

**SWCA, Incorporated which will do business in
California as SWCA Environmental Consultants**

FIRST AMENDMENT TO AGREEMENT FOR SERVICES #4976

THIS FIRST AMENDMENT to that Agreement for Services #4976 made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), Sycamore Environmental Consultants, Inc., a corporation duly qualified to conduct business in the State of California, now owned and operating as SWCA, Incorporated which will do business in California as SWCA Environmental Consultants, an Arizona corporation duly qualified to conduct business in the State of California, whose principal place of business is 20 E Thomas Road, Suite 1700, Phoenix, Arizona 85012, and whose local address is 6355 Riverside Boulevard, Suite C, Sacramento, California 95831 (hereinafter referred to as "Consultant").

RECITALS

WHEREAS, Consultant has been engaged by County to assist its Department of Transportation with the development of a Routine Maintenance Agreement (RMA) with the California Department of Fish and Wildlife (CDFW) to protect the structural and functional integrity of existing water conveyance infrastructure, within or affecting waterways throughout County, pursuant to Agreement for Services #4976, dated September 1, 2020, incorporated herein and made by reference a part hereof (hereinafter referred to as "Agreement");

WHEREAS, ARTICLE XIII, Assignment and Delegation, of the Agreement prohibits Sycamore Environmental Consultants, Inc., from subcontracting, delegating, or assigning services to be provided, in whole or in part, to any other person or entity without prior written consent of County;

WHEREAS, Sycamore Environmental Consultants, Inc. was acquired by SWCA, Incorporated which will do business in California as SWCA Environmental Consultants, effective April 13, 2021;

WHEREAS, Sycamore Environmental Consultants, Inc. executed a Form of Conditional Assignment and Assumption Agreement granting, assigning, transferring, conveying, delivering, delegating, and setting over unto SWCA, Incorporated which will do business in California as SWCA Environmental Consultants all of Sycamore Environmental Consultants, Inc.'s rights, title, interest, duties, obligations, and liabilities in, to, and under Agreement #4976 and the Form of Conditional Assignment and Assumption Agreement is incorporated herein as Exhibit D, marked "EXHIBIT B Form of Conditional Assignment and Assumption Agreement," effective as of April 13, 2021;

WHEREAS, by operation of this acquisition, SWCA, Incorporated which will do business in California as SWCA Environmental Consultants shall assume all of Sycamore Environmental Consultants, Inc.'s duties, responsibilities, and obligations, including insurance and indemnity obligations, for services under the terms and conditions of the Agreement, including, but not limited to, any liabilities or obligations for consulting services prior to the effective date of the acquisition;

WHEREAS, Sycamore Environmental Consultants, Inc., now operating as SWCA, Incorporated which will do business in California as SWCA Environmental Consultants has requested that County accept the proposed assignment of the Agreement and consent to the assignment of all of Assignor's rights, obligations, and liabilities to SWCA, Incorporated which will do business in California as SWCA Environmental Consultants;

WHEREAS, the parties hereto desire to amend the Agreement to change all references throughout the Agreement from Sycamore Environmental Consultants, Inc. to SWCA, Incorporated which will do business in California as SWCA Environmental Consultants;

WHEREAS, County will accept this First Amendment to Agreement for Services #4976 on condition that SWCA, Incorporated which will do business in California as SWCA Environmental Consultants assumes and fulfills the terms and conditions of this First Amendment and the Agreement;

WHEREAS, the parties hereto desire to fully-replace or add specific Articles to update County's contract provisions;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter contained, County and Consultant mutually agree to amend the terms of the Agreement in this First Amendment to Agreement on the following terms and conditions:

1. The parties agree that by operation of the acquisition described above, SWCA, Incorporated which will do business in California as SWCA Environmental Consultants assumes all duties and obligations under this Agreement, including, but not limited to, any liabilities or obligations, including insurance and indemnity obligations, for services performed by Sycamore Environmental Consultants, Inc. prior to the effective date of the acquisition, and SWCA, Incorporated which will do business in California as SWCA Environmental Consultants is responsible for performing the work and services in accordance with all the terms and conditions of this Agreement. Exhibit D, marked "EXHIBIT B Form of Conditional Assignment and Assumption Agreement" has been incorporated herein and made by reference a part hereof to the Agreement.
2. All references to Sycamore Environmental Consultants, Inc. throughout the Agreement shall read SWCA, Incorporated which will do business in California as SWCA Environmental Consultants.

