

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT  
AND  
ASHBY SURVEYING & DRAFTING, INC.**

For reference this Professional Services Agreement (“Agreement”) is dated March 14, 2017. The parties to this Agreement are the Rio Nuevo Multipurpose Facilities District, an Arizona tax levying special facilities district (the “District”) and Ashby Surveying & Drafting, Inc. (the “Provider”).

**RECITALS**

A. The Provider submitted a proposal dated September 20, 2016 to the District to perform certain professional services for the District (the “Survey Proposal”), which is attached as Exhibit A. The District approved the Survey Proposal at its September 27, 2016 Board meeting and instructed Provider to perform the services, which services have been completed.

B. At the District’s request, the Provider submitted an additional proposal dated February 28, 2017 to perform additional professional services (the “Final Plat Proposal”), which is attached as Exhibit B. The District’s executive officers have agreed to amend the scope of services to include the final plat services and to memorialize the agreement with Provider. The Survey Proposal and Final Plat Proposal are collectively referred to as the “Proposals.”

C. After considering the Proposals, the District has elected to formally engage the Provider to fulfill the tasks set forth in the Proposals (individually, the “Survey Services” or the “Final Plat Services”; collectively, the “Services”).

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the District and the Provider hereby agree as follows:

1. **Term of Agreement.** This Agreement shall be effective upon its full execution and, unless earlier terminated as set forth herein, shall remain in full force and effect for a period of one hundred eighty (180) days or upon the completion of and payment for the Services, whichever comes first (the “Term”). By mutual written and executed agreement, the parties may extend the Term of this Agreement.

2. **Services.** Provider has completed the Survey Services set forth in the Survey Proposal. The Provider shall provide the Final Plat Services as set forth in the Final Plat Proposal.

3. **Compensation.** In accordance with the Proposals and the District’s prior authorization for the Survey Proposal, the District shall pay Provider up to \$12,000 for the

Survey Services and up to \$12,414 for the Final Plat Services (collectively “Compensation”). Any additional fees not included in the Services must be approved in writing by the District prior to the time the additional fees are incurred.

4. **Payments.** Within fourteen (14) days of the submission of “Invoice(s)” the District shall pay the Provider for work performed and completed provided there are not any revisions or additional information needed for approval. Each Invoice shall document and itemize all work completed as of the date of the Invoice. Each invoice shall include a record of time expended, costs incurred and work performed in sufficient detail to justify payment.

5. **Documents.** All documents, including any intellectual property rights thereto, prepared and submitted to the District pursuant to this Agreement shall be the property of the District upon full payment of all monies owed to the Provider.

6. **District Personnel.** The District’s primary contact for the Provider shall be Phil Swaim, Swaim Associates, Ltd. (“Swaim”).

7. **Provider Personnel.** Provider shall provide adequate, experienced personnel capable of and devoted to the successful completion of the Services to be performed under this Agreement. Provider agrees to assign specific individuals to key positions. If deemed qualified, the Provider is encouraged to hire District residents to fill vacant positions at all levels. Provider agrees that, upon commencement of the Services to be performed under this Agreement, key personnel shall not be removed or replaced without prior written notice to the District. If key personnel are not available to perform the Services for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, Provider shall immediately notify the District of same and shall, subject to the concurrence of the District, replace such personnel with personnel possessing substantially equal ability and qualifications.

8. **Inspection; Acceptance.** All work shall be subject to inspection and acceptance by Swaim and the District at reasonable times during Provider’s performance. The Provider shall provide and maintain a self-inspection system that is acceptable to Swaim and the District.

9. **Licenses; Materials.** Provider shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Provider. The District has no obligation to provide Provider, its employees or subcontractors any business registrations or licenses required to perform the specific services set forth in this Agreement. The District has no obligation to provide tools, equipment or materials to Provider.

10. **Performance Warranty.** Provider warrants that the Services rendered will conform to the requirements of this Agreement and to the highest customarily accepted professional standards in the field.

11. **Indemnification.** To the fullest extent permitted by law, the Provider shall indemnify, defend and hold harmless the District and each board member, officer, employee or agent thereof (the District and any such person being herein called an “Indemnified Party”) for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including,

but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions in connection with the work or services of the Provider, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

## 12. **Insurance.**

### 12.1. **General.**

A. Insurer Qualifications. Without limiting any obligations or liabilities of Provider, Provider shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the District. Failure to maintain insurance as specified herein may result in termination of this Agreement at the District's option.

