

DOC # 0211761

04/07/2008

04:47 PM

Official Record

Recording requested By
EUREKA COUNTY

Eureka County - NV

Mike Rebaleati - Recorder

Fee: Page 1 of 26
RPTT. Recorded By: FS
Book- 0471 Page- 0334



0211761

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

A Contract Between Eureka County (County)
Acting By and Through Its

Board of Eureka County Commissioners (Board)
P.O. Box 677, Eureka, NV 89316
(775) 237-5262

and

LUMOS AND ASSOCIATES, INC. (Contractor)
Thomas Young, P.E.
Location Principal
800 College Parkway
Carson City, NV 89706
(775) 883-7077

WHEREAS, NRS 244.320 authorizes the Board of Eureka County Commissioners ("Board") to engage the services of persons as independent contractors; and

WHEREAS, it is deemed that the service of LUMOS AND ASSOCIATES, INC. ("Contractor") is both necessary and in the best interests of the County of Eureka;

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

1. REQUIRED APPROVAL. This Contract shall not become effective until and unless approved by the Board.

2. DEFINITIONS. "County" means the County of Eureka and its officers, employees and immune contractors as defined in NRS §41.0307. "Independent Contractor" means a person or entity that performs services and/or provides goods for the County under the terms and conditions set forth in this Contract.

3. CONTRACT TERM. This Contract shall be effective from March 7, 2008, to Friday, March 5, 2010, unless sooner terminated by either party as specified in paragraph (10).

4. NOTICE. Unless otherwise specified, termination shall not be effective until 60 calendar days after a party has served written notice of default, or without cause upon the other party. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above.

5. INCORPORATED DOCUMENTS. The parties agree that the scope of work shall be specifically described; this Contract incorporates the following attachments in descending order of constructive precedence; a Contractor's Attachment shall not contradict or supersede any County specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract:

ATTACHMENT A:	SCOPE OF SERVICES
ATTACHMENT B:	FEE SCHEDULE
ATTACHMENT C:	INITIAL TWO YEAR CONTRACT MARCH 7, 2005 TO MARCH 6, 2008

6. CONSIDERATION. The parties agree that Contractor will provide the services specified in paragraph (5) at a cost in accordance with and not to exceed the fee schedule with installments payable by invoice each month. The County does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments.

7. ASSENT. The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified.

8. TIMELINESS OF BILLING SUBMISSION. The parties agree that timeliness of billing is of the essence to the contract.

9. INSPECTION & AUDIT.

a. Books and Records. Contractor agrees to keep and maintain under general accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the County, State of Nevada or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

b. Inspection & Audit. Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the County, the State Auditor, the relevant

state agency or its contracted examiners, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect requirements of this paragraph.

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

10. CONTRACT TERMINATION.

a. Termination Without Cause. Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon written notice by mutual consent of both parties or unilaterally by either party without cause.

b. Termination for Nonappropriation. The continuation of this Contract beyond the current County fiscal year is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available. The County may terminate this Contract, and Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (on any date specified therein) if for any reason the Contracting Agency's funding is not appropriated or is withdrawn, limited, or impaired.

c. Cause Termination for Default or Breach. A default or breach may be declared with or without termination. This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:

- i. If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or
- ii. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
- iii. If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or
- iv. If the County materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or
- v. If it is found by the County that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the County with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or
- vi. If it is found by the County that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.



d. Time to Correct. Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in paragraph (4), and the subsequent failure of the defaulting party within 15 calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

e. Winding Up Affairs Upon Termination. In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:

i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;

ii. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the County;

iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the County;

iv. Contractor shall preserve, protect and promptly deliver into County possession all proprietary information in accordance with paragraph (21).

11. REMEDIES. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation \$125 per hour for County-employed attorneys.

12. LIMITED LIABILITY. The County will not waive and intends to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any County breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor. Damages for any Contractor breach and contractor's tort liability shall not be limited.

