

# CONTRACT

## A Contract For Professional Engineering Services

A Contract Between  
City of Fernley  
595 Silver Lace Blvd  
Fernley NV 89408

and

Lumos and Associates, Inc.  
9222 Prototype Drive  
Reno, NV 89521

WHEREAS, Nevada Revised Statutes (“NRS”) chapter 266 authorizes the City of Fernley, Nevada (the “City”) to engage services of persons as independent contractors; and

WHEREAS, it is deemed that the services of Lumos and Associates, Inc., (the “Contractor”) are both necessary and in the best interests of the City; and

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. **REQUIRED APPROVAL.** This Contract for Services of Independent Contractor (this “Contract”) is contingent upon Fernley City Council approval.
2. **DEFINITIONS.**
  - a. “City” means City of Fernley, County of Lyon, State of Nevada.
  - b. “Independent Contractor” means a person or entity that performs services and/or provides goods for the City under the terms and conditions set forth in this Contract.
  - c. “Fiscal Year” is defined as the period beginning July 1 and ending June 30 of the following year.
3. **CONTRACT TERM.** This Contract shall be effective from the 7th day of November, 2018, to the 30th day of June, 2019, subject to appropriation.
4. **NOTICE.** All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, or by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above.

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Notice for the City shall be sent to:

Derek Starkey, City Engineer  
City of Fernley  
595 Silverlace Blvd.  
Fernley, NV 89408

Notice for the Contractor shall be sent to:

Steven G. Moon, P.E.  
Lumos and Associates, Inc.  
9222 Prototype Drive  
Reno, NV 89521

5. **SCOPE OF WORK:** Scope of Work shall be set forth in Attachment A.
6. **CONSIDERATION.** The parties agree that Contractor will provide the services specified in paragraph (5) at a Fee Schedule outlined in Attachment A.
7. **ATTACHMENTS:** This Contract also incorporates the following attachments (the "Attachments"): (N/A)

Should a conflict arise between the terms of the attachment(s) and this contract, the contract term(s) prevails unless specifically addressed in a document separate from the contract and attachments and signed by all parties.

8. **TIMELINESS OF BILLING SUBMISSION.** The parties agree that timeliness of billing is of the essence to this Contract and recognize that the City is on a fiscal year. All billings for dates of service prior to July 1 must be submitted to the City no later than the first Friday in August of the same year.

### 9. **INSPECTION & AUDIT.**

- a. **Books and Records.** Contractor agrees to keep and maintain under general accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the City, the State of Nevada or the United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes. Contractor agrees to provide a copy of the file within a reasonable time upon being requested by the City.
- b. **Inspection & Audit.** Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and

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documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the City, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect the requirements of this paragraph.

- c. **Period of Retention.** All books, records, reports, and statements relevant to this Contract must be retained a minimum three years and for five years if any federal funds are used under this Contract. The retention period runs from the date of payment for the relevant goods or services by the City, or from the date of termination of this Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

### 10. CONTRACT TERMINATION.

- a. **Termination Without Cause.** Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated without cause by (1) written mutual consent of both parties, or (2) unilateral termination by either party after service of formal Thirty Day (30) written notice as specified in paragraph (4).
- b. **Termination for Non-Appropriation.** The continuation of this Contract beyond the current fiscal year is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the City. The City may terminate this Contract, and Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the City's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.
- c. **Default or Breach.** A default or breach may be declared with or without termination. The following shall constitute a default or breach:
  - i. If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or
  - ii. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
  - iii. If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or

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- iv. For any other good or sufficient reason, including, but not limited to, dishonesty, fraud, ethical violations, bribery, or other similar acts.
- d. **For Cause Termination and Time to Correct.** This Contract may be terminated by the non-defaulting party upon a declared default or breach only after service of formal written notice as specified in paragraph (4), and the subsequent failure of the defaulting party within 15 calendar days of receipt of that notice to provide evidence, satisfactory to the non-defaulting party, showing that the declared default or breach has been corrected.
- e. **Winding Up Affairs Upon Termination.** In the event that this Contract is terminated for any reason, the parties agree that the provisions of this paragraph survive termination:
  - i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
  - ii. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the City;
  - iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the City; and
  - iv. Contractor shall preserve, protect and promptly deliver possession to the City of all proprietary information in accordance with paragraph (21).
  - v. In the event that dispute(s) arise during the winding up of affairs upon termination, the parties agree to meet and negotiate in good faith to resolve any such dispute(s).

**11. REMEDIES.** Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages exclusive of lost profits.

**12. ATTORNEYS' FEES, COSTS, AND EXPENSES.** Unless otherwise stated herein, the Parties will bear their own attorneys' fees, costs, and expenses in connection with the negotiation, execution, and performance of this Agreement.

