

Assessor's Parcel Number: N/A

Date: MAY 20, 2011

Recording Requested By:

Douglas County - NV  
Karen Ellison - Recorder  
Page: 1 Of 10 Fee: 0.00  
BK-0511 PG-3841 RPTT: 0.00



Name: EILEEN CHURCH, PUBLIC WORKS  
(CP)

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Real Property Transfer Tax: \$ N/A

CONTRACT #2011.104  
(Title of Document)

2011.104  
2011 MAY 20 AM 9:05

**CONTRACT FOR SERVICES BY AN INDEPENDENT CONTRACTOR**

A CONTRACT BETWEEN

**DOUGLAS COUNTY**

AND

**LUMOS AND ASSOCIATES, INC.**

CLERK  
DEPUTY  
*[Signature]*

This Contract for Services by an Independent Contractor (the "Contract") is made this 19<sup>th</sup> day of May, 2011 (the "Effective Date"), by and between Douglas County, a political subdivision of the State of Nevada, through the Board of County Commissioners (the "County"), and Lumos and Associates, Inc. a Nevada corporation ("Contractor"). The County and Contractor are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

**WHEREAS**, Douglas County, a political subdivision of the State of Nevada, from time to time requires the services of independent contractors; and

**WHEREAS**, it is deemed that the personal services of Contractor herein specified are both necessary and desirable and in the best interests of Douglas County; and

**WHEREAS**, Contractor represents that Contractor is duly qualified, equipped, staffed, ready, willing and able to perform and render the services hereinafter described.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein made, the County and Contractor mutually agree as follows:

**1. TERM AND EFFECTIVE DATE OF CONTRACT.** The Contract will become effective on the date it is approved and signed by representatives of both Parties. The term of the Contract will be for two years from the Effective Date unless terminated sooner as provided hereinafter.

**2. INDEPENDENT CONTRACTOR STATUS.** The Parties agree Contractor will have the status of an independent contractor and that the Contract, by explicit agreement of the Parties, incorporates and applies the provisions of NRS 333.700, as necessarily adapted to the Parties, including the express understanding that Contractor is not an employee of the County and that:

There shall be no:

- (1) Withholding of income taxes by the County;
- (2) Industrial insurance coverage provided by the County;

- (3) Participation in group insurance plans which may be available to employees of the County;
- (4) Participation or contributions by either the Contractor or the County to the public employee's retirement system;
- (5) Accumulation of vacation leave or sick leave; and
- (6) Unemployment compensation coverage provided by the County if the requirements of NRS 612.085 for independent contractors are met.

**3. INDUSTRIAL INSURANCE.**

Contractor further agrees that, prior to the commencement of any work and as a precondition to any obligation of the County to make any payment under the Contract, Contractor will provide the County with a work certificate and/or a certificate issued by a qualified insurer in accordance with NRS 616B.627. Contractor also agrees that, prior to commencing any work under the Contract, Contractor will complete and provide evidence to the County that Contractor has made the following written request to Contractor's insurer:

Lumos and Associates, Inc. has entered into a contract with Douglas County to perform work from July 1, 2011 to June 30, 2012 and requests that the authorized insurer provide to Douglas County: (1) A certificate of coverage issued pursuant to NRS 616B.627 and (2) Notice of any lapse in coverage or nonpayment of coverage that the Contractor is required to maintain.

The certificate and notice should be mailed to:

Douglas County  
Post Office Box 218  
Minden, Nevada 89423

Contractor agrees to maintain all required workers' compensation coverage throughout the entire term of the Contract. If Contractor does not maintain the required coverage throughout the entire term of the Contract, Contractor agrees that the County may, at any time the coverage is not maintained by Contractor, order the Contractor to stop work, suspend the Contract, or terminate the Contract at the sole discretion of the County. For each six-month period this Contract is in effect, Contractor agrees, prior to the expiration of the six-month period, to provide another written request to the insurer for the provision of a certificate and notice of lapse in, or nonpayment of, insurance coverage. If Contractor does not make the request or does not provide the certificate before the expiration of the six-month period, Contractor agrees that the County may order the Contractor to stop work, suspend the Contract, or terminate the Contract at the sole discretion of the County.

**4. SERVICES TO BE PERFORMED.** The Parties agree that the scope of the services to be performed by Contractor for the County and the costs for services are attached hereto as Exhibit "A."

