LYON COUNTY REGIONAL TRANSPORTATION COMMISSION
WEDNESDAY, JUNE 21, 2023
1:00 PM
LYON COUNTY ADMINISTRATIVE COMPLEX
27 S. MAIN STREET
YERINGTON, NV 89447

Join Zoom Meeting:
https://us02web.zoom.us/j/82459181815?pwd=OW9IRkJ6K1hVdW5yYzB3aFhDMjAvQT09
Meeting ID: 824 5918 1815/ Passcode: 491949
Mobile: (669) 444-9171 / (719) 359-4580

Meetings are open to the public and may be attended in person or via virtual Zoom, if available.

Virtual public comment may be given if you are attending the virtual Zoom meeting by raising your hand. This can occur in several ways, including by dialing *9 from your phone to raise your hand and request to speak for public comment. Then to unmute yourself, dial *6.

Written public comments may also be mailed to the Lyon County Clerk-Treasurer's Office at 27 S. Main Street, Yerington, Nevada 89447, or emailed to countyclerks@lyon-county.org, be sure to type, PUBLIC COMMENT in the subject line. Comments must be received the day prior to the date of the meeting by 4:00 P.M. for the comments to be included in the meeting. Any written public comments received after the aforementioned time will be compiled and added as supplemental materials to the County's website and distributed to the Commission within 24 hours after the meeting.

AGENDA

(Action will be taken on all items unless otherwise noted)
(No action will be taken on any item until it is properly agendized).

To avoid meeting disruptions, please place cell phones and beepers in the silent mode or turn them off during the meeting.

The Board reserves the right to take items in a different order to accomplish business in the most efficient manner. Items may be combined for consideration and items may be pulled or removed from the agenda at anytime.
Restrictions on comments by the general public: Any such restrictions must be reasonable and may restrict the time, place and manner of the comments, but may not restrict comments based upon viewpoint.

1. **Roll Call**

2. **Public Participation (no action will be taken on any item until it is properly agendized)** - *It is anticipated that public participation will be held at this time, though it may be returned to at any time during the agenda. Citizens wishing to speak during public participation are asked to state their name for the record and will be limited to 3 minutes. The Board will conduct public comment after discussion of each agenda action item, but before the Board takes any action.*

3. **Review and Adoption of Agenda**

4. **REGULAR AGENDA – (ACTION WILL BE TAKEN ON ALL ITEMS UNLESS OTHERWISE NOTED)**

   4.a. For Possible Action: Appoint the Regional Transportation Commission Chair for 2023

   4.b. For Possible Action: Appoint the Regional Transportation Commission Vice Chair for 2023.

   4.c. For Possible Action: Approve minutes from March 15, 2023 meeting.

   4.d. For Possible Action: Accept and approve the lowest responsive bid for the 2023 RTC Pavement Maintenance Project to Sierra Nevada Construction (SNC) in the amount of $3,981,007.00.

   4.e. For Possible Action: Approve a 10% Contingency for any un-foreseen issues that may arise.

   4.f. For Possible Action: Approve the proposal from Lumos & Associates for the testing and inspection services, in the amount of $176,400.00

   4.g. For Possible Action: Approve Staff to sign any project related documents.

5. **Public Participation (no action will be taken on any item until it is properly agendized)** - *It is anticipated that public participation will be held at this time, though it may be returned to at any time during the agenda. Citizens wishing to speak during public participation are asked to state their name for the record and will be limited to 3 minutes. The Board will conduct public comment after discussion of each agenda action item, but before the Board takes any action.*

6. **Adjourn**

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Pursuant to NRS 241.020, the agenda has been posted at the following locations: Lyon County Administrative Complex (27 S. Main Street, Yerington, NV), the Lyon County Website: https://www.lyon-county.org, and the State Website: https://notice.nv.gov. Supporting documentation for the items on the agenda is available to members of the public at the County Manager’s Office (27 S. Main Street, Yerington, NV), by phone (775)463-6531, or by email requests to countyclerks@lyon-county.org.

Lyon County recognizes the needs and civil rights of all persons regardless of age, race, color, religion, sex, handicap, family status, or national origin. In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race,
color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternate means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible agency or USDA’s TARGET Center at (202) 720-2600 (voice and T) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found on-line at http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) Mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410; Fax: (202) 690-7442; or Email: program.intake@usda.gov

T.D.D. services available through 463-2301 or 463-6620 or 911 (emergency services) notice to persons with disabilities: members of the public who are disabled and require special assistance or accommodations at the meeting are requested to notify the Commissioners’/Manager’s office in writing at 27 S. Main Street, Yerington, NV 89447, or by calling (775) 463-6531 at least 24 hours in advance

Lyon County is an equal opportunity provider.

Agenda and Backup Material is
Available at www.lyon-county.org
The Lyon County Regional Transportation Commission met this day, Thursday, March 15, 2023 at 10:00 a.m. in the LYON COUNTY ADMINISTRATIVE COMPLEX, 27 S. MAIN STREET, YERINGTON, NV 89447.

1. Call to Order

2. Roll Call:
   
   Present: Elmer Bull, Cody Wagner and Wes Henderson

   Shane Martin was present but did not participate in the meeting.

   Staff Present: Roads Director, Dustin Homan and Accounting Supervisor Billie Milligan

3. Public Participation.

   There was none.

4. For possible Action: Review and adoption of agenda

   Elmer Bull made a motion to approve the agenda as presented.

   Cody Wagner seconded.

   The motion passed 3-0.

5. For Possible Action: Approve minutes of May 18, 2022

   Cody Wagner made a motion to approve the minutes.

