and the Contractor (individually the "Party" and collectively the "Parties" to this Agreement) agree as follows:

Services Provided

1. The Client hereby agrees to engage the Contractor to provide the Client with services (the "Services") consisting of:
  - For the retainer rate of \$1500/month:
    - 1) Perform as the distribution system (from the water plant to the individual residences/businesses) DRC , including routine repairs, prevent maintenance, and being on a 24-hour call basis for emergency repairs of the culinary water distribution system e.g., leaks, accidental breaks, etc. An emergency phone number will be placed on the Town website. This

task covers responding to routine and emergency distribution system issues and assessing the needed remediation effort. Once the effort required is determined, work will be on a time and materials basis. In routine situations, coordinate the repair with the Water System Maintenance Supervisor prior to commencing work. For preventive maintenance, coordinate a schedule with the Town for distribution system checking, testing, maintaining tasks.

- 2) Perform connections from the main line to a meter set following approved Town standards. Cost of installation will be set by Town ordinance and charged to the user.
- 3) If requested by a user, install a connection from the meter set to the residence/building. Cost of installation will be charged to the user.
- 4) Conduct water infrastructure inspections of new construction that is permitted by Huntsville Town.
- 5) Participate in conducting the Cross Connection Program in compliance with State requirements.
- 6) If requested, Blue Staking will be conducted at a rate of \$60/hour and GPS reading (one person and machine) will be conducted at a rate of \$75/hour.
- 7) Participate in periodic water committee status meetings and report on tasks performed since the previous meeting.

The retainer, Blue Staking, GPS reading, and repairs will be billed at the end of every month.

2. The Services will also include any other tasks which the Parties may agree on. The Contractor hereby agrees to provide such Services to the Client.

#### Term of Agreement

3. The term of this Agreement (the "Term") will begin on the date of this Agreement and will remain in full force and effect indefinitely until terminated as provided in this Agreement.
4. In the event that either Party wishes to terminate this Agreement, that Party will be required to provide at least 30 days' notice to the other Party.
5. In the event that either Party breaches a material provision under this Agreement, the non-defaulting Party may terminate this Agreement and require the defaulting Party to indemnify the non-defaulting Party against all reasonable damages.

6. This Agreement may be terminated at any time by mutual agreement of the Parties.
7. Except as otherwise provided in this Agreement, the obligations of the Contractor will end upon the termination of this Agreement.

Performance

8. The Parties agree to do everything necessary to ensure that the terms of this Agreement take effect.

Currency

9. Except as otherwise provided in this Agreement, all monetary amounts referred to in this Agreement are in US Dollars.

Compensation

10. For the services rendered by the Contractor as required by this Agreement, the Client will provide compensation (the "Compensation") to the Contractor as follows:
  - Monthly retainer for services at a rate of \$1500 per month
    - Blue Staking at a rate of \$60 per hour
    - GPS reading at a rate of \$75 per hour
    - Overtime will apply in non regular hours
    - Repairs and materials paid at a separate rate.
11. The Client is tax-exempt and will not be charged any taxes.

Confidentiality

Confidential information (the "Confidential Information") refers to any data or information relating to the Contractor that is classified by the Client at "protected" and Client records under this Agreement are subject to the Utah Government Recorder Management Act (GRAMA).

Ownership of Materials and Intellectual Property

12. All intellectual property and related materials (the "Intellectual Property") including any related work in progress that is developed or produced under this Agreement, will be the sole property of the Client. The use of the Intellectual Property by the Client will not be restricted in any manner.

13. The Contractor may not use the Intellectual Property for any purpose other than that contracted for in this Agreement except with the written consent of the Client. The Contractor will be responsible for any and all damages resulting from the unauthorized use of the Intellectual Property.

Return of Property

14. Upon the expiry or termination of this Agreement, the Contractor will return to the Client any property, documentation, records, or Confidential Information which is the property of the Client.

Capacity/Independent Contractor

15. In providing the Services under this Agreement it is expressly agreed that the Contractor is acting as an independent contractor and not as an employee. The Contractor and the Client acknowledge that this Agreement does not create a partnership, employment, or joint venture between them, and is exclusively a contract for service.

Notice

16. All notices, requests, demands or other communications required or permitted by the terms of this Agreement will be given in writing and delivered to the Parties of this Agreement as follows:
  - a. Huntsville Town, Inc  
7381 E 200 S, Huntsville, UT 84317, USA
  
  - b. Thom Summers & Sons Excavating  
6212 E 2100 N, Eden, UT 84310, USA

or to such other address as any Party may from time to time notify the other.

Indemnification

17. The Contractor shall indemnify, defend, and hold the Client and its officers, employees, agents, affiliates, assigns, and volunteers harmless for Contractor's performance under this Agreement. The Client shall indemnify, defend, and hold the Contractor harmless for Client's performance under this Agreement. This indemnification will survive the termination of this Agreement.

Insurance

18. The Contractor is required to maintain general liability insurance including coverage for bodily injury, property damage, and otherwise at a level that would be considered reasonable in the industry of the Contractor based on the risk associated with the characteristics of this Agreement and only to the extent permitted by law. All insurance policies will remain materially unchanged for the duration of this Agreement. The Contractor shall name the Client as an additional insured on general liability insurance policies.

Legal Expenses

19. In the event that legal action is brought to enforce or interpret any term of this Agreement, the prevailing Party will be entitled to recover, in addition to any other damages or award, all reasonable legal costs and fees associated with the action.

Modification of Agreement

20. Any amendment or modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement will only be binding if evidenced in writing signed by each Party or an authorized representative of each Party.

Extension

21. This Agreement may be extended by the Parties, and no violation of this Agreement may be deemed to operate as a waiver of any provision.

Assignment

22. The Contractor will not voluntarily, or by operation of law, assign or otherwise transfer its obligations under this Agreement without the prior written consent of the Client.

Entire Agreement

23. It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressly provided in this Agreement.

Enurement

24. This Agreement will enure to the benefit of and be binding on the Parties and their respective heirs, executors, administrators, successors and permitted assigns.

Titles/Headings

25. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement.

Gender

26. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

Governing Law

27. It is the intention of the Parties to this Agreement that this Agreement and the performance under this Agreement, and all suits and special proceedings under this Agreement, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of Utah, without regard to the jurisdiction in which any action or special proceeding may be instituted.

Severability

28. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.

Waiver

29. The waiver by either Party of a breach, default, delay or omission of any of the provisions of this Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions.

**IN WITNESS WHEREOF** the Parties have duly affixed their signatures under hand and seal on this 10<sup>th</sup> day of Sept, 2024.

Phillip Walker

ATTEST: \_\_\_\_\_

Huntsville Town, Inc

Mayor: Phil Dawson

Thom Summers & Sons Excavating

Wade Nielsen

WITNESS: \_\_\_\_\_

Per: Thom Summers  
(Seal)