3. The following articles are fully-replaced in their entirety:

ARTICLE XI

Consultant to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further understood that this Agreement does not create an exclusive relationship between County and Consultant, and Consultant may perform similar work or services for others. However, Consultant shall not enter into any agreement with any other party, or provide any information in any manner to any other party, that would conflict with Consultant's responsibilities or hinder Consultant's performance of services hereunder, unless County's Contract Administrator, in writing, authorizes that agreement or sharing of information.

ARTICLE XIV

Independent Contractor: The parties intend that an independent contractor relationship will be created by this contract. Consultant is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by the terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, agents, affiliates, and subcontractors, if any are authorized herein, as they relate to the services or work to be performed under this Agreement during the course and scope of their employment by Consultant. Those persons will be entirely and exclusively under the direction, supervision, and control of Consultant.

County may designate the tasks to be performed and the results to be accomplished under this Agreement, provide information concerning the work or services, approve or disapprove the final work product and/or services provided, and set deadlines for the completion of the work or services, but County will not control or direct the manner, means, methods, or sequence in which Consultant performs the work or services for accomplishing the results. Consultant understands and agrees that Consultant lacks the authority to bind County or incur any obligations on behalf of County.

Consultant, including any subcontractor or employees of Consultant, shall not receive, nor be eligible for, any benefits County provides for its employees, including, but not limited to, vacation pay, paid holidays, life insurance, health insurance, social security, disability insurance, pension, or 457 plans. Consultant shall not receive, nor be eligible for, workers' compensation, including medical and indemnity payments. County is not responsible for withholding, and shall not withhold, Federal Income Contribution Act amounts or taxes of any kind from any payments which it owes Consultant. Consultant shall not be subject to the work schedules or vacation periods that apply to County employees.

Consultant shall be solely responsible for paying its employees, and for withholding Federal Income Contribution Act amounts and other taxes, workers' compensation, unemployment compensation, medical insurance, life insurance, or any other benefit that Consultant provides for its employees.

Consultant acknowledges that it has no authority to bind the County or incur any obligations on behalf of the County with regard to any matter, and shall not make any agreements or representations on the County's behalf.

ARTICLE XVII

Default, Termination, and Cancellation:

A. Termination by Default: If either party becomes aware of an event of default, that party shall give written notice of said default to the party in default that shall state the following:

1. The alleged default and the applicable Agreement provision.
2. That the party in default has ten (10) days upon receiving the notice to cure the default (Time to Cure).

If the party in default does not cure the default within ten (10) days of the Time to Cure, then such party shall be in default and the party giving notice may terminate the Agreement by issuing a Notice of Termination. The party giving notice may extend the Time to Cure at their discretion. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

1. If County terminates this Agreement, in whole or in part, for default: County reserves the right to procure the goods or services, or both, similar to those terminated, from other sources and Consultant shall be liable to County for any excess costs for those goods or services. County may deduct from any payment due, or that may thereafter become due to Consultant, the excess costs to procure from an alternate source.
2. County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.
3. County may require Consultant to transfer title and deliver to County any completed work under the Agreement.

The following shall be events of default under this Agreement:

1. Failure by either party to perform in a timely and satisfactory manner any or all of its obligations under this Agreement.
2. A representation or warranty made by Consultant in this Agreement proves to have been false or misleading in any respect.