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

14. INDEMNIFICATION. To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend, not excluding the County's right to participate, the County from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents.

15. INDEPENDENT CONTRACTOR. Contractor is associated with the County only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor

and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the County whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and the County shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the County; (4) participation or contributions by either Contractor or the County to the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the County. Contractor shall indemnify and hold County harmless from, and defend County against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees. Neither Contractor nor its employees, agents, or representatives shall be considered employees, agents, or representatives of the County. The County and Contractor shall evaluate the nature of services and term negotiated in order to determine "independent contractor" status and shall monitor the work relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such. To assist in determining the appropriate status (employee or independent contractor), Contractor represents as follows:

This space blank intentionally

Contractor's Initials

- | | YES | NO |
|--|------------|------------|
| 1. Does the County have the right to require control of when, where and how the independent contractor is to work? | _____ | <u>TWY</u> |
| 2. Will the County be providing training to the independent contractor? | _____ | <u>TWY</u> |
| 3. Will the County be furnishing the independent contractor with worker's space, equipment, tools, supplies or travel expenses? | _____ | <u>TWY</u> |
| 4. Are any of the workers who assist the independent contractor in performance of his/her duties employees of the County? | _____ | <u>TWY</u> |
| 5. Does the arrangement with the independent contractor contemplate continuing or recurring work (even if the services are seasonal, part-time, or of short duration)? | <u>TWY</u> | _____ |
| 6. Will the County incur an employment liability if the independent contractor is terminated for failure to perform? | _____ | <u>TWY</u> |
| 7. Is the independent contractor restricted from offering his/her services to the general public while engaged in this work relationship with the County? | _____ | <u>TWY</u> |

16. INSURANCE SCHEDULE. Unless expressly waived in writing by the County, Contractor, as an independent contractor and not an employee of the County, must carry policies of insurance in amounts specified in this Insurance Schedule and pay all taxes and fees incident hereunto. The County shall have no liability except as specifically provided in the Contract. The Contractor shall not commence work before:

- 1) Contractor has provided the required evidence of insurance to the Contracting Agency of the County, and
- 2) The County has approved the insurance policies provided by the Contractor.

Prior approval of the insurance policies by the County shall be a condition precedent to any payment of consideration under this Contract and the County's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition

subsequent to this Contract. Any failure of the County to timely approve shall not constitute a waiver of the condition.

PROOF OF INSURANCE IS HEREBY WAIVED BY COUNTY

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

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

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

Workers' Compensation and Employer's Liability Insurance

- 1) Contractor shall provide proof of worker's compensation insurance as required of Nevada Revised Statutes Chapters 616A through 616D inclusive.
- 2) Employer's Liability insurance with a minimum limit of \$500,000 each employee per accident for bodily injury by accident or disease.

If this contract is for temporary or leased employees, an *Alternate Employer* endorsement must be attached to the Contractor's workers' compensation insurance policy.

- 3) If the Contractor qualifies as a sole proprietor as defined in NRS Chapter 616A.310, and has elected to not purchase industrial insurance for himself/herself, the sole proprietor must submit to the County a fully executed "Affidavit of Rejection of Coverage Under NRS 616B.627 and NRS 617.210" form.

Commercial General Liability Insurance

- 1) Minimum Limits required:
 - \$2,000,000_ General Aggregate
 - \$2,000,000_ Products & Completed Operations Aggregate
 - \$1,000,000_ Personal and Advertising Injury
 - \$1,000,000_ Each Occurrence

- 2) Coverage shall be on an occurrence basis and shall be at least as broad as ISO 1996 form CG 00 01 (or a substitute form providing equivalent coverage); and shall cover liability arising from premises, operations, independent contractors, completed operations, personal injury, products, civil lawsuits, Title VII actions and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

Business Automobile Liability Insurance

- 1) Minimum Limit required: \$ 1,000,000 Each Occurrence for bodily injury and property damage.
- 2) Coverage shall be for "any auto" (including owned, non-owned and hired vehicles). The policy shall be written on ISO form CA 00 01 or a substitute providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

Professional Liability Insurance

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

Umbrella or Excess Liability Insurance

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

Commercial Crime Insurance

Minimum Limit required: \$ N/A Per Loss for Employee Dishonesty

This insurance shall be underwritten on a blanket form amending the definition of "employee" to include all employees of the Vendor regardless of position or category.

