

## AGREEMENT

This Agreement made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Reno, hereinafter referred to as the “CITY”, and Lumos & Associates, Inc., hereinafter referred to as “CONSULTANT”:

### WITNESSETH:

WHEREAS, CITY desires to obtain Construction Inspection Services for the 2023 Reno Preventative Maintenance Project, hereinafter referred to as “Project;”

WHEREAS, public convenience and necessity require the services of a consulting CONSULTANT to provide the services required;

WHEREAS, the CITY has found CONSULTANT qualified and experienced in the performance of said services;

WHEREAS, the CITY is desirous of engaging the services of CONSULTANT to perform said services; and

NOW, THEREFORE, said CITY and said CONSULTANT, for the considerations hereinafter set forth, mutually agree as follows:

### ARTICLE I - SERVICES

- A. CITY agrees to retain and does hereby retain CONSULTANT to perform the professional services hereinafter more particularly described, with such services to commence on the date of the execution of this Agreement and to continue until the completion of the work provided for herein.
- B. CONSULTANT hereby agrees to perform the professional services as set forth herein and to furnish or procure the use of incidental services, equipment, and facilities necessary for the completion of said services.
- C. CONSULTANT has the status of an independent contractor as defined in NRS 333.700 and shall not be entitled to any of the rights, privileges, benefits, and emoluments of either an officer or employee of CITY. CONSULTANT shall undertake performance of services as independent contractor and shall be wholly responsible for the methods of performance and for their performance.

## ARTICLE II - SCOPE OF SERVICES

A. The Scope of Services is set forth in Exhibit A as attached hereto and incorporated herein by this reference.

## ARTICLE III - COMPENSATION

A. Payment for the services hereinabove set forth shall be made by the CITY to the CONSULTANT and shall be considered as full compensation for all personnel, materials, supplies, and equipment used in carrying out the work.

B. Compensation to the CONSULTANT shall be Time and Materials as set Exhibit A per the Fee Schedule as set forth in Exhibit B, which are attached hereto and incorporated herein by this reference.

C. Payments shall be made by the CITY based on itemized invoices from the CONSULTANT which lists costs and expenses. Such payments shall be for the invoice amount.

C. CITY shall pay CONSULTANT within 30 days of receipt by CITY of CONSULTANT's invoice. If CITY disputes only portions of an invoice, CITY agrees to pay for undisputed items on that invoice within the time provided herein. Payment by CITY of invoices or request for payment shall not constitute acceptance by CITY of work performed under the Agreement by the CONSULTANT.

E. The not-to-exceed budget for the services authorized by this Agreement is the sum of \$161,735.00 and shall not be exceeded without written authorization of the CITY. The budget may be increased by amendment hereto if necessitated by a change in the scope of services which increases the cost of providing the services. CONSULTANT is not authorized to provide any additional services beyond the scope of work without having authorized funding pursuant to a written amendment hereto signed by the authorized representative of the governing body.

## ARTICLE IV - SCHEDULE OF WORK

A. CONSULTANT will commence the services as described immediately following the Notice to Proceed provided to the CONSULTANT by the CITY and will proceed with such services in a diligent manner per the schedule in Exhibit A. CONSULTANT will not be responsible for delays caused by factors beyond CONSULTANT's control and will not be responsible for delays caused by factors which could not reasonably have been foreseen at the time the Agreement was approved.

## ARTICLE V - ASSIGNMENT OF AGREEMENT

A. The CONSULTANT SHALL not assign this Contract or any portion of the work without prior written approval of the CITY which may be withheld for any reason whatsoever.

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## ARTICLE VI- OWNER'S RESPONSIBILITY

A. CITY shall provide any information in its possession that is requested by CONSULTANT and is necessary to complete the Project. CITY shall assist CONSULTANT in obtaining access to public and private lands to allow the CONSULTANT to perform the work under this Agreement. CITY shall examine all studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by the CONSULTANT and shall render decisions pertaining thereto within a reasonable time so as not to delay the work of the CONSULTANT.

## ARTICLE VII - NONDISCLOSURE OF PROPRIETARY INFORMATION

A. CONSULTANT shall consider all information provided by CITY to be proprietary unless such information is available from public sources. CONSULTANT shall not publish or disclose proprietary information for any purpose other than the performance of the Services without the prior written authorization of CITY or in response to legal process or as required by the regulations of public entities.

## ARTICLE VIII - NOTICE

A. Any notice, demand, or request required by or made pursuant to this Agreement shall be deemed properly made if personally delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below:

To CONSULTANT:  
Brian Harer, Project Manager  
Lumos & Associates, Inc.  
9222 Prototype Drive  
Reno, NV 89521

To CITY:  
Kerrie Koski, P.E.  
Director of Public Works  
City of Reno  
If by personal service  
1 East First Street  
Reno, NV 89501  
If by mail  
P.O. Box 1900  
Reno, NV 89505

B. Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of CONSULTANT and CITY.