   Cody Wagner abstained from voting, he was not on the board at the time.

   Elmer Bull seconded and the motion passed 2-0.

6. For Possible Action: Approve bills; Financial Report

   Elmer Bull made a motion to approve the bills and Financial Report as presented.

   Cody Wagner seconded.

   Wes Henderson asked for public comment. There was none.
The motion passed 3-0.

7. For Possible Action: Approve the 2023-2024 RTC Budget

Accounting Supervisor Billie Milligan, representing the Comptroller’s office requested approval allowing Comptroller Josh Foli to make changes based on final revenue projections.

Elmer Bull made a motion to approve the 2023-2024 RTC Budget allowing Comptroller Josh Foli to make changes as needed.

Cody Wagner seconded.

Wes Henderson asked for public participation. There was none.

The motion passed 3-0.

8. For possible Action: Approve to go to bid for the 2023 Lyon County RTC Chip Seal project. The Project will be in the Stagecoach and Silver Springs area. This project will consist of 76.39 miles of roadways, of chip seal, double chip seal, slurry seal, fog seal and crack sealing. Dowl engineering will be doing the bid preparations and Project Management.

Roads Director Dustin Homan gave a presentation on the Silver Springs and Stagecoach projects.

Wes Henderson questioned how much the cost of chip sealing has gone up. Dustin stated it could possibly be lower this year.

Elmer Bull questioned what the difference was between deciding if the road is to be chip sealed or double chip sealed. Dustin Homan stated the condition of the road at the time, larger cracks will get double chip seal and if reconstructing the road was not so costly they would do that instead. Elmer Bull also asked about a contingency fund. Dustin Homan replied that when he comes back before the Board around May to ask for approval of the bid he will ask for a 10% contingency which will come out of the $4.7 Million budget for roads that may have been missed or maybe a road may need a double chip seal by then.
Cody Wagner asked if this project was budgeted from last year. Dustin Homan replied it was not and also explained the process for choosing what roads are repaired every year. Cody Wagner wanted to know if this is all reimbursable or does RTC pay once the bid is approved. Dustin Homan replied that as they received the invoices Comptroller Josh Foli will pay them out of the RTC fund.

Wes Henderson asked for public participation. There was none.

Elmer Bull moved to approve to go to bid for the 2023 Lyon County RTC Chip Seal project in the Stagecoach and Silver Springs area.

Cody Wagner seconded.

The motion passed 3-0.

9. For Possible Action: Approve Dowl engineering to do the bid preparations and Project Management, for a total cost of $65,745.00.

Roads Director Dustin Homan gave a presentation on the purchase of Farr West by Dowl engineering and that being short of staff they need the County Engineer’s assistance.

Cody Wagner made a motion approve Dowl engineering to do the bid preparations and Project Management, for a total cost of $65,745.00.

Elmer Bull seconded.

Wes Henderson asked for public participation. There was none.

The motion passed 3-0

10. For Possible Action: Approve reimbursement request by the City of Yerington in the amount of $850,000.00 for fiscal year 2022 through 2023. The funding request will be applied towards the city of Yerington’s Water and Sewer Project for road rehabilitation, which is currently an ongoing project. The City of Yerington has currently paid an amount of $610,898.84 towards the Water and Sewer Project and also requests reimbursement for the remaining amount of $239,101.16.

City of Yerington Manager Rob Switzer gave a presentation on the water, sewer and road rehabilitation project. In some cases the water and sewer are separated almost as wide as
the road so they are thinking why not add one to two more feet to the project and reconstruct the entire road and have a brand new road. In the areas where they only had to dig a trench for the project they would just use sealant after the trenches are reconstructed. There are many roads that need reconstructed around the City and through a combination of funds, including ARPA funds, they have been able to repair the entire road.

Late backup was provided for invoices and payments made by the City of Yerington to Q & D Construction.

Elmer Bull verified the amount the City has already spent and the amount they are requesting to be reimbursed for and asked if it is common practice to reimburse before an entity has spent the money. Accounting Supervisor Billie Milligan stated they usually need an invoice before they will payout.

Roads Director Dustin Homan will call another meeting for bid approval once they receive the bids. This will probably be in May.

Wes Henderson asked Mr. Switzer if he was good with coming back for the additional amount after he has the invoices, he said he absolutely was ok with coming back.

Cody Wagner questioned if all the funds requested were coming out of the main account. Mr. Switzer said the main account although Comptroller Josh Foli would have the final say on this. They have budgeted with the County and anything over would probably come out of ARPA funds.

Wes Henderson asked for public participation. There was none.

Wes Henderson made a motion to approve reimbursement request by the City of Yerington in the amount of $610,898.84 for the Water and Sewer Project for fiscal year 2022 through 2023.

Cody Wagner seconded.

The motion passed 3-0.

11. **Public Participation**

There was none.

12. **Adjourn**
Meeting was adjourned at 10:37 a.m.

LYON COUNTY REGIONAL TRANSPORTATION COMMITTEE

__________________________________________
Chairman

ATTEST:

__________________________________________
STACI LINDBERG, Lyon County Clerk/Treasurer
June 7, 2023

Dustin Homan, Road & Fleet Director
Lyon County Road Department
18 Highway 95A North
Yerington, Nevada 89447

Re: Recommendation of Award for 2023 County Resurfacing Project

Dear Mr. Homan

On June 6, 2023 DOWL held a bid opening for the 2023 County Roadway Resurfacing project on behalf of Lyon County Road Department. A single bid was received by Sierra Nevada Construction, Inc. with a bid price of $3,981,007.00.