Performance Security

Amount required: \$ N/A

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

General Requirements:

- a. Additional Insured: By endorsement to the general liability insurance policy evidenced by Contractor, ***The County, its officers, employees and immune contractors*** as defined in NRS 41.0307 shall be named as additional insureds for all liability arising from the Contract.

- b. Waiver of Subrogation: General liability and worker's compensation insurance policy shall provide for a waiver of subrogation as to additional insureds.
- c. Cross-Liability: All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
- d. Deductibles and Self-Insured Retentions: Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the County. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$5,000 per occurrence, unless otherwise approved by the Risk Management Division. The errors and omissions insurance deductible or self-insured retention shall not exceed \$50,000 for professional liability.
- e. Policy Cancellation: Except for ten days notice for non-payment of premium, each insurance policy shall be endorsed to state that without thirty (30) days prior written notice to the County, the policy shall not be canceled, non-renewed or coverage and /or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mailed to the address shown below.
- f. Approved Insurer: Each insurance policy shall be:
 - 1) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the County and the State and having agents in Nevada upon whom service of process may be made, and
 - 2) Currently rated by A.M. Best as "A- VII" or better.

Evidence of Insurance:

Prior to the start of any Work, Contractor must provide the following documents to the County:

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

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

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

Mail all required insurance documents to the Contracting Agency identified on page one of the contract.

PROOF OF INSURANCE IS HEREBY WAIVED BY COUNTY

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

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

19. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

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

21. COUNTY OWNERSHIP OF PROPRIETARY INFORMATION. Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under the Contract), or any other documents or drawings, prepared or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this Contract and any previous Contracts with the County shall be the exclusive property of the County and all such materials shall be delivered into County possession by Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without the prior written consent of the County. Notwithstanding the foregoing, the County shall have no proprietary interest in any materials licensed for use by the County that are subject to patent, trademark or copyright protection.

22. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The County will have the duty to

disclose unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Contractor thereby agrees to indemnify and defend the County for honoring such a designation. The failure to so label any document that is released by the County shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

23. CONFIDENTIALITY. Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise required by this Contract.

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

a. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

b. Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

c. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)

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

a. Any federal, state, county or local agency, legislature, commission, counsel or board;

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

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

26. WARRANTIES.

a. General Warranty. Contractor warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the



incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.

b. System Compliance. Contractor warrants that any information system application(s) shall not experience abnormally ending and/or invalid and/or incorrect results from the application(s) in the operating and testing of the business of the County. The County is immune from liability due to any failure of any incorrect data being produced, calculated or generated by a computer or other information system.

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

28. GOVERNING LAW; JURISDICTION. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. Contractor consents to the jurisdiction of the Nevada district courts for enforcement of this Contract.

29. ENTIRE CONTRACT AND MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

J. W. M.

4/7/2008

LOCATION PRINCIPAL

Independent Contractor's Signature Date

Independent's Contractor's Title

[Signature]

Signature – Chairman of the Board

APPROVED BY BOARD

Approved as to form by:

On April 7, 2008
(Date)

[Signature]

Eureka County District Attorney
Attorney for the Board

On April 7, 2008
(Date)

ATTEST:

[Signature]
Clerk of the Board

On April 7, 2008
(Date)



