

**AGENDA
CITY OF FALLON – CITY COUNCIL
55 West Williams Avenue
Fallon, Nevada
March 7, 2023 – 9:00 a.m.**

The Honorable City Council will meet in a regularly scheduled meeting on March 7, 2023 at 9:00 a.m. in the City Council Chambers, 55 West Williams Avenue, Fallon, Nevada.

Items on the agenda may be taken out of order. The Council may combine two or more agenda items for consideration. The Council may remove an item from the agenda or delay discussion relating to an item on the agenda at any time. Unless otherwise allowed by the City Council, public comments by an individual will be limited to three minutes.

1. Pledge of Allegiance to the Flag.
2. Certification of Compliance with Posting Requirements.
3. Public Comments: General in nature, not relative to any agenda items.
No action may be taken on a matter raised under this item until the matter has been specifically included on an agenda as an item upon which action will be taken. **(For discussion only)**
4. Consideration and possible approval of Council Meeting Minutes for February 10, 2023. **(For possible action)**
5. Approval of Warrants: **(For possible action)**
 - A) Accounts Payable
 - B) Payroll
 - C) Customer Deposit
6. Possible introduction of Bill No. 792: An Ordinance amending the City of Fallon Municipal Code, Title Five, “Business Licenses and Regulations,” to add Chapter 5.60 entitled “Mobile Food Vendors” which provides for the regulation and licensing of mobile food vendors within the City of Fallon; and other matters properly related thereto. **(For possible action) (This agenda item is for possible introduction of the proposed ordinance only. If introduced, a public hearing on the proposed ordinance will be set in the next agenda item and no further action can or will be taken at this meeting. At the public hearing, which will be properly noticed and advertised, the City Council will take comment and then consider possible adoption of the ordinance as introduced or amended.)**
7. Setting of public hearing date for Bill No. 792: An Ordinance amending the City of Fallon Municipal Code, Title Five, “Business Licenses and Regulations,” to add Chapter 5.60 entitled “Mobile Food Vendors” which provides for the regulation and licensing of mobile food vendors within the City of Fallon; and other matters properly related thereto. **(For possible action.)**
8. Consideration and possible action to approve a construction contract with A&K Earthmovers of Fallon, Nevada, in order to complete the Oats Park Splash Pad and Pavilions Project, PWP-CH-2023-186, in the amount of One Million Five Hundred Sixty Thousand Dollars (\$1,560,000). **(For possible action)**

9. Consideration and possible approval of a Professional Services Contract with Lumos and Associates, Inc. for construction administration support services relating to the Oats Park Splash Pad and Pavilions project in the amount of Forty-Nine Thousand Seven Hundred Dollars (\$49,700).
(For possible action)
10. Public Comments **(For discussion only)**
11. Council and Staff Reports **(For discussion only)**
12. Executive Session (closed):
 - Discuss Litigation Matters **(For discussion only)** (NRS 241 et.seq.)
 - Negotiations with Operating Engineers Local Union No. 3 **(For discussion only)**
 - Negotiations with Fallon Peace Officers Association **(For discussion only)**

This agenda has been posted on or before 9:00 a.m. on March 2, 2023 at City Hall, District Court Building, Churchill County Office Complex, Churchill County Public Library and posted to the City's website (<https://fallonnevada.gov>) and the State of Nevada public notice website (<https://notice.nv.gov/>). Members of the public may request the supporting material for this meeting by contacting Elsie M. Lee, Deputy City Clerk, City Clerk's Office, City Hall, 55 West Williams Avenue, Fallon, Nevada, 775-423-5104. The supporting material for this meeting is also available to the public on the City's website (<https://fallonnevada.gov>) and the State of Nevada public notice website (<https://notice.nv.gov/>).


Elsie M. Lee

NOTICE TO PERSONS WITH DISABILITIES: Reasonable effort will be made to assist and accommodate physically handicapped persons desiring to attend the meeting. Please call the City Clerk's Office at 775-423-5104 in advance so that arrangements may be conveniently made.

March 7, 2023

Agenda Item 4

Consideration and possible approval of Council Meeting Minutes for February 10, 2023. **(For possible action)**



FALLON

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**MINUTES
CITY OF FALLON
55 West Williams Ave
Fallon, Nevada
February 10, 2023**

The Honorable City Council met in a special meeting on the above date in the Council Chambers, 55 West Williams Avenue, Fallon, Nevada.

Present:

Mayor Ken Tedford
Councilwoman Kelly Frost
Councilwoman Karla Kent
Councilman Paul Harmon
Chief of Staff Bob Erickson
City Attorney Mike Mackedon
Deputy City Attorney Trent deBraga
Public Works Director Brian Byrd
Deputy Public Works Adrian Noriega
City Clerk-Treasurer Sean Richardson
Deputy City Clerk Elsie Lee
Deputy City Clerk Michael O'Neill
Captain Ron Wenger
Captain John Riley
City Engineer Derek Zimney
Director of Tourism Jane Moon

The meeting was called to order by Mayor Ken Tedford at 9:00 a.m.

Mayor Ken Tedford led the Pledge of Allegiance.

Mayor Ken Tedford inquired if the agenda had been posted in compliance with NRS requirements.

City Clerk-Treasurer Sean Richardson advised that the agenda was posted in compliance with the NRS requirements.

Public Comments

Mayor Ken Tedford inquired if there were any public comments. He noted that comments are to be general in nature, not relative to any agenda items. No action may be taken on a matter raised under this item until the matter has been specifically included on an agenda as an item upon which action will be taken.

No comments were noted.

Consideration and possible action to determine the City of Fallon's options and participation in the Utah Associated Municipal Power Systems (UAMPS) Carbon Free Power Project (CFPP). The three options are to continue in the project, reduce the City of Fallon's entitlement share, or withdrawal from the project.