**13. LIMITED LIABILITY.** Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the Attachments. Damages for any default or breach by the City shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the default or breach.

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**14. FORCE MAJEURE.** Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of this Contract after the intervening cause ceases.

**15. INDEMNIFICATION.**

A. As respects negligent acts, errors or omissions in the performance of professional services, the Contractor agrees to indemnify and hold harmless the City, including their elected officials, officers, employees, and agents from and against reasonable defense costs, including reasonable attorney fees, liability or claims arising directly out of the Contractor's negligent acts, errors or omissions in the performance of its work under the terms of this Agreement, to the extent the liabilities are determined to have been proximately caused by the negligent acts, errors or omissions of the Contractor, its Sub-CONTRACTORS or Sub-Contractors (hereafter "Subs"), their employees, agents, or representatives. City shall provide notice to Contractor of the City's receipt of a written demand/claim or lawsuit arising from Contractor's work.

B. The CONTRACTOR agrees to hold harmless, indemnify, and defend the City, including their elected officials, officers, employees, and agents from loss or liability resulting from any claim, demand, suit, action, or cause of action based on bodily injury, including death, or property damage, caused by any negligent or intentional acts, errors or omissions, either direct or passive, on the part of the Contractor, its Subs, their employees, agents, or representatives, arising from the performance of work under this Agreement. The collective group to be indemnified shall hereinafter be referred to as "Indemnitees." If an "Indemnitees" is found to be liable in the proceeding, then Contractor's obligation here under shall be limited to the proportional share of the liability attributed to the Contractor.

**16. INDEPENDENT CONTRACTOR.** Contractor is associated with the City only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the City whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and the City shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the City; (4) participation or contributions by either Contractor or the Public

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Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the City. Contractor shall indemnify and hold the City harmless from, and defend the City against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees. Neither Contractor nor its employees, agents, or representatives shall be considered employees, agents, or representatives of the City.

**17. INSURANCE** Unless expressly waived in writing by the City, Contractor, as an independent contractor and not an employee of the City, must carry those policies of insurance which have been agreed to by the parties as evidenced by the parties initials in the signature spaces provided in the amounts specified below and pay all taxes and fees incident hereunto. The City shall have no liability except as specifically provided in this Contract. Contractor shall not commence work before:

- a. Contractor has provided the required evidence of insurance to the City, and
- b. The City has approved the insurance policies provided by Contractor. Prior approval of the insurance policies by the City shall be a condition precedent to any payment of consideration under this Contract and the City's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of the City to timely approve the insurance policies or any changes to the insurance coverage shall not constitute a waiver of the condition.

Insurance Coverage: Contractor shall, at Contractor's sole expense, procure, maintain and keep in force for the duration of this Contract the following insurance conforming to the minimum requirements specified below. Unless specified herein or otherwise agreed to by the City, the required insurance shall be in effect prior to the commencement of work by Contractor and shall continue in force as appropriate until the latter of:

- 1) Final acceptance by the City of the completion of this Contract;  
or
- 2) Such time as the insurance is no longer required by the City under the terms of this Contract.

Any insurance or self-insurance available to the City shall be in excess of, and non-contributing with, any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the City, Contractor shall provide the City with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by this Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the City and immediately replace such insurance or bond with an insurer meeting the requirements.

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Workers' Compensation and Employer's Liability Insurance:

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INDUSTRIAL INSURANCE. Contractor further agrees, as a precondition to the performance of any work under this Contract and as a precondition to any obligation of the City to make payment under this Contract, to provide the City with a work certificate issued by a qualified insurer in accordance with NRS 616B.627. Contractor agrees, prior to commencing any work under this Contract, to complete and to provide the following written request to the qualified insurer:

\_\_\_\_\_ has entered into a contract with Owner to perform work from \_\_\_\_\_ to \_\_\_\_\_ and requests that an industrial insurance provider qualified and licensed to offer such insurance within the State of Nevada, provide to The City of Fernley, Nevada 1) a certificate of coverage issued pursuant to NRS 616B.627 and 2) notice of any lapse in coverage or nonpayment of coverage that Contractor is required to maintain. The certificate and notice should be mailed to:

City of Fernley  
595 Silver Lace Blvd  
Fernley, NV 89408

Contractor agrees to maintain required workers compensation coverage throughout the entire term of this Contract. If Contractor does not maintain coverage throughout the entire term of this Contract, Contractor agrees that the City may, at any time the coverage is not maintained by Contractor, order Contractor stop work, suspend this Contract, or terminate this Contract.

Contractor may, in lieu of furnishing a certificate of an insurer, provide an affidavit indicating that Contractor is a sole proprietor and that:

- 1) In accordance with the provisions of NRS 616B.659, Contractor has not elected to be included within the terms, conditions, and provisions of NRS chapters 616A to 616D, inclusive; and
- 2) Contractor is otherwise in compliance with those terms, conditions and provisions.