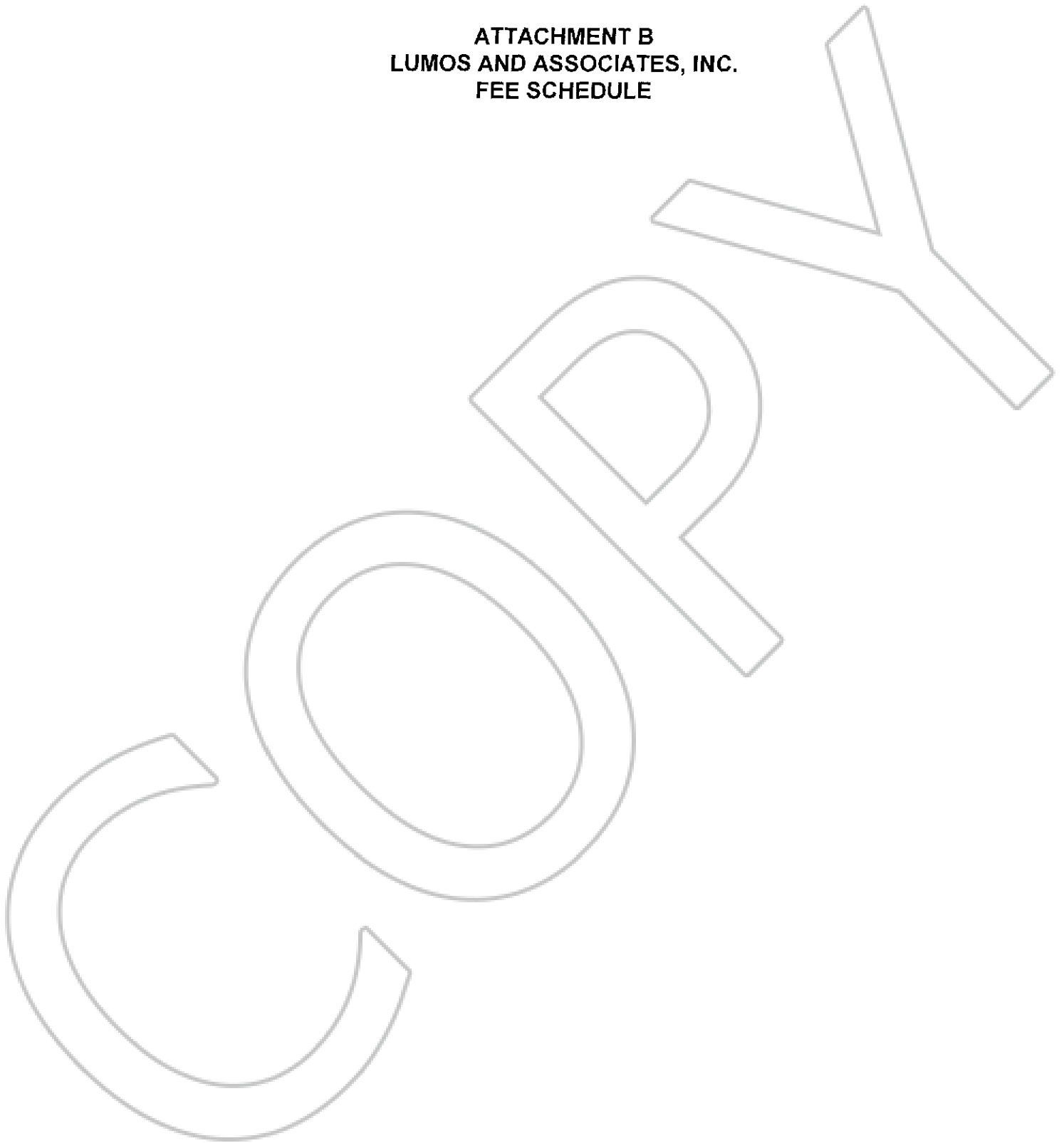
**ATTACHMENT A
SCOPE OF SERVICES**

The following is a summary of responsibilities and duties related to LUMOS AND ASSOCIATES, INC.:

Responsibility and duties include and are related to working as Eureka County's Engineer and providing on-call planning, design, survey, GIS, geotechnical, construction, inspection, construction management, material testing, technical review and oversight, and water permit service.