## ARTICLE IX - UNCONTROLLED FORCES

A. Neither CITY nor CONSULTANT shall be considered to be in default of this Agreement, if delays in or failure of performance shall be due to uncontrollable forces the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid and is not reasonably foreseeable at the time of entering into this Agreement. The term “uncontrollable forces” shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the control of the non-performing party. It includes, but is not limited to, fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, inability to procure permits, licenses, or authorizations from any state, local, or federal agency or personal for any of the supplies, material, accesses, or services required to be provided by either CITY or CONSULTANT under this Agreement, strikes, work slowdowns or other labor disturbances, and judicial restraint. CONSULTANT shall be paid for services performed prior to the delay.

B. Neither party shall, however, be excused from performance if nonperformance is due to uncontrollable forces, which are removable. The provisions of this Article shall not be interpreted or construed to require CONSULTANT or CITY to prevent, settle, or otherwise avoid a strike, work slowdown, or other labor action. The non-performing party shall upon being prevented or delayed from performance by an uncontrollable force immediately give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligation of this Agreement.

## ARTICLE X- GOVERNING LAW

A. This Agreement shall be governed by and construed pursuant to the laws of the State of Nevada. In the event suit is commenced hereunder and in accordance with the Dispute Resolution Procedures of Article XXII, the suit shall be brought in the appropriate court in Washoe County, State of Nevada. In the event of an arbitration or mediation pursuant to Article XXII, such arbitration or mediation shall be held in Reno, Nevada.

## ARTICLE XI - SUCCESSORS AND ASSIGNS

A. CITY and CONSULTANT each binds itself and their successors, and assigns to the other party to this Agreement and to the successors, and assigns of such other party, in respect to all covenants, agreements and obligations or this Agreement.

## ARTICLE XII - INDEMNIFICATION

A. To the fullest extent permitted by law, CONSULTANT shall defend, indemnify and hold harmless CITY and its officers, employees and agents (collectively “Indemnitee”) from any liabilities, damages, losses, claims, actions or proceedings, including, without limitation, reasonable attorneys’ fees, that are caused by the negligence, errors, omissions, recklessness or

intentional misconduct of the CONSULTANT or employees or agents of the CONSULTANT in the performance of this Agreement.

B. CONSULTANT assumes no liability for the negligence or willful misconduct of any indemnitee or other consultants of indemnitee.

C. CONSULTANT'S indemnification obligations for claims involving Professional Liability (claims involving acts, error, or omissions in the rendering of professional services and Economic Loss Only (claims involving economic loss which are not connected with bodily injury or physical damage to property) shall be limited to the proportionate extent of CONSULTANT'S negligence or other breach of duty.

D. If CITY's personnel (consultants or other professionals) are involved in defending such legal action, CONSULTANT shall also reimburse CITY for the time spent by such personnel at the rate charged for such services by private professionals. These provisions shall survive termination of this agreement and shall be binding upon CONSULTANT, her legal representatives, heirs, successors and permitted assigns.

E. If CONSULTANT does not so defend the CITY and the CONSULTANT is adjudicated to be liable, reasonable attorney's fees and costs shall be paid to CITY in an amount proportionate to the liability of CONSULTANT.

#### ARTICLE XIII - INTELLECTUAL PROPERTY INDEMNITY

A. To the fullest extent permitted by law, CONSULTANT shall defend, protect, hold harmless, and indemnify CITY and the CITY'S related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by CITY in writing. If CONSULTANT has reason to believe the use of a required design, process or product is an infringement of a patent, CONSULTANT shall be responsible for such loss. This Indemnity Covenant shall survive the termination of this Agreement.

#### ARTICLE XIV – PAYMENT OF TAXES

A. Any and all Federal, State and local taxes, charges, fees, or contributions required by law to be paid with respect to CONSULTANT'S performance of this Agreement (including, without limitation, unemployment insurance, social security, and income taxes).

## ARTICLE XIV - INSURANCE

### A. GENERAL REQUIREMENTS.

1. The CITY requires that CONSULTANT purchase Industrial Insurance, General Liability, and CONSULTANT's Errors and Omissions Liability Insurance as described below against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, its agents, representatives, employees or subconsultants. The cost of such insurance shall be borne by CONSULTANT unless otherwise agreed.

### B. INDUSTRIAL INSURANCE (WORKERS' COMPENSATION & EMPLOYER'S LIABILITY).

1. It is understood and agreed that there shall be no Industrial Insurance coverage provided for CONSULTANT or any Subconsultant by the CITY and in view of NRS 616B.627 and 617.210 requiring that CONSULTANT complies with the provisions of Chapters 616A to 616D, inclusive and 617 of NRS, CONSULTANT shall, before commencing work under the provision of this Agreement, furnish to the CITY a certificate of insurance from the Worker's Compensation Insurer certifying that the CONSULTANT and each Subconsultant have complied with the provisions of the Nevada Industrial Insurance Act, by providing coverage for each and every employee, subconsultants, and independent contractors. Should the CONSULTANT be self-insured for Industrial Insurance, the CONSULTANT shall so notify the CITY and approve written approval of such self-insurance prior to the signing of a Contract. The CITY reserves the right to accept or reject a self-insured CONSULTANT and to approve the amount(s) of any self-insured retentions. The CONSULTANT agrees that the CITY is entitled to obtain additional documentation, financial or otherwise, for review prior to entering into a Contract with the CONSULTANT.