City Clerk-Treasurer Sean Richardson greeted the Council. As a member of UAMPS, we have been involved in this Carbon Free Power Project since the beginning. In the last year, the Carbon Free Power Project included 27 UAMPS members. For the member's protection, UAMPS negotiates, what they call, Development Cost Reimbursement Agreement. This reimburses the majority of the expenses, if certain bench marks are not met. During the past year, the project had an economic competitive test failure, when the cost of the energy price went up significantly. They mentioned that the cost was not due to project design, but due to significant increases in commodity prices and interest rates. Now, the members of the Carbon Free Power Project have three options. The first option is to continue in the project, under a new Development Cost Reimbursement Agreement. This new agreement includes an adjusted cost of the consonants; the energy rate, which is significantly increased from the old rate. The group pushed UAMPS to renegotiate a subscription clause into the agreement. If the project doesn't reach a certain subscription amount, that amount of 80%, that would fail another test and allow us another offramp to this project. The other option is to reduce our entitlement share in the project. The last option would be to withdraw completely from the project. If we were to withdraw right now, we would not receive the reimbursement benefits from the current Development Cost Agreement, since the project is still scheduled to move forward. I believe the current members, in the Carbon Free Development Project have already passed a resolution to move forward. As of yesterday, at our last meeting, there was only one entity that has chosen, out of the 27-members, to withdraw this year. I believe, more than half have already agreed to move forward. The due date, that the resolution has to be passed for UAMPS, is next Friday, the 17th.

Mayor Tedford inquired if there were any questions for City Clerk-Treasurer Richardson. I believe that we got into this because it is a good project. As you know, we already purchase alternative sources of energy from UAMPS. We were in wind, years ago. As you know, we buy geothermal, solar energy from CYRQ, and we are involved in other solar power energy with UAMPS. We have been, in what I would call, clean coal, from UAMPS for years but there is a lessening of that in our country and in our state. We got in this Carbon Free Power Project, several years ago, with these other 28-members, now down to 27-members, and us, for a good reason. To secure stable power for our citizens and I think that it is something that we should continue to ride out with UAMPS, for at least the next coming year, and find out how things are going at the next offramp. It is my recommendation, and staff's recommendation, to continue down this road. Does public or Council have any comments or questions?

Councilwoman Kent inquired on the company that backed out of the project. Do we know what percentage they were involved?

City Clerk-Treasurer Sean Richardson stated that it was a City that backed out. I believe, they had approximately 1.3, so about 1,300 KW of entitlement share. The entitlement share is less than ours, and a pretty small percentage.

Deputy City Attorney Trent deBraga added that before Council was the Schedule I listing the member's entitlement shares. It was Morgan, who withdrew from the project, and their development cost share percentage was 1.2%. We have been informed, at our last UAMPS meeting, that Los Alamos, who was at 1.86%, increased to 8.6%. Of course, all of the

other members have remained with the same entitlement share, and there are still others, like us, where a decision has to be made.

Mayor Tedford added that we also have hydro power. Wind was one of the first sources of power we did at Horse Butte, to diversify our portfolio. I know that there was some talk, during Paul's campaign, that we don't have a diversified portfolio. Most of what happened, with the discussions, during Paul's campaign, were false, and that was one of them. It has been diversified since sometime in the 1990's. In Horse Butte, their wind power, was one of the first things that we did. Rachel Dahl went to Horse Butte and signed one of the wind turbines.

Councilwoman Frost stated that this is a good project and believes it makes us more diversified. I believe this is the best option for us, as we go forward, in diversifying our portfolio.

Councilman Harmon stated that this project was new to him when he came on board. I received good education regarding the Carbon Free Project within the last months. Listening to City staff, I believe that this is a good project, at least for the next year. We need to continue in attempting to reach that 80% goal, and seeing what the off-ramp options will be, after that year.

Councilwoman Frost motioned to approve Resolution 23-01, Continuation Resolution, for the City of Fallon's 2,000 KW entitlement share under the Carbon Free Power Project Power Sales Contract for phase 1B of the licensing period for the CFPP; and related matters; seconded by Councilman Harmon and approved with a 3-0 vote by the Council.

Public Comments

Mayor Tedford inquired if there were any public comments.
No comments were noted.

Council and Staff Reports

Mayor Tedford inquired if there were any Council or staff reports.
No reports were noted.

Executive Session

Mayor Tedford tabled the executive session, as it was not needed at this time.

Adjournment

There being no further business to come before the Council, Mayor Tedford adjourned the meeting at 9:13 a.m.

Mayor Ken Tedford

Attest: _____
Sean C. Richardson, City Clerk-Treasurer

March 7, 2023

Agenda Item 6

Possible introduction of Bill No. 792: An Ordinance amending the City of Fallon Municipal Code, Title Five, “Business Licenses and Regulations,” to add Chapter 5.60 entitled “Mobile Food Vendors” which provides for the regulation and licensing of mobile food vendors within the City of Fallon; and other matters properly related thereto. **(For possible action) (This agenda item is for possible introduction of the proposed ordinance only. If introduced, a public hearing on the proposed ordinance will be set in the next agenda item and no further action can or will be taken at this meeting. At the public hearing, which will be properly noticed and advertised, the City Council will take comment and then consider possible adoption of the ordinance as introduced or amended.)**

An Ordinance amending the City of Fallon Municipal Code, Title Five, "Business Licenses and Regulations," to add Chapter 5.60 entitled "Mobile Food Vendors" which provides for the regulation and licensing of mobile food vendors within the City of Fallon; and other matters properly related thereto.

WHEREAS, the City Council of the City of Fallon does ordain as follows:

SECTION ONE: that Title Five, "Business Licenses and Regulations," be amended, adding Chapter 5.60 which shall read as follows:

Chapter 5.60-"Mobile Food Vendors"

5.60.010 -Statement of Purpose and Intent-Regulation.