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### Commercial General Liability Insurance:

- 1) Minimum Limits required:
  - \$1,000,000** General Aggregate
  - \$1,000,000** Products & Completed Operations Aggregate
  - \$1,000,000** Personal and Advertising Injury
  - \$1,000,000** Each Occurrence
- 2) Coverage shall be on an occurrence basis and shall be at least as broad as ISO 1996 form CG 00 01 (or a substitute form providing equivalent coverage); and shall cover liability arising from premises, operations, independent contractors, completed operations, personal injury, products, civil lawsuits, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

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### Business Automobile Liability Insurance:

Minimum Limit required: **\$100,000** Each Occurrence for bodily injury and property damage. Coverage shall be for "any auto" (including owned, non-owned and hired vehicles).

The policy shall be written on ISO form CA 00 01 or a substitute providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

### Professional Liability Insurance:

- 3) Minimum Limit required: \$1,000,000 Each Claim, \$2,000,000 Aggregate.
- 4) Retroactive date: Prior to commencement of the performance of this Contract
- 5) Discovery period: Three (3) years after the termination date of this Contract.
- 6) A certified copy of this policy may be required.

### Umbrella or Excess Liability Insurance:

- 1) May be used to achieve the above minimum liability limits.
- 2) Shall be endorsed to state it is "As Broad as Primary Policy"

### Commercial Crime Insurance:

- 1) Minimum Limit required: **\$10,000** Per Loss for Employee Dishonesty
- 2) This insurance shall be underwritten on a blanket form amending the definition of "employee" to include all employees of the Vendor regardless of position or category.

### Performance Security:

- 1) Amount required: \$ **0.00**
- 2) Security may be in the form of surety bond, Certificate of Deposit or Treasury Note payable to the City only.
- 3) The security shall be deposited with the City no later than ten (10) working days following award of this Contract to Contractor.
- 4) Upon successful completion of this Contract, the security and all interest earned, if any, shall be returned to Contractor.

### General Requirements:

- 1) Additional Insured: By endorsement to the general liability insurance policy evidenced by Contractor, ***The City of Fernley, its officers, employees and immune contractors*** shall be named as additional insureds for all liability arising from this Contract.



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- 2) Waiver of Subrogation: Each liability insurance policy shall provide for a waiver of subrogation as to additional insureds.
- 3) Cross-Liability: All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
- 4) Deductibles and Self-Insured Retentions: Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the City. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$5,000 per occurrence, unless otherwise approved by the City.
- 5) Policy Cancellation: Except for ten days notice for non-payment of premium, each insurance policy shall be endorsed to state that; without thirty (30) days prior written notice to the City, the policy shall not be canceled, non-renewed or coverage and/or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mail to the address shown below.
- 6) Approved Insurer: Each insurance policy shall be:
  - a. Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the City and having agents in the State of Nevada upon whom service of process may be made, and
  - b. Currently rated by A.M. Best as "A- VII" or better.

Evidence of Insurance: Prior to the start of any work, Contractor must provide the following documents to the City:

- 1) Certificate of Insurance: The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the City to evidence the insurance policies and coverages required of Contractor.
- 2) Additional Insured Endorsement: An Additional Insured Endorsement (CG20 10 or C20 26), signed by an authorized insurance company representative, **must** be submitted to the City to evidence the endorsement of the City as an additional insured per General Requirements, Subsection 1) above.
- 3) Schedule of Underlying Insurance Policies: If an Umbrella or Excess insurance policy is evidenced to comply with minimum limits, a copy of the Underlying Schedule from the Umbrella or Excess insurance policy may be required.

Review and Approval: Documents specified above must be submitted for review and approval by the City prior to the commencement of work by Contractor. Neither approval by the City nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its sub-contractors, employees or agents to the City or others, and shall be in addition to and not in lieu of any other remedy available to the City under

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this Contract or otherwise. The City reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

Required Mailing: Contractor will mail all required insurance documents to the City at the address identified in section 4 of this Contract.

**18. COMPLIANCE WITH LEGAL OBLIGATIONS.** Contractor shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract.

**19. WAIVER OF BREACH.** Failure to declare a breach or the actual waiver of any particular breach of this Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other default or breach.

**20. SEVERABILITY OF PARTS.** If any portion, provision, or part of this Agreement is held, determined, or adjudicated by any court of competent jurisdiction to be invalid, unenforceable, or void for any reason whatsoever, each such portion, provision, or part shall be severed from the remaining portions, provisions, or parts of this Agreement, and such determination or adjudication shall not affect the validity or enforceability of such remaining portions, provisions, or parts.

