



AGREEMENT FOR PROFESSIONAL SERVICES

2N CIVIL Proposal Number 19-E-53

Date: November 5, 2019

1. **PARTIES.** The parties to this Agreement are 2N Civil, LLC, a Colorado limited liability company, and Colorado Springs Urban Renewal Authority (CSURA).
2. **RECITALS.** Client desires to retain the services of 2N Civil. 2N Civil agrees to provide and perform services as more fully described below.
3. **DESCRIPTION AND SCOPE OF SERVICES TO BE PROVIDED BY 2N Civil.** The scope of services (the "Project") Reviewing existing documentation and providing cost certifications for metropolitan district expenses.
4. **SERVICES TO BE PROVIDED BY CLIENT.** Providing coordination and necessary documentation.
5. **TERMS AND CONDITIONS.** The attached "Standard Terms and Conditions" is incorporated into and made a part of this Agreement.
6. **MEETING HOURS.** Services include the following number of meeting hours 0. Meeting hours in excess of those specified will be charged on an hourly rate basis per attached Schedule of Hourly Rates. Consultant fees for municipal or county government processing are based on one continuous process unless stated otherwise in Section 3. In the event the processing schedule is interrupted or repeated, the fees for resulting additional consultant time are in addition to the fees agreed upon in this Agreement.
7. **TIME.** It is estimated that the services will be performed and the job completed on or before January 1, 2020

8. FEES.

Client agrees to pay 2N Civil:

- a. A fixed fee of \$_____ + Budgeted Items.
- b. On an hourly basis for each and all services rendered in accordance with the attached 2N Civil Schedule of Hourly Rates. It is estimated that the fee for services rendered, exclusive of out-of-pocket-expenses, will be approximately \$ n/a based on 2N Civil's Schedule of Hourly Rates. **Estimates are not a guarantee and actual fees may be higher than the estimate. This fee arrangement shall not be construed as a fixed priced contract unless subsection (a) above is completely filled out.** In the event additional services of 2N Civil are required, 2N Civil shall obtain written approval from Client before commencing additional work.
- c. On an hourly basis with the fee not to exceed \$_____.

In addition to the above fees, including subsection (a), Client agrees to pay 2N Civil all direct reimbursable expenses including, but not limited to, travel, communications, printing, deliveries, outside services, and sub-contractor services at cost plus 10% for hourly-based services. Mileage shall be reimbursed at the rate of \$0.60 per mile.

9. PAYMENT TERMS.

Client agrees to the following method of payment:

- a. An initial retainer of \$_____ with the balance due upon completion of the project.
- b. Full payment upon completion of the project.
- c. Monthly payments of full invoiced amount.

2N Civil shall submit monthly invoices for services performed and Client shall pay the full invoice amount within 10 days from the date of the invoice. Time is of the essence with respect to payment under this Agreement. All amounts not paid when due shall be assessed an administrative charge of 1.5% per month. Invoices will be considered correct if not questioned in writing within 10 days of the invoice date. Client payment to 2N Civil is not contingent on arrangement of project financing or upon the Client receiving payment from any other person.

10. LIMITED WARRANTY. For a period of one year from the date of performance, 2N Civil shall correct any defects, errors or omissions attributable to 2N Civil in the performance of this Agreement, provided that 2N Civil receives written notice specifically describing any defects, errors, or omissions within 20 days of Client's discovery of such defect, error or omission. 2N Civil shall not be liable for the cost of any acts or omission that adds value to the Project. Except for the foregoing, 2N Civil hereby disclaims any and all warranties, express or implied, including but not limited to the implied warranties of merchantability, fitness for a particular purpose, course of dealing and course of performance.

11. CLIENT DEFAULT. The Client shall be in default of this Agreement upon the occurrence of any of the following events:

- a. Failure to make any payment within 10 days from the date of the invoice.
- b. Insolvency or bankruptcy of Client, or the making of any assignment for the benefit of creditors or the filing of any petition for bankruptcy or reorganization by Client.
- c. The breach of any provision of this Agreement by Client, other than non-payment of sums due hereunder, and the failure by Client to cure the same within 15 days of the receipt of written notice thereof from 2N Civil.
- d. The breach of any other agreement between 2N Civil and the Client.