It is found and declared that the public health, safety, morals, good order and general welfare of the residents of the City of Fallon require the regulation and control of all mobile food vendors. All mobile food vendors shall be licensed and regulated so as to protect the public health, safety, morals, good order and general welfare of the inhabitants of the City and to safeguard the public. It is further found and declared that the right to obtain such a license is a privilege and that the license may be suspended, limited or revoked for violation of the conditions of this chapter. In conformity with the policy of this chapter, the following persons are declared not to be qualified to hold a license under the provisions of this chapter:

- A. A person who violates, or has violated, the provisions of this chapter despite notice by the City;
- B. A person who has been convicted of a crime involving theft, fraud, dishonesty, receiving or possessing stolen property, any controlled substance violation or any sex offense;
- C. A person whose license, issued under the provisions of this chapter, or those ordinances or statutes of any other agency lawfully engaged in the licensing or regulation of business as defined in this chapter, has been denied, suspended or revoked for cause;
- D. A person who, at the time of renewal of any license issued under this chapter, would not be eligible for such license upon a first application;
- E. A partnership, limited partnership association, limited liability company, or other business entity unless all of the members of such partnership, limited partnership association, limited liability company, or other business entity are qualified to obtain a license;

- F. A corporation, unless it is incorporated in the State of Nevada, or unless it is a foreign corporation which is qualified under Nevada law to transact business in Nevada; or
- G. A corporation, if an officer or director thereof would not be eligible to receive a license for any reason which would disqualify an individual applicant.

5.60.020- Definitions.

For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- A. "City" means the City of Fallon.
- B. "Mobile food vendor" means, but is not limited to, any person or employee or agent thereof carrying on or conducting the business of selling ice cream, fruit, candy, vegetables, meats or any other edible foods, whether raw, prepared, loose or packaged, from a motor vehicle, or other type of food service conveyance, for human consumption and which is used to sell and dispense food or beverages to customers.
- C. "Employee" means a person who works for or under the direction of, on behalf of, or as an agent of a licensee.
- D. "Licensee" means the holder of a mobile food vendor license.
- E. "Vehicle" means a motorized vehicle, as well as a trailer or other portable unit that can be drawn by a motorized vehicle and is intended for use in vending.
- F. "Vend or Vending" means to sell or offer to sell food products or beverages from a vehicle.
- G. "Premises" means the interior of a business establishment, and all exterior landscaped areas, pedestrian areas and sidewalks adjacent to a business establishment, and the designated parking lot area provided by a business establishment for its customers to park their vehicle. The premises includes the entire parking area used by a multi-store complex or shopping center wherein such business establishment is located.
- H. "Private property" means all real property in the City, but excluding public property.

- I. "Public property" means all real property owned, leased or occupied by the City, all real property in which the City has a possessory interest, and any easement granted to the City for public purposes, including, without limitation, public streets, parks, alleys, sidewalks, flood control channels, and any other real property within the City owned, leased or occupied by any governmental entity.
- J. "Health District" means the Central Nevada Health District.
- K. "Nevada State Division" means the Nevada Division of Public and Behavioral Health or other state agency responsible for regulating mobile food vendors or mobile units.

5.60.030-License Required.

It is unlawful for any mobile food vendor to engage in the business of mobile food vending within the City without first obtaining a license therefor in compliance with the provisions of this chapter. As a prerequisite to obtaining a license pursuant to this chapter, a licensee shall first have a City business license issued pursuant to FMC 5.04.

5.60.040-License-Application.

An application for a mobile food vendor license must be made upon forms provided by the City Clerk's Office. The applicant shall provide the following:

- (A) A description of the selling methods to be used and the nature of the products or services to be offered;
- (B) Proof of filing with the State of Nevada Department of Taxation;
- (C) A health permit for each vehicle;
- (D) A copy of a valid, unexpired Nevada vehicle registration, if applicable, for each vehicle;
- (E) Such other information or documentation as the City or any of the City's departments may require in order to establish the applicant's suitability and fitness for approval; and
- (F) By submitting an application, an applicant consents to a background investigation, including the applicant's criminal history to determine if the applicant is suitable for approval.

5.60.050-Compliance with Health Regulations.

Each mobile food vendor shall:

- (A) Comply with all Nevada State Division regulations, or, if at the time of application the Health District is regulating mobile food vendors then each mobile food vendor shall comply with all Health District regulations.
- (B) Prominently display on all vehicles all health permits issued to the vendor by the Nevada State Division or Health District.

5.60.060-License Fee.

Each mobile vendor shall pay an annual fee that shall be established and amended from time to time by resolution of the City Council. The annual license fee shall be due on the first day of January of each year. There shall be no pro rata computation for the license fee for any license issued after the first day of January of each calendar year.

5.60.070-License-Display-Nontransferable.

- (A) Any person required to have a mobile food vendor license must display in a conspicuous manner of each vehicle to be used for vending, the license associated with that vehicle. The display shall be of such color, size and placement that the license can be easily read at a distance of ten feet.
- (B) No license granted or issued under any provision of this chapter shall be in any manner assignable or transferable.

5.60.080- Further Regulations.

- (A) No licensee hereunder may lease, rent, or otherwise hire a vehicle to another for use as a mobile food vendor. Every driver shall be a licensee hereunder, or the direct employee of such licensee.
- (B) No mobile food vendor shall enter on private property, knock on doors, ring any bells, or otherwise disturb persons in their residences. This section shall not apply, however, when the mobile food vendor has been specifically invited by the owner, resident, occupant or person legally in charge of the premises.
- (C) Every mobile food vendor's vehicle must be equipped with a trash receptacle and shall keep setup sites free from trash, garbage or other refuse. Each mobile food vendor shall be held responsible for littering in the vicinity of their vehicle.
- (D) Mobile food vendors shall provide a venue free from excessive noise. Mobile food vendors shall not broadcast any music while stopped or parked.
- (E) Use of strobe lights or other similar devices aimed at directing attention to the mobile vending business is prohibited.

(F) Mobile food vendors shall not interfere with the safe and convenient passage of pedestrians, obstruct any pedestrian walkway or reduce its clear width to less than four feet.

(G) The licensee shall maintain a vehicle to be used for vending in such a condition that all doors, windows, hoods and trunks open and close securely; ensure the exterior of the vehicle is clean and in good repair; and ensure any windows on the vehicle are clear of signs and other obstructions.