2. It is further understood and agreed by and between the CITY and CONSULTANT that CONSULTANT shall procure, pay for, and maintain the above mentioned industrial insurance coverage at the CONSULTANT's sole cost and expense.

### C. MINIMUM SCOPE OF LIABILITY INSURANCE. Coverage shall be at least as broad as:

1. **Commercial General Liability** at least as broad as Insurance Services Office Commercial General Liability Coverage "occurrence" form CG OO O1 04 13 and ISO CG 20 37 04 13, or equivalent forms.. The Comprehensive General Liability Coverage shall include, but is not limited to, liability coverage arising from premises, operations, independent contractors, products and completed operations, personal and advertising, injury, blanket contractual liability and broad form property damage.

2. **Automobile Coverage** at least as broad as Insurance Services Office Business Auto Coverage form CA OO 01 10 13 or an equivalent form covering Automobile Liability Symbol 1 "Any Auto". In lieu of a separate Business Auto Liability Policy, the City may agree to accept Auto Liability covered in the General Liability Policy, if nonowned and hired auto liability are included. The CONSULTANT shall maintain limits of no less than \$1,000,000 or the amount customarily carried by the contractor, whichever is greater, combined single limit per accident for bodily injury and property damage. No aggregate limit may apply.

3. **Professional Errors and Omissions Liability** applying to all activities performed under this Agreement in a form acceptable to CITY. CONSULTANT will maintain professional liability insurance during the term of this Agreement and for a period of six (6) years from the date of substantial completion of the project unless waived by the CITY. In the event the CONSULTANT goes out of business during the term of this Agreement or the six (6) year period described above, CONSULTANT shall purchase Extended Reporting coverage for claims arising out of CONSULTANT's negligence acts, errors and omissions committed during the term of the Professional Liability Policy.

D. **MINIMUM LIMITS OF INSURANCE.** CONSULTANT shall maintain limits no less than:

1. General Liability: \$2 million minimum combined single limit per occurrence for bodily injury, personal injury and property damage and \$4 million annual aggregate.

2. CONSULTANT's Errors and Omissions Liability: \$2 million per claim and \$4 million as an annual aggregate during the term of this Agreement and for six years after the completion of the project, with each subsequent renewal having a retroactive date which predates the date of this Agreement. The CONSULTANT may purchase project insurance or obtain a rider on her normal policy in an amount sufficient to bring CONSULTANT's coverage up to minimum requirements, said additional coverage to be obtained at no cost to the CITY.

E. **DEDUCTIBLES OR SELF-INSURED RETENTIONS**

1. Any deductibles or self-insured retentions must be declared to and approved by the Risk Manager. The CITY reserves the right to request additional documentation, financial or otherwise prior to giving its approval of the deductibles or self-insured retention. Any changes to the deductible or self-insured retention made during the term of this Agreement or during the term of any policy, must be approved by the Risk Manager.

F. **OTHER INSURANCE PROVISIONS**

1. The CITY, its officers, officials and employees are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the CONSULTANT including the insured's general supervision of the CONSULTANT; products and completed operations of the CONSULTANT; or premises owned, occupied or used by the CONSULTANT.

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The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials or employees.

2. The CONSULTANT's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, and employees. Any insurance or self-insurance maintained by the CITY, its officers, officials or employees shall be excess of the CONSULTANT's insurance and shall not contribute with it in any way.

3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CITY, its officers, officials, or employees.

4. The CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. Endorsements for General Liability, Auto, and Excess/Umbrella Liability listing all additional insureds are required. The endorsement for Excess/Umbrella Liability can be accomplished by the CONSULTANT'S production of a letter from the insurance company stating that Excess/Umbrella Liability will "follow form."

6. The CONSULTANT'S insurance coverage shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after at least thirty (30) days prior written notice for reasons other than non-payment of premium and at least ten (10) days for non-payment of premium mail has been given to the CITY.

#### G. ACCEPTABILITY OF INSURERS

1. Insurance is to be placed with an A.M. Best and Company rating level of A - Class VII or better, or otherwise approved by the CITY in its sole discretion. CITY reserves the right to require that CONSULTANT'S insurer be a licensed and admitted insurer in the State of Nevada, or on the Insurance Commissioner's approved but not admitted lists.

#### H. VERIFICATION OF COVERAGE

1. CONSULTANT shall furnish the CITY with certificates of insurance, including but not limited to the Certificate of Compliance in NRS 616B.627 and with original endorsements affecting coverage required by this article. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf and must be countersigned by a duly appointed and licensed agent in this state. All approved deductibles and self-insured retentions shall be shown on the certificate. The certificates are to be on forms approved by the CITY. All certificate and endorsements are to be received and approved by the CITY before work commences. The CITY reserves the right to require complete, certified copies of all required insurance policies, at any time.