DOWL has evaluated the Sierra Nevada Construction, Inc. Bid and finds that it complies with the prescribed requirements of the Bid Form, and therefore is considered “responsive”. We have also performed a due diligence check on the company by checking provided references, System for Award Management, Nevada State Contractor’s Board, Secretary of State, and the Labor Commissioner. The references were all positive; the consensus is that Sierra Nevada Construction, Inc. is qualified to perform and complete the work associated with this project. A search with the Contractor’s Board shows no disciplinary action against them and they are within their licensed limits. A search of the Secretary of State shows that they are in good standing. Lastly, a search of the Labor Commissioner shows no actions, pending or filed, against them.

Sierra Nevada Construction, Inc. has over 30 years of experience in the construction industry and has performed similar projects in the past. Based on a review of their bid and background check, DOWL finds Sierra Nevada Construction, Inc. as being a “responsible” Bidder and we recommend awarding them the Construction Contract.

I have attached the bid tab for your reference.

If you have any questions or require additional information regarding this letter, please feel free to contact me.

Sincerely,

Keith Karpstein, P.E.
Senior Engineer

Attached: Bid Tab
# BID OPENING FORM

**Lyon County Road Department**

**2023 County Roadway Resurfacing**

**Bid Opening Location:** PlanBids  
**Date:** Tuesday, June 6, 2023  
**Time:** 2:00 PM  
**Owner:** Lyon County Road Department  
**Engineer:** DOWL

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<th>Bid Item</th>
<th>Description</th>
<th>Quantity</th>
<th>Units</th>
<th>Unit Price</th>
<th>Total</th>
<th>Engineer's Opinion of Probable Cost</th>
<th>Sierra Nevada Construction</th>
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<tr>
<td>1</td>
<td>Mobilization and Demobilization</td>
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<td>Install Double Chip Seal w/Fog Seal</td>
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**Base Bid Total:**  
$4,013,945.05  
$3,981,007.00

**PERCENTAGE OF ENGINEER’S ESTIMATE**  
99%
February 28, 2023

Lyon County Public Works
Attn: Dustin Homan
PO Box 1699
Dayton, NV 89403
Email: dhoman@lyon-county.org

Subject: Proposal to provide Inspection and Materials Testing Services
Lyon County RTC 2023 Pavement Maintenance Project
Stagecoach and Silver Springs Areas

Dear Mr. Homan:

Lumos & Associates, Inc. is pleased to have the opportunity to provide this proposal for the above mentioned project. We understand our scope of services is to provide inspection and materials testing services as required by the plans, specifications and "The Standard Specifications for Public Works Construction". The following is our estimated cost to provide the required inspection materials testing services:

Crack Sealing/Slurry Seal/Chip Seal/Fog Seal/Striping Inspection Testing and Sampling:

80 days x 10 hrs/day x $120/hr = $96,000

In addition to the above mentioned field materials tests, we will provide the laboratory testing as follows:

1 Sand Equivalents/Gradations/Durability Test x $650 each = $650
15 Gradations/Fractured Faces/Cleanliness Values x $550 each = $8,250
1 Binder Series x $1,500 each = $1,500
70 Viscosity Tests x $500 each = $35,000
1 % Residue/Softening Point x $400 each = $400

We will also provide a technician to pick up and deliver samples to our laboratory.

70 visits x 2 hrs/visit x $120/hr = $16,800

At the conclusion of the project, we will prepare a final inspection and materials testing package for submittal to Lyon County Public Works Department that will be reviewed and stamped by a Professional Engineer. The estimated cost to prepare this package is $1,800.

Administrative Services associated with the above scope of work is estimated at 10% of the above costs. Administrative Services including Technical Typist, Construction Services Engineer, and Construction Services Supervisor. We can provide these services for an estimated cost of $16,000.
Our total estimated cost to provide the above mentioned scope of work is $176,400.

Additional tests and inspections, outside of this scope of work, can be provided on a time and materials basis per our current fee schedule. Re-inspections and standby time are not part of our estimated cost and will be billed on a time and materials basis. Prevailing wages were not assumed for our inspectors/technicians. If prevailing wages are required, the above additional costs will be adjusted accordingly.

You can authorize Lumos to complete the above scope of services by completing the attached forms.

If you have any questions, please do not hesitate to contact me at 775.883.7077.

Sincerely,

[Signature]

Mitch Burns, P.E.
Materials Engineering Manager

Attached: Contract
Provisions
AGREEMENT
To Engage the Services of
LUMOS & ASSOCIATES, INC.

THIS AGREEMENT, entered into on the 28th day of February 2023, by and between Lyon County Public Works whose mailing address is 1699 Dayton, NV 89403 herein called “CLIENT,” and LUMOS & ASSOCIATES, INC., hereinafter called “CONSULTANT,” is as follows:

CLIENT intends to pursue work on Lyon County RTC 2023 Pavement Maintenance (Project Name)

hereinafter called the "PROJECT" and whose location is Lyon County, NV

THE CLIENT/contact person for this project is Dustin Homan

Phone 775-463-6551 Email dhoman@lyon-county.org

CLIENT and CONSULTANT, for mutual consideration hereinafter set forth, agree as follows:

A. CONSULTANT agrees to perform certain consulting, design, advisory, surveying, and/or testing services for CLIENT as follows: See proposal attached hereto as Exhibit "A"

B. CLIENT agrees to pay CONSULTANT as compensation for his/her services as follows:

See proposal attached hereto as Exhibit "A"

This Agreement does not include any agency fees advanced on the CLIENT’s behalf. All fees advanced for this project will be assessed a 15% handling fee in accordance with company policy. Should CLIENT wish to avoid the 15% charge, all agency and outside fees will be required 24 hours prior to submittal deadline.