5.60.090-Location Restrictions.

(A) Except as otherwise provided in subsection (B) of this section, no mobile food vendor shall:

(1) Conduct business on Public Property.

(2) Conduct business on Private Property unless written permission is received from the owner of record and the mobile food vendor can provide satisfactory evidence of the same.

(3) Vend in any congested area where the operation will impede pedestrian or vehicle traffic.

(B) The provisions of subsection (A)(1) of this section do not apply to the operations of a mobile food vendor at a particular location if and to the extent the vendor is operating at that location pursuant to a contractual arrangement with the City or authorization from the City.

5.60.110- Hours of Operation- Restrictions.

It is unlawful for a mobile food vendor to operate within the corporate limits of the City between the times of 8:00 p.m. and 8:00 a.m.; provided, however, that the provisions of this section shall not apply to mobile food vendors who receives approval from the City to conduct business at different hours.

5.60.120- Unlawful Operations.

It shall be unlawful for any mobile food vendor to:

(A) Sale, offer, or provide alcohol or alcoholic beverages as those terms are defined in FMC 5.08.010, unless the mobile food vendor has been issued a liquor license pursuant to FMC 5.08 and the City Clerk, in the promotion of public events within the City, allows a licensee, for the duration of the public event only, to sell alcoholic beverages at such public event.

(B) Vend or park a vehicle to be used for vending within five hundred (500) feet of the outside perimeter of school property:

- 1. During the hours the school is in session;**
- 2. During the one-hour period preceding the start of the first session of the day;
or**
- 3. During the one-hour period after the final session has ended;**

(C) Consume alcoholic beverages while vending;

(D) Vend within five hundred (500) feet of a licensed concession stand located within a City park when the concession stand is open for business, unless otherwise permitted under a contractual arrangement with the City or authorization from the City regarding a specific location;

(E) Vend in any residential neighborhood unless the vendor is operating as a caterer for a specific event at a specific location;

(F) Vend within two hundred (200) feet of the primary public entrance of a licensed restaurant during the hours the restaurant is open for business, unless the vendor:

- 1. Is located on the same premises as the licensed restaurant and is operating either on behalf of or with the written consent of the restaurant licensee and with the written permission of all other licensed restaurants within two hundred (200) feet of where the vending will take place; or**
- 2. Is operating at a location which such vending has been specifically approved by means of a special event permit issued by the City;**

(G) Operate or park a vehicle to be used in vending in violation of applicable traffic and parking laws and ordinances;

(H) Place tables, chairs or similar items in the public right-of-way in connection with a vending operation;

(I) Vend on any one parcel, lot or commercial subdivision for more than four (4) hours within any twenty-four hour period;

(J) Vend on the same premises where the licensee operates any licensed business, including a restaurant establishment, unless the food and beverages to be prepared, offered or sold from the vehicle could be prepared, sold, and disposed of on the premises in compliance with all City codes and regulations.

5.60.130-License-Suspension-Revocation-Limitation.

Any license issued under this chapter may be revoked, limited, or suspended by the City Council for any of the reasons set forth in Sections 5.60.030 through 5.60.130, inclusive.

5.60.140- Licensee Responsible for Acts of Employees.

Every licensee shall be responsible for the acts of their employees and agents committed during the course of employment or licensed activity. In any license suspension, limitation or revocation proceedings, the fact that the licensee did not have actual knowledge of the events complained of shall be no defense, and every licensee hereunder accepts their license subject to said condition.

5.60.150- Licensee's Agreement to Conform to Law.

Acceptance of a license constitutes an agreement on the part of such licensee to be bound by all of the regulations of the City as the same now are, or may hereafter be amended or promulgated. It is the sole responsibility of the licensee to keep themselves informed of the content of all such rules and regulations, and ignorance thereof shall not excuse violations.

5.60.160 - Procedure for suspension or revocation of license.

(A) Any license issued pursuant to the provisions of this chapter may be suspended or revoked in the manner provided in this section.

(B) The City Council may, on its own motion or initiative, or upon the complaint of any person, initiate proceedings to suspend or revoke a license by serving a complaint upon the licensee setting forth the alleged reason for the proceeding;

(C) The licensee shall within five days of the date of service of the complaint, file with the City Clerk a written answer to the complaint, under oath;

(D) The City Council shall set a date and time for a hearing with notice of said hearing to be served upon the licensee;

(E) If the licensee fails to file a written answer within the time required or fails to appear at the place and time designated for the hearing, the City Council shall order the license revoked;

(F) The City Council shall within ten days from the date of the hearing enter its order suspending, revoking or sustaining the license;

(G) There shall be no reopening, appeal or review of the proceedings before the City Council, except when it shall subsequently appear to the satisfaction of the City Council that the licensee's failure to answer or appear was due to matters beyond the licensee's control and not through negligence on the part of the licensee.

5.60.170 - Emergency Suspension.

Notwithstanding any provision of this chapter, the licensee accepts their license, subject to suspension by the Mayor, Chief of Police or City Council without notice following a determination that continued operation by the licensee constitutes a clear and immediate threat to the safety and peace of the citizens of the City of Fallon. Where suspension is by the Mayor or Chief of Police, it shall remain in effect until the next regular meeting of the City Council, at which time the City Council may continue the suspension until a hearing can be held in accordance with this chapter. Upon an emergency suspension by the City Council, the suspension shall remain in effect until the hearing has been held in accordance with this chapter or the suspension is rescinded by order of the City Council.

SECTION TWO: If any section, article, paragraph, sentence, clause, phrase or word in this ordinance, or application thereto, of any persons or circumstances is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance; and the City Council hereby declares it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

This ordinance shall become effective after its passage, approval and publication as required by law.

Proposed by: _____

Passed and adopted this ____ day of _____, 2023.