## I. SUBCONSULTANTS

1. CONSULTANTS shall require all subconsultants to be insured on their own or under its policies and shall furnish separate certificates and endorsement for each subconsultant. Coverages for subconsultants shall be subjected to all of the requirements stated herein.

## J. MISCELLANEOUS CONDITIONS

1. If the CONSULTANT or any Subconsultant fails to maintain any of the insurance coverages required, the CITY may terminate this Agreement for cause.

2. Nothing herein contained shall be construed as limiting in any way to the extent to which the CONSULTANT may be held responsible for payment for damages to persons or property resulting from her operations or the operations of any subconsultant under her.

3. If CONSULTANT's failure to maintain the required insurance coverage results in a breach of this Agreement, CITY may purchase the required coverage, and without further notice to CONSULTANT, deduct from sums due to CONSULTANT any premium cost advanced by CITY for such insurance.

## ARTICLE XVI - LITIGATION

A. This Agreement does not require the CONSULTANT to prepare for or appear in litigation on behalf of The CITY, or as agent of the CITY, other than specified herein, except in consideration of additional reasonable compensation.

## ARTICLE XVII - TERMINATION OF WORK

A. Either party to this Agreement may terminate the Agreement for cause upon giving the other party thirty (30) days prior written notice. Cause may include, failure to perform through no fault of the party initiating the termination. In addition, CITY may terminate the Agreement for any one of the following causes: performance by CONSULTANT which CITY deems unsatisfactory in CITY's sole judgment; and CITY's lack of funds to complete the work. Cause for CONSULTANT may include, failure of CITY to make timely payment to CONSULTANT without good cause, following a demand for payment.

B. In addition, CITY may terminate any or all of the work covered by this Agreement by notifying CONSULTANT in writing. In the event such termination occurs at the conclusion of services pursuant to an executed task order, then CONSULTANT shall be entitled to receive compensation for all work satisfactorily completed and performed through the conclusion of that task order. No other changes or costs incurred for services or materials other than pursuant to an executed task order shall be reimbursed by CITY pursuant to this Agreement. In the event such termination occurs during the performance of services pursuant to an authorized task order, then CONSULTANT and CITY shall need to determine what, if any additional services should be

performed by CONSULTANT in order to close out the work in progress and provide any such unfinished materials to CITY. CONSULTANT and CITY shall agree upon the additional amount of work to be performed following the termination notice and the amount payable by CITY for such work. In the event that the parties cannot otherwise agree on the amount to be paid pursuant to this provision, then the matter may be referred to the Dispute Resolution Procedure in ARTICLE XXII.

C. In the event the Agreement is terminated by CITY for cause, including performance deemed unsatisfactory by CITY, or CONSULTANT failure to perform, or other cause created by CONSULTANT, CITY may withhold and offset against any payments otherwise due and/or seek recovery from CONSULTANT for amounts already paid, including without limitation: amounts paid for unsatisfactory work or work not done in accordance with this Agreement; value of CITY's time spent in correcting the work or problem; any increase in cost resulting from the problem or work; and any other costs which result from such termination. Subject to the terms herein, CONSULTANT will be paid for services performed prior to termination.

D. CONSULTANT expressly agrees that this Agreement shall be terminated immediately if for any reason local, federal and/or State Legislature funding ability to satisfy this Agreement is withdrawn, limited, or impaired.

#### ARTICLE XVIII - PROFESSIONAL SERVICES

A. CONSULTANT shall be responsible for the professional quality and technical accuracy of all services furnished by CONSULTANT and their subconsultants under this Agreement. Without limiting the effect of any other provision of this Agreement and in addition to any other provision contained herein, CONSULTANT shall, without additional compensation, correct or revise any errors or omissions in their services.

B. CONSULTANT and their subconsultants retained pursuant to this Agreement are considered by CITY to be skilled in their profession to a degree necessary to perform the services and duties contained in this Agreement, and CITY hereby relies upon those skills and the knowledge of CONSULTANT and their subconsultants. CONSULTANT and their subconsultants shall perform such professional services and duties as contained in this Agreement in conformance to and consistent with the standards generally recognized as being employed by professionals of their caliber in the State of Nevada and under similar conditions. CONSULTANT makes no warranty, either expressed or implied, as to their findings, recommendations, specifications or professional advice other than as provided herein.

C. Neither CITY'S' review, approval, or acceptance of nor payment for any of the professional services or work required under this Agreement shall be construed to operate as a waiver of any of CITY'S' rights under of this Agreement. The rights and remedies of CITY provided for under this Agreement are in addition to any other rights and remedies provided by law.

D. Project information including but not limited to reports, written correspondence, and verbal reports will be prepared for the use of the CITY. The observations, findings, conclusions and recommendation made represent the opinions of the CONSULTANT. Reports, records, and information prepared by others will be used in the preparation of the report. The CONSULTANT has relied on the same to be accurate and does not make any assurances, representations, or warranties pertaining to the records or work of others, except for its subconsultants, nor does the CONSULTANT make any certifications or assurances except as explicitly provided in writing. No responsibility is assumed by the CONSULTANT for use of reports for purposes of facility design by others.

