

**VIEWING PROFESSIONAL SERVICES CONTRACT FOR
REDETERMINATION OF BENEFITS AND GRASS STRIP ACQUISITION FOR
JD 1 LAT 2
IN LE SUEUR & SCOTT COUNTIES, MINNESOTA**

This Viewing Professional Services Contract (this “**Agreement**”) is made effective _____, 2020 (the “**Effective Date**”), by and between Bryan Murphy (“**Murphy**”), Shantel Hecht (“**Hecht**”) and Larry Murphy (“**Larry**”) (collectively, the “**Viewers**”) Robert Conely (“**Robert**”), and Ken DeGier (“**Ken**”) acting through H2Over Viewers, LLC, a Minnesota limited liability company (the “**Company**”), and the Drainage Authority of Le Sueur County & Scott County for JD 1 Lat 2 (the “**Drainage Authority**”), for the Redetermination of Benefits and Grass Strip Acquisition for JD 1 Lat 2, and (the “**Drainage Systems**”).

RECITALS

- A.** Viewers Murphy, Hecht and Larry, along with Robert and Ken as alternative Viewers, were appointed by the Drainage Authority on _____, 2020 for JD 1 Lat 2.
- B.** The Viewers operate and coordinate their administrative functions, through the Company.
- C.** The Drainage Authority has funds available to purchase the services contemplated by this Agreement (collectively the “**Services**”).
- D.** The Drainage Authority desires to purchase the Services of the Viewers and the Company in connection with the redetermination of benefits and grass strip acquisition for the Drainage System (the “**Redetermination of Benefits**”).

AGREEMENT

In consideration of the foregoing Recitals, the mutual undertakings and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

1. VIEWING SERVICES.

- a. General Viewing Services.** Pursuant to this Agreement’s terms and conditions, the Viewers, individually and as a part of the viewing team, will provide professional services in connection with the development of the viewing procedures for the Redetermination of Benefits within the Drainage System’s watershed, professional analysis, meeting facilitation and report preparation as follows (the following collectively hereinafter referred to as the “**General Viewing Services**”):

- i. *First Meeting of Viewers*: Attend and participate virtually in the first meeting of the Viewers. Take Viewer’s oath and make initial coordination with Drainage Authority staff and/or engineer.
- ii. *Review Historical Drainage System Information*: Gather data regarding the Drainage System and its watershed. Identify/verify watershed boundaries or max extent of benefited area; identify parcels to be viewed by section, township, range and property ID number; identify owner/occupant information by name and mailing address (on file with County Auditor/Treasurer/Assessor); identify hydraulic efficiency of Drainage System (working with engineer).
- iii. *Coordination Meeting with Drainage Authority Staff*: Identify/verify watershed boundaries or max extent of benefited area; identify parcels to be viewed by section, township, range and property ID number; identify owner/occupant information by name and mailing address; identify hydraulic efficiency of Drainage System (working with engineer); and develop mapping information and maps to aid in viewing process.
- iv. *Conduct Office and Field Investigations and Viewing*: Identify any modification to natural drainage; identify unique features - land use, impervious surface, isolated basins, erosive soils, conservation practices; determine element of benefit utilizing standards in Minnesota Statutes Section 103E.315 and accepted viewing practices; address direct benefits and outlet benefits; meet with owners onsite when necessary to clarify issues.
- v. *Prepare and Deliver Viewers’ Report*: Following the standards of Minnesota Statutes Section 103E.321; prepare and deliver to the Drainage Authority, a viewer’s report, consisting of the following (the following collectively hereinafter referred to as the “**Viewer’s Report**”):
 1. A narrative report outlining the Viewers’ basis and findings, provided to the Drainage Authority in MS Word or PDF form;
 2. A tabular report called “Exhibit A” listing out every parcel according to Minn. Stat. Section 103E, provided in PDF form (MS Excel format if needed for tax system import); and
 3. A GIS derived image of the entire Drainage System and the classifications therein, provided in JPEG format.