Those voting "aye": _____

Those voting "nay": _____

Those absent: _____

Those abstaining: _____

KEN TEDFORD
Mayor

ATTEST: _____
SEAN RICHARDSON
City Clerk-Treasurer

March 7, 2023

Agenda Item 7

Setting of public hearing date for Bill No. 792: An Ordinance amending the City of Fallon Municipal Code, Title Five, “Business Licenses and Regulations,” to add Chapter 5.60 entitled “Mobile Food Vendors” which provides for the regulation and licensing of mobile food vendors within the City of Fallon; and other matters properly related thereto. **(For possible action.)**

**CITY OF FALLON
REQUEST FOR COUNCIL ACTION**

Agenda Item No. 7

DATE SUBMITTED: February 27, 2023

AGENDA DATE REQUESTED: March 7, 2023

TO: The Honorable City Council

FROM: Trent deBraga, Deputy City Attorney

SUBJECT TITLE: Setting of public hearing date for Bill No. 792: An Ordinance amending the City of Fallon Municipal Code, Title Five, "Business Licenses and Regulations," to add Chapter 5.60 entitled "Mobile Food Vendors" which provides for the regulation and licensing of mobile food vendors within the City of Fallon; and other matters properly related thereto.(For possible action.)

Resolution Ordinance
 Formal Action/Motion Other

POSSIBLE ACTION: Set public hearing date for March 21, 2023, at 9:00 a.m. for Bill No. 792, an Ordinance amending the City of Fallon Municipal Code, Title Five, "Business Licenses and Regulations," as presented.

DISCUSSION: None.

PREPARED BY: Trent deBraga, Deputy City Attorney

March 7, 2023

Agenda Item 8

Consideration and possible action to approve a construction contract with A&K Earthmovers of Fallon, Nevada, in order to complete the Oats Park Splash Pad and Pavilions Project, PWP-CH-2023-186, in the amount of One Million Five Hundred Sixty Thousand Dollars (\$1,560,000). **(For possible action)**

Incorporated 1908

**CITY OF FALLON
REQUEST FOR COUNCIL ACTION**

Agenda Item No. 8

DATE SUBMITTED: February 28, 2023

AGENDA DATE REQUESTED: March 7, 2023

TO: The Honorable City Council

FROM: Brian Byrd

SUBJECT TITLE: Consideration and possible action to approve a construction contract with A&K Earthmovers of Fallon, Nevada, in order to complete the Oats Park Splash Pad and Pavilions Project, PWP-CH-2023-186, in the amount of One Million Five Hundred Sixty Thousand Dollars (\$1,560,000.00). **(For possible action)**

TYPE OF ACTION REQUESTED: (Check One)

- | | |
|--|------------------------------------|
| <input type="checkbox"/> Resolution | <input type="checkbox"/> Ordinance |
| <input checked="" type="checkbox"/> Formal Action/Motion | <input type="checkbox"/> Other |

RECOMMENDED COUNCIL ACTION: Motion to approve a construction contract with A&K Earthmovers of Fallon, Nevada, in order to complete the Oats Park Splash Pad and Pavilions Project, PWP-CH-2023-186, in the amount of One Million Five Hundred Sixty Thousand Dollars (\$1,560,000.00). **(For possible action)**

DESCRIPTION: Upon approval, the project would allow for the construction and installation of a 3,000 square foot splash pad located directly north of the outdoor pool. The splash pad will feature multiple areas where family friendly water play activities can occur. The versatility of splash pads with their multiple spray zones appeal to all age groups while providing an area that is free of standing water. In addition to the area designated specifically for splash pad activities, development will occur on approximately 15,000 square feet of area surrounding the splash pad. Wrought iron fencing will be constructed around the newly developed area, providing security and access control to both the outdoor pool and splash pad. Three pavilions will be placed around the perimeter of the developed area, providing a covered space for individuals wishing to utilize the existing facilities at Oats Park as well as those using the newly constructed splash pad area.

Construction elements of the project include: Civil improvements in support of the installation of a new splash pad. Various demolition and removals, ADA concrete walkway improvements around the exterior of the splash pad, concrete stairs and handrails, wrought iron fencing and gates, CMU block walls, CMU block equipment room, synthetic turf, concrete foundations, furnish and install specified pavilions, storm drain improvements, electrical and lighting components, water service

components, and site control.

BACKGROUND: This project was released for public bid on February 2, 2023 and was advertised in the Fallon Post in accordance with NRS 338.1385. A pre-bid meeting was held on February 10, 2023. One (1) bid was received and opened on February 23, 2023 as further described in the attached documents.

FISCAL IMPACT: \$1,560,000.00

FUNDING SOURCES: Local Funds

PREPARED BY: Brian Byrd, Director of Public Works

DATE: March 1, 2023

TO BE PRESENTED TO THE COUNCIL BY: Brian Byrd



Carson City • Fallon • Lake Tahoe • Reno

www.LumosInc.com

Reno
9222 Prototype Drive
Reno, Nevada
775.827.6111

February 23, 2023

Brian Byrd, Public Works Director
City of Fallon
55 W. Williams Ave
Fallon, Nevada 89406

**Subject: Oats Park Splash Pad and Pavilions Project - CH-2023-186
Recommendation of Award**

Dear Mr. Byrd:

As you are aware, bids for the above referenced project were received and opened on February 23rd, 2023. One (1) bid was received with A&K Earthmovers, Inc. having the lowest total bid of \$1,560,000.00.

A&K Earthmovers, Inc., a Nevada contractor licensee, is of good standing and their bid was found to be complete and responsive. Therefore, we recommend that award be considered to A&K Earthmovers, Inc. in the amount of \$1,560,000.00.

In preparation of this recommendation, Lumos verified that A&K Earthmovers, Inc. and all proposed subcontractors are actively licensed and satisfy the requirements of this project.

A Bid Tabulation has been attached for your reference. Please contact me at (775) 827-6111 or AGreenblat@lumosinc.com, should you have any questions.