#### ARTICLE XIX – PROPERTY: COPYRIGHTS

A. The CONSULTANT shall furnish to the CITY all field notes, reports, data, and electronic or magnetic media, and original tracings of all drawings and plans, maps, photographs, and other materials (including, if requested by the Director, design computations, design sketches and review drawings) prepared pursuant to this Contract (hereinafter collectively referred to as “Documents”). The originals of such Documents shall be and remain the property of the CITY.

B. All of such Documents shall be deemed to be “works made for hire” prepared for the CITY. The ownership of all copyrights and all rights embodied in the copyrights in or to such Documents shall rest in the CITY when any such is subject to copyright. The CONSULTANT agrees that it, nor any of its employees, shall have any right to copyright any of such Documents. The CONSULTANT further agrees that neither it nor any of its employees shall exercise any of the rights embodied in the copyrights in or to such Documents, unless authorized to do so by the Reno City Council. The CONSULTANT shall place a conspicuous notation upon each Document which indicates that the copyright thereto is owned by the CITY.

C. Should it be finally determined, by a court or to her tribunal of competent jurisdiction, that any of such Documents is not a “works make for hire,” it is agreed that the provisions of this section shall be termed an assignment, sale, and transfer of the copyright in or to such Documents to the CITY for the longest term allowed by law. Notwithstanding the foregoing, the CONSULTANT may retain copies of such Documents and such copies shall remain the property of the CONSULTANT. The CONSULTANT shall have the right to use such copies as it may desire, but the CONSULTANT may not sell, license, or otherwise market such Documents.

D. Documents, including drawings and specification prepared by CONSULTANT pursuant to this Contract, are not intended or represented to be suitable for reuse by CITY or others on extensions of the services provided for the Project or any other project. Any use of completed Documents for other projects and/or any use of uncompleted Documents without specific written authorization from CONSULTANT will be at the CITY’s sole risk without liability or legal exposure to CONSULTANT.

## ARTICLE XX - RIGHTS OF CONSULTANTS AND EMPLOYEES

A. No personnel employed by CONSULTANT shall acquire any rights or status in the CITY services and CONSULTANT shall be responsible in full for payment of its employees, including insurance, deductions, and all the like.

## ARTICLE XXI - SERVICES BY CITY

A. It is understood and agreed that the CITY shall, to the extent reasonable and practicable, assist and cooperate with the CONSULTANT in the performance of CONSULTANT's services hereunder. Such assistance and cooperation shall include, but not necessarily be limited to, environmental approval, right of access to work sites; providing material available from the CITY's files such as maps, As-Built drawings, records, and operation and maintenance information; serving all notices, holding all hearings, and fulfilling legal requirements in connection therewith; and rendering assistance in determining the location of existing facilities and improvements which may be affected by the project.

## ARTICLE XXII - DISPUTE RESOLUTION PROCEDURE

A. If disputes arise under this Agreement, the parties agree to attempt to resolve such disputes through direct negotiations or if such negotiations are not successful, by non-binding mediation conducted in accordance with the rules and procedures to be agreed upon by the parties.

B. Each party shall bear its own attorney's fees and court costs regardless of the outcome of any proceeding brought to enforce or interpret this Agreement. In no event shall any prevailing party in be entitled to an award of attorney's fees.

## ARTICLE XXIII - NO UNFAIR EMPLOYMENT PRACTICES

A. In connection with the performance of work under this Agreement, CONSULTANT agrees not to discriminate against any employee or applicant for employment because of race, creed, color, religion, national origin, age, sex, sexual orientation, gender identity, gender expression, veteran status, or any other protected class status applicable under federal, state or local law, rule or regulation. Such Agreement shall include, but not be limited to, the following: 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 apprenticeship.

B. CONSULTANT further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

C. Race includes traits associated with race, including, without limitation, hair texture and protective hairstyles.

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D. As used in this Article, sexual orientation means having or being perceived as having an orientation for heterosexuality, homosexuality or bi-sexuality.

E. Any violation of these provisions by CONSULTANT shall constitute a material breach of contract.

#### ARTICLE XXIV - AMERICANS WITH DISABILITIES ACT

A. CONSULTANT and its subconsultants shall comply with the 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.

#### ARTICLE XXV - GENERAL PROVISIONS

A. Integration. This Agreement, including the Exhibits and the Recitals, all of which are true and correct and are incorporated by reference as a part of this Agreement, constitutes the complete and integrated Agreement between the parties with respect to the matters recited herein, and supersedes any prior or contemporaneous written or oral agreements or understandings with respect thereto.

B. Severability. The legality of any provision or portion of this Agreement shall not affect the validity of the remainder.

C. Amendment. This Agreement shall not be modified, amended, rescinded, canceled, or waived, in whole or in part, except by written amendment signed by duly authorized representatives of the parties.

D. No Third Party Benefit. This Agreement is a contract between CITY and CONSULTANT and nothing herein is intended to create any third party benefit.