12. 2N CIVIL DEFAULT. 2N Civil shall not be deemed in default of this Agreement unless Client has given 2N Civil written notice of default and 2N Civil has not cured such default within 15 days after such notice was given ("Cure Period") or, in the event the default is of a nature that cannot reasonably be cured within the Cure Period, 2N Civil has not commenced such cure during the Cure Period and has not diligently and in good faith continuously used its best efforts to cure the default.

13. TERMINATION. The non-breaching party may terminate this Agreement upon 7 days written notice in the event of default by the other party. 2N Civil shall submit an invoice for services performed up through the effective date of termination and the Client shall pay 2N Civil all amounts then outstanding within 7 days of the date of the invoice.


14. STOP WORK. In lieu of terminating this Agreement as provided in Section 13 above, upon the occurrence of any event of default set forth in Section 11 above or in the event 2N Civil reasonably determines that working conditions at the site that are outside of 2N Civil's control are unsafe or in violation of applicable laws or for other circumstances not caused by 2N Civil that are interfering with the normal progress of the work, 2N Civil may stop the performance of its work, or the progress of the work, until such time as the default is cured. Upon curing the default, 2N Civil will add Client back into 2N Civil's schedule; however, there is no guarantee as to when 2N Civil will be able to resume performing services. The right to stop work shall be without prejudice to any other legal remedy or right 2N Civil may possess. The stoppage of work by 2N Civil under this section shall not be deemed a default by 2N Civil of its obligations under this Agreement.

15. LIEN RIGHTS. 2N Civil may file a lien against the Clients' property in the event that the Client does not make payment when due. The Client agrees that 2N Civil's services under this Agreement shall constitute property improvements and the Client hereby waives its right to any legal defense to the contrary.

16. ENTIRE AGREEMENT INCLUDES ADDITIONAL DOCUMENTS. This Agreement for Professional Services, Standard Terms and Conditions, proposal letter, Project Schedule and Schedule of Hourly Rates and any exhibits or attachments to any of the foregoing (collectively, the "Agreement") represent the entire agreement between the parties, and all prior negotiation and agreements, whether written or oral, are merged herein and are null and void. Client warrants it has received and reviewed all of the documents described in this Section 16 before signing this Agreement.

Signatures are on the next page

17. SIGNATURES. This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument. Facsimile signatures shall be deemed to be original signatures. If Client is any type of legal entity, the undersigned expressly warrants that he or she is duly authorized to sign this Agreement on behalf of the Client and bind Client to this Agreement.

<p>2N Civil, LLC</p> <p>By: <u></u></p> <p>DATED: November 5, 2019</p> <p>Mailing Address: <u>PO Box 630042</u> <u>Littleton, Colorado 80163-0042</u></p> <p>Phone: <u>303-925-0544</u></p> <p>Cell: <u>303-434-4727</u></p> <p>Email: <u>eric@2ncivil.com</u></p>	<p><u>Client Acceptance:</u></p> <p>_____</p> <p>Company Name _____</p> <p>By: _____ (Signature)</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p> <p>Billing Address: _____ _____</p> <p>Tax ID #: _____</p> <p>Phone: _____</p> <p>Cell: _____</p> <p>Email: _____</p>
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Standard Terms & Conditions