- vi. *Prepare Benefited Area Map*: Prepare a map identifying benefited areas for use by Drainage Authority and prepare exportable digital format for Drainage Authority's use.

- b. Landowners' Meeting. At least one of the Viewers shall attend and participate in a virtual Landowners' Meeting (as hereinafter defined). A "**Landowners' Meeting**" shall mean one informational group meeting with at least one of the Viewers and the landowners to provide an overview of the viewing process and value determinations and at which the Viewer(s) attending address individual questions from landowners in attendance immediately following the meeting presentation. Additional Revisions may be made to the Viewer's Report after the Landowners' Meeting, but prior to the Final Hearing, to address changes brought forward during the Landowners' Meeting.

- c. Final Hearing. The Viewers shall present in a virtual meeting the determination of benefits and damages to the Drainage Authority and the public; explain viewing methodology and basis of benefit and damage determinations; answer questions of the Drainage Authority and public regarding specific determinations, to the best of the Viewers' ability; and schedule reviewing as necessary to validate determinations (collectively the "**Final Hearing**").

- d. Hourly Services. As needed or as requested by the Drainage Authority, the Viewers will also furnish the following services (collectively the "**Hourly Services**"):
 - i. *Additional Revisions*. Conduct reviewing; prepare summaries of reviewing; submit changes and revise report, if necessary; and provide explanation of changes, if necessary, revise Viewer's Report to address issues raised at Final Hearing and present changes, if any, to Viewer's Report (collectively, "**Additional Revisions**"). A final amended version of the Viewer's Report, as well as a GIS based file for the Drainage Authority's ArcPro software will be provided after all Additional Revisions are made and the Final Hearing has taken place.

 - ii. *Attendance/Participation at Additional Meetings*. Attend and participate in any additional public meetings.

- e. Additional Services. The Viewers may also furnish such additional services (the "**Additional Services**") as may be requested by the Drainage Authority from time to time, which are not listed as part of the General Viewing Services, Hourly Services, Landowner's Meeting or Final

Hearing above, or which are not covered by the Litigation Fee under Paragraph 2(c) of this Agreement. The Viewers and the Company will provide an estimate to the Drainage Authority and receive approval to proceed from the Drainage Authority before furnishing the Additional Services.

2. **RATES AND FEES.** The Drainage Authority shall pay the Company the following amounts for the Services:
- a. Fees for General Viewing Services. The Drainage Authority shall pay the Company for the Viewers' performance of the General Viewing Services at the rate of \$3.95 per acre for all acres evaluated by the Viewers or otherwise determined to be benefitted or damaged (the "**Per Acre Charge**").
 - b. Hourly Services Charge. In addition to the foregoing Per Acre Charge, for the Hourly Services, the Drainage Authority shall pay the Company an amount calculated at the rate of \$75/hour (the "**Hourly Charge**") for time spent by each of the Viewers and Company staff performing the Hourly Services. Hourly Charges shall be calculated to the nearest one-quarter (1/4) hour.
 - c. Litigation Fees. The Drainage Authority shall also pay the Company an additional amount calculated at the rate of \$120/hour (the "**Litigation Fee**") for work performed for each Viewer's time spent at any appearances required of any of the Viewers in court regarding the Services or reports provided under this Agreement, or any work provided as part of an appeal.
 - d. Surcharges. The following additional charges shall apply to the total amounts due to the Company under this Agreement from the Drainage Authority:
 - i. Authorized Discharge Facilities. In the event the Viewers' duties include the determination of benefits and fees for authorized municipal stormwater, municipal wastewater or commercial or industrial discharges (each hereinafter defined as an "**Authorized Discharge Facility**"), an additional charge of \$750.00 per Authorized Discharge Facility.
 - ii. Out-Letting Systems. An additional charge of 50% of the Per Acre Charge for all acres evaluated by the Viewers or otherwise determined to be benefitted or damaged by the Redetermination of Benefits if a contributing drainage system uses the Drainage System. For example, if there is a \$4.00 Per Acre Charge, an

additional \$2.00 per acre will be charged for all acres evaluated by the Viewers or otherwise determined to be benefited or damaged.

