TOOELE COUNTY CORPORATON
CONTRACT # 11-11-05

ENSIGN

Civil Engineering
Structural Engineering
Water-Wastewater Design
Transportation Design
Land Surveying
Urban Design
Planning

# Professional Service Agreement Contract

Date: October 27, 2011
Job No: T1624

Tooele County Roads Department, hereinafter "CLIENT", does hereby authorize Ensign Engineering and Land Surveying, Inc., hereinafter "ENSIGN", a corporation existing under the laws of the State of Utah, to perform the services set forth below.

CLIENT represents that either (1) it is the record owner or authorized agent of the record owner of the real property that shall be improved pursuant to this Agreement with authority to enter into contractual agreements and to grant ENSIGN authority to perform the work identified herein, or (2) the record owner is aware of and consents to the services ENSIGN will perform.

Client: Tooele County Roads Department
Representative: Rod Thompson
Address: 47 South Main Street
City, State, Zip: Tooele, UT 84074
Phone No.: 435-843-3204

**Any services performed beyond the scope of services identified herein which are reasonably necessary due to circumstances not contemplated by ENSIGN at the commencement of this Agreement shall constitute extra work and shall be paid for on a time and materials basis in accordance with the normal rates charged by Ensign for such services regardless of whether such services are the subject of a further writing between parties.**

**Project Information**

Project Name: Cochrane Lane Roadway Improvements

Description of Services: As defined in the October 18, 2011 Scope of Service and Fee Letter, see attached Proposal.

**Project fee will be calculated as follows:**

____ Estimated Fee
__X_ Fixed Fee $23,900.00
____ Salary cost plus reimbursable expenses times (___) multiplier.
____ Hourly Rate
____ Percentage of construction costs_____%
____ Retainer Fee

CLIENT has read and understood the terms and conditions set forth on the reverse side hereof and agrees that such items are hereby incorporated into and made a part of this Agreement.

Having read, understood and agreed to the foregoing, CLIENT and ENSIGN, by and through their authorized representatives, have subscribed their names hereon, effective as of the date of this Agreement.

| CLIENT | ENSIGN ENGINEERING & LAND SURVEYING, INC. |
|---|---|
| Colleen Johnson | |
| Title: Commissioner | Title: Principal |
| Date: 11/01/11 | Date: October 27, 2011 |

**ATTEST:**

Marilyn K. Gillette

MARILYN K. GILLETTE
TOOELE COUNTY CLERK

TOOELE COUNTY CORPORATION COUNTY CLERK STATE OF UTAH

# TERMS AND CONDITIONS

## ARTICLE 1: DEFINITIONS

1.1 Hourly Rate
The billing rate charged towards each project for all work expended. Hourly rates are based on the employee pay rate times a multiplier to cover employee pay, plus all overhead costs, and profit. Unless otherwise agreed upon, all additional services outside of the agreed-upon scope will be billed at standard hourly rates, plus reimbursable expenses.

1.2 Reimbursable Expenses
Expenditures made by ENSIGN, its employees or its consultants in the interest of the Project. Reimbursable Expenses include but are limited to:

1.2.1 Expense of transportation, subsistence and lodging when traveling in connection with the Project.
1.2.2 Expense of messenger service, field office expenses, and fees paid for securing approval of authorities having jurisdiction over the Project.
1.2.3 Expenses of all reproduction, postage and handling, shipping charges of drawings, specifications, reports or other Project-related instruments of service of ENSIGN.
1.2.4 Expense of preparing perspectives, renderings or models.

## ARTICLE 2: COMPENSATION

2.1 Invoicing Procedure
CLIENT will be invoiced at the end of the first calendar month following the effective date of the Agreement and at the end of each calendar month thereafter. Such invoices shall reflect billing for work performed by ENSIGN and Reimbursable Expenses incurred during the month invoiced. Payment on an invoice is due upon receipt of the invoice by CLIENT. In the event of a dispute regarding billing, CLIENT shall pay all undisputed amounts per this Article.

2.2 Late Payment
CLIENT shall pay ENSIGN's periodic invoices for services upon receipt. Invoices not paid within thirty (30) days of the invoice date shall be subject to interest at the rate of 1-1/2 percent per month, compounded monthly, from date of billing until paid, prejudgment and postjudgment. The invoice amounts shall be presumed to be correct unless CLIENT notifies ENSIGN in writing within fourteen (14) days of receipt. Payment of invoices shall be deemed acceptance by CLIENT of the invoiced services. If client fails to pay an invoice when due, ENSIGN may suspend all services, and withhold any and all documents, instruments and information regarding ENSIGN's services on any project until such invoice is paid in full and satisfactory arrangements made to ensure payment for further services. Unless specifically mandated by a principal at ENSIGN, it is ENSIGN's policy to record a mechanics' lien on any project for which payment is not made within sixty (60) days of the invoice date. Said lien will be released upon payment.