3. Consultant fails to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, unless County agrees, in writing, to an extension of the time to perform before that time period expires.
 4. A violation of ARTICLE XXIV, Conflict of Interest.
- B. Bankruptcy: County may terminate this Agreement immediately in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
 - C. Ceasing Performance: County may terminate this Agreement immediately in the event Consultant ceases to operate as a business or otherwise becomes unable to substantially perform any term or condition of this Agreement.
 - D. Termination or Cancellation without Cause: County may terminate this Agreement, in whole or in part, for convenience upon thirty (30) calendar days' written Notice of Termination. If such termination is effected, County will pay for satisfactory services rendered before the effective date of termination, as set forth in the Notice of Termination provided to Consultant, and for any other services that County agrees, in writing, to be necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the Agreement. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise.

ARTICLE XVIII

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

To County:

With a copy to:

County of El Dorado
 Department of Transportation
 2850 Fairlane Court
 Placerville, California 95667

County of El Dorado
 Chief Administrative Office
 330 Fair Lane
 Placerville, California 95667

Attn.: Rafael Martinez
 Director

Attn.: Michele Weimer
 Procurement and Contracts Manager

or to such other location as County directs.

Notices to Consultant shall be addressed as follows:

SWCA, Incorporated which will do business in
California as SWCA Environmental Consultants
20 E Thomas Road, Suite 1700
Phoenix, Arizona 85012

Attn.: Joseph Fluder
Chief Executive Officer

or to such other location as the Consultant directs.

ARTICLE XXIV

Conflict of Interest: The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and the Political Reform Act of 1974 (Section 87100 et seq.), relating to conflict of interest of public officers and employees. Individuals who are working for Consultant and performing work for County and who are considered to be consultant within the meaning of Title 2, California Code of Regulations, Section 18700.3, as it now reads or may thereafter be amended, are required to file a statement of economic interest in accordance with County's Conflict of Interest Code. County's Contract Administrator shall at the time this Agreement is executed make an initial determination whether or not the individuals who will provide services or perform work pursuant to this Agreement are consultants within the meaning of the Political Reform Act and County's Conflict of Interest Code. Statements of economic interests are public records subject to disclosure under the California Public Records Act.

Consultant covenants that during the term of this Agreement neither it, or any officer or employee of Consultant, has or shall acquire any interest, directly or indirectly, in any of the following:

1. Any other contract connected with, or directly affected by, the services to be performed by this Agreement.
2. Any other entities connected with, or directly affected by, the services to be performed by this Agreement.
3. Any officer or employee of County that are involved in this Agreement.

If Consultant becomes aware of a conflict of interest related to this Agreement, Consultant shall promptly notify County of the existence of that conflict, and County may, in its sole discretion, immediately terminate this Agreement by giving written notice of termination specified in ARTICLE XVII, Default, Termination, or Cancellation.

4. The following articles are added to the Agreement.

ARTICLE XXXVII

Force Majeure: Neither party will be liable for any delay, failure to perform, or omission under this Agreement that is due to any cause that it is beyond its control, not due to its own negligence, and cannot be overcome by the exercise of due diligence. In that event, the affected party will:

1. Promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) that is beyond its control.
2. Once the cause(s) has ceased, provide written notice to the other party and immediately resume its performance under this Agreement.

For purposes of this Article, "cause that is beyond its control" includes labor disturbances, riots, fires, earthquakes, floods, storms, lightning, epidemics, war, disorders, hostilities, expropriation or confiscation of properties, failure of and delays by carriers, interference by civil or military authorities, whether legal or de facto, and whether purporting to act under some constitution, decree, or law, or otherwise, or acts of God.

ARTICLE XXXVIII

Waiver: No failure on the part of the parties to exercise any rights under this Agreement, and no course of dealing with respect to any right hereunder, shall operate as a waiver of that right, nor shall any single or partial exercise of any right preclude the exercise of any other right. The remedies herein provided are cumulative and are not exclusive of any other remedies provided by law.

Except as herein amended, all other parts and sections of Agreement for Services #4976, shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Agreement for Services #4976 on the dates indicated below.