B. No Representation of Coverage Adequacy. By requiring insurance herein, the District does not represent that coverage and limits will be adequate to protect Provider. The District reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but have no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Provider from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

C. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the District, its agents, representatives, officers, directors, officials and employees, as an Additional Insured as specified under the respective coverage sections of this Agreement.

D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the District, unless specified otherwise in this Agreement.

E. Primary Insurance. Provider's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the District as an Additional Insured.

F. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the District, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Provider. Provider shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

G. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the District. Provider shall be solely responsible for any such deductible or self-insured retention amount.

H. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Provider shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the District and Provider. Provider shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

I. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Provider will provide the District with suitable evidence of insurance in the form of certificates of insurance issued by Provider's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The District shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. In the event any insurance policy required by this Agreement is written on a "claims made" basis, coverage shall extend for two years past completion of the Services and the District's acceptance of the Provider's work or services and as evidenced by annual certificates of insurance. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Provider's responsibility to forward renewal certificates and declaration page(s) to the District 30 days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the Proposal number and title of this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate Proposal number and title or a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded. *Certificates of insurance and declaration page(s) shall specifically include the following provisions:*

- (1) The District, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

(a) Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 03 97 or equivalent.

(b) Auto Liability – Under ISO Form CA 20 48 or equivalent.

(c) Excess Liability – Follow Form to underlying insurance.

(2) Provider’s insurance shall be primary insurance with respect to performance of the Agreement.

(3) All policies, except for Professional Liability, including Workers’ Compensation, waive rights of recovery (subrogation) against District, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Provider under this Agreement.

(4) A 30-day advance notice cancellation provision. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives” shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

## 12.2. Required Insurance Coverage.

A. Commercial General Liability. Provider shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured’s clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the District, its agents, representatives, officers, officials and employees, shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read “Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of ‘your work’ for that insured by or for you.” If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

B. Vehicle Liability. Provider shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Provider’s owned,

hired and non-owned vehicles assigned to or used in the performance of the Provider's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the District, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

C. Professional Liability. If this Agreement is the subject of any professional services or work, or if the Provider engages in any professional services or work adjunct or residual to performing the work under this Agreement, the Provider shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Provider, or anyone employed by the Provider, or anyone for whose negligent acts, mistakes, errors and omissions the Provider is legally liable, with an unimpaired liability insurance limit of \$1,000,000 each claim and \$2,000,000 annual aggregate. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the Services, and the Provider shall be required to submit certificates of insurance and a copy of the declaration page(s) of the insurance policies evidencing proper coverage is in effect as required above. Confidential information such as the policy premium or proprietary information may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement.

D. Workers' Compensation Insurance. Provider shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Provider's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

12.3. **Cancellation and Expiration Notice.** Insurance required herein shall not expire, be canceled, or be materially changed without 30 days' prior written notice to the District.

### 13. **Termination; Cancellation.**

13.1. **For District's Convenience.** This Agreement is for the convenience of the District and, as such, may be terminated without cause after receipt by Provider of written notice by the District. Upon termination for convenience, Provider shall be paid for all undisputed services performed up to and including the termination date.

13.2. **For Cause.** If either party fails to perform any obligation pursuant to this Agreement and such party fails to cure its nonperformance within 30 days after notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event

of such default, the non-defaulting party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party's nonperformance is such that it cannot reasonably be cured within 30 days, then the defaulting party will have such additional periods of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (A) provides written notice to the non-defaulting party and (B) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event shall any such cure period exceed 90 days. In the event of such termination for cause, payment shall be made by the District to the Provider for the undisputed portion of its fee due as of the termination date.

13.3. **Due to Work Stoppage.** This Agreement may be terminated by the District upon 30 days' written notice to Provider in the event that the Services are permanently abandoned. In the event of such termination due to work stoppage, payment shall be made by the District to the Provider for the undisputed portion of its fee due as of the termination date.

13.4. **Conflict of Interest.** This Agreement is subject to the provisions of A.R.S. § 38-511. The District may cancel this Agreement without penalty or further obligations by the District or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the District or any of its departments or agencies is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement with respect to the subject matter of the Agreement.