**5. PAYMENT FOR SERVICES.** Contractor agrees to provide the services set forth in Paragraph 4 at a cost not to exceed Fifty One Thousand Eight Hundred Dollars (\$51,800.00) (the "Contract Price"). Contractor understands and agrees that County does not guarantee any minimum amount and Contractor will only be paid for those services and materials requested by the County. Unless Contractor has received a written exemption from the County, Contractor must submit a written request for payment to the County for any services provided under the Contract. Requests for payment by Contractor may only be made for services actually rendered or for reimbursement of actual expenses incurred and paid by Contractor. Requests for payment must be submitted no later than fifteen (15) days after the end of the month in which services were provided and must include a detailed summary of the expenditures reported. Contractor agrees to provide with each request for payment a schedule of actual expenditures for the period, the cumulative total expenditures under the Contract, and a comparison of the cumulative expenditures to the total approved Contract Price.

**6. TERMINATION OF CONTRACT.** Either Party may terminate the Contract if either Party fails to correct any breach of the terms of the Contract within 30 days after receiving notice of such breach and having been given an opportunity to cure the breach.

**7. NONAPPROPRIATION.** All payments required pursuant to the Contract are contingent upon the availability of County funds. In accordance with NRS 354.626 and any other applicable provision of law, the financial obligations between the Parties will not exceed those monies appropriated and approved by the County for the Contract for the then current fiscal year under the Local Government Budget Act. The Contract will terminate and the County's obligations will be extinguished if the County fails to appropriate the necessary funding.

Nothing in the Contract will be construed to provide Contractor with a right of payment from any entity other than the County. Any funds budgeted by the County pursuant to the terms of the Contract that are not paid to Contractor will automatically revert to the County's discretionary control upon the completion, termination, or cancellation of the Contract. The County will not have any obligation to re-award or to provide, in any manner, the unexpended funds to Contractor. Contractor will have no claim of any sort to the unexpended funds.

**8. CONSTRUCTION OF CONTRACT.** The Contract will be construed and interpreted according to the laws of the State of Nevada. There will be no presumption for or against the drafter in interpreting or enforcing the Contract. In the event a dispute arises between the Parties, the Parties promise and agree to first meet and confer to resolve any dispute. If such meeting does not resolve the dispute, then the Parties agree to mediate any dispute arising from or relating to the Contract before an independent mediator. The fee, rate or charge of the mediator will be shared equally by the Parties, who will otherwise be responsible for their own attorney's fees and costs. If mediation is unsuccessful, litigation may only proceed before a department of the Ninth Judicial Court of the State of Nevada in and for the County of Douglas that was not involved in the mediation process and attorney's fees and costs will be awarded to the prevailing party at the discretion of the court. The mediator and court will recognize any offers of judgment made by a Party pursuant to Nevada law.

**9. COMPLIANCE WITH APPLICABLE LAWS.** Contractor promises and agrees to fully and completely comply with all applicable local, state and federal laws, regulations, orders, or

requirements of any sort in carrying out the obligations of the Contract, including, but not limited to, all federal, state, and local accounting procedures and requirements, all hazardous materials regulations, and all immigration and naturalization laws.

**10. ASSIGNMENT.** Contractor will neither assign, transfer nor delegate any rights, obligations or duties under the Contract without the prior written consent of the County.

**11. COUNTY INSPECTION.** The books, records, documents and accounting procedures and practices of Contractor related to the Contract will be subject to inspection, examination and audit by the County, including, but not limited to, the contracting agency, the County Manager, the District Attorney, and, if applicable, the Comptroller General of the United States, or any authorized representative of those entities.

**12. DISPOSITION OF CONTRACT MATERIALS.** Any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials prepared by or supplied to Contractor in the performance of its obligations under the Contract (the "Materials") will be the exclusive property of the County and all such materials will be remitted and delivered, at Contractor's expense, to the County by Contractor upon the completion, termination or cancellation of the contract. Alternatively, if the County provides its written approval to Contractor, the Materials must be retained by Contractor for a minimum of six years after Contractor's receipt of the final payment from County and all other pending matters are closed. If, at any time during the retention period, the County, in writing, requests any or all of the Materials, then Contractor will promptly remit and deliver the materials, at Contractor's expense, to the County. Unless the County has requested the remittance and delivery by Contractor of the Materials, Contractor will not use, willingly allow or cause to have such Materials used for any purpose other than the performance of Contractor's obligations under the terms of the Contract without the prior written consent of the County.