**21. ASSIGNMENT/DELEGATION.** To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by the City, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations or duties under this Contract without the prior written consent of the City.

**22. CITY OWNERSHIP OF PROPRIETARY INFORMATION.** Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under this Contract), or any other documents or drawings, prepared or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the City and all such materials shall be delivered into the possession of the City by Contractor upon completion, termination, or cancellation of

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this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without the prior written consent of the City. Notwithstanding the foregoing, the City shall have no proprietary interest in any materials licensed for use by the City that are subject to patent, trademark or copyright protection.

**23. PUBLIC RECORDS.** Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The City will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential," provided that Contractor thereby agrees to indemnify and defend the City for honoring such a designation. The failure to so label any document that is released by the City shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

**24. FEDERAL FUNDING.** In the event federal funds are used for payment of all or part of this Contract:

- a. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.
- b. Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.
- c. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)

**25. LOBBYING.** The parties agree, whether expressly prohibited by federal, state or local law, or otherwise, that no funding associated with this contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

Any federal, state, county or local agency, legislature, commission, counsel or board;  
Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official; or

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Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.

**26. GENERAL WARRANTY:** Contractor warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.

**27. PROPER AUTHORITY.** The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that as required by statute or regulation this Contract is effective upon signing and only for the period of time specified in this Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

**28. GOVERNING LAW; VENUE.** This Agreement will be interpreted, and the rights and liabilities of the Parties determined, in accordance with the laws of the State of Nevada, excluding its conflict of laws rules. In any action or proceeding arising under this Agreement, each Party to this Agreement hereby (a) consents to the jurisdiction of Nevada Courts, and of the pertinent appellate courts, and consents to the venue of such action or proceeding in Lyon County, Nevada courts, (b) irrevocably agrees that all actions or proceedings arising out of or relating to this Agreement shall be litigated in such courts, and (c) consents to personal jurisdiction within Lyon County, Nevada. Each Party to this Agreement accepts for itself, generally and unconditionally, the exclusive jurisdiction and venue of the aforesaid courts and waives any defense of lack of personal jurisdiction, improper venue or inconvenient forum or any similar defense, and irrevocably agrees to be bound by any non-appealable judgment rendered thereby in connection with this Agreement.

**29. INTEGRATED AGREEMENT.** This Agreement contains the entire agreement and understanding among the Parties regarding the matters set forth herein and supersedes all previous negotiations, discussions, and understandings regarding such matters. The Parties acknowledge and represent that they have not relied on any promise, inducement, representation, or other statement made in connection with this Agreement that is not expressly contained herein. The terms of this Agreement are contractual and not a mere recital.

**30. COUNTERPARTS.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

**31. ADVICE OF COUNSEL.** Each Party hereto represents and agrees that it has had the opportunity to seek and has sought from attorneys any such advice as it deems appropriate with respect to signing this Agreement or the meaning of it. Each party has

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undertaken such independent investigation and evaluation as it deems appropriate and is entering into this Agreement in reliance on that and not in reliance on any advice, disclosure, representation or information provided by or expected from any other Party or Party's attorneys. This is an agreement of settlement and compromise, made in recognition that the Parties may have different, disputed or incorrect understandings, information and contentions, as to facts and law, and with each Party compromising and settling any potential correctness or incorrectness of its understandings, information and contentions as to the facts, law, claims, duties, disclosures and conduct occurring before or during the entry into this Agreement. No conduct, failure, misunderstanding or misinformation and no claim of fraud or fraudulent inducement occurring prior to or in connection with the execution hereof shall be a ground for rescission hereof or for recovery of damages, except as otherwise expressly provided herein.

**32. MODIFICATION; NO WAIVER.** The provisions of this Agreement, including this paragraph, may be modified or waived only in writing signed by all Parties. No waiver with respect to any portion of this Agreement shall apply to any other portion of the Agreement, and a waiver on one occasion shall not be deemed to be a waiver of the same or any other breach on a future occasion. No course of dealing by any Party, and no failure, omission, delay, or forbearance by any Party in exercising such Party's rights or remedies shall be deemed a waiver of any such rights or remedies or a modification of this Agreement.

**33. INTERPRETATION OF AGREEMENT.** This Agreement shall be construed without regard to the Party or Parties responsible for its preparation, and shall be deemed to have been prepared collectively by the Parties. Any ambiguity or uncertainty arising herein shall not be interpreted or construed against any Party hereto on the basis that a Party prepared or drafted a particular provision of this Agreement.

**34. COOPERATION OF PARTIES.** The Parties agree to cooperate to accomplish the purpose of this Agreement and to execute any and all supplementary documents and to take all additional actions not inconsistent with the terms set forth in this Agreement that are necessary and appropriate to give full force and effect to the terms and intent of this Agreement.