C. CLIENT agrees to provide the following to CONSULTANT to aid in his/her work:

See proposal attached hereto as Exhibit “A”

D. CONSULTANT will begin work on or about February 20, 2023; and have said work completed See proposal attached hereto as Exhibit "A"

CONSULTANT contact for this project is Mitch Burns Phone (775) 883-7077

The attached Standard Provisions of Agreement are incorporated hereinto and made a part of this Agreement. In the event of any conflicts or inconsistencies between the terms contained in Exhibit “A” and those contained in the Standard Provisions of Agreement, the terms of the Standard Provisions of Agreement shall govern and control.

All notices, requests, demands, and other communications required under this Agreement shall be in writing and shall be deemed duly given and received: (i) if personally delivered, on the date of delivery; (ii) if mailed, three (3) days after deposit in the United States Mail, registered or certified, return receipt requested, postage prepaid; and/or (iii) if by a courier delivery service providing overnight or “next-day” delivery, on the next business day after deposit with such service. All written communications shall be addressed to CONSULTANT at 9222 Prototype Drive, Reno, NV 89521, or to CLIENT at the address written above.

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this Agreement upon the terms, conditions, and provisions written above and incorporated herein as set forth in the attached, on the date first written above.

CONSULTANT:
PRINT Mitch Burns, P.E.
SIGN
TITLE Material Engineering Manager
DATE 02/28/2023

CLIENT:
PRINT
SIGN
TITLE
DATE
STANDARD PROVISIONS OF AGREEMENT

1. AGREEMENT

These Standard Provisions of Agreement are deemed part of the attached Agreement. As used herein, the term "Agreement" will mean the attached Agreement, the Proposal attached thereto as Exhibit "A," these Standard Provisions of Agreement, and any other exhibits attached hereto and specifically incorporated herein. Consultant shall provide for the Client the scope of services described in the referenced Proposal, and all services not specifically described therein are excluded from Consultant's scope of services.

2. BILLING AND PAYMENT

Fees and other charges shall be billed monthly as the work progresses and shall be due and payable at the time of billing. Ten (10) days are allowed for processing payment, and any unpaid balance remaining twenty (20) days after the date of the original invoice shall be considered past due. Any unpaid balance remaining thirty (30) days after the date of the original invoice shall be considered Critically Past Due. Consultant reserves the right to suspend services on accounts with outstanding balances that are Critically Past Due. Consultant shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension. Upon payment in full by the Client, Consultant shall resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension. In the event Client fails to pay Consultant within forty-five (45) days or more after invoices are rendered, Client agrees that Consultant shall have the right in its sole discretion to consider said default a material breach of the Agreement and the duties of Consultant under this Agreement terminated, without requiring the seven (7) days written advance notice otherwise required for termination pursuant to Section hereof.

Any payment not received within thirty (30) days of date of the original invoice shall accrue interest at the rate of eighteen percent (18%) per annum.

Client hereby agrees that the balance as stated on any invoice from Consultant to Client is correct and is acceptable to Client unless, within ten (10) days from the date of the original invoice, Client notifies Consultant in writing of the particular item that is alleged to be in error or is otherwise in dispute.

Client shall pay the costs for checking and inspection fees, zoning and annexation applications fees, assessment fees, soils engineering fees, soils testing fees, aerial topography fees, and all other fees, permits, bond premiums, title company charges, blueprints and reproductions, and all other charges not specifically covered by the terms of this Agreement.

For projects that extend for more than one (1) year from the date of the Agreement, Consultant shall be entitled to an increase in fees in proportion to the increase in the Consumer Price Index over the preceding year, for the duration of the Agreement.

3. TERMINATION

This Agreement may be terminated by either party upon seven (7) days advance written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

In the event all or any portion of the services performed or partially performed by Consultant be suspended, abandoned, or terminated, Client shall pay Consultant for all fees, charges and services provided up to the date of termination. In return, Consultant shall provide Client with copies of all drawings, specifications and reports prepared or partially prepared up to the date of termination, at Client's expense and for use solely with respect to the Project. Payment in full up to the date of termination shall be a condition precedent to Consultant's providing copies of all drawings, specifications and reports, regardless of the pendency of any dispute.

4. ADDITIONAL SERVICES

Client may request that Consultant provide services beyond those set forth in Consultant's Proposal ("Additional Services"). The scope of such Additional Services and the compensation therefore shall be as mutually agreed upon in writing by Client and Consultant prior to commencement of such Additional Services.

The Consultant shall comply with applicable laws, codes and regulations in effect as of the date it provides its services pursuant to the standard of care in the industry. Changes to Consultant's services made necessary by newly enacted laws, codes and regulations after such date shall entitle the Consultant to a reasonable adjustment in the schedule and additional compensation in accordance with this Additional Services provision. In addition, the Consultant shall be entitled to rely reasonably on interpretations and approvals given by government officials with responsibility for enforcing such laws, codes, and regulations and shall not be responsible for changes made by such officials to interpretations or approvals previously given.
5. **STANDARD OF CARE**

Consultant shall perform its services in a manner consistent with the level of care and skill ordinarily exercised by members of Consultant's profession currently practicing in the same locality under similar circumstances and with reasonable diligence and expediency consistent with sound professional practices ("Standard of Care"). Nothing contained herein shall be construed to constitute a guarantee, warranty or assurance, either express or implied of the services to be provided herein.