**13. PUBLIC RECORDS LAW.** Contractor expressly understands and agrees that all documents submitted, filed, or deposited with the County by Contractor, unless designated as confidential by a specific statute of the State of Nevada, will be treated as public records pursuant to NRS chapter 239 and shall be available for inspection and copying by any person, as defined in NRS 0.039, or any governmental entity. Contractor expressly and indefinitely waives all of its rights to bring, including but not limited to, by way complaint, interpleader, intervention, or any third party practice, any claims, demands, suits, actions, judgments, or executions, for damages or any other relief, in any administrative or judicial forum, against the County or any of its officers or employees, in either their official or individual capacity, for violations of or infringement of the copyright laws of the United States or of any other nation.

**14. INDEMNIFICATION.** Contractor agrees to indemnify, defend, and save and hold the County, its agents and employees harmless from any and all claims, causes of action or liability arising from or related to Contractor's negligent performance pursuant to the terms of the Contract by Contractor or Contractor's agents or employees, including any intentional misconduct.

**15. MODIFICATION OF CONTRACT.** The Contract and the attached exhibit constitute the entire agreement and understanding between the Parties and may only be modified by a written amendment signed by both of the Parties.

**16. AUTHORITY.** The Parties represent and warrant that they have the authority to enter into this agreement.

**17. STANDARD OF CARE.** Contractor will perform all services in a manner consistent with that level of care and skill ordinarily exercised by other members of Contractor's profession currently practicing in the same locality under similar conditions.

**18. Waiver of Lien.** Contractor understands and agrees that the services it will render to the County are not intended for the improvement of real property or to otherwise grant any rights to Contractor pursuant to NRS chapter 108.

**19. THIRD PARTY BENEFICIARY.** Nothing contained in this Agreement is intended to convey any rights or to create a contractual relationship with any third party or to otherwise allow a third party to assert a cause of action against either Contractor or County.

**20. Notices.** All notices, requests, demands and other communications hereunder must be in writing and will be deemed delivered when sent via certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

**To County:** Douglas County  
Attn: Public Works Director  
1120 Airport Road, F2  
Post Office Box 218  
Minden, Nevada 89423  
Telephone: (775) 782-6227

**To Contractor:** Lumos and Associates, Inc  
225 Kingsbury Grade, Suite A  
P.O. Box 3570  
Stateline, Nevada 89449

**21. CONFLICT OF INTEREST.** By signing the Contract, Contractor agrees that any information obtained from Douglas County, in whatever form, will not be divulged to other competing interests without the permission of the County Manager. In the event of a breach of this provision, Douglas County may immediately withdraw, without penalty or any payment, from the Contract. Contractor must notify Douglas County of any other contracts or projects Contractor is working on that may impact Douglas County.

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

Lumos and Associates, Inc.

By: [Signature] 5/19/11  
Location Principal Lake Tahoe (Date)

Douglas County

By: [Signature] May 19, 2011  
Michael A. Olson, Chairman (Date)  
Douglas County Board of County Commissioners

Attest:

By: [Signature] May 19, 2011  
Ted Thran (Date)  
Douglas County Clerk/Treasurer

BY: [Signature]  
CLERK TO THE BOARD



November 12, 2010

Cathe Poole, Senior Civil Engineer  
Public Works  
P.O. Box 218  
Minden, NV 89423

**RE: Proposed Contract Amendment - Douglas County Landfill Monitoring and Sampling Closure Assessment**

Dear Cathe,

After submitting a closure plan to the Nevada Department of Environmental Protection (NDEP), Douglas County received comments from NDEP pursuant to the issues questioning the location of the existing monitoring wells and sampling protocol. NDEP is questioning if the locations of the existing monitoring wells are adequate to ensure that that PCE contamination plume has really receded. They are also questioning the sampling protocol for collecting the water quality samples for analysis. Douglas County has requested Lumos provide them with a proposal to have their Hydrogeologist review the historical data associated with the monitoring of the landfill and prepare a written opinion of the adequacy of the initial investigation and monitoring protocol. The following scope of work has been proposed to assess the historical information associated with the Douglas County landfill groundwater investigation and monitoring protocol.

In addition, additional requests were made by NDEP for submittal of the Final Closure Report and request to suspend monitoring of groundwater at the monitoring sites. Specifically NDEP requested a Certified Environmental Manager's (CEM) signature on the report. The original scope of work for this project covered rebuilding and data entry to the Landfill Groundwater Monitoring Database. When this work was complete Douglas County requested Lumos complete the "Landfill Closure Report and Request for Suspension of Monitoring Efforts." Lumos agreed to begin work on the report with the understanding that future budget increases may be necessary to cover final costs of the report. This project amendment request covers the additional costs incurred to provide:

- The CEM signature,
- Other additional costs incurred,
- Costs required to provide zone sampling of indicated monitoring wells,
- Costs to provide an investigation and assessment of the landfill final cover,
- And the costs to provide the hydrogeologist's opinion of the original monitoring plan's suitability and effectiveness.