- iii. Continuations. In the event of any hearing continuation, an additional charge of \$2,000.00 per continuance.
- iv. Landowners' Meeting. \$2,000.00 for each Landowners' Meeting attended in person (the "**Landowners' Meeting Fee**"). The Drainage Authority acknowledges and agrees that the Landowners' Meeting Fee shall automatically be revised without the Drainage Authority's consent, to the Company's then current fee amount, in the event it takes longer than twelve (12) months after submission of the Viewer's Report to the Drainage Authority, to hold the Landowners' Meeting. In the event the Drainage Authority works several systems into one Landowners' Meeting, only one Landowners' Meeting Fee will be charged (not one for each system).
- v. Final Hearing. \$2,000.00 for the Final Hearing if attended in person (the "**Final Hearing Fee**"). The Drainage Authority acknowledges and agrees that the Final Hearing Fee shall automatically be revised without the Drainage Authority's consent, to the Company's then current rate, in the event it takes longer than twelve (12) months after submission of the Viewer's Report to the Drainage Authority, to hold the Final Hearing.
- e. Expenses. In the event the Viewers and/or the Company provide any Hourly Services or Additional Services, the Drainage Authority shall reimburse the Viewers' for their expenses incurred in providing such services, which shall include, but not be limited to mileage at the 2020 IRS standard mileage rate, meals, lodging and hotel costs and printing costs.

3. **PAYMENT**. The Drainage Authority shall pay to the Company all fees, surcharges and other amounts provided for above as follows:

- a. Payment Requests. The Company shall submit pay requests monthly. The Drainage Authority shall make payment directly to the Company within thirty-five (35) days after the Drainage Authority's receipt of a pay request for the Viewers' Services performed and expenses incurred, in the manner provided by law for payment of claims against the Drainage Authority.
- b. Proration of Per Acre Charge and Out-Letting System Charge.

- i. Monthly Amounts. Because the actual acreage evaluated or otherwise determined to be benefitted or damaged is not definite until completion of the Redetermination of Benefits, monthly amounts due and owing to the Company for the Per Acre Charge, as well as the Out-Letting System charge, shall be calculated and paid based upon ninety percent (90%) of the total estimated acreage to be evaluated or otherwise determined to be benefitted or damaged, as prorated over the course of the estimated time to complete the Redetermination of Benefits, as reasonably determined by the Company.
- ii. True-Up Payment. No later than thirty-five (35) days after the Company's submission of its Viewer's Report to the Drainage Authority, the Drainage Authority shall pay for any remaining amounts due and owing for the Per Acre Charge and the Out-Letting System Charge, based upon the actual final acreage evaluated and otherwise determined to be benefitted or damaged. These amounts shall be calculated by taking the Per Acre Charge and the Out-Letting System Charge and multiplying each by the actual acreage, and deducting from each respective charge, the amounts the Drainage Authority has already paid to the Company for each respective charge. To the extent the Drainage Authority has over-paid the Company based upon the actual acreage, the Drainage Authority shall be entitled to a credit for such overpayment.
- c. Remaining Payments. All other charges and expenses reflected within this Agreement not otherwise paid through monthly pay requests, shall be paid no later than thirty-five (35) days after the Company's submission of its Viewer's Report to the Drainage Authority. Notwithstanding the foregoing, in the event any charges reflected within this Agreement are incurred or the Services are performed after the Viewers' submission of the Viewer's Report, such charges shall be due within thirty-five (35) days after the Drainage Authority's receipt of a pay request for such charges and expenses.

4. AGREEMENT TERM AND TERMINATION.

- a. Term. The Viewers agree to furnish the Services commencing on or about _____ and, unless earlier terminated, this Agreement and the Services shall continue until the Redetermination of Benefits is complete and the Final Order, adopting the Viewers' Report and statements of benefits and damages, are adopted by the Drainage Authority.
- b. Drainage Authority Termination. The Drainage Authority may terminate this Agreement with the Viewers and Company at any time with or

without cause. Notice of termination shall be given in writing and shall become effective not earlier than the date of mailing. If the Agreement is terminated, the Viewers and the Company shall be promptly compensated for Services performed and expenses incurred through the date of termination based on the amounts provided for under Section 2 of this Agreement.