-- COUNTY OF EL DORADO --

By: 

Dated: 9-21-21

Board of Supervisors
"County"

Attest:
Kim Dawson
Clerk of the Board of Supervisors

By: 
Deputy Clerk

Dated: 9-21-21

--SYCAMORE ENVIRONMENTAL CONSULTANTS, INC.--

By: *R. John Little*
R. John Little (Jul 7, 2021 16:43 PDT)

John Little
Chief Executive Officer
"Consultant"

Dated: 07/07/2021

By: *CYNTHIA LITTLE*
CYNTHIA LITTLE (Jul 7, 2021 15:41 PDT)

Cynthia L. Little
Corporate Secretary

Dated: 07/07/2021

--SWCA, INCORPORATED WHICH WILL DO BUSINESS
IN CALIFORNIA AS
SWCA ENVIRONMENTAL CONSULTANTS--

By: *Joseph Fluder*
Joseph Fluder (Jul 7, 2021 16:15 CDT)

Joseph Fluder
Chief Executive Officer
"Consultant"

Dated: 07/07/2021

By: *Denis Henry*
Denis Henry (Aug 11, 2021 13:54 PDT)

Denis Henry
Corporate Secretary

Dated: 08/11/2021

**SWCA, Incorporated which will do business in
California as SWCA Environmental Consultants
Exhibit D
Form of Conditional Assignment and Assumption Agreement**

**EXHIBIT B
Form of
Conditional Assignment and Assumption Agreement**

CONDITIONAL ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS CONDITIONAL ASSIGNMENT AND ASSUMPTION AGREEMENT ("Conditional Assignment") is made as of April 13, 2021, by (i) SYCAMORE ENVIRONMENTAL CONSULTANTS, INC., a California corporation ("SEC" or "Seller"); and (ii) SWCA, INCORPORATED, an Arizona corporation which does business as SWCA Environmental Consultants ("SWCA" or "Buyer").

WHEREAS, the Seller and the Buyer, along with the other parties named therein, are parties to that certain Asset Purchase Agreement, dated as of April 13, 2021 (the "Agreement"), pursuant to which the Buyer will purchase the Purchased Assets of Seller (subject to the exclusion of the Excluded Assets) effective as of the Closing Date (all capitalized terms used herein but not defined will have the meanings set forth in the Agreement);

WHEREAS, SELLER DESIRES TO EFFECTUATE THE SALE, ASSIGNMENT, CONVEYANCE, TRANSFER AND DELIVERY TO THE BUYER OF THE PURCHASED ASSETS, AND THE BUYER DESIRES TO ACCEPT THE PURCHASED ASSETS;

WHEREAS, AS PART OF THE TRANSFER OF THE PURCHASED ASSETS OF SELLER, SELLER DESIRES TO ASSIGN AND DELEGATE TO THE BUYER, AND THE BUYER DESIRES TO RECEIVE AN ASSIGNMENT OF AND ASSUME FROM SELLER, SELLER'S RIGHTS AND INTEREST UNDER THE CLIENT CONTRACTS.

WHEREAS, SELLER AND BUYER HAVE IDENTIFIED CERTAIN OF THE CLIENT CONTRACTS LISTED ON EXHIBIT A ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE AS REQUIRING THE CONSENT OF THIRD PARTIES IN ORDER TO BE ASSIGNED TO BUYER ("CLIENT CONTRACTS WITH REQUIRED CLIENT CONSENTS"); AND

WHEREAS, SELLER INTENDS TO SEEK THE CLIENT CONSENTS FOR ASSIGNMENT OF THE CLIENT CONTRACTS WITH REQUIRED CLIENT CONSENTS TO SWCA FOLLOWING THE CLOSING, AND SELLER AND BUYER WISH TO PROVIDE FOR THE ASSIGNMENT TO AND ASSUMPTION BY SWCA OF THE CLIENT CONTRACTS WITH REQUIRED CLIENT CONSENTS TO BECOME EFFECTIVE IMMEDIATELY UPON SELLER OBTAINING SUCH CLIENT CONSENTS.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Conditional Transfer of Certain Client Contracts. Seller hereby conditionally sells, assigns, transfers, conveys and delivers to the Buyer, and the Buyer hereby accepts such sale, assignment, transfer, conveyance and delivery of, all of Seller's right, title and interest in and to all of the Client Contracts with Required Client Consents, which sale, assignment, transfer, conveyance and delivery shall become automatically effective as to each of the Client Contracts with Required Client Consents upon obtaining the consent of the third party or parties required to