13.5. **Gratuities.** The District may, by written notice to the Provider, cancel this Agreement if it is found by the District that gratuities in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Provider or any agent or representative of the Provider to any officer, agent or employee of the District for the purpose of securing this Agreement. In the event this Agreement is canceled by the District pursuant to this provision, the District shall be entitled, in addition to any other rights and remedies, to recover and withhold from the Provider an amount equal to 150% of the gratuity.

14. **Counterparts/Facsimile Signatures.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute only one agreement. Pending exchange and receipt of original signatures, facsimile signatures shall be fully effective as original signatures.

15. **Israel Boycott Certification.** Contractor certifies that it is not currently engaged in, and agrees for the duration of this Contract that it will not engage in, a boycott of Israel, as that term is defined in A.R.S. § 35-393.

16. **Miscellaneous.**

16.1. **Independent Contractor.** The Provider acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the District. Provider, its employees and subcontractors are not entitled to workers' compensation benefits from the District. The District does not have the authority to

supervise or control the actual work of Provider, its employees or subcontractors. The Provider, and not the District, shall determine the time of its performance of the services provided under this Agreement so long as Provider meets the requirements of its agreed Scope of Work as set forth in Section 2 above and in Exhibits A and B. Provider is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. District and Provider do not intend to nor will they combine business operations under this Agreement.

16.2. Applicable Law; Venue. Provider shall abide by and conform to any and all laws of the United States and the State of Arizona, including, but not limited to, federal and state executive orders providing for equal employment and procurement opportunities, OSHA and any other federal or state laws applicable to this Agreement. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in Pima County, Arizona.

16.3. Laws and Regulations. Provider shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Provider is responsible abides by, and remains in compliance with, all applicable rules, regulations, ordinances, statutes or laws affecting the Services, including, but not limited to, the following: (A) existing and future District and County ordinances and regulations, (B) existing and future State and Federal laws, and (C) existing and future Occupational Safety and Health Administration standards.

16.4. Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the District and the Provider.

16.5. Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted or is not correctly inserted, then upon the application of either party, the Agreement will promptly be physically amended to make such insertion or correction.

16.6. Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

16.7. Relationship of the Parties. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Provider is advised that taxes or Social Security payments will not be withheld from any District payments issued hereunder and Provider agrees to be fully and solely responsible for the payment of such taxes or any other tax applicable to this Agreement.

16.8. Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous



agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of or against the party drafting the Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

16.9. Assignment; Delegation. No right or interest in this Agreement shall be assigned by Provider without prior, written permission of the District, signed by the Chair and Treasurer of the Board, and no delegation of any duty of Provider shall be made without prior, written permission of the District, signed by the Chair and Treasurer of the Board. Any attempted assignment or delegation by Provider in violation of this provision shall be a breach of this Agreement by Provider.

16.10. Subcontracts. No subcontract shall be entered into by the Provider with any other party to furnish any of the material or services specified herein without the prior written approval of the District. The Provider is responsible for performance under this Agreement whether or not subcontractors are used. Failure to pay subcontractors in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by Provider.

16.11. Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the District of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the District to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement or by law, or the District's acceptance of and payment for services, shall not release the Provider from any responsibilities or obligations imposed by this Agreement or by law and shall not be deemed a waiver of any right of the District to insist upon the strict performance of this Agreement.

16.12. Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

16.13. Liens. All materials or services shall be free of all liens and, if the District requests, a formal release of all liens shall be delivered to the District. This shall not apply to liens placed by Provider as a result of the District defaulting on payment obligations to the Provider.

16.14. Offset.

A. Offset for Damages. In addition to all other remedies at law or equity, the District may offset from any money due to the Provider any amounts Provider owes to the District for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

B. Offset for Delinquent Fees or Taxes. The District may offset from any money due to the Provider any amounts Provider owes to the District for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

16.15. Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the District: Rio Nuevo Multipurpose Facilities District  
400 W. Congress, Suite 152  
Tucson, Arizona 85701  
Attn: Fletcher McCusker, Chairman

With copies to: Swaim Associates, Ltd.  
7350 E. Speedway Blvd. Suite 210  
Tucson, Arizona 85710  
Attn: Phil Swaim

And

Gust Rosenfeld, P.L.C.  
One South Church Avenue  
Suite 1900  
Phoenix, Arizona 85701-1627  
Attn: Mark Collins, Esq.