2.3 Contingent Fee
Unless otherwise contained in a separate written agreement, no fee arrangement is to be interpreted by CLIENT, as contingent upon completion of the project by CLIENT. All fixed fee arrangements will be billed monthly on an hourly or percent complete basis, whichever is higher.

2.4 Retainer Fee
If a retainer fee is specifically indicated as part of this agreement, said fee shall be due and payable immediately upon notice to proceed. Work may be suspended at any time until retainer fee is received.

## ARTICLE 3: SPECIAL TERMS AND CONDITIONS

3.1 Additional Services
Any services performed that are reasonably necessary due to circumstances not contemplated by ENSIGN at the commencement of this Agreement shall constitute Additional Services and shall be paid for on a time and materials basis in accordance with the normal hourly rates and reimbursable expenses charged by ENSIGN for such services regardless of whether such services are the subject of a further writing between parties.
Services not expressly stated herein, as determined by ENSIGN, are not covered by this Agreement. Such services may be provided only upon execution of a written amendment.

3.2 Termination for Cause
This Agreement may be terminated by either party upon seven (7) days' written notice should the other party fail substantially to perform in accordance with this Agreement through no fault of the party initiating the termination.

3.3 Termination without Cause
This Agreement may be terminated by CLIENT upon at least seven (7) days' written notice to ENSIGN in the event that the Project is permanently abandoned.

3.4 Termination Adjustment Payment
If this Agreement is terminated through no fault of ENSIGN, CLIENT shall pay ENSIGN upon request for services performed and Reimbursable Expenses incurred in accordance with this Agreement, plus a Termination Adjustment equaling fifteen percent of the estimated fee remaining to be earned at time of termination to account for ENSIGN's rescheduling adjustments, reassignment of personnel and related costs incurred due to termination. Should CLIENT so terminate this Agreement, ENSIGN reserves the right to complete such of its services and a report on the services performed to date of termination to the extent that ENSIGN, in its sole judgment, deems it necessary to place its files in order and/or to protect ENSIGN's professional reputation, for which an additional termination charge to cover the cost thereof in an amount not in excess of thirty percent (30%) of the charges incurred prior to the date of termination shall be paid by CLIENT upon ENSIGN's request.

3.5 Cost Estimates
Estimates of construction cost, material quantities and construction time estimate provided by ENSIGN under this Agreement are preliminary, subject to change, and are contingent upon factors over which ENSIGN has no control. ENSIGN does not guarantee the accuracy of estimated costs for providing services hereunder, nor shall ENSIGN be responsible to provide additional services without compensation to re-design project in an effort to reduce project construction costs.

3.6 Limitation of Liability
Any liability of ENSIGN which may arise, directly or indirectly, from any act, error and/or omission, professional or otherwise, including breach of this Agreement or the negligence of ENSIGN, its agents, employees, or subcontractors shall not, in the aggregate, exceed that amount of compensation to be paid to ENSIGN pursuant to this Agreement or $25,000.00, whichever is less.
CLIENT waives any claim against ENSIGN, its officers, employees, owners and agents and agrees, to the greatest extent permitted by law, to defend, indemnify, protect and hold harmless ENSIGN and its officers, employees, owners and agents from any and all claims, liabilities, damages or expenses, of whatever nature, to any party, arising out of or relating to, directly or indirectly, the services provided by ENSIGN under this Agreement, which exceed in the aggregate the limitation set forth herein. For purposes of this paragraph, costs and expenses, including attorney fees, shall be included in determining the amount of said liability. This limit applies to all services on the Project, whether provided under this Agreement, subsequent agreements, or otherwise.
ENSIGN shall not be liable for incidental or indirect damages as result of any act, omission or performance of this Agreement. CLIENT and ENSIGN waive any and all claims against each other for liquidated, incidental, and consequential damages of any kind arising out of or relating to this Agreement, including the termination provisions.
All claims by CLIENT shall be deemed relinquished unless filed within one (1) year after substantial completion of ENSIGN's services.