**ATTACHMENT B
LUMOS AND ASSOCIATES, INC.
FEE SCHEDULE**





April 7, 2008

J.P. Ithurrealde, Chairman
Kenneth Benson, Vice-Chairman
Donna Bailey, Member

Board of Eureka County Commissioners
P.O. Box 677
Eureka, NV 89316

**Re: Professional Service Agreement
Two-Year Contract Extension**

Dear Commissioners:

Thank you for selecting Lumos and Associates three years ago to continue service as County Engineer for Eureka County. We are proud of our past efforts and excited about continuing our relationship. Our firm began working with Eureka County 24 years ago under our founder, Paul Lumos. When Paul retired in 2000, I gladly took over his role as County Engineer. Two project managers over 25 years is an unheard-of record with respect to today's turnover of employees. I would like to continue this tradition of stability and quality.

Stability, knowledge of the area, history with and working knowledge of past projects, and easy access to past documents all are benefits we provide that allow us to begin each project on the ground running.

Our past tasks have been attending Commissioner meetings, maintaining county water rights, survey map review, staff assistance, and projects.

While we try very hard to keep our services reasonably priced in order to provide you with the most cost-effective projects, unfortunately, increased costs require us to increase our fees.

We propose the following for the next two years:

County Engineer: Attend twenty-four (24) Commissioner meetings and provide miscellaneous assistance. We will also attend up to four (4) additional meetings on an as-needed basis for \$2,200 per month for one year with a 3% increase for the second year.

Water Rights: Time and Materials in accordance with our current fee schedule (enclosed). DWR fees will incur a 7.5% markup.

Project Review: Time and Materials in accordance with our current fee schedule.

Projects: Negotiated amount prior to beginning the project at our current fee schedule. Sub-consultant fees, if any, will incur a 7.5% markup.

Thank you again for considering Lumos and Associates. We look forward to continuing our working relationship with Eureka County.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Young'.

Thomas W. Young, P.E.
Location Principal
Lumos and Associates, Inc.
TY/srl Enc.



Engineering	Per Hour
President/CEO	\$200.00
Principal	175.00
Project Manager	150.00
Senior Engineer	125.00
Traffic Engineer	120.00
Project Engineer	115.00
Senior Project Designer	110.00
Project Designer	100.00
Senior Engineering Technician	90.00
Engineering Tech II	80.00
Engineering Technician/CAD Operator	70.00
Support Technician	50.00
Planning/Landscape Architecture/Environmental	Per Hour
Planning Manager	\$150.00
Senior Landscape Architect	150.00
Environmental Scientist	130.00
Senior Planner	115.00
Landscape Designer	90.00
Planner 2	90.00
Planner 1	75.00
Geotechnical/Testing/Inspection	Per Hour
Senior Hydrogeologist	\$135.00
Hydrogeologist	100.00
Geotechnical Engineer	135.00
Construction Services Manager	125.00
Construction Services Supervisor	100.00
Senior Inspector	95.00
Field Technician II & III	80.00
Field Technician I	75.00
Surveying	Per Hour
Survey Manager	\$120.00
Professional Land Surveyor	105.00
Senior Surveying Technician	100.00
Survey Technician I	85.00
GIS 2	95.00
GIS 1	80.00
2 Man Survey Crew	165.00
3 Man Survey Crew	215.00
GPS Equipment: 1 Man Survey Crew	115.00
2 Man Survey Crew	190.00
Prevailing Wage Rate Project	Price on Request
Administrative and Other Services	Per Hour
Administrator	\$ 60.00
Clerical	50.00
Mileage	.50-¢ per mile

Map filing, checking, consulting, and other fees paid by the office on behalf of the client shall be billed at cost plus fifteen percent (15%). Survey party rate includes cost of pickup and miscellaneous survey materials.