If to Provider: Ashby Surveying & Drafting, Inc.  
717 N. Swan Rd.  
Tucson, Arizona 85711-1210  
Attn: T. Wayne Ashby

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above

governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

16.16. Confidentiality of Records. The Provider shall establish and maintain procedures and controls that are acceptable to the District for the purpose of ensuring that information contained in its records or obtained from the District or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Provider's duties under this Agreement. Persons requesting such information should be referred to the District. Provider also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Provider as needed for the performance of duties under this Agreement. The use and disclosure of the confidential information shall not apply to information which (A) was known to the Provider before receipt of same from the District, or (B) becomes publicly known other than through the Provider, or (C) is disclosed pursuant to the requirements of a governmental authority or judicial order.

16.17. Records and Audit Rights. To ensure that the Provider and its subcontractors are complying with the warranty under subsection 16.18 below, Provider's and its subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Provider and its subcontractors' employees who perform any work or services pursuant to this Agreement, (all of the foregoing hereinafter referred to as "Records") shall be open to inspection and subject to audit and/or reproduction during normal working hours by the District to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on Provider's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred or units expended directly in the performance of work under this Agreement, and (B) evaluation of the Provider's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 13.18 below. To the extent necessary for the District to audit Records as set forth in this subsection, Provider and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the District shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the District to Provider pursuant to this Agreement. Provider and its subcontractors shall provide the District with adequate and appropriate workspace so that the District can conduct audits in compliance with the provisions of this subsection. The District shall give Provider or its subcontractors reasonable advance notice of intended audits. Provider shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

16.18. E-verify Requirements. To the extent applicable under A.R.S. § 41-4401, the Provider and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under A.R.S. § 23-214(A). Provider's or its subcontractors' failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the District.

16.19. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, the Scope of Work, any District-approved Purchase Order, the Proposal these documents shall govern in the order listed herein.

16.20. Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the District. The District reserves the right to obtain like goods and services from another source when necessary.

16.21. Cooperative Purchasing. Specific eligible political subdivisions and nonprofit educational or public health institutions (“Eligible Procurement Unit(s)”) are permitted to utilize procurement agreements developed by the District, at their discretion and with the agreement of the awarded Provider. Provider may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Provider. Payment for such purchases will be the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The District assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The District shall not be responsible for any disputes arising out of transactions made by others.

16.22. Liability Limits. The total amount of all claims the District may have against the Provider under this Agreement or arising from the performance or non-performance of the Services under any theory of law, including but not limited to, claims for negligence, negligent misrepresentation and breach of contract, shall be strictly limited to the lesser of 3 times the fees due to Provider or \$500,000. As the District's sole and exclusive remedy under this Agreement, any claim, demand or suit shall be directed and/or asserted only against the Provider and not against any of the Provider's employees, officers or directors.

16.23. Incidental, Indirect & Consequential Damages Waiver. Neither the District nor the Provider shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected to this Agreement or the performance of the services on this project. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, unrealized energy savings, diminution of property value or loss of reimbursement or credits from governmental or other agencies.

**SIGNATURES ON FOLLOWING PAGES**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

**“District”**

Rio Nuevo Multipurpose Facilities District,  
an Arizona tax levying public improvement district


By: \_\_\_\_\_  
Fletcher McCusker, Chairman

**ATTEST:**

By: \_\_\_\_\_  
Mark Irvin, Secretary

**"Provider"**

Ashby Surveying & Drafting, Inc.

By:   
T. Wayne Ashby, President

**EXHIBIT A**  
**Survey Proposal**



Via E-Mail: pswaim@swaimaia.com

September 20, 2016

Mr. Phil Swaim, A.I.A.  
Swaim Associates Ltd. Architects AIA  
7350 E. Speedway Blvd., Suite #210  
Tucson, AZ 85710

**RE: Proposed Caterpillar Parcel – 7.85 Acres**  
**(Portions of Pima County APN's 116-20-134A, 116-20-139B,**  
**116-20-138J & 116-20-031B)**

Dear Mr. Swaim:

It is our understanding that an ALTA/NSPS Land Title Survey is required for the above referenced parcel. As part of the required work for this survey, it was necessary for Ashby to create the new parcel lines based on a schematic drawing received from Swaim along with certain parameters given to Ashby by Swaim. The following scope of work includes the initial parcel configuration work accomplished by Ashby along with a Record of Survey boundary drawing.