Sincerely,

Alex Greenblat, P.E.
Senior Project Manager
Engineering Division

CC: Ryan Swirczek – Deputy Public Works Director, City of Fallon
Brian Harer – Construction Senior Project Manager, Lumos

Attach: Bid Tabulation



CITY OF FALLON
PROJECT: OATS PARK SPLASH PAD AND PAVILIONS PROJECT
PWP# CH-2023-186
BID TAB - FEBRUARY 23, 2023

Item No.	Base Bid Item and Description	Unit	Engineer's Estimate			A&K Earthmovers		
			Unit Cost	Quantity	Total	Unit Cost	Total	
1	MOBILIZATION/DEMOBILIZATION/EROSION CONTROL/TRAFFIC CONTROL/CLEANUP	LS	\$75,000.00	1	\$75,000.00	\$56,129.00	\$56,129.00	
2	PERFORM ROOT EXPOSURE, MITIGATION, AND TREE REMOVAL BY ISA CERTIFIED ARBORIST	EA	\$3,500.00	8	\$28,000.00	\$2,500.00	\$20,000.00	
3	REMOVE EXISTING CONCRETE	SF	\$1.50	5,353	\$8,029.50	\$4.00	\$21,412.00	
4	REMOVE EXISTING FENCING	LF	\$30.00	108	\$3,240.00	\$28.00	\$3,024.00	
5	REMOVE EXISTING ROCK WALL	LF	\$50.00	15	\$750.00	\$100.00	\$1,500.00	
6	REMOVE EXISTING PAVILION STRUCTURE AND FOOTINGS	LS	\$10,000.00	1	\$10,000.00	\$33,000.00	\$33,000.00	
7	DEMOLISH AND REMOVE EXISTING BLOCK BUILDING	LS	\$15,000.00	1	\$15,000.00	\$28,000.00	\$28,000.00	
8	REMOVAL AND ABANDONMENT OF VARIOUS UTILITY INFRASTRUCTURE	LS	\$6,000.00	1	\$6,000.00	\$18,000.00	\$18,000.00	
9	REMOVE EXISTING LANDSCAPING, RECONFIGURE IRRIGATION SYSTEM, AND INSTALL CONDUIT SLEEVES	LS	\$2,500.00	1	\$2,500.00	\$85,000.00	\$85,000.00	
10	INSTALL NEW PCC MONOLITHIC TURNDOWN SIDEWALK	SF	\$18.00	10,418	\$187,524.00	\$18.50	\$192,733.00	
11	REMOVE AND REPLACE TYPE 1 PCC CURB AND GUTTER	LF	\$80.00	8	\$640.00	\$190.00	\$1,520.00	
12	INSTALL TYPE 1 PCC MEDIAN CURB	LF	\$55.00	97	\$5,335.00	\$52.00	\$5,044.00	
13	INSTALL PCC RETAINING CURB	LF	\$80.00	72	\$5,760.00	\$108.00	\$7,776.00	
14	INSTALL PCC STEPS	SF	\$120.00	57	\$6,840.00	\$120.00	\$6,840.00	
15	FURNISH AND INSTALL HANDRAILS	LF	\$300.00	18	\$5,400.00	\$300.00	\$5,400.00	
16	INSTALL PERMANENT ASPHALT PAVEMENT PATCH	SF	\$50.00	16	\$800.00	\$250.00	\$4,000.00	
17	OVER-EXCAVATION OF UNSUITABLE MATERIAL AND BACKFILL (CONTINGENT ITEM)	CY	\$75.00	100	\$7,500.00	\$75.00	\$7,500.00	
18	CONSTRUCT CMU EQUIPMENT BUILDING	LS	\$40,000.00	1	\$40,000.00	\$115,000.00	\$115,000.00	
19	CONSTRUCT CMU SCREEN WALL	LF	\$300.00	80	\$24,000.00	\$550.00	\$44,000.00	
20	FURNISH AND INSTALL WROUGHT IRON FENCING AND SWING GATES	LF	\$180.00	296	\$53,280.00	\$105.00	\$31,080.00	
21	INSTALL CHAIN LINK SWING GATE	EA	\$2,500.00	1	\$2,500.00	\$1,700.00	\$1,700.00	
22	FURNISH AND INSTALL 12x10' SHELTER PAVILION AND FOOTINGS	EA	\$25,000.00	1	\$25,000.00	\$55,000.00	\$55,000.00	
23	FURNISH AND INSTALL 20x40' SHELTER PAVILION AND FOOTINGS	EA	\$65,000.00	2	\$130,000.00	\$118,000.00	\$236,000.00	
24	FURNISH AND INSTALL 40x40' SHELTER PAVILION AND FOOTINGS	EA	\$115,000.00	1	\$115,000.00	\$200,000.00	\$200,000.00	
25	FURNISH AND INSTALL ARTIFICIAL TURF	SF	\$40.00	1,303	\$52,120.00	\$52.00	\$67,756.00	
26	FURNISH AND INSTALL NEW PLAYGROUND BARK MULCH	SF	\$5.00	1,065	\$5,325.00	\$2.20	\$2,343.00	
27	REMOVE EXISTING INLET AND REPLACE WITH NEW 4R CATCH BASIN	EA	\$5,000.00	1	\$5,000.00	\$7,300.00	\$7,300.00	
28	INSTALL 6" SDR-35 PVC STORM DRAIN-PIPE	LF	\$120.00	262	\$31,440.00	\$97.00	\$25,414.00	
29	INSTALL 8" SDR-35 PVC STORM DRAIN-PIPE	LF	\$140.00	32	\$4,480.00	\$147.00	\$4,704.00	
30	INSTALL NYOPLAST INLINE DRAIN	EA	\$400.00	10	\$4,000.00	\$990.00	\$9,900.00	
31	INSTALL TERMINAL STORM DRAIN CLEANOUT	EA	\$500.00	5	\$2,500.00	\$725.00	\$3,625.00	
32	INSTALL WATER SERVICE INFRASTRUCTURE	LS	\$10,000.00	1	\$10,000.00	\$8,800.00	\$8,800.00	
33	INSTALL ELECTRICAL AND LIGHTING INFRASTRUCTURE FOR PAVILIONS	LS	\$75,000.00	1	\$75,000.00	\$75,500.00	\$75,500.00	
34	CONTRACT ALLOWANCE	LS	\$175,000.00	1	\$175,000.00	\$175,000.00	\$175,000.00	
					TOTAL =	\$1,122,963.50	TOTAL =	\$1,560,000.00