Invoices are due upon receipt and considered to be past due after 30 days.
This fee schedule applies to services provided from March 1, 2008 until further notice.

Testing / Inspection **Per Hour**

Construction Services Engineer	\$135.00
Geotechnical Engineer	135.00
Construction Services Manager	125.00
Construction Services Supervisor	100.00
Senior Inspector (includes nuclear gauge)	95.00
Field Technician II & III (includes nuclear gauge)	80.00
Field Technician I (includes nuclear gauge)	75.00
Clerical	50.00

Particle Size Testing **Each**

Sieve Analysis	(ASTM C-136/C-117)	\$80.00
Wash	(ASTM C-117)	60.00
Hydrometer Analysis	(ASTM D-422)	200.00
Sieve Analysis/Wash (coarse combined)	(ASTM C-136/C-117)	160.00

Soils & Aggregate Testing **Each**

Specific Gravity & Absorption – Coarse or Fine Aggregate	(ASTM C-127/C-128)	\$80.00
Sand Equivalent	(ASTM D-2419)	85.00
Dry Unit Weight of Aggregate	(ASTM C-29)	55.00
Organic Impurities	(ASTM C-40)	50.00
Fractured Faces	(NDOT T-230)	50.00
L.A. Abrasion	(ASTM C-131)	175.00
Sodium Sulphate Soundness (5 cycles)	(ASTM C-88)	450.00
Moisture Content	(ASTM C-566)	20.00
Moisture Content and Unit Density	(ASTM D-2937)	35.00
Plastic Index	(ASTM D-4318)	160.00
Expansion Index	(ASTM D-4829)	100.00
R-Value	(ASTM D-2844)	250.00
California Bearing Ratio	(ASTM D-1883)	Quote on request
Direct Shear	(ASTM D-3080)	275.00
Unconfined Compression	(ASTM D-2166)	Quote on request
Consolidation	(ASTM D-2435)	500.00
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)	100.00
Cement Treated Base Mix Design		1,500.00
Cement Treated Base Compression Test		50.00
Durability Index	(ASTM D-3744)	125.00
Cleanness Value	(CAL 229)	125.00

Moisture Density Testing **Per Test**

Compaction	(ASTM D-698 or ASTM D-1557)	
a) Method A or B (4-inch Mold)		\$120.00
b) Method C (6-inch Mold)		150.00
Rock Correction	(ASTM D-4718)	80.00
Harvard Miniature	(NDOT T-101)	110.00
CAL 216		75.00
Check Point	(ASTM D-1557)	50.00

Concrete Testing		Each
Compression Concrete Cylinders	(ASTM C-39)	\$25.00
Hold Cylinder (Cured but not tested)		15.00
Compression, Concrete Core	(ASTM C-42)	25.00
Flexural Strength of Concrete Beams	(ASTM C-78/C-293)	75.00
Compression, Grout Cylinder	(UBC 24-28)	25.00
Compression, Mortar Cylinder	(UBC 24-28)	15.00
Masonry Block Absorption and Moisture Shrinkage	(ASTM C-140)	Quote on request
Compression, Concrete Masonry Units	(ASTM C-426)	Quote on request
Compression, Concrete Masonry Prisms	(ASTM C-140)	Quote on request
Density of Spray Applied Fireproofing	(ASTM C-1314)	Quote on request
Concrete Mix Design, including Mixing and Casting of Cylinders		2,200.00

Asphalt Concrete Testing		Each
Sieve Analysis	(ASTM D-5444)	\$80.00
Unit Weight on Compacted Sample	(ASTM D-2726)	40.00
Unit Weight on Core	(ASTM D-2726)	65.00
Marshall Stability & Flow	(ASTM D-1559)	50.00
Max. Theoretical Specs. Gravity	(ASTM D-2041)	100.00
Bitumen Content	(ASTM D-6307)	150.00
Asphalt Concrete Mix Design		Quote on request