**35. NON-DISCRIMINATION.** In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation, gender identity or expression, or age, including, without limitation, with regard to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including, without limitation, apprenticeship. The contractor further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

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**36. ACKNOWLEDGMENT AND EXECUTION.** In witness whereof, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby:

**CITY MANAGER**

City of Fernley  
Daphne Hooper  
Telephone: 775-784-9900

\_\_\_\_\_  
DAPHNE HOOPER  
DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CITY ATTORNEY**

City of Fernley  
Brandi Jensen, Esq.  
Telephone: 775-784-9861  
Fax: 775-784-9868

I have reviewed this Contract and approve as to its legal form.

\_\_\_\_\_  
BRANDI JENSEN  
DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CITY'S ORIGINATING DEPARTMENT:**

City of Fernley Department: Engineering Department

\_\_\_\_\_  
DEREK STARKEY, P.E., CITY ENGINEER  
DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CONTRACT ACCEPTANCE AND EXECUTION:**

The City Council of Fernley, Nevada, at their publicly noticed meeting of \_\_\_\_\_, 20\_\_, approved the acceptance of this Contract. Further, the City Council authorizes the Mayor of Fernley, Nevada to set his hand to this document and record his signature for the execution of this Contract in accordance with the action taken.

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**FERNLEY:**

\_\_\_\_\_  
ROY EDGINGTON, MAYOR  
DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**ATTEST:**

\_\_\_\_\_  
KIM SWANSON, CITY CLERK  
DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CONTRACT**

A Contract For Professional Engineering Services

\_\_\_\_\_, being first duly sworn, deposes and says: That \_\_\_\_\_ is the Contractor; that \_\_\_\_\_ has read the foregoing Contract; and that \_\_\_\_\_ understands the terms, conditions, and requirements thereof.

CONTRACTOR

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
FIRM: \_\_\_\_\_  
BUSINESS LICENSE #: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Telephone: \_\_\_\_\_ / Fax #: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Contractor)

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

STATE OF \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_, before me, \_\_\_\_\_ / Notary Public, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary's Signature

My Commission Expires: \_\_\_\_\_



# **CONTRACT**

A Contract For Professional Engineering Services

ATTACHMENT A



September 26, 2018

LA18.635

Jessica Dover, E.I.  
Associate Engineer  
City of Fernley Public Works Department  
595 Silver Lace Blvd.  
Fernley, NV 89408

**RE: Proposal for Engineering Services to Design a Waterline to Service the City of Fernley Wastewater Treatment Plant**

Dear Ms. Dover:

Lumos & Associates Inc. (Lumos) is pleased to provide this proposal for engineering services to design a potable waterline to serve the City of Fernley (City) Wastewater Treatment Plant (WWTP).

**Project Understanding**

The City of Fernley has determined the need for a reliable high volume potable water supply at their existing Wastewater Treatment Plant (WWTP). The potable water supply would be utilized for fire protection, truck fill operations, and miscellaneous potable uses at the WWTP itself. The waterline is envisioned as approximately 6,500 linear feet of 8 or 10-inch waterline proposed to run easterly from the southern end of Nevada Pacific Blvd. to the east side of the WWTP.

The City has requested a proposal from Lumos to provide the engineering services associated with design of the waterline improvements. The following scope of services has been developed to assist the City with the project.

**Scope of Services**

**Task 1: Topographic Survey**

A project base map will be created using a combination of aerial photogrammetry and ground collected survey field shots. The photogrammetry can be collected by either an unmanned aerial vehicle (UAV) or traditional fixed wing aircraft.

The project will be flown at an appropriate elevation to obtain a horizontal scale of 1"=40' with a 1' contour interval accuracy and ground sampling distance of 0.25' per pixel. Isolated field shots will be obtained at critical locations such as edge of roadway, curb and flowline elevations, surface evidence of utilities, storm drain features (with inverts), and obscured areas to be combined with the aerial imagery to supplement the base map. A digital terrain model, topographic base map, and color orthophoto will be generated using the combination of ground and aerial collected data.

Control for the project will be referenced to the Nevada Coordinate System, West Zone, NAD83 using a local combined scale factor to establish ground values for the base map. The vertical datum for the project will be reference to NAVD88.

Boundary survey work is proposed as part of Task 2 to ensure easements are in place for the waterline and to verify the working corridor. If easements are not in place Lumos will prepare the necessary easement documents under Task 9.

### **Task 2: Boundary Survey**

Lumos will perform field surveying measurements to determine the location of monuments and evidence that affect the boundary of the subject property. Measurements will be compared to dimensions of record documents including but not limited to; vesting deeds of subject and adjoining properties, record mapping, right of way dedications and mapping. No new boundary monuments will be set as part of this scope of service. If a material discrepancy in the record boundary is found the client will be advised with a proposal to file a Record of Survey.