BID FORM:	X
BID BOND:	X
5% LIST:	X
PREFERENTIAL BIDDER STATUS:	X
AFFIDAVIT OF CERTIFICATION:	X
STATE BUSINESS LICENCE:	X
ADDENDUM NO. 1 ACKNOWLEDGEMENT	X
1% LIST:	X
PROPOSED MATERIAL SUPPLIERS	X
SUBCONTRACTORS:	
	New River Masonry
	LB Fence Company LLC
	Triumph Electric, INC
	Legends Landscaping

March 7, 2023

Agenda Item 9

Consideration and possible approval of a Professional Services Contract with Lumos and Associates, Inc. for construction administration support services relating to the Oats Park Splash Pad and Pavilions project in the amount of Forty-Nine Thousand Seven Hundred Dollars (\$49,700).
(For possible action)

Incorporated 1908

**CITY OF FALLON
REQUEST FOR COUNCIL ACTION**

Agenda Item No. 9

DATE SUBMITTED: February 28, 2023

AGENDA DATE REQUESTED: March 7, 2023

TO: The Honorable City Council

FROM: Brian Byrd

SUBJECT TITLE: Consideration and possible approval of a Professional Services Contract with Lumos and Associates, Inc. for construction administration support services relating to the Oats Park Splash Pad and Pavilions project in the amount of Forty-Nine Thousand Seven Hundred Dollars (\$49,700.00). (For possible action)

TYPE OF ACTION REQUESTED: (Check One)

- | | |
|--|------------------------------------|
| <input type="checkbox"/> Resolution | <input type="checkbox"/> Ordinance |
| <input checked="" type="checkbox"/> Formal Action/Motion | <input type="checkbox"/> Other |

RECOMMENDED COUNCIL ACTION: Motion to approve a Professional Services Contract with Lumos and Associates, Inc. for construction administration support services relating to the Oats Park Splash Pad and Pavilions project in the amount of Forty-Nine Thousand Seven Hundred Dollars (\$49,700.00). (For possible action)

DISCUSSION: The approval of a contract with Lumos & Associates would allow for engineering and construction services associated with the expansion of a one-acre portion of Oats Park, north of the existing Outdoor Pool in order to provide the public with a splash pad experience for water-play activities.

The construction services scope of work for this project includes construction management, inspection, and quality assurance testing to support civil improvements in conjunction with the installation of a splash pad and three pavilions.

City staff recommends approval of a Professional Services Contract with Lumos and Associates, Inc.

FISCAL IMPACT: Forty-Nine Thousand Seven Hundred Dollars (\$49,700.00).

FUNDING SOURCE: Local Funds

PREPARED BY: Brian Byrd, Director of Public Works

AGREEMENT
To Engage the Services of
LUMOS & ASSOCIATES, INC.

THIS AGREEMENT, entered into on the _____ day of _____, 20 23, by and
 by and between City of Fallon

whose mailing address is 55 W. Williams Avenue
 hereinafter called "CLIENT," and LUMOS & ASSOCIATES, INC., hereinafter called "CONSULTANT," is as follows:

CLIENT intends to pursue work on Oats Park Splash Pad and Pavilions - CS (Project Name)
 hereinafter called the "PROJECT" and whose location is Fallon, Nevada

THE CLIENT/contact person for this project is Brian Byrd
 Phone 775-217-5990 Email bbyrd@fallonnevada.gov

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

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

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

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

C. CLIENT agrees to provide the following to CONSULTANT to aid in his/her work:
See proposal attached hereto as Exhibit "A"

D. CONSULTANT will begin work on or about March 1 20 23; and have said
 work completed See proposal attached hereto as Exhibit "A"

CONSULTANT contact for this project is Randy Hines Phone (775) 423-2188

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

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

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

CONSULTANT:

PRINT Brian Harer
 SIGN 
 TITLE Senior Project Manager
 DATE 2/15/2023

CLIENT:

PRINT _____
 SIGN _____
 TITLE _____
 DATE _____

STANDARD PROVISIONS OF AGREEMENT

1. AGREEMENT

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

2. BILLING AND PAYMENT

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

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

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

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

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

3. TERMINATION

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

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

4. ADDITIONAL SERVICES

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

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

5. STANDARD OF CARE

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

6. COST ESTIMATES

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

7. LIMITATIONS ON RESPONSIBILITIES

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

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

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

8. OWNERSHIP OF DOCUMENTS

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

9. INDEMNIFICATION

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

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

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

10. RIGHT OF ENTRY

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

11. SAMPLES

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

12. GOVERNING LAW; DISPUTES

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

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

13. NO THIRD PARTY BENEFICIARIES

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

14. WAIVER OF CONSEQUENTIAL DAMAGES

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

15. FORCE MAJEURE

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

16. SOLE CORPORATE REMEDY

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

17. HAZARDOUS MATERIALS

The Consultant shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. In the event the Consultant or any other party encounters any

hazardous materials, or should it become known to the Consultant that such materials may be present on or about the jobsite or any adjacent areas that may affect the performance of the Consultant's services, the Consultant may, at its option and without liability for consequential or any other damages, suspend performance of its services under this Agreement until the Client retains appropriate consultants or contractors to identify and abate or remove the hazardous or toxic materials and warrants that the jobsite is in full compliance with all applicable laws and regulations. Consultant shall not be responsible for locating or abating any hazardous materials.

18. LIMITATION OF LIABILITY

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

19. MISCELLANEOUS

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

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

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

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

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

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

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

20. RETAINER

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



Fallon
178 S. Maine Street
Fallon, Nevada 89406
775.423.2188

February 15, 2023

Brian Byrd
Public Works Director
City of Fallon, Public Works
55 W. Williams Ave
Fallon, NV 89406

LA23.116

Subject: Proposal for Construction Services – City of Fallon Oats Park Splash Pad and Pavilions Project

Dear Brian:

Thank you for giving Lumos & Associates, Inc. ("Lumos") the opportunity to provide you with this proposal for construction services for the City of Fallon Oats Park Splash Pad and Pavilions Project in Fallon, NV.