E. Governing Law and Jurisdiction. This Agreement shall be administered and interpreted under the laws of the State of Nevada. Any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the district courts of the State of Nevada, County of Washoe.

#### ARTICLE XXVI - DUE AUTHORIZATION

A. Each party represents that all required authorizations have been obtained to execute this Agreement and for the compliance with each and every term hereof. Each person signing this Agreement warrants and represents to the other party that he or she has actual authority to execute this Agreement on behalf of the party for whom he or she is signing. A facsimile or electronic signature on this Agreement shall be treated for all purposes as an original signature.

B. Duplicate originals. This Agreement is executed in one duplicate original for each party hereto, and is binding on a party only when all parties have signed and received a duplicate original.

IN WITNESS WHEREOF, CITY has caused this Agreement to be executed by the City of Reno and CONSULTANT have caused this Agreement to be executed, all as of the day and year first above written.

CITY OF RENO

ATTEST:


By: \_\_\_\_\_  
Hillary L. Schieve, Mayor

By: \_\_\_\_\_  
Mikki Huntsman, City Clerk

APPROVED AS TO FORM

By: \_\_\_\_\_  
Susan Ball Rothe  
Deputy City Attorney

Lumos & Associates, Inc.

By:  \_\_\_\_\_  
Steven G. Moon, P.E.  
Director – Construction Division

## **EXHIBIT A**

### **CITY OF RENO 2023 RENO PREVENTATIVE MAINTENANCE PROJECT SCOPE OF SERVICES**

The City has identified approximately 6,500,000 square feet of streets, parking lots, and trails/walkways for placement of Type 2 Rapid Setting Slurry Seal, approximately 260,000 square feet of 1.75" asphalt concrete mill and overlay, approximately 50,000 square feet of t-cut asphalt patching, and miscellaneous concrete improvements in the Northwest and Southwest areas of Reno.

#### **Project Understanding/Scope of Services**

Lumos & Associates will provide professional engineering services for the City of Reno 2023 Reno Preventative Maintenance project. The project limits are in the Northwest and Southwest areas for the proposed surface treatments.

The scope of services for this project will include the following tasks:

1. Administration of services including sampling and testing coordination, meeting attendance, , and providing test results and recommendations.
2. Source Aggregate Material Sampling and Testing of slurry aggregates, Material Sampling and Testing for emulsified asphalt used for slurry seal. Material Sampling and Testing of asphalt concrete, and Material Sampling and Testing for portland cement concrete.
3. Additional services as directed by the City's Project Manager.

Each of these tasks is described in greater detail below. It is understood that the final requirements may be adjusted as needed to meet the demands of the project and needs of the City.

The anticipated start date for the project is April 3, 2023, with substantial completion expected July 28, 2023.

#### **Task 1: Administration**

- Coordination of material sampling and testing activities.
- Supervise the material sampling and testing activities.
- Review and provide recommendations on test results.
- Attendance at the pre-construction conference and weekly progress meetings (if required)
- 
- Provide final test results and field reports in an electronic \*.pdf format.

#### **Task 2: Inspection, Material Sampling and Testing Services**

Lumos will provide Inspection, Material Sampling and Testing for compliance with the project specifications and the Standard Specifications for Public Works Construction (Orange Book) 2012 Edition, Revision 8 (10/19/18), for slurry aggregate and emulsion, and asphalt concrete.

Lumos will furnish all materials, tools, and equipment necessary to complete the work required for inspection, material sampling and testing. The following inspections, tests and frequencies shall be performed:

- Slurry Seal Placement Inspection
  - Slurry seal inspection will include removal of existing striping prior to placement of slurry seal, verification of traffic control and verification of slurry seal placement. Staffing shall include:
  - Provide Inspector(s) that have the appropriate certification required by the Nevada Alliance for Quality Transportation Construction (NAQTC). Provide one full time Senior Inspector, twelve (12) hour workdays for 30 shifts. We anticipate a total of 360 inspection hours.
  
- Slurry Aggregate Source Acceptance:
  - Laboratory Testing: Tests shall be conducted at the beginning of the project for each slurry aggregate source. City anticipates one (1) sample for testing. Testing will include: Sand Equivalent, Durability Index, Sieve Analysis, Plasticity Index, Sodium Sulfate Soundness, L.A. Abrasion, Specific Gravity & Absorption.
  
- Slurry Aggregate:
  - Laboratory Testing: Construction aggregate testing will include: Sand Equivalent, Durability Index and Sieve Analysis, including a #200 wash. A total of seventeen (17) samples will be sampled and tested.
  
- Slurry Emulsion:
  - Laboratory Testing: Emulsion testing will be completed in-house for Residue by Evaporation and Ring & Ball Softening Point per the specified test method. Testing frequency shall be eighteen (18) samples for the entire project.
  