3.7 Limited Warranty
ENSIGN shall promulgate and prepare findings, recommendations, specifications or advice provided hereunder in accordance with the standards of the consulting engineering profession in Utah. ENSIGN makes no other warranty or representation, expressed or implied, and CLIENT hereby expressly waives the same. Liability under Section is expressly limited as per Section 3.6.

3.8 Design Services Only
Unless otherwise indicated in the *Description of Services* section of this agreement, it is agreed that the professional services of ENSIGN do not extend to or include review, site observation, or inspection of any work or performance on the Project. Any presence of ENSIGN or its representatives at the Project site is merely for the purpose of observing the work being performed for its own convenience and benefit. ENSIGN has not undertaken to, and shall not, supervise or direct, and is not responsible for, the means, methods or actual work of the contractor(s). ENSIGN shall not be responsible for working conditions on the job site including the safety and security of persons or property. CLIENT shall defend, indemnify and hold harmless ENSIGN from any and all claims and liabilities resulting from a failure of any contractor's work to conform to the design intent and contract documents for the Project.

3.9 Ownership of Documents
All drawings, specifications, notes, data, tracings, and other documents, including those in electronic form, prepared by ENSIGN are instruments of professional service for use solely with respect to this Project. ENSIGN shall be deemed the author and owner of these documents and shall retain all common law, statutory and other reserved rights, including copyrights. No other use is authorized, intended or contemplated. Modification or use of the documents on other projects without ENSIGN's prior express written consent is strictly prohibited, and shall be at CLIENT's sole risk. CLIENT shall hold harmless, indemnify and defend ENSIGN for any and all claims arising out of any such unauthorized modification or use.

3.10 CLIENT Information
ENSIGN shall have the right to rely on any and all information supplied to ENSIGN by or through CLIENT or its representative, and shall not have a duty to verify the accuracy of such information unless otherwise agreed herein. CLIENT shall hold harmless, indemnify and defend ENSIGN as to any claims related directly or indirectly to ENSIGN's use of or reliance on any such information.

3.11 Financing Information
ENSIGN shall have the right to request evidence of financing for the Project from CLIENT at any time during the performance of its services. If such evidence is not provided or is insufficient, ENSIGN may suspend all services, and withhold any and all documents, instruments and information regarding ENSIGN's services on any project until such sufficient evidence is provided.

## ARTICLE 4: GENERAL TERMS AND CONDITIONS

4.1 Applicable Law
This Agreement shall be interpreted and enforced under the laws of the State of Utah.

4.2 Assignment Subcontracting
Neither CLIENT nor ENSIGN shall assign its interest in this Agreement without the written consent of the other. ENSIGN may subcontract any portion of the work to be performed hereunder without such consent.

4.3 Force Majeure
ENSIGN shall not be liable for failure of performance or failure of delay in delivery by reason of any event beyond the control of ENSIGN, including, but not limited to, strikes; labor disputes; fire; flood; weather; embargo; war or other hostilities; government authority or regulation; acts of God; shortage of material or fuel; as a result of actions of CLIENT, record owner, or any other person; or as a result of the extension of time granted by CLIENT. Upon the occurrence of such delay, ENSIGN shall receive an equitable extension of time for completion of the Agreement.

4.4 Severability: Waiver
In the event any provisions of this Agreement shall be held to be invalid and unenforceable, the remaining provision shall remain valid and binding upon the parties. One or more waiver of any term, condition or other provision of this Agreement by either party shall not be construed as a waiver of a subsequent breach of the same of any other provision.

4.5 Attorney Fees
CLIENT agrees to pay attorney fees and costs necessary to collect on past due accounts. In no event shall this provision allow for an award of attorney fees and costs for any other breach of this agreement.

4.6 Modification and Interpretation
This Agreement may be amended only by written instrument expressly referring hereto and duly signed by the parties. This Agreement constitutes the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations and/or agreements, written or oral. This Agreement shall be construed and interpreted as if drafted equally by CLIENT and ENSIGN. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against ENSIGN.

4.7 Dispute Resolution
Any dispute arising under or relating to this Agreement shall be resolved in the following manner: (1) mediation in good faith with each party to pay one half of the mediation costs; (2) at ENSIGN's option, arbitration in accordance with the terms and provisions of the Revised Utah Uniform Arbitration Act and judgment on the award may be entered in any court having jurisdiction thereof; and (3) litigation. Any arbitration or litigation shall occur in Salt Lake County, State of Utah.