**Invoices are due upon receipt and considered to be past due after thirty days.
This fee schedule applies to services provided from March 1, 2008 until further notice.**

**ATTACHMENT C
LUMOS AND ASSOCIATES, INC.
COPY OF MARCH 7, 2005
PROFESSIONAL SERVICES AGREEMENT
FOR COUNTY ENGINEER**

(SEE ATTACHED)



PROFESSIONAL SERVICES AGREEMENT
FOR COUNTY ENGINEER
March 7, 2005 to March 6, 2008 renewable in two year increments

1. RECITALS

This agreement is made and entered into this 7th day of March, 2005, by and between LUMOS AND ASSOCIATES, Inc., (Lumos), and the Board of Eureka County Commissioners (Eureka County), with reference to the following facts:

- A. On January 5, 2005, Eureka County Public Works released a Request for Qualifications for qualified civil engineering consultants to serve as County Engineer. The closing date to accept statements of qualification was set at February 7, 2005.
- B. On February 8, 2005, a selection committee met to consider the statements of qualification submitted by seven civil engineering consultant firms, and a list of three firms that met the Request for Qualifications standards was forwarded to the Eureka County Commissioners.
- C. On February 23, 2005, during a duly noticed and public meeting of the Eureka County Commissioners, the Commissioners considered the presentation by the three firms identified by the selection committee and ranked each firm, then entered into contract negotiations with the firm ranked first, Lumos.
- D. On March 7, 2005, during their regularly scheduled meeting the Eureka County Commissioners considered the terms and conditions of this agreement with Lumos.



NOW, THEREFORE, on the basis of the foregoing recitals, the parties agree as follows:

2. LUMOS IS COUNTY ENGINEER:

- A. Lumos agrees to work as Eureka County's Engineer and shall provide on-call planning, design, survey, GIS, geotechnical, construction, inspection, construction management, material testing, technical review and oversight, and water permit services on the specific terms and conditions set forth in this agreement.
- B. This agreement does not create an employee/employer relationship between the parties. Lumos is an independent contractor of Eureka County for all purposes, including but not limited to the application of overtime, unemployment, and taxes. Lumos has absolute discretion in the manner and means of carrying out its responsibilities under this agreement. Lumos recognizes it is a separate and independent enterprise from Eureka County, that it has every opportunity to find other business, and that it will utilize a high level of professional skill necessary to perform the work under this agreement. Eureka County will not be liable for any obligations incurred by Lumos, including but not limited to unpaid wages, overtime or taxes.
- C. Lumos agrees to work with successive Boards of Eureka County Commissioners, but understands the obligations and duties of Tom Young and Lumos and Associates, Inc., under this agreement are personal and not assignable.

3. TERM OF AGREEMENT:

- A. The initial term of this agreement starts March 7, 2005, and ends Thursday, March 6, 2008.
- B. This agreement may be renewed for an indefinite period of two (2) year increments after

the initial term, beginning on the first regularly scheduled County Commission meeting in March and ending on the first regularly scheduled County Commission meeting in March two years later. All renewals must be in writing, by reissuing this agreement and obtaining signatures on or before the start date of a renewal period.

- C. For each renewal period the parties shall meet to consider a change in the amount paid for attendance at meetings, and will review any increases to the fee schedule.

4. TERMINATION:

- A. This agreement may be terminated by either party without cause by mailing a notice of termination to the principals listed below, who are also the persons designated as the responsible parties for carrying out this agreement by their respective organizations:

EUREKA COUNTY
c/o Ron Damele
Director of Public Works
P.O. Box 714
Eureka, NV 89316
(775) 236-5372
Fax: (775) 237-5708
E-mail: rdamele@eurekanv.org

LUMOS AND ASSOCIATES, INC.
c/o Tom Young, P.E.
Engineering Manager
800 E. College Parkway
Carson City, NV 89706
(775) 883-7077
Fax: (775) 883-7114
E-mail: tyoung@lumosenineering.com

- B. Termination is effective thirty (30) calendar days from mailing, counting the day of mailing.