- Hot Mix Asphalt (HMA) Testing:
  - Laboratory Testing: Provide HMA tests per five-hundred (500) tons placed. Laboratory tests shall include: asphalt content, aggregate gradation, specific gravity, flow & stability, and Marshall unit weight. All hot mix samples are to be tested same-day (reheating will not be allowed); Test Reports will also include voids in total mix. Provide written Test Reports to the City PM and Contractor within twenty-four (24) hours of sampling. A total of eight (8) samples are anticipated.
  - Field Testing: Provide on-site thin-lift nuclear gauge testing and sampling for hot mix asphalt (HMA) placement. Test frequency shall comply with the 2012 edition of the Orange Book. Provide verbal results at the time of testing to the CI and written Test Reports to the PM and the Contractor, on a weekly basis; Test Reports shall be stamped by a State of Nevada licensed Professional Engineer (PE).
  - HMA Coring: Provide HMA coring and laboratory testing including: core unit weight and percent compaction and in place air voids. Provide written Test Reports to the City PM and Contractor within twenty-four (24) hours of sampling. All cores shall be backfilled with a DOT rated rapid set grout. The grout shall match the finished grade of the proposed roadway surface and shall match the asphalt color. Final acceptance of the core locations shall be at the discretion of the City.
  
- Portland Cement Concrete (PCC) Testing:
  - Field and Laboratory Testing: Provide on-site nuclear density gauge testing of aggregate base material and concrete testing and sampling during the placement of concrete. Provide tests including: air content, slump, and compressive strength of 6-inch by 12-inch molded cylinders with sulfur/un-bonded caps and maximum / minimum thermometer readings for field curing. Testing will meet the requirements specified in Section 336 of the Supplemental Specifications. Test frequency shall comply with the latest amendment of



the Specifications for Public Works Construction (Orange Book). Provide verbal results at the time of testing to the CI and written Test Reports (including max. & min. temperatures) to the PM and the Contractor, on a weekly basis. Test cylinders will be prepared in accordance with ASTM C31/C31M. A total of nine (9) samples and forty-five (45) compressive strength specimens are anticipated.

Daily Field Reports and Test reports accompanied with Lumos' recommendation regarding acceptance/mitigation of materials shall be submitted promptly to the City. The estimated turnaround time for the emulsion test results is expected to be within 24 hours after receipt of the sample.

### **Task 3: Additional Services**

At the City's request, provide additional material testing and/or inspection services on an as needed basis; requests will come in writing and will only be authorized by the City. This work shall be added at the sole discretion of the City, for fees negotiated on a case-by-case basis. Work will be performed on a time and materials basis in accordance with Lumos' fee schedule. A standard fee schedule is incorporated into this proposal.

### **Requirements**

Consultant services shall be performed under the direction of a Registered Professional Engineer licensed in the State of Nevada. The laboratory must be accredited by the American Association of State Highway and Transportation Officials (AASHTO). Technicians must be certified by the American Concrete Institute (ACI) and the Nevada Alliance for Quality Transportation Construction (NAQTC) in the test methods performed by the consultant. In addition, local testing personnel and laboratory facilities must be available to perform the testing requested. No testing shall be sub-contracted. The consultant's proposal shall be based on the estimated quantity of services and include a schedule of charges for hourly rates of personnel, equipment, and rates for laboratory testing services. Proposal shall be based on time and materials and laboratory rates with a "Not to Exceed" price. Laboratory certification shall be provided upon request from the City Project Manager.

### **Consultant Personnel**

Qualifications, staffing level, and number and types of vehicles shall be subject to the approval of the City.

- The Consultant shall submit a list of Key Personnel assigned to the project prior to the start of construction.
- The Consultant shall assign personnel for the duration of the Contract unless otherwise approved by the City. Employees required to operate vehicles must possess and maintain a valid State of Nevada driver's license. The inspectors and testers permanently assigned to the project shall be competent in Project Plans, Specifications, Reno Municipal Codes, NDEP and Air Quality Permit requirements, MUTCD, City manuals, City forms and documentation requirements. Testers and laboratory shall meet the current requirements of the Chapter VI of the City of Reno Design Manual.
- Additional personnel and any substitutions are subject to the approval by the City. The City may request removal of any person provided by the Consultant if in the reasonable judgment of the City that the person is not qualified or fails to perform the duties set forth in this Scope of Services Agreement. In that event, the Consultant will immediately replace that person with a person approved by the City.

### **Work Duration and Fees**

- The Notice to Proceed for the Consultant Scope of Services is anticipated by April 3, 2023 and will continue through December 31, 2023. The contract duration may be adjusted based upon the award of the contract and the completion of the work by the Contractor. Work will be required during days and/or on weekends. Work weeks may be in excess of or less than the standard forty (40) hour week.
- The Consultant agrees to comply with NRS 338 with regard to prevailing wage rates.
- All Consultant overtime charges will be included in the standard hourly rate.
- Miscellaneous expenses such as vehicles, phones, mileage, supplies, photocopies, etc. are include in the approved standard hourly rate and no additional fees will be charged by the Consultant.

### **Invoices**

Invoices shall be submitted monthly and based on actual services provided and there will be no additional compensation for overtime.