- c. Viewers and Company Termination. The Viewers and Company may terminate this Agreement at any time with or without cause. Notice of termination shall be given in writing and shall become effective not earlier than the date of mailing. If the Agreement is terminated, the Viewers and the Company shall be promptly compensated for work performed and expenses incurred through the date of termination based on the amounts provided for under Section 2 of this Agreement.

5. ADMINISTRATION OF SERVICES

- a. Company Coordination. Each Viewer is considered independent. Each Viewer individually shall at all times be free to exercise initiative, judgment and discretion as to how to best perform or provide the Services. However, the individual Viewers acknowledge that they are a member of a three-viewer team and that their efforts and deliverable products will be coordinated by the Company. The Company shall not have direct control over the means and methods employed by individual Viewers. However, all coordination with the Drainage Authority and its staff, billing, record keeping, insurance and reporting shall occur through the Company.
- b. Viewing Process. Viewers agree to ensure a unity and consistency of effort in the viewing process. Viewers agree to provide a consensus recommendation to the Drainage Authority in the proceedings.
- c. Alternate Viewer. In the event the Company, in its discretion determines that any of the Viewers are no longer able to provide the Services, or, if the Company otherwise deems it necessary, in its discretion, to have Robert and/or Ken serve in place of any of the Viewers, the Company may utilize Robert and/or Ken as a Viewer in place of any of the other Viewers, and the Drainage Authority authorizes appointment of Robert and/or Ken as a Viewer in place of any of the other Viewers, who upon the Company's notification to the Drainage Authority, shall serve as and will be considered a "Viewer", with all rights, responsibilities and obligations of a "Viewer" under this Agreement's terms and conditions, as well as those provided for under Minnesota Statutes Chapter 103E.
- d. Drainage Authority Cooperation. Coordination with Drainage Authority staff is expected throughout the drainage proceedings. The Drainage Authority and its staff will cooperate with each Viewer to provide

information relevant to the viewing process. The Drainage Authority and its staff shall not impede the viewing process. All coordination with the Drainage Authority and its staff shall occur through the lead viewer, who shall be Bryan Murphy.

6. INDEPENDENT CONTRACTOR STATUS

- a. Independent Contractor. At all times and for all purposes hereunder, each Viewer shall be an independent contractor and is not an employee of the Drainage Authority for any purpose. No statement contained in this Agreement shall be construed so as to find any Viewer to be an employee of the Drainage Authority, and each Viewer shall not be entitled to any of the rights, privileges, or benefits of employees of the Drainage Authority or the County of Le Sueur & Scott, including but not limited to, workers' compensation, health/death benefits, and indemnification for third-party personal injury/property damage claims.
- b. Responsibility for Withholding. Each Viewer acknowledges and agrees that no withholding or deduction for State or Federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due each Viewer or the Company and that it is the sole obligation of each Viewer and the Company to comply with the applicable provisions of all Federal and State Tax laws.
- c. Hiring of Staff. Each Viewer and the Company is responsible for hiring sufficient workers to perform the services/duties required by this Agreement, withholding their taxes, and paying all other employment tax obligations on their behalf.

7. INSURANCE

- a. Required Insurance. The Viewers and Company agree that in order to protect itself as well as the Drainage Authority, the Viewers and Company will at all times during the term of this Agreement keep in force the following insurance:
 - i. Commercial General Liability. In the amount of \$1,000,000 per occurrence; \$2,000,000 general aggregate; or such other liability amounts as established in Minnesota Statutes 466, as amended.
 - ii. Professional Liability. In the amount of \$1,000,000 per claim and in the aggregate.
 - iii. Business Automobile Liability. In the amount of \$1,000,000 combined single limit coverage.