Please note the following: 1. We have included two optional items at the end of the proposal for (a) writing a legal description for the new parcel (to be furnished to the Title Company) and (b) a contingency amount for additional design surveys should they be deemed necessary during the subsequent design process for the project 2. We will need a current title report for the subject parcel along with copies of only the relevant schedule B Exception documents listed in the Title Report in order to complete the ALTA survey.

Based on the above, Ashby Surveying & Drafting, Inc. will produce an ALTA/NSPS survey per 2016 Minimum Standards along with Items 1, 3, 4, 5, 8 and 11.

**Item 5:** Relates to topographical mapping. It is our understanding that 40 scale, 1' contour interval mapping will be obtained for the project along with a color digital photograph. The mapping will include the subject parcel and 100 feet south and west of the subject parcel, the TEP substation (200'± west of the west line of the subject parcel and south of Cushing Street), the full right-of-way of Cushing Street on the north and the top of west bank of the Santa Cruz River on the east. The area to be mapped is approximately 14.5 acres.

**Item 8:** Substantial features will also include the existing street car tracks, stairs to the river path and Landfill Limits as depicted on a map provided by the City of Tucson.

717 NORTH SWAN ROAD • TUCSON, AZ 85711-1210 • TEL: (520) 325-1991 • FAX: (520) 325-2074

**Item 11:** Utilities - In addition to locating above ground utility appurtenances, Ashby will obtain plans from agencies and utility companies and show the location, sizes and material of the lines as best we can. We have not included potholing or the location of bluestaked lines in this item, however it could be included in the contingency item for design surveys.

Based on the above, our fees will be as follows:

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>FEE</u>
1.	<b>Initial Parcel Boundaries:</b> <ul style="list-style-type: none"><li>Coordination, calculations and drafting of the proposed parcel boundaries based on supplied criteria</li><li>Draft the results into a Record of Survey boundary drawing</li></ul>	\$ 1,400.00
2.	<b>Aerial Ground Controls:</b> <ul style="list-style-type: none"><li>Construct targets for the flyover</li><li>Obtain targets for the flyover</li><li>Obtain x, y and z coordinates on the target points from published control points</li><li>Draft an AGC diagram for the aerial company and client</li></ul>	\$ 1,250.00
3.	<b>Topographical Mapping:</b> <ul style="list-style-type: none"><li>40 scale, 1' contour interval</li><li>Color digital photo</li><li>DTM files and breaklines</li></ul>	\$ 2,000.00
4.	<b>ALTA/NSPS Survey:</b> <ul style="list-style-type: none"><li>Includes Optional items 1, 3, 4, 5, 8 &amp; 11</li><li>Includes off-site design survey data and on-site land fill limits</li></ul>	\$ 4,500.00
5.	<b>Recording of Survey:</b> <ul style="list-style-type: none"><li>Recording fees, mylar fees, clerical costs</li></ul>	\$ 150.00
	<b>TOTAL:</b>	<b>\$ 9,300.00</b>

**OPTIONAL ITEMS**

A.	<b>Legal Description:</b> <ul style="list-style-type: none"><li>Writing of a legal description for the new subject parcel</li></ul>	\$ 250.00
B.	<b>Contingency Amount for Supplemental Surveys</b> <ul style="list-style-type: none"><li>Field Crew – 8.0 hrs.</li><li>Drafting – 8.0 hrs.</li></ul>	\$ 1,800.00





Mr. Phil Swain, A.I.A.  
RE: Proposed Caterpillar Parcel - 7.85 Acres  
September 20, 2016  
Page 3 of 3

Thank you for contacting Ashby Surveying & Drafting, Inc. We look forward to assisting you on this project.

Sincerely,  
**Ashby Surveying & Drafting, Inc.**



T. Wayne Ashby, R.L.S.  
President/Director of Survey

TWA:kaa

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**EXHIBIT B**  
**Final Plat Proposal**



Via E-Mail: pswaim@swaimaia.com

February 28, 2017

Mr. Phil Swaim, A.I.A.  
Swaim Associates Ltd. Architects AIA  
7350 E. Speedway Blvd., Suite #210  
Tucson, AZ 85710

**RE: Proposed Caterpillar Parcel (7.85 Acres±)**  
**(Portions of Pima County APN's 116-20-134A, 116-20-139B,**  
**116-20-138J & 116-20-031B)**

Dear Mr. Swaim:

It is our understanding that a Final Plat is required for the parcels referenced above and for which Ashby Surveying & Drafting, Inc. recently completed an ALTA/NSPS survey.