consent thereto pursuant to the terms of such Client Contract. Prior to the effectiveness of the assignment of the Client Contracts with Required Client Consents hereunder, each of the Client Contracts with Required Client Consents shall be performed and administered in accordance the terms of such Client Contract and the applicable provisions of the Agreement.

2. Liabilities Assumed. Upon the effectiveness of the assignment of each of the Client Contracts with Required Client Consents, the Buyer hereby agrees to, and hereby does undertake to, assume, pay, perform or discharge as appropriate the Client Contracts with Required Client Consents.

3. Further Assurances.

(a) Seller, for itself and its successors and assigns, hereby covenants and agrees to execute and deliver such other instruments of sale, conveyance, assignment or transfer and take such other actions as may be reasonably requested to more fully effectuate the sale, conveyance, assignment, transfer and delivery to the Buyer, or its successors and assigns, of Seller's right, title and interest in and to the Client Contracts hereby sold, conveyed, assigned, transferred and delivered to the Buyer; and in case of conflict, such specific instruments will control with respect to the Client Contracts sold, transferred, conveyed or assigned thereby.

(b) Upon the effectiveness of the assignment hereunder, Seller hereby authorizes the Buyer to take any appropriate action to protect the right, title and interest in and to the Client Contracts hereby sold, conveyed, assigned, transferred and delivered to the Buyer, in the name of Seller, the Buyer or any other name (for the benefit of the Buyer and its successors and assigns), against each and every person or persons whomsoever claiming or asserting any claim against any or all of the same.

4. Conflicts. This Conditional Assignment is subject in all events to the terms and conditions of the Agreement. In the event of a conflict or inconsistency between this Conditional Assignment and the Agreement, the terms of the Agreement will prevail. Nothing in this Conditional Assignment is intended to modify, expand or limit the terms of the Agreement.

5. Survival. Notwithstanding anything herein to the contrary, the terms and conditions of the Agreement will survive the execution and delivery of this Conditional Assignment.

6. Binding Effect. This Conditional Assignment will inure to the benefit of and be binding upon the parties and their respective successors and assigns.

7. Governing Law; Forum. This Conditional Assignment and any claim, controversy, dispute or cause of action (whether in contract, tort or otherwise) based upon, arising out of or relating to this Conditional Assignment and the transactions contemplated hereby shall be governed by, construed, and initiated in accordance with Sections 12.1 and 12.2 of the Agreement.

8. Counterparts. This Conditional Assignment may be executed in multiple counterparts (including by means of telecopied, facsimile or pdf signature pages), any one of which need not contain the signatures of more than one party, but all such counterparts taken together will constitute one and the same agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Conditional Assignment and Assumption Agreement as of the date first written above.

SELLER:

BUYER:

SYCAMORE ENVIRONMENTAL CONSULTANTS,
INC.

SWCA, INCORPORATED

By _____

By  _____
Joseph J. Fluder III, President/CEO

Name _____

Title _____

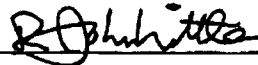
IN WITNESS WHEREOF, the parties have executed this Conditional Assignment and Assumption Agreement as of the date first written above.

SELLER:

BUYER:

SYCAMORE ENVIRONMENTAL
CONSULTANTS, INC.

SWCA, INCORPORATED

By 

By _____
Joseph J. Fluder III, President/CEO

Name R. John Little

Title President

[Inserted signature page for John Little in APA from the Bill of Sale, standalone document.]

[Signature Page to Conditional Assignment and Assumption Agreement]