- iv. Workers' Compensation Insurance. Workers' Compensation Insurance for all its employees in accordance with statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability, at limits of not less than \$500,000 bodily injury by disease each employee, \$500,000 bodily injury by disease policy limit and \$500,000 bodily injury each accident.
- b. Insurance Policy Requirements. Any policy obtained and maintained under this clause shall provide that it shall not be cancelled, materially changed, or not renewed without thirty (30) days' prior notice thereof to the Drainage Authority.
- c. Insurance Certificates. Prior to the Effective Date, and as a condition precedent to this Agreement, the Viewers will furnish the Drainage Authority with Certificates of Insurance listing the Drainage Authority as a certificate holder.

8. DATA PRACTICES

- a. Work Product. Viewers are performing work for hire, all work product, background information, investigations, summaries, photographs, maps or other materials, whether in paper, electronic or other form, produced or obtained by any Viewer in the course of the drainage proceeding are the property of the Drainage Authority and shall be provided to the Drainage Authority upon completion of the Viewers' Services, however, the Company may retain copies of such documents and materials for its own records and reporting and retention requirements.
- b. Government Data Practices Act. All data collected, created, received, maintained, or disseminated for any purposes by the activities of a Viewer because of this Agreement is governed by the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as amended, the Minnesota Rules implementing such act, now in force or as adopted, as well as federal regulations on data privacy.

9. RECORDS-AVAILABILITY AND RETENTION

- a. Inspection. Pursuant to Minnesota Statute §16C.05, subd. 5, the Viewers agree that the Drainage Authority, the State Auditor, the County Auditors of Le Sueur & Scott County or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the Viewers and involve transactions relating to this Agreement.

- b. Records Retention. The Company agrees to maintain these records for a period of six (6) years from the date of termination of this Agreement.

10. MISCELLANEOUS

- a. Entire Agreement. It is understood and agreed that the entire Agreement between the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. All items referred to in this Agreement are incorporated or attached and are deemed to be part of this Agreement.
- b. Amendments. Any material alterations, variations, modifications, or waivers of provisions of this Agreement shall be valid only when they have been reduced to writing as an amendment and signed by the parties.
- c. Legal Fees and Costs. Should the Drainage Authority, the Viewers, or the Company have to bring legal action to secure compliance with any provision of this Agreement, each party shall pay its own attorneys' fees and costs in such an action.
- d. Subcontracting and Assignment. The Viewers shall not enter into any subcontract for performance of any Services without the prior written approval of the Drainage Authority and subject to such conditions and provisions as the Drainage Authority may deem necessary. The Viewer shall be responsible for the performance of all subcontractors.
- e. Nondiscrimination. During this Agreement's performance, the Viewers agree to the following:

No person shall, on the grounds of race, color, religion, age, sex, disability, marital status, public assistance status, criminal record, creed or national origin be excluded from full employment rights in, participation in, be denied the benefits of or be otherwise subjected to discrimination under any and all applicable federal and state laws against discrimination.
- f. Compliance with Laws. The Viewers and the Company shall abide by all Federal, State, and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Agreement.
- g. Severability. The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid, or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement unless the part or parts which are void, invalid or otherwise unenforceable shall substantially impair the value of the entire Agreement with respect to the parties.

- h. Counterparts.** This Agreement may be signed in two or more counterparts, all of which shall constitute a single instrument. Facsimile and scanned electronic signatures shall be sufficient for all purposes.

Viewers and Company having signed this Agreement, the Drainage Authority of Le Sueur County & Scott County for JD 1 Lat 2 duly approved this Agreement on the ___ day of _____, 2020 and pursuant to such approval and the proper Drainage Authority officials having signed this Agreement, the parties hereto agree to be bound by the provisions herein set forth.

Le Sueur County & Scott County Drainage
Authority for JD 1 Lat 2

By: _____
Chair/President of the Le Sueur & Scott
County Drainage Authority

[Signature Page to Follow]

Bryan Murphy, Viewer

Shantel Hecht, Viewer

Larry Murphy, Viewer

Robert Conely, Alternate Viewer

Ken DeGier, Alternate Viewer

H2Over Viewers, LLC

By Bryan Murphy
Its Authorized Agent