1. **SERVICES.** 2N Civil has developed the project scope of service, schedule, and compensation based on available information and various assumptions. The Client acknowledges that adjustments to the schedule and compensation may be necessary based on the actual circumstances encountered by 2N Civil in performing its services. 2N Civil will perform its services in a workmanlike manner consistent with the ordinary skill and competence of engineers and professionals engaged in the same type of work at the time and place 2N Civil's services are rendered and in accordance with the scope of services 2N Civil agreed to provide.
2. **SITE ACCESS.** The Client shall obtain all necessary approvals for 2N Civil to access the Project site(s).
3. **PERIOD OF SERVICE.** 2N Civil will strive to perform its services according to the project schedule set forth in the Proposal Letter. The services of each task shall be considered complete when deliverables for the task have been presented to the Client. 2N Civil shall be entitled to an extension of time equivalent to the length of any delay beyond 2N Civil's control. 2N Civil shall be entitled to reimbursement of the reasonable expenses it incurs as a result of any such delays or extensions of time.
4. **ADDITIONAL SERVICES.** The Client and 2N Civil acknowledge that additional services may be necessary for the Project to address issues that may not be known at Project initiation or that may be required to address circumstances that were not foreseen. In that event, 2N Civil shall notify the Client of the need for additional services and the client shall pay for such additional services in an amount and manner as the parties may subsequently agree.
5. **THIRD PARTIES.** Client acknowledges that 2N Civil will rely on information furnished by third parties in performing its services under this Agreement. 2N Civil shall not be liable for any damages that may be incurred by the Client as a result of 2N Civil's use of third party information. 2N Civil is not responsible for any delays, acts or omissions of any third parties. Client shall indemnify, defend and hold 2N Civil harmless from all loss, cost, damage, and/or expense arising from or due to third-party claims related to the Project, regardless of whether suit is filed in a court of law, and shall compensate 2N Civil for time expended and/or services performed in defense of such claims unless a claim resulted solely from the negligent act or omission of 2N Civil.
6. **PERMITS AND APPROVALS.** 2N Civil shall assist the Client in preparing applications and supporting documents for the Client to secure all necessary governmental permits and approvals. The Client shall pay all fees associated with all permits and approvals. 2N Civil shall obtain the permits and approvals upon payment from Client of the amount due for such permits and approvals.
7. **ENVIRONMENTAL MATTERS.** The Client warrants that it has disclosed all potential hazardous substances that may be encountered on the Project. In the event unknown hazardous substances are encountered, 2N Civil shall be entitled to reimbursement from Client for all actions 2N Civil deems appropriate to protect the health and safety of its personnel, and for additional services required to comply with all applicable laws. The Client shall indemnify 2N Civil from any claim related to hazardous substances encountered on the Project except for those events caused by negligent acts of 2N Civil. "Hazardous Substances" means any substance regulated by or subject to any federal, state or local law intended to protect health, safety or the environment including, but not limited to, asbestos, asbestos-containing materials, lead, PCB's, petroleum and any hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act.
8. **BACK CHARGES.** Client agrees that 2N Civil shall not pay for any back-charge from the Client, its contractor, consultant or any other person unless before construction of the back-charged items is started 2N Civil (a) was promptly notified of the potential need for such back-charged work, (b) was involved in determining the need for and scope of the back-charged work, (c) agreed the back-charged work is the responsibility of 2N Civil and (d) agreed to the fees involved for the back-charged work. Client shall indemnify 2N Civil for any back-charges assessed to 2N Civil that do not meet the conditions set forth in this Section 8.
9. **NON-SOLICITATION OF EMPLOYEES.** During the term of this Agreement and for a period of one year from the date 2N Civil completed the services pursuant to this Agreement, each party agrees not to solicit for employment, directly or indirectly, any person then-employed by the other party or any person who had been employed by the other party within six months prior to the solicitation. Advertising generally for employees on an internet job posting site or in a newspaper of general circulation or accepting an application in response to such advertising shall not be a violation of this Section.
10. **LIMITS ON DAMAGES.** To the maximum extent permitted by applicable law, in no event shall either party be liable to the other for any special, incidental, indirect, consequential, punitive or exemplary damages whatsoever arising out of this Agreement, even if the party has been advised of the possibility of such damages. In recognition of the relative risks and benefits of the project to both the Client and 2N Civil, the parties have agreed to allocate the risks. Client agrees to limit the liability of 2N Civil for all claims related to the services provided by 2N Civil that are in dispute to the Net Income realized by 2N Civil. "Net income" means the total amount paid to 2N Civil by Client for the services in dispute minus all costs incurred by 2N Civil for materials, equipment, contract labor (but not in house labor), sales and use taxes and other expenses.