Lumos will obtain a Preliminary Title Report on the subject parcels to determine easements of record within the subject project area. Boundary and Easements will be added to the base mapping listed above on the subject project area.

### **Task 3: Geotechnical Report**

For the current scope of work, we propose a field investigation that will consist of approximately seven (7) test pits within the shoulder of the roadway. The test pits will be excavated to a depth of between five (5) and ten (10) feet, or practical refusal, whichever is shallower. Lumos will collect samples of each soil type encountered at regular intervals during the excavation. We understand Lumos will provide the excavation services, and notify USA DIG clearance.

Lumos & Associates, Inc. herein proposes to provide laboratory testing on the samples collected. Additionally, we propose to perform engineering analyses and calculations and develop a report that will discuss the site conditions, field and laboratory test data, and our conclusions and recommendations from a geotechnical perspective. Our Geotechnical Investigation will be supervised by a Registered Professional Engineer in the State of Nevada and will specifically include the following services:

Field Investigation will include:

- Notify USA DIG
- Identification of All Test Pit Locations
- Soil Sampling

Laboratory analysis may include:

- Atterberg Limits
- R-Value
- Grain size Analysis (including fines and moisture content)
- Modified Proctor

Report, Recommendations, and Conclusions:

- Table of Contents
- Project Location, Background, and Purpose
- Exploration Logs and Maps

- Site Conditions
- Field Investigation
- Soil Types and Classifications
- Laboratory Test Results
- Site Preparation Recommendations
- Trenching and Backfill Recommendations
- Construction Procedures
- Ground Water Depth, if Encountered

#### **Task 4: Improvement Plans and Specifications**

Lumos will prepare engineering drawings and specifications for the installation of the new waterline, waterline appurtenances, and related surface repairs. The drawings will be prepared on 24"x36" format sheets at a standard engineering scale. Design review submittals will be provided to the City at specific levels of completion with the 100% review containing the following sheets:

- a. Title sheet with notes, locations, and vicinity maps;
- b. Horizontal/vertical control sheet;
- c. Site plan indicating location of improvements and staging areas;
- d. Plan and profile views of new waterline piping;
- e. Detail sheets with construction details and piping connections.

Drawing deliverables will be provided at the 60%, 90%, and 100% design levels. Specifications and cost estimates will be included at the 90% and 100% levels. It is assumed that City and/or agency comments will be incorporated with each subsequent deliverable. This task also includes a Final Bid Set in the event additional comments are generated and addressed subsequent to the 100% plan set/specs.

- As per City's preference for 60%, 90% and 100% deliverables for review will typically be two (2) sets of 11x17, along with a PDF copy of plans, formatted with the capability to print both half and full size, and a PDF copy of Contract Documents
- Bid Set plans/specs, deliverables will be:
  - 24x36 full size set of plans – stamped
  - Stamped PDF formatted with the capability to print both half and full size PDFs
  - Stamped bound copy of final Contract Documents along with a PDF copy and final Word document(s)

This task includes two review meetings with the City. Reproduction expenses will be billed under the reimbursable task.

#### **Task 5: Agency Permitting**

Under this task Lumos will prepare and submit all the necessary applications and plan sets for the permitting of the design projects with NDEP. This task also includes coordination meetings with these agencies as it relates to this project and all responses to agency comments during the permitting process.

### **Task 6: Bidding Assistance**

Under this task, Lumos will assist the City with the bidding process including conducting a pre-bid meeting, evaluating bids for completeness, and summarizing bid results with a recommended contractor to the City and funding agency. Lumos will also conduct the bid-opening at City Hall, will distribute and track plan holder's list, and will issue and track addendums for the project.

### **Task 7: Easement Preparation**

New or amended easements may be necessary based upon whether or not existing ROW or easements are available to place the new waterline in. Once the proposed alignment is set the need for new easements can be determined. If necessary, Lumos will prepare an Exhibit "A" defining the metes and bounds, along with an Exhibit "B" graphically depicting the horizontal location of the proposed water improvements across the properties in question. It will be the City's responsibility to prepare the legal documents to create the easement and negotiate the execution with the property owners. This task will only be utilized in the event that new or amended easements are necessary. An estimate budget per easement document is provided.

### **Task 8: Water Modeling**

As necessary, or requested by the City, Lumos can provide assistance for coordinating the water modeling for this project. If it becomes necessary for us to run the model (which we are happy to do if provided the City's model) we can conduct that service as well under this task. Due to the flexible nature of this task at this time we are proposing an estimated budget that may need to be revisited once the final scope is defined. The budget proposed assumes the City provides us with the up to date Bently water model to run and generate reports associated with the waterline.