Project Understanding

The City of Fallon is expanding an approximately one-acre area along West Park Street and within their 9.7-acre Oats Park (APN 01-673-02), north of the existing community pool to provide the public with a splash pad experience for water-play activities, together with three events pavilions. The new splash pad area will be contained within itself and has separate, dedicated utilities and equipment. Lumos assisted the City in planning, developing, and designing these new splash facilities and the project is currently out to bid.

The construction services scope of work for this project includes construction management, inspection, and quality assurance testing to support civil improvements in conjunction with installation of a new splash pad (by others) including various demolition and removals, ADA concrete walkway improvements around the exterior of the splash pad, concrete stairs and handrails, wrought iron fencing and gates, CMU block walls, CMU block equipment room, synthetic turf, concrete foundations, furnish and install specified pavilions, storm drain improvements, electrical and lighting components, water service components, and site control.

Project Scope

Task 14 – Construction Administration

Lumos will provide contract administration services as follows:

- Attend the preconstruction conference and progress meetings at intervals determined by the City of Fallon
- Perform construction coordination
- Review and stamp contractor's submittal for conformance to the contract documents
- Review and provide recommendations on test results
- Review and provide recommendations on contractor's construction schedule and work progress

- Review construction for acceptance and/or mitigation
- Provide verification and approval of contractor's monthly pay request
- Supervise the inspection and material testing activities
- Assist with review and approval of Contractor's Certified Payroll Reports
- Provide recommendations to the City of Fallon for any necessary construction changes due to field conditions
- Assist in change order review and approval
- Provide final test results, field reports in an electronic .pdf via email

Task 15 – Construction Inspection

The following staffing shall be provided for the duration of project construction:

- Provide Inspector(s) that have the appropriate certification required by the Nevada Alliance for Quality Transportation Construction (NAQTC). Provide one part time Special Inspector for a total of 140 hours.

The inspectors will:

- Attend the preconstruction conference
- Monitor the work performed by the Contractor and verify that the work is in accordance with the plans and specifications
- Assist in problem resolution with the City of Fallon, contractor personnel, utility agencies, the public and others
- Prepare daily inspection reports, submitted weekly to the City of Fallon and CC'd to the appropriate government jurisdiction(s).
- Provide quantity reports and assist in review of contractor's monthly progress payments
- Provide verification of the distribution of public relation notices required to be delivered by the contractor
- Assist in preparation of the Punch List
- Maintain a field blue line set of drawings to incorporate contractor record drawing mark-ups

Task 16 – Materials Testing

Lumos will provide Materials Testing for compliance with the specifications per the Standard Specifications for Public Works Construction, Revision 8 of the 2012 Edition (Orange Book) testing requirements.

The following tests and frequencies shall be performed:

- Materials to be tested will include aggregate base, native subgrade material, structural fill, Portland Cement Concrete, masonry, and grout. Test reports, accompanied with Lumos' recommendation regarding acceptance/mitigation of materials, shall be submitted promptly to the City of Fallon and CC'd to appropriate governmental jurisdiction(s).
- Provide On-site Nuclear Gauge Testing & Sampling during the placement of aggregate base and fill materials, on-site thin-lift Nuclear Gauge testing & sampling for asphalt concrete placement, and on-site PCC testing & sampling.

Task 17 – Record Drawings

Lumos shall provide record drawings for the completed project. One set of blue line and two sets of electronic drawings, in PDF format (24" x 36" at 300dpi), will be provided to the City of Fallon for its files.

The final record drawings must be identified, dated and signed as the record drawings. These drawings may include either:

1. The final revisions on the original engineer-stamped/signed reproducible drawings, which will then also be identified as the record drawings, or

The record drawings shall include a copy of the original title sheet (including the appropriate signatures by the City of Fallon, local government, signed by Lumos) and identified as record drawings.

Task 18 – Construction Services Contingency (Optional)

This task is contingency for miscellaneous increases within the scope of this contract in the performance of services. If Lumos determines that it is necessary to perform work to be paid out of contingency, Lumos shall provide a letter detailing the need, scope, and not-to-exceed budget for any proposed work. Work under this task shall proceed only with the City of Fallon Project Manager’s prior written approval. This task may or may not be used at the sole discretion of the City of Fallon.

Assumptions / Exceptions

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

- Construction Staking is not included in this proposal.

Fees

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

Task	Description	Fee
Task 14	Construction Administration	\$12,320
Task 15	Construction Inspection	\$19,600
Task 16	Materials Testing	\$10,060
Task 17	Record Drawings	\$2,720
Task 18	Construction Services Contingency (Optional)	\$5,000
Total:		\$49,700

Project Schedule

Anticipated Notice to Proceed (NTP): March 13, 2023

Phase 1 Duration: 65 Calendar Days

Phase 2 Duration: 15 Calendar Days

Final Completion: 10 Calendar Days after substantial completion of Phases 1 & 2

If this proposal is acceptable, please execute the attached contract and provisions and return the same to our office. Any additional services requested but not covered by this Scope of Work can be provided by an amendment to this proposal. The attached Standard Provisions of Agreement are a part of this proposal.

Lumos and Associates, Inc. will send monthly progress billings on this project. The amount of these billings will be based upon the percentage of work completed. The terms are 'Due Upon Receipt' and accounts are past due after 30 days. Accounts over 30 days old will be subject to interest at the rate of 1 ½% per month and such collection action as may be necessary to collect the account. In addition, a "Stop Work Order" may be issued on past due accounts. In this case, no further work will be performed until the account is brought current.

Thank you again for allowing Lumos and Associates to provide you with this proposal. Please do not hesitate to call me if you have questions.

Sincerely,



Brian Harer
Senior Project Manager

Alex Greenblat, P.E.
Senior Project Manager

Encl: Standard Provisions of Agreement