**FEBRUARY 11, 2023**

**2023 RENO PREVENTATIVE MAINTENANCE PROJECT**

**PROPOSED FEES**

Lumos & Associates proposes to furnish Material Sampling & Testing services for the above-described work on a time and material basis using the Standard Engineering Fees as listed in Exhibit B.

The Time and Material Fees shall not exceed the following amounts for each of the Tasks outlined above.

Task 1: Administration	<b>\$ 13,740.00</b>
Task 2: Inspection, Material Sampling and Testing	<b>\$ 132,995.00</b>
Task 3: Additional Services as needed	<b>\$ 15,000.00</b>
Total Not to Exceed Cost	<b>\$ 161,735.00</b>

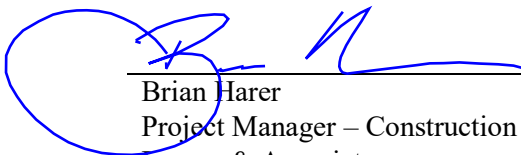
**PROJECT SCHEDULE**


Consultant Agreement to City Council	March 22, 2023
Asphalt Patching & Mill/Overlay estimated completion	July 28, 2023
Slurry Seal estimated start	June 5, 2023
Slurry Seal estimated completion	July 28, 2023
Estimated Substantial Completion Date	July 28, 2023

**KEY PERSONNEL**

The key personnel assigned to this project include the following:

<b>PERSONNEL TITLE</b>	<b>NAME</b>
Project Manager	Brian Harer
Project Engineer (Construction)	Mitch Burns, P.E.
Quality Control and Assurance	Brian Harer
Materials Technician (sampling)	Zach Lim, E.I. / Jeremy Macaluso, E.I.
Materials Technician (testing)	Pete McCreary, E.I. / Zach Lim, E.I.
Construction Inspector(s)	Alex Szendrey / Brad Pillsbury

 Date: 2/11/2023  
Brian Harer  
Project Manager – Construction Division  
Lumos & Associates

 Date: 2/11/2023  
Steven G. Moon, P.E.  
Director – Construction Division  
Lumos & Associates

Encl: Exhibit B – Fee Schedule



## Exhibit B - Quality Control Fee Schedule

February 10, 2023

<b>Testing/Inspection</b>		<b>Per Hour</b>
Director		\$265
Materials Engineering Manager		220
Assistant / Project / Senior Project Manager		180/210/220
Staff / Project / Senior Geotechnical Engineer		170/180/210
Construction Services Supervisor / Engineer		150/175
Assistant / Project / Senior Project Coordinator		135/160/170
Geotechnician		150
Inspector / Senior Inspector (includes nuclear gauge)		130/140
Construction Technician I / II / III		110/120/130
Materials Technician I / II / III (includes nuclear gauge)		100/110/120
Administrator		90
Clerical		80

<b>Particle Size Testing For Soils/Aggregates</b>		<b>Each</b>
Sieve Analysis	(ASTM C-136/C-117)	\$200
Wash	(ASTM C-117)	150
Grain Size Analysis Soils	(ASTM D-421/422)	300
Sieve Analysis/Wash (coarse combined)	(ASTM C-136/C-117)	250

<b>Soils &amp; Aggregate Testing</b>		<b>Each</b>
Specific Gravity & Absorption — Coarse or Fine Aggregate	(ASTM C-127/C-128)	\$150
Sand Equivalent	(ASTM D-2419)	200
Dry Unit Weight of Aggregate	(ASTM C-29)	100
Organic Impurities	(ASTM C-40)	100
Fractured Faces	(NDOT T-230)	100
L.A. Abrasion	(ASTM C-131)	250
Sodium Sulfate Soundness (5 cycles)	(ASTM C-88)	500
Moisture Content	(ASTM C-566)	50
Moisture Content and Unit Density	(ASTM D-2937)	100
Plastic Index	(ASTM D-4318)	225
Expansion Index	(ASTM D-4829)	300
R-Value	(ASTM D-2844)	350
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		75
Fine Durability Index	(ASTM D-3744)	250
Coarse Durability Index	(ASTM D-3744)	300
Cleanness Value	(CAL 229)	250

<b>Moisture Density Testing</b>		<b>Each</b>
Compaction	(ASTM D-698 or ASTM D-1557)	\$275
Rock Correction	(ASTM D-4718)	150
Harvard Miniature	(NDOT T-101)	150
CAL 216		300
Check Point	(ASTM D-1557)	125



## Exhibit B - Quality Control Fee Schedule

February 10, 2023

<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	350
Saybolt Furol Viscosity Test @ 122°	(AASHTO T-59)	275
Rotational Paddle Viscosity	(ASTM D-7226 & AASHTO T-382)	500

<b>Concrete Testing</b>		<b>Each</b>
Compression Concrete Cylinders	(ASTM C-39)	\$40
Hold Cylinder (Cured but not tested)		30
Compression, Concrete Core	(ASTM C-42)	40
Flexural Strength of Concrete Beams	(ASTM C-78/C-293)	80
Compression, Grout Cylinder	(UBC 24-28)	40
Compression, Mortar Cylinder	(UBC 24-28)	40
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)	300