### **Task 9: Direct Expenses / Reimbursables**

Any fees or other associated project costs incurred by Lumos for submittal plan, and document reproduction, to obtain copies of previous plans or reports, additional mapping, permit fees paid by Lumos, or other unforeseen reimbursable expenses will be billed under this task at cost plus 15%. Additional production of plans and specifications as requested by the City will also be billed under this task on a time and materials basis in accordance with our current fee schedule.

### **Assumptions / Exceptions**

Lumos has made the following assumptions in preparation of this proposal:

- The City will assist in locating documentation regarding existing easements in which to place the new waterline.
- City will pay for fees associated with permitting

**Fees**

The tasks described in the Scope of Services will be completed for the following fees:

Task	Description	Fee
Task 1	Topographic Survey	\$7,500
Task 2	Boundary Survey	\$5,500
Task 3	Geotechnical Report	\$8,350
Task 4	Improvement Plans and Specifications	\$22,000
Task 5	Agency Permitting	\$3,500
Task 6	Bidding Assistance	\$6,000
Task 7	Easement Preparation (per Exhibit A and B set)	\$1,000
Task 8	Water Modeling Coordination	\$750
Task 9	Direct Expenses / Reimbursables	\$1,000
	Total:	\$55,600

Tasks 1 through 9 are T&M not to exceed without prior authorization. Lumos will be happy to amend this proposal as necessary to include services not included or to amend the proposed services to better match the scope of services required.

If this proposal is acceptable, please provide your Contract for execution. Lumos will send monthly progress billings on this project. The amount of these billings will be based upon the percentage of work completed. The terms are 'Due Upon Receipt' and accounts are past due after 30 days. Accounts over 30 days old will be subject to interest at the rate of 1 1/2% per month and such collection action as may be necessary to collect the account. In addition, a "Stop Work Order" may be issued on past due accounts. In this case, no further work will be performed until the account is brought current.

Thank you again for allowing Lumos to provide you with this proposal. Please do not hesitate to call me if you have questions or concerns as we would happy to discuss them with you.

Sincerely,



Tim Russell, P.E., WRS  
Group Manager, Engineering Division

<b>Engineering &amp; Development</b>	<b>Per Hour</b>
President	\$250
Director	225
Group Manager	210
Planning Group Manager	170
Project – Senior Project Manager	170-180
Hydrogeologist - Senior Hydrogeologist	160-165
Staff - Project - Senior Engineer	130-140-150
Staff - Project - Senior Structural Engineer	130-140-160
Landscape Architect Manager	140
Landscape Architect Designer – Landscape Architect	115-130
Project Coordinator	125
Project - Senior Project Designer	115-120
Structural - Senior Structural Designer	100-110
Assistant Planner	100
Engineering Technician I - II	90-100
Support Technician	65
<b>Construction</b>	<b>Per Hour</b>
Director	\$225
Group Manager	210
Project Manager	170
Geotechnical Engineer	190
Construction Services Engineer	155
Construction Services Supervisor	135
Geotechnician	125
Inspector - Senior Inspector	105-115
Field Technician I - II	90-95
<b>Surveying</b>	<b>Per Hour</b>
Director	\$225
Group Manager	210
Project Manager	170
Project - Senior Surveyor	130-140
Project Coordinator	125
Staff Surveyor	120
Surveying Technician I - II	95-110
Party Chief	140
Chain Person	70
<b>Administrative &amp; Other Services</b>	<b>Per Hour</b>
Administrator	\$75
Clerical	65
30x42 Color/B&W (per copy)	10/5
24x36 Mylar/Color/B&W (per copy)	20/5/3
8.5x11 Color /B&W (per copy)	0.50/0.15
Mileage (per mile)	0.70

- Fees for prevailing wage rate projects available upon request.
- Map filing, checking, consulting, and other fees paid on behalf of the client shall be billed at cost plus fifteen percent (15%).
- Overtime hours will be billed at 1.5 times standard rate where applicable.
- Survey and Field crew billing rates include standard testing equipment and truck up to 30 mile radius, after which mileage rates apply
- Fees for depositions and testimony will be billed at two (2) times the standard billing rates

**Invoices are due upon receipt and considered to be past due after 30 days.**  
**This fee schedule applies to services provided from January 1, 2018 until further notice.**

<b>Testing/Inspection</b>		<b>Per Hour</b>
Director		\$225
Group Manager		210
Geotechnical Engineer		190
Construction Services Engineer		155
Construction Services Supervisor		135
Geotechnician		125
Senior Inspector (includes nuclear gauge)		115
Inspector (includes nuclear gauge)		105
Field Technician II (includes nuclear gauge)		95
Field Technician I (includes nuclear gauge)		90
Administrator		75
Clerical		65

