

RESOLUTION 2023-5-2-C

A RESOLUTION OF HUNTSVILLE TOWN, UTAH, TO ENTER INTO AN AGREEMENT WITH THOM SUMMERS & SONS, AN INDEPENDENT CONTRACTOR TO WORK WITH HUNTSVILLE TOWN ON WATER MAINTENANCE AND REPAIR.

WHEREAS, Huntsville Town (hereafter “Town”) is a municipal corporation duly organized and existing under the laws of the State of Utah;

WHEREAS, the Town Council is the municipal legislative body;

WHEREAS, the Town is in need of additional support in repair and maintenance for the Town’s culinary water system, and for the benefit of the health, safety, and welfare of the public;

WHEREAS, the Town Council has entered into an agreement with Thom Summers & Sons and desires to ratify that Agreement;


NOW, THEREFORE, BE IT RESOLVED by the Huntsville Town Council as follows;

Section 1. Ratification. That the Agreement between Huntsville Town and Thom Summers & Son’s attached hereto as Exhibit “A” and incorporated herein by this reference is hereby ratified by the Town Council and shall continue in full force and effect according to the terms of the Agreement.

Section 2. Effective Date. This Resolution is effective immediately upon adoption by the Town Council.

VOTES	AYE	NAY	RECUSED	EXCUSED
Mayor Richard Sorensen	✗			
CM Kevin Anderson	✗			
CM Sandy Hunter	✗			
CM Artie Powell	✗			
CM Bruce Ahlstrom	✗			

PASSED AND ADOPTED by the Town Council on this 2nd day of May, 2023.


RICHARD SORENSEN, Mayor



ATTEST:


BECKKI ENDICOTT, Clerk

RECORDED this 2nd day of May, 2023.

CERTIFICATE OF PASSAGE AND PUBLICATION OR POSTING

According to the provision of U.C.A. §10-3-713, 1953 as amended, I, the municipal clerk of Huntsville Town, hereby certify that foregoing resolution was duly passed and published, or posted at 1) Town Hall 2) www.huntsvilletown.com 3) pnn.gov


Huntsville Town Clerk

DATE: 5-2-2023

INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT (the "Agreement") dated this

2nd day of May, 2023

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 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 tasking 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. If repairs need to be done on a weekend or holiday, overtime rates will be accessed.

2) Perform the connections from the main line to a meter following approved town standards. Cost of installation will be charged to the resident/business.

3) Conduct water infrastructure inspections of new construction that is permitted by Huntsville Town.

4) Participate in conducting the Cross Connection Program in compliance with State requirements.

5) 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.

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 – detailed included in #1- Services Provided in this contract.

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 Compensation as stated in this Agreement does not include sales tax, or other applicable duties as may be required by law. Any sales tax and duties required by law will be charged to the Client in addition to the Compensation.

Confidentiality

12. Confidential information (the "Confidential Information") refers to any data or information relating to the business of the Client which would reasonably be considered to be proprietary to the Client including, but not limited to, accounting records, business processes, and client records and that is not generally known in the industry of the Client and where the release of that Confidential Information could reasonably be expected to cause harm to the Client.

13. The Contractor agrees that it will not disclose, divulge, reveal, report or use, for any purpose, any Confidential Information which the Contractor has obtained, except as authorized by the Client. This obligation will survive the expiration or termination of this Agreement and will continue indefinitely.
14. All written and oral information and materials disclosed or provided by the Client to the Contractor under this Agreement is Confidential Information regardless of whether it was provided before or after the date of this Agreement or how it was provided to the Contractor.

Ownership of Materials and Intellectual Property

15. 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.
16. 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

17. 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

18. 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 or joint venture between them, and is exclusively a contract for service.

Notice

19. 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

20. Except to the extent paid in settlement from any applicable insurance policies, and to the extent permitted by applicable law, each Party agrees to indemnify and hold harmless the other Party, and its respective affiliates, officers, agents, employees, and permitted successors and assigns against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or amount whatsoever, which result from or arise out of any act or omission of the indemnifying party, its respective affiliates, officers, agents, employees, and permitted successors and assigns that occurs in connection with this Agreement. This indemnification will survive the termination of this Agreement.

Insurance

21. The Contractor will be required to maintain general liability insurance including coverage for bodily injury and property damage 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.

Legal Expenses

22. 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

23. 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.

Time of the Essence

24. Time is of the essence in this Agreement. No extension or variation of this Agreement will operate as a waiver of this provision.

Assignment

25. 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

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

Enurement

27. 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

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

Gender

29. 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

30. 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

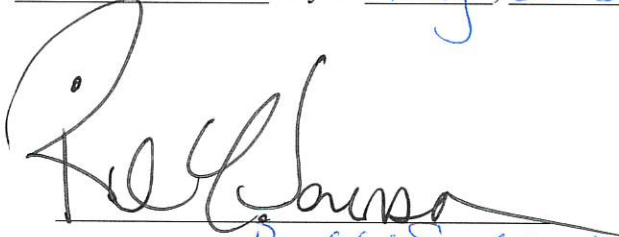
31. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.

Waiver

32. 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.

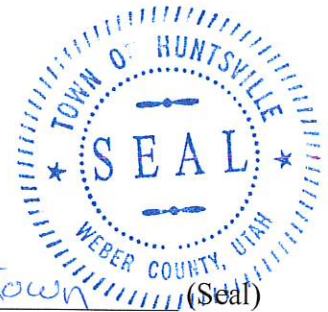
IN WITNESS WHEREOF the Parties have duly affixed their signatures under hand and seal on this

2nd day of May, 2023.

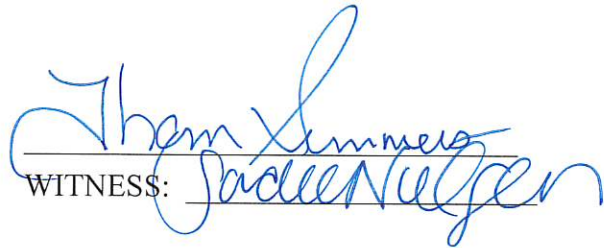


WITNESS: Bealeki Endicott

Huntsville Town, Inc



Per: Huntsville Town (Seal)



WITNESS: Jacelyn Nelson

Thom Summers & Sons Excavating

Per: _____ (Seal)