5. COMPENSATION:

- A. Every calendar year Lumos will provide Eureka County a set fee schedule. The twelve month fee schedule will display the time and materials cost to Eureka County for services under this agreement. The fee schedule will remain fixed throughout the life of a project, set by the fee schedule in force at the time the project commences.
- B. During the initial three year term of this agreement, Lumos shall attend 24 Commissioner meetings per year, and up to an additional 4 meetings per year when requested by Eureka County to do so, at the fixed rate of \$2,000 per month. After the initial term of this agreement expires, the parties will consider a change to this fixed fee.
- C. Fees incurred by Lumos for necessary permits, applications, or sub-consultant fees shall be charged to Eureka County without an increase in cost.
- D. Compensation for projects may also be negotiated at the commencement of the project with reference to the fee schedule current at the time the project work starts.

6. PAYMENT:

Eureka County agrees to make payments within thirty (30) days upon receipt of an invoice from Lumos, unless Eureka County contests the amount charged. If there is a dispute, the parties agree to meet and work to immediately resolve the dispute.

7. WORK PRODUCT:

All documentation and papers prepared on behalf of Eureka County, in whatever form they are stored, whether electronically or otherwise, at all times work was done on behalf of Eureka County, including the time before this contract was executed, shall be and remain the property of Eureka County, and shall be made available upon the request of Eureka County at any time, but no later than one year

from the time this agreement, or any extension or amendment to this agreement, terminates. Eureka County shall pay a reasonable fee for the compilation, reproduction, and transmittal of any records requested under this provision.

8. INSURANCE

- A. Lumos shall give all notice and comply with all laws, rules and regulations of every kind and nature relating to Lumos's performance of work under this agreement, and will maintain the insurance coverage described below during the terms of this agreement.
- B. Lumos agrees to maintain general liability and property damage insurance from claims for, but not limited to, bodily injury, sickness, disease, death or property damage arising out of the performance by Lumos or a subconsultant under this agreement. Lumos also agrees Eureka County shall be listed as an additional insured. In addition, Lumos agrees to maintain an errors and omissions professional liability insurance policy, and workers' compensation insurance.

9. HOLD HARMLESS

- A. Lumos agrees to hold Eureka County, and its agents and employees, harmless of and from any civil liability to the extent allowed by law incurred by Lumos and while undertaking the activities contemplated by this agreement.
- B. This agreement to hold Eureka County harmless does not disturb Lumos's ability to enforce the provisions of this agreement.

10. ENTIRE AGREEMENT

This agreement shall be interpreted in accordance with the laws of the State of Nevada. Both parties may waive from time to time any and all rights under this agreement without effecting a waive:

forever. This agreement is the entire understanding and agreement between the parties and there are no other agreements or understandings, written or oral, in effect between the parties. Prior negotiations or agreements, if any, between the parties for the services contemplated by this agreement are superceded and are of no force or effect.

IN WITNESS WHEREOF, the parties have hereunder set their hands upon the date and year below written:

Signed this 7th day of
March, 2005.

Board of Eureka County Commissioners:



DONNA BAILEY, Chairman
P.O. Box 677, Eureka, NV 89316

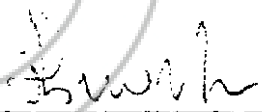
ATTEST:



CLERK

Signed this 7th day of
March, 2005.


LUMOS AND ASSOCIATES, Inc.:



Tom Young, P.E., Engineering Manager
800 E. College Parkway, Carson City, NV 89706

Signed this 7 day of
March, 2005.

Eureka County District Attorney:



THEODORE BEUTEL, Bar No. 5222
Eureka County District Attorney
P.O. Box 190, Eureka, NV 89316