6. **COST ESTIMATES**

Consultant makes no representation concerning estimates of construction costs other than that these are estimates only and Consultant shall not be responsible for fluctuations in cost factors. Any such estimates prepared or agreed to by Consultant represent the Consultant's judgment as a design professional. It is recognized that neither the Consultant nor the Client has control over the cost of labor, materials or equipment; the contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Consultant cannot and does not warrant or represent that bids or negotiated prices will not vary from the Client's budget or from any estimate of construction cost prepared or agreed to by the Consultant.

7. **LIMITATIONS ON RESPONSIBILITIES**

Consultant shall not be responsible for the acts or omissions of the Client, Client's other consultants, contractors, subcontractors, their agents or employees, or other persons providing work or services on the Project. Consultant does not guarantee the completion or quality of performance of work performed by the construction contractor(s) or other third parties. Site safety is the sole responsibility of the contractor. Consultant shall neither have control over nor be in charge of, nor be responsible for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with work for the Project.

Unless retained to perform a geotechnical investigation, Consultant makes no representations concerning soil conditions and Consultant is not responsible for any liability that may arise out of the making or failure to make soils surveys, or subsurface soil tests, or general soil testing.

Unless specifically included in the Proposal's scope of services, Consultant is neither responsible for notifying Client of any expiration or renewal dates for permits and/or approvals of any type or description, nor for renewing or requesting a renewal from any agency, municipality, or authority of any permits and/or approvals that may be due to expire.

8. **OWNERSHIP OF DOCUMENTS**

Drawings, details, specifications, reports, and other documents prepared by Consultant, including those in electronic form, are instruments of service for use solely with respect to this Project. Consultant shall be deemed the author and owner of the Consultant's instruments of service and shall retain all common law, statutory and other reserved rights, including copyrights. Upon execution of this Agreement Consultant grants to Client a nonexclusive license to reproduce the Consultant's Instruments of Service solely for purposes of the Project, provided the Client shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. Client shall not use the instruments of service for future additions or alterations to this Project or for other projects without Consultant's prior written consent. Any unauthorized use, reuse or modifications of the instruments of service shall be at the Client's sole risk and without liability to Consultant, and Client agrees to defend, indemnify and hold harmless Consultant from all claims and damages arising out of or purported to arise out of the use, reuse, or modification of the Instruments of Service.

9. **INDEMNIFICATION**

Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Consultant from and against any claims, damages, liabilities, suits, demands, losses, expenses or costs (including reasonable attorneys' fees and costs of defense) ("Claims"), to the extent caused by Client's negligent acts, errors, or omissions and those of its contractors, subcontractors or consultants or anyone for whom Client is legally liable, except for claims or litigation arising through the sole negligence or willful misconduct of Consultant.

Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless Client from and against any claims, damages, liabilities, suits, demands, losses, expenses to the extent they are determined to have been caused by the negligent acts, errors or omissions of Consultant or anyone for whom Consultant is legally liable, to the extent consistent with the Limitation of Liability provision herein. Consultant shall not have an obligation to indemnify and hold harmless Client for claims or litigation arising through the sole negligence or willful misconduct of Client or anyone for whom Client is legally liable.

Neither party shall have an upfront duty to defend the other but shall reimburse reasonably incurred defense fees and costs (for fees and costs actually incurred in defending claims attributable to the other party's fault) to the extent of its indemnity obligation herein. Neither the Client nor the Consultant shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.
February 28, 2023

Lyon County Public Works
Attn: Dustin Homan
PO Box 1699
Dayton, NV 89403
Email: dhoman@lyon-county.org

Subject: Proposal to provide Inspection and Materials Testing Services
Lyon County RTC 2023 Pavement Maintenance Project
Stagecoach and Silver Springs Areas

Dear Mr. Homan:

Lumos & Associates, Inc. is pleased to have the opportunity to provide this proposal for the above mentioned project. We understand our scope of services is to provide inspection and materials testing services as required by the plans, specifications and “The Standard Specifications for Public Works Construction”. The following is our estimated cost to provide the required inspection materials testing services:

Crack Sealing/Slurry Seal/Chip Seal/Fog Seal/Striping Inspection Testing and Sampling:

80 days x 10 hrs/day x $120/hr = $96,000

In addition to the above mentioned field materials tests, we will provide the laboratory testing as follows:

- 1 Sand Equivalents/Gradations/Durability Test x $650 each = $650
- 15 Gradations/Fractured Faces/Cleanness Values x $550 each = $8,250
- 1 Binder Series x $1,500 each = $1,500
- 70 Viscosity Tests x $500 each = $35,000
- 1 % Residue/Softening Point x $400 each = $400

We will also provide a technician to pick up and deliver samples to our laboratory.

70 visits x 2 hrs/visit x $120/hr = $16,800

At the conclusion of the project, we will prepare a final inspection and materials testing package for submittal to Lyon County Public Works Department that will be reviewed and stamped by a Professional Engineer. The estimated cost to prepare this package is $1,800.

Administrative Services associated with the above scope of work is estimated at 10% of the above costs. Administrative Services including Technical Typist, Construction Services Engineer, and Construction Services Supervisor. We can provide these services for an estimated cost of $16,000.
Our total estimated cost to provide the above mentioned scope of work is $176,400.

Additional tests and inspections, outside of this scope of work, can be provided on a time and materials basis per our current fee schedule. Re-inspections and standby time are not part of our estimated cost and will be billed on a time and materials basis. Prevailing wages were not assumed for our inspectors/technicians. If prevailing wages are required, the above additional costs will be adjusted accordingly.

You can authorize Lumos to complete the above scope of services by completing the attached forms.

If you have any questions, please do not hesitate to contact me at 775.883.7077.

Sincerely,

Mitch Burns, P.E.
Materials Engineering Manager

Attached: Contract
Provisions
AGREEMENT
To Engage the Services of
LUMOS & ASSOCIATES, INC.