11. **DISPUTE RESOLUTION.** The parties agree that they shall in good faith mediate all disputes. Such mediation shall take place within 60 days of a party providing to the other party written notice to mediate. The mediation shall be conducted exclusively by the Judicial Arbitrator Group ("JAG") located in Denver, Colorado or, if JAG no longer exists, any other entity that provides mediation services in Denver, Colorado and has a minimum of three mediators associated with such entity. In the event the parties cannot agree on a mediator within 15 days of a party's notice to mediate, JAG shall appoint a mediator. The parties may pursue all remedies available to them in the event the dispute is not resolved by mediation within 60 days of the notice to mediate. 2N Civil shall continue to perform services for the Project and the Client shall pay for all such services during the mediation process unless 2N Civil stops work as provided in Section 14 of the Agreement for Professional Services.
12. **MISCELLANEOUS.**
 - a. **Severability.** If any provision of this Agreement is deemed unenforceable by an arbitrator or court of law, the provision shall be modified to the extent necessary to make such provision enforceable to the fullest extent permitted by law. If no such modification will make the provision enforceable, such provision will be stricken without invalidating the remaining provisions of this Agreement.
 - b. **Contract Construction.** The headings contained in this Agreement are for reference purposes only and they in no way define or limit the scope or intent of this Agreement. All provisions contained in this Agreement shall survive execution, delivery and termination for the applicable statute of limitations.
 - c. **Governing Law; Venue.** This Agreement shall be governed by Colorado law. Any action related to this Agreement shall be brought exclusively in either the state court located in Douglas County, Colorado or federal court located in Denver, Colorado.
 - d. **No Assignment; Binding Agreement.** Neither party shall assign its rights, interests, or obligations under this Agreement without the express written consent of the other party. All rights of the parties are for the benefit of, and the obligations are binding on, each respective party and its assigns and successors.
 - e. **No Waiver.** No delay or inaction on the part of any party hereto in exercising any right, power or remedy shall operate as a waiver of such right or otherwise prejudice its rights, powers or remedies. No partial or single waiver of a right shall constitute a waiver of future performance of that or any other right. A waiver of any term or provision of this Agreement shall not be construed as a waiver of any other term or provision.
 - f. **Attorneys' Fees.** Client shall pay all fees and charges 2N Civil incurs in taking any actions to collect any amounts due from Client under this Agreement including, but not limited to, all legal, mediation, arbitration, expert witness and attorneys' fees regardless of whether suit is filed. If either party files an action in court to enforce this Agreement, or any provision(s) hereof, including but not limited to an action for injunctive relief or an action for damages or both, the substantially prevailing party shall be awarded its reasonable attorneys' fees, expert witness fees and all other costs.
 - g. **Force Majeure.** 2N Civil shall not be held responsible for any damages or losses occasioned by delays resulting from: failure of Client to make timely progress payments or payments for additional work, work done by Client's subcontractors, additional work, acts of Client's agents, shortages of material and/or labor, bad weather, fire, strike, war, governmental regulations, or any other contingencies unforeseen by 2N Civil or beyond 2N Civil's reasonable control.
 - h. **Notices.** All notices required by this Agreement shall be deemed given as follows: (i) upon delivery if personally delivered or delivered by nationally recognized overnight delivery services or (ii) the earlier of receipt or three days after mailing registered or certified mail properly addressed to the other party and postage pre-paid. A party may change its address in accordance with this Section. Notices shall be addressed to the party at the address set forth below its signature on the Agreement for Professional Services.



RATE SCHEDULE

Personnel Hourly Rates

Principal Engineer.....	\$160.00
Project Manager.....	\$135.00
Project Engineer.....	\$105.00
Design Engineer II.....	\$90.00
Design Engineer I.....	\$80.00
Field Engineer.....	\$98.00
Technician.....	\$75.00
Clerical.....	\$50.00
Expert Testimony.....	\$325.00

Material and Equipment Rates

Photocopies.....	\$0.15/ page
Color Photocopies.....	\$0.75/ page
Paper Plot 24x36.....	\$2.50/ page
Paper Color Plot 24x36.....	\$15.00/ page
Mylar Plot.....	\$20.00/ page
Mileage.....	\$0.60/ mile

Expenses incurred as a result of the project such as shipping, lodging, meals, vehicle or equipment rental and outside consultants will be billed at cost plus 15%. Invoices are due upon receipt and will be charged an interest rate of 2.0% per month past 30 days.

2N Civil, LLC’s “Standard Terms and Conditions” apply to all contracts and are available upon request.