Please note that the proposed configuration of the parcel, as shown on the ALTA survey, will require that either a vacation of a portion of the Cushing Street right-of-way will also be required before the plat is recorded or a note on the plat that reads "TO BE VACATED BY SEPARATE INSTRUMENT".

Similarly, the proposed roadway on the west side of the parcel will need to have a recorded conveyance with a legal description prior to the plat recording or shown with a note that reads "TO BE DEDICATED BY SEPARATE INSTRUMENT". The alignment of this new roadway will presumably be determined by others and supplied to Ashby for inclusion on the plat.

In addition, there may be easements encumbering the subject parcel which may need to be abandoned or partially abandoned either with a recorded legal description prior to the plat recording or with a note that reads "TO BE ABANDONED BY SEPARATE INSTRUMENT". The abandonments may also require new easements to be written at different locations.

We have included "Optional Items" in our following fee estimate for calculating and writing legal descriptions with depiction drawings for whatever scenario may arise, although we reserve the right to amend the proposed cost should the configuration of the legal description be more complex than anticipated or require any additional field survey work.

We will also need to be advised of and supplied with the location(s) and dimensions of the vehicular or pedestrian access points to the parcel along with the locations of any "no access" easements to be shown on the plat.

Finally, a current (per COT requirements) Title Report will need to be obtained and supplied to Ashby along with the Schedule B Exception documents listed in the report affecting the subject parcel. As you will recall, we wrote the legal description for the new parcel prior to the title report being ordered so that the Title Company could determine which easements actually affected the parcel and not include those affecting other City owned parcels in the section. In fact, this was not done and we spent hours in determining that many of the easements should not have been included. Some easements were actually on the other side of the Santa Cruz River. If this same scenario should reoccur, we will again be asking for compensation of the time expended in determining which easements actually affect the subject parcel.

Based on the above, our fee will not exceed the following (subject to possible legal description additions previously described):

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>FEE</u>
1.	<b>Preparation of a Final Plat for the project            (Does not include hydrology or to be determined            flood lines)</b>	\$ 9,310.00
	40.00 Hrs. RLS @ \$115.00/Hr. = \$4,600.00 <ul style="list-style-type: none"> <li>▪ Calculations, reviews and coordination</li> </ul>	
	60.00 Hrs. Survey Technician @ \$78.50/Hr. = \$4,710.00	
2.	<b>Submittal(s) to City of Tucson for review(s)</b>	\$ 1,004.00
	4.0 Hrs. RLS (Principal) @ \$115.00/Hr. = \$460.00 <ul style="list-style-type: none"> <li>▪ Responses to plat review comments</li> </ul>	
	4.0 Hrs. Survey Technician @ \$78.50/Hr. = \$314.00 <ul style="list-style-type: none"> <li>▪ Supplemental Drafting</li> </ul>	
	4.0 Hrs. Clerical @ \$57.50/Hr. = \$230.00 <ul style="list-style-type: none"> <li>▪ Submittal package documents and errands</li> </ul>	
	<b>Printing Costs</b>	\$ 200.00
	<ul style="list-style-type: none"> <li>▪ Budgeting Allowance for submittal(s) and final mylars</li> </ul>	
	<b>Recording Costs</b>	\$ -0-
	<ul style="list-style-type: none"> <li>▪ To be accomplished by others</li> </ul>	
	<b>TOTAL:</b>	<b>\$ 10,514.00</b>



Mr. Phil Swain, A.I.A.  
RE: Proposed Caterpillar Parcel (7.85 Acres±)  
February 28, 2017  
Page 3 of 3

**OPTIONAL ITEMS**

<b>A. Legal Descriptions with Depictions (each)</b>	<b>\$ 700.00</b>
<b>B. Supplemental Surveys</b>	<b>\$ 1,200.00</b>
▪ Resetting of boundary corners	
▪ Additional field time allocated for locating survey monuments due to abandonments, vacations, or new easements	
8.0 Hrs. @ Person GPS Survey Crew @ \$150.00/Hr. = \$1,200.00	

Thank you for contacting Ashby Surveying & Drafting, Inc. We look forward to assisting you on this project.

Sincerely,  
**Ashby Surveying & Drafting, Inc.**



T. Wayne Ashby, R.L.S.  
President/Director of Survey

TWA:kaa

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