<b>Particle Size Testing For Soils/Aggregates</b>		<b>Each</b>
Sieve Analysis	(ASTM C-136/C-117)	\$150
Wash	(ASTM C-117)	125
Grain Size Analysis Soils	(ASTM D-421/422)	300
Sieve Analysis/Wash (coarse combined)	(ASTM C-136/C-117)	175

<b>Soils &amp; Aggregate Testing</b>		<b>Each</b>
Specific Gravity & Absorption — Coarse or Fine Aggregate	(ASTM C-127/C-128)	\$125
Sand Equivalent	(ASTM D-2419)	150
Dry Unit Weight of Aggregate	(ASTM C-29)	100
Organic Impurities	(ASTM C-40)	75
Fractured Faces	(NDOT T-230)	100
L.A. Abrasion	(ASTM C-131)	225
Sodium Sulfate Soundness (5 cycles)	(ASTM C-88)	500
Moisture Content	(ASTM C-566)	50
Moisture Content and Unit Density	(ASTM D-2937)	75
Plastic Index	(ASTM D-4318)	200
Expansion Index	(ASTM D-4829)	250
R-Value	(ASTM D-2844)	325
California Bearing Ratio	(ASTM D-1883)	Quote on request
Direct Shear	(ASTM D-3080)	350
Unconfined Compression	(ASTM D-2166)	Quote on request
Consolidation	(ASTM D-2435)	500
Permeability (4-inch Rigid Wall, Falling head)	(ASTM D-4491)	Quote on request
Soluble Sulfates		Quote on request
pH	(ASTM D-4972)	Quote on request
Resistivity		Quote on request
Clay Lumps/Friable Parts	(ASTM C-142)	100
Cement Treated Base Mix Design		Quote on request
Cement Treated Base Compression Test		50
Fine Durability Index	(ASTM D-3744)	200
Coarse Durability Index	(ASTM D-3744)	300
Cleanness Value	(CAL 229)	200

<b>Moisture Density Testing</b>		<b>Each</b>
Compaction	(ASTM D-698 or ASTM D-1557)	\$250
Rock Correction	(ASTM D-4718)	125
Harvard Miniature	(NDOT T-101)	110
CAL 216		225
Check Point	(ASTM D-1557)	125



<b>Emulsion Testing</b>		<b>Each</b>
% Residue By Evaporation/Softening Point (Ring & Ball)	(AASHTO T-53 & T-59) 24 hr. turnaround	\$400
% Residue By Evaporation/Softening Point (Ring & Ball)	(AASHTO T-53 & T-59) 3-day turnaround	300
Saybolt Furol Viscosity Test @ 122°	(AASHTO T-59)	275

<b>Concrete Testing</b>		<b>Each</b>
Compression Concrete Cylinders	(ASTM C-39)	\$35
Hold Cylinder (Cured but not tested)		25
Compression, Concrete Core	(ASTM C-42)	35
Flexural Strength of Concrete Beams	(ASTM C-78/C-293)	75
Compression, Grout Cylinder	(UBC 24-28)	35
Compression, Mortar Cylinder	(UBC 24-28)	35
Masonry Block Absorption and Moisture	(ASTM C-140)	Quote on request
Shrinkage	(ASTM C-426)	Quote on request
Compression, Concrete Masonry Units	(ASTM C-140)	Quote on request
Compression, Concrete Masonry Prisms	(ASTM C-1314)	Quote on request
Density of Spray Applied Fireproofing		Quote on request
Concrete Mix Design, including Mixing and Casting of Cylinders		Quote on request

<b>Asphalt Concrete Testing</b>		<b>Each</b>
Sieve Analysis	(ASTM D-5444)	\$125
Unit Weight on Compacted Sample	(ASTM D-2726)	50
Unit Weight on Core	(ASTM D-2726)	75
Marshall Stability & Flow	(ASTM D-1559)	50
Max. Theoretical Specs. Gravity	(ASTM D-2041)	100
Bitumen Content	(ASTM D-6307)	150
Asphalt Concrete Mix Design		Quote on request
A.C. Series (Marshall)		675
Oven Correction	(ASTM D-6307)	250

- Fees for prevailing wage rate projects available upon request.
- Map filing, checking, consulting, and other fees paid on behalf of the client shall be billed at cost plus fifteen percent (15%).
- Overtime hours will be billed at 1.5 times standard rate where applicable.
- Billing rates include standard testing equipment and truck up to 30 mile radius, after which mileage rates apply.

**Invoices are due upon receipt and considered to be past due after thirty days.**  
**This fee schedule applies to services provided from February 2018 until further notice.**