THIS AGREEMENT, entered into on the 28 day of February 20 23, by and between Lyon County Public Works whose mailing address is PO Box 1699, Dayton, NV 89403 hereinafter called “CLIENT,” and LUMOS & ASSOCIATES, INC., hereinafter called “CONSULTANT,” is as follows:

CLIENT intends to pursue work on Lyon County RTC 2023 Pavement Maintenance (Project Name) hereinafter called the “PROJECT” and whose location is Lyon County, NV

THE CLIENT/contact person for this project is Dustin Homan

Phone 775-463-6551 Email dhoman@lyon COUNTY.O.G

CLIENT and CONSULTANT, for mutual consideration hereinafter set forth, agree as follows:

A. CONSULTANT agrees to perform certain consulting, design, advisory, surveying, and/or testing services for CLIENT as follows: See proposal attached hereto as Exhibit “A”

B. CLIENT agrees to pay CONSULTANT as compensation for his/her services as follows: See proposal attached hereto as Exhibit “A”

This Agreement does not include any agency fees advanced on the CLIENT’s behalf. All fees advanced for this project will be assessed a 15% handling fee in accordance with company policy. Should CLIENT wish to avoid the 15% charge, all agency and outside fees will be required 24 hours prior to submittal deadline.

C. CLIENT agrees to provide the following to CONSULTANT to aid in his/her work:

See proposal attached hereto as Exhibit “A”

D. CONSULTANT will begin work on or about February 20 23; and have said work completed See proposal attached hereto as Exhibit “A”

CONSULTANT contact for this project is Mitch Burns Phone (775) 883-7077

The attached Standard Provisions of Agreement are incorporated hereinto and made a part of this Agreement. In the event of any conflicts or inconsistencies between the terms contained in Exhibit “A” and those contained in the Standard Provisions of Agreement, the terms of the Standard Provisions of Agreement shall govern and control.

All notices, requests, demands, and other communications required under this Agreement shall be in writing and shall be deemed duly given and received: (i) if personally delivered, on the date of delivery; (ii) if mailed, three (3) days after deposit in the United States Mail, registered or certified, return receipt requested, postage prepaid; and/or (iii) if by a courier delivery service providing overnight or “next-day” delivery, on the next business day after deposit with such service. All written communications shall be addressed to CONSULTANT at 9222 Prototype Drive, Reno, NV 89521, or to CLIENT at the address written above.

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this Agreement upon the terms, conditions, and provisions written above and incorporated herein as set forth in the attached, on the date first written above.

CONSULTANT:
PRINT Mitch Burns, P.E.
SIGN
TITLE Materials Engineering Manager
DATE 02/28/2023

CLIENT:
PRINT
SIGN
TITLE
DATE

Page 1 of 5 Effective Feb. 2018
1. AGREEMENT

These Standard Provisions of Agreement are deemed part of the attached Agreement. As used herein, the term "Agreement" will mean the attached Agreement, the Proposal attached hereto as Exhibit "A," these Standard Provisions of Agreement, and any other exhibits attached hereto and specifically incorporated herein. Consultant shall provide for the Client the scope of services described in the referenced Proposal, and all services not specifically described therein are excluded from Consultant's scope of services.

2. BILLING AND PAYMENT

Fees and other charges shall be billed monthly as the work progresses and shall be due and payable at the time of billing. Ten (10) days are allowed for processing payment, and any unpaid balance remaining twenty (20) days after the date of the original invoice shall be considered past due. Any unpaid balance remaining thirty (30) days after the date of the original invoice shall be considered critically past due. Consultant reserves the right to suspend services on accounts with outstanding balances that are critically past due. Consultant shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension. Upon payment in full by the Client, Consultant shall resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension. In the event Client fails to pay Consultant within forty-five (45) days or more after invoices are rendered, Client agrees that Consultant shall have the right in its sole discretion to consider said default a material breach of the Agreement and the duties of Consultant under this Agreement terminated, without requiring the seven (7) days written advance notice otherwise required for termination pursuant to Section hereof.

Any payment not received within thirty (30) days of the date of the original invoice shall accrue interest at the rate of eighteen percent (18%) per annum.

Client hereby agrees that the balance as stated on any invoice from Consultant to Client is correct and is acceptable to Client unless, within ten (10) days from the date of the original invoice, Client notifies Consultant in writing of the particular item that is alleged to be in error or is otherwise in dispute.

Client shall pay the costs for checking and inspection fees, zoning and annexation applications fees, assessment fees, soils engineering fees, soils testing fees, aerial topography fees, and all other fees, permits, bond premiums, title company charges, blueprints and reproductions, and all other charges not specifically covered by the terms of this Agreement.

For projects that extend for more than one (1) year from the date of the Agreement, Consultant shall be entitled to an increase in fees in proportion to the increase in the Consumer Price Index over the preceding year, for the duration of the Agreement.

3. TERMINATION

This Agreement may be terminated by either party upon seven (7) days advance written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

In the event all or any portion of the services performed or partially performed by Consultant be suspended, abandoned, or terminated, Client shall pay Consultant for all fees, charges and services provided up to the date of termination. In return, Consultant shall provide Client with copies of all drawings, specifications and reports prepared or partially prepared up to the date of termination, at Client's expense and for use solely with respect to the Project. Payment in full up to the date of termination shall be a condition precedent to Consultant's providing copies of all drawings, specifications and reports, regardless of the pendency of any dispute.