The following scope of work itemizes and details the work required to respond to these agency comments.



## **Scope of Work**

### **Task-4: Provide CEM Signature and Additional Items of Work**

Prior to submittal of the Landfill Closure Report and Request to Suspend Monitoring Services, the Nevada Department of Environmental Protection required that a CEM's signature be on the report. Obtaining this signature required additional coordination efforts with Douglas County and NDEP and it also required additional justification within the report to justify the request to suspend monitoring. Out of good faith, Lumos completed this work even though completing this work meant the project would sustain substantial budget overruns. This task requests reimbursement for these overruns.

### **Task-5: Review of Historical Data and Site Visit**

Lumos will review the historical phase 1 investigation conducted by Hydro-Search Inc (HIS) in 1988 along with all pertinent data provided by Douglas County. The data will be assessed for potential gaps in the initial investigation and monitoring and sampling protocol that might skew the data collected over the past 20+ years. Specifically, Lumos will compare the Hydrosearch plan against current standards and requirements for such monitoring plans in order to comment on its suitability to be used to meet current monitoring requirements. Upon completion of the historical data review, Lumos' Hydrogeologist will conduct a site visit of the area to assess the physical nature of the area and meet with a county representative to assess and inspect the equipment used for monitoring and sampling. Lumos also assumes that attendance at up to three additional meetings with NDEP and USGS will be required to clarify findings that will need to be made in order for the County to suspend monitoring operations at the landfill. Lumos attendees will include our hydrogeologist and Lake Tahoe Location Principal.

### **Task-6: Zone Sampling Douglas County Park Well.**

Lumos proposes to hire Carson Pump to install a packer system on up to four of the monitored wells and sample specific screen intervals within each well. Lumos has received a verbal estimate on the cost to provide this service and has included this cost in this task. Lumos will oversee the work to ensure proper placement of equipment in the well and will collect the water samples from the sampling zones. The samples will be delivered under chain of custody to an analytical lab of the County's choosing, following the approved sampling protocol. Lumos assumes that the zone sampling can be conducted within four "long" business days on up to four wells. All water quality analysis will be billed directly to the Douglas County for payment.

### **Task-7: Brief Written Opinion**

Following the assessment of the existing information, site visit, zone sampling, and water quality analysis, Lumos' Hydrogeologist will provide a brief written opinion in a "letter format" of the findings to Douglas County.

**Task-8: Final Cover Evaluation**

Douglas County has additionally informed Lumos that the HDPE cover that "caps" the landfill has shown signs of isolated failures along the seam overlaps. The County has therefore requested that Lumos provide an evaluation and recommendations for future repairs and maintenance of this cover. Lumos proposes to hire GC Environmental Inc. (GCE) to conduct this investigation and deliver recommendations. Dean Stanphill of GCE will be the primary person completing the work for this task. A copy of their scope of work is provided. In addition to the work completed by GCE for this task, the costs proposed for this task will also include time and expenses for Lumos to administer and manage the work completed by GCE. We assume the Lumos Location Principal will need to attend two meetings, one on site, relating to this work. In addition we anticipated 4 hrs of principal time will be required to coordinate and manage the task.

**Fee Schedule**

|  |                 |
|--|-----------------|
| Task 4: Provide CEM Signature and Additional Items of Work | \$6,600         |
| Task 5: Review of Historical Data and Site Visit           | \$4,800         |
| Task 6: Zone Sampling Including Carson Pump Costs          | \$25,800        |
| Task 7: Written Opinion                                    | \$900           |
| Task 8: Final Cover Evaluation (Lumos and GCE)             | \$13,700        |
| <b>Total Cost</b>  | <b>\$51,800</b> |

All other conditions of original contract apply. Lumos appreciates the opportunity to submit this request.

Sincerely,



Brian McRae P.E.  
Location Principal  
Lake Tahoe Office

**CERTIFIED COPY**

The document to which this certificate is attached is a full, true and correct copy of the original on file and on record in my office.

DATE: May 20 2011  
 \_\_\_\_\_ Clerk of the \_\_\_\_\_ Judicial District Court  
 of the State of Nevada, In and for the County of Douglas.  
 By [Signature] Deputy