4. ADDITIONAL SERVICES

Client may request that Consultant provide services beyond those set forth in Consultant's Proposal ("Additional Services"). The scope of such Additional Services and the compensation therefore shall be as mutually agreed upon in writing by Client and Consultant prior to commencement of such Additional Services.

The Consultant shall comply with applicable laws, codes and regulations in effect as of the date it provides its services pursuant to the standard of care in the industry. Changes to Consultant's services made necessary by newly enacted laws, codes and regulations after such date shall entitle the Consultant to a reasonable adjustment in the schedule and additional compensation in accordance with this Additional Services provision. In addition, the Consultant shall be entitled to rely reasonably on interpretations and approvals given by government officials with responsibility for enforcing such laws, codes, and regulations and shall not be responsible for changes made by such officials to interpretations or approvals previously given.
5. **STANDARD OF CARE**

Consultant shall perform its services in a manner consistent with the level of care and skill ordinarily exercised by members of Consultant's profession currently practicing in the same locality under similar circumstances and with reasonable diligence and expediency consistent with sound professional practices ("Standard of Care"). Nothing contained herein shall be construed to constitute a guarantee, warranty or assurance, either express or implied of the services to be provided herein.

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Consultant makes no representation concerning estimates of construction costs other than that these are estimates only and Consultant shall not be responsible for fluctuations in cost factors. Any such estimates prepared or agreed to by Consultant represent the Consultant's judgment as a design professional. It is recognized that neither the Consultant nor the Client has control over the cost of labor, materials or equipment; the contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Consultant cannot and does not warrant or represent that bids or negotiated prices will not vary from the Client's budget or from any estimate of construction cost prepared or agreed to by the Consultant.

7. **LIMITATIONS ON RESPONSIBILITIES**

Consultant shall not be responsible for the acts or omissions of the Client, Client's other consultants, contractors, subcontractors, their agents or employees, or other persons providing work or services on the Project. Consultant does not guarantee the completion or quality of performance of work performed by the construction contractor(s) or other third parties. Site safety is the sole responsibility of the contractor. Consultant shall neither have control over nor be in charge of, nor be responsible for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with work for the Project.

Unless returned to perform a geotechnical investigation, Consultant makes no representations concerning soil conditions and Consultant is not responsible for any liability that may arise out of the making or failure to make soils surveys, or subsurface soil tests, or general soil testing.

Unless specifically included in the Proposal's scope of services, Consultant is neither responsible for notifying Client of any expiration or renewal dates for permits and/or approvals of any type or description, nor for renewing or requesting a renewal from any agency, municipality, or authority of any permits and/or approvals that may be due to expire.

8. **OWNERSHIP OF DOCUMENTS**

Drawings, details, specifications, reports, and other documents prepared by Consultant, including those in electronic form, are instruments of service for use solely with respect to this Project. Consultant shall be deemed the author and owner of the Consultant's instruments of service and shall retain all common law, statutory and other reserved rights, including copyrights. Upon execution of this Agreement Consultant grants to Client a nonexclusive license to reproduce the Consultant's Instruments of Service solely for purposes of the Project, provided the Client shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. Client shall not use the instruments of service for future additions or alterations to this Project or for other projects without Consultant's prior written consent. Any unauthorized use, reuse or modifications of the instruments of service shall be at the Client's sole risk and without liability to Consultant, and Client agrees to defend, indemnify and hold harmless Consultant from all claims and damages arising out of or purported to arise out of the use, reuse, or modification of the Instruments of Service.

9. **INDEMNIFICATION**

Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Consultant from and against any claims, damages, liabilities, suits, demands, losses, expenses or costs (including reasonable attorneys' fees and costs of defense) ("Claims"), to the extent caused by Client's negligent acts, errors, or omissions and those of its contractors, subcontractors or consultants or anyone for whom Client is legally liable, except for claims or litigation arising through the sole negligence or willful misconduct of Consultant.

Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless Client from and against any claims, damages, liabilities, suits, demands, losses, expenses to the extent they are determined to have been caused by the negligent acts, errors or omissions of Consultant or anyone for whom Consultant is legally liable, to the extent consistent with the Limitation of Liability provision herein. Consultant shall not have an obligation to indemnify and hold harmless Client for claims or litigation arising through the sole negligence or willful misconduct of Client or anyone for whom Client is legally liable.

Neither party shall have an upfront duty to defend the other but shall reimburse reasonably incurred defense fees and costs (for fees and costs actually incurred in defending claims attributable to the other party's fault) to the extent of its indemnity obligation herein. Neither the Client nor the Consultant shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.
10. **RIGHT OF ENTRY**

Client shall secure the permission necessary to allow Consultant’s personnel and equipment access to the project site and any adjacent properties necessary to perform the services at no cost to Consultant. While Consultant will take all reasonable precautions to minimize any damages to the property, it is understood by the Client that in the normal course of field work some damage may occur, the correction of which is not part of this Agreement.

11. **SAMPLES**

Samples obtained for materials testing will be discarded upon completion of testing, and portions of samples not tested or unused shall be preserved for not longer than thirty (30) days.

12. **GOVERNING LAW; DISPUTES**

This Agreement shall be governed by the laws of the state, in which the Project is located, and all dispute resolution proceedings shall be venued in the county and state in which the services are rendered unless the parties mutually agree otherwise in writing.

The parties agree to first endeavor in good faith to resolve any dispute arising out of or related to this Agreement by mediation pursuant to the Construction Industry Mediation Rules of the American Arbitration Association or JAMS. Mediation shall be a condition precedent to the instigation of any legal proceedings. If the claim or controversy is not resolved by mediation, the claim or controversy may be resolved by final and binding arbitration, if the parties so mutually agree in writing prior to the commencement of any arbitration proceeding. Absent express mutual consent to arbitrate, all disputes shall be litigated in a court of competent jurisdiction in the state in which the Project is located.

13. **NO THIRD PARTY BENEFICIARIES**

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Consultant.

14. **WAIVER OF CONSEQUENTIAL DAMAGES**

Notwithstanding any other provision in this Agreement, and to the fullest extent permitted by law, neither the Consultant nor the Client shall be liable to the other for, or shall make, any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, damage to reputation or any other consequential damages either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty.

15. **FORCE MAJEURE**

Client and Consultant are aware that many factors outside the Consultant’s control may affect the Consultant’s ability to complete the services to be provided under this Agreement. Client agrees that Consultant is not responsible for damages arising directly or indirectly from any delays for causes beyond Consultant’s control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters; fires, riots, war or other emergencies or acts of God; failure of any government agency to act in a timely manner; failure of performance by Client or Client’s contractors or consultants; or discovery of any hazardous substances or differing site conditions.

16. **SOLE CORPORATE REMEDY**

It is intended by the parties to this Agreement that the Client’s obligations and Consultant’s services in connection with the Project shall not subject the Client’s or Consultant’s individual shareholders, officers, directors, members, managers or employees to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, the parties agree that as their sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against the business entities that are the parties to this Agreement and not against any of the parties’ individual shareholders, officers, directors, members, managers or employees, except for acts of willful misconduct or as otherwise prohibited by law.

17. **HAZARDOUS MATERIALS**

The Consultant shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. In the event the Consultant or any other party encounters any
hazardous materials, or should it become known to the Consultant that such materials may be present on or about the jobsite or any adjacent areas that may affect the performance of the Consultant's services, the Consultant may, at its option and without liability for consequential or any other damages, suspend performance of its services under this Agreement until the Client retains appropriate consultants or contractors to identify and abate or remove the hazardous or toxic materials and warrants that the jobsite is in full compliance with all applicable laws and regulations. Consultant shall not be responsible for locating or abating any hazardous materials.

18. LIMITATION OF LIABILITY

In recognition of the relative risks and benefits of the Project to both the Client and the Consultant relating to Consultant's provision of services in accordance with this Agreement, the risks have been allocated such that the Client agrees that Consultant's total liability to Client for any and all injuries, claims, losses, expenses or damages whatsoever (including attorneys' fees and costs and expert witness fees and costs) arising out of or in any way related to the services provided for the Project and/or under this Agreement, regardless of theories of liability or causes of action asserted (unless otherwise prohibited by law) including, but not limited to, allegations of Consultant's negligence, errors, omissions, strict liability, breach of contract or breach of warranty, shall not exceed the total sum of $50,000 or the total amount of fees paid to Consultant under this Agreement, whichever is less. In no event shall Consultant's liability exceed the sum of Consultant's available professional liability insurance coverage at the time of settlement or judgment. Client and Consultant hereby acknowledge that this provision was expressly negotiated and agreed upon.

19. MISCELLANEOUS

(a) Client and Consultant each respectively bind themselves, their partners, successors, executors, administrators, and assigns to the Agreement.

(b) Client agrees to cooperate fully with Consultant on the Project and to provide any and all information and/or documents reasonably necessary for Consultant to perform the agreed scope of services as detailed in the Agreement, and Consultant shall be entitled to rely upon the accuracy and completeness thereof.

(c) Neither Client nor Consultant shall assign its interest in the Agreement without the prior express written consent of the other.

(d) It is expressly understood that Consultant is an independent contractor and in no event will the Consultant, its agents, employees, representatives, or servants, be considered as the agent, employee, representative or servant of Client. Nothing contained in this Agreement or any action by Consultant shall be construed to impose a fiduciary duty on Consultant or create a fiduciary relationship between Consultant and Client or between Consultant and any third party.

(e) If any provision of this Agreement is invalid or unenforceable, such provision shall (i) be modified to the minimum extent necessary to render it valid and enforceable, or (ii) if it cannot be so modified, be deemed not to be a part of this Agreement and shall not affect the validity or enforceability of the remaining provisions.

(f) Waiver of any provision of this Agreement by either party shall not be deemed to constitute a waiver of any other provision of this Agreement, nor shall such waiver constitute a continuing waiver.

(g) This Agreement, and the attachments hereto, shall constitute the entire understanding between the parties, and no modification shall be binding unless in writing and signed by the parties.

20. RETAINER

Client agrees to deposit the sum of $0 as a retainer, receipt of which is a prerequisite for Consultant to perform services for Client. The retainer will be held by Consultant to secure payment of Consultant's invoices in Consultant's general accounts with all benefits accruing to Consultant. Consultant, at its sole discretion, may apply the retainer to any outstanding invoices which Client has failed to pay in the time frames set forth in this Agreement; however, nothing herein shall be interpreted to relieve Client from paying Consultant's invoices as set forth in this Agreement. If any portion of the retainer is applied to an outstanding invoice, Client shall, within five (5) days of Consultant's request, replenish the retainer account to the original amount listed herein. The retainer, or unused portion thereof, shall be refunded to Client within thirty (30) days after Consultant's services conclude or termination of this Agreement, whichever comes first, provided that there is no balance owed to Consultant. If a balance is owed to Consultant when services conclude or this Agreement is terminated, Consultant will be refunded the difference between the amount owed and the remaining retainer, if any. Nothing herein shall limit Consultant's rights to collect any remaining balance owed by Client once the retainer is depleted.
### Paint Striping

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<th>Broken Yellow</th>
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**Total**

### Thermal Plastics needing to be grinded

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**Total**

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