

**VIEWING PROFESSIONAL SERVICES CONTRACT FOR
REDETERMINATION OF BENEFITS AND GRASS STRIP ACQUISITION ON
COUNTY DITCH 62 IN LE SUEUR COUNTY, MINNESOTA**

This Viewing Professional Services Contract (this “**Agreement**”) is made effective June 15, 2021 (the “**Effective Date**”), by and between **H2Over Viewers, LLC**, a Minnesota limited liability company (the “**Company**”), and the Drainage Authority of Le Sueur County for County Ditch **62** (the “**Drainage Authority**”), for the Redetermination of Benefits and Grass Strip Acquisition for County Ditch 62 (the “**Drainage System**”).

RECITALS

- A.** Viewers Bryan Murphy (“**Murphy**”), Shantel Hecht (“**Hecht**”) and Larry Murphy (“**Larry**”) (collectively, the “**Viewers**”) along with Robert Conely (“**Robert**”) and Kenneth DeGier (“**Ken**”) as alternative Viewers, were appointed by the Drainage Authority June 15, 2021.
- B.** The Viewers operate and coordinate their administrative functions, through the Company.
- C.** The Company’s proposal contained a per-acre cost estimate for the Redetermination of Benefits of \$3.85 per acre (the “**Per Acre Rate**”) evaluated or otherwise determined to be benefited or damaged.
- D.** The Drainage Authority has funds available to purchase the services contemplated by this Agreement (collectively the “**Services**”).
- E.** 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.** The Company agrees to cause the Viewers to furnish the following Services commencing on or about June 15, 2021:
 - 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 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), which the Company may import into the Drainage Authority’s tax system for no additional charge; 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.
 - vii. *Preparation of Owners' Report*. Prepare owners' reports consistent with requirements of Minnesota Statutes Section 103E.323.
 - viii. *Landowners' Meeting*. At least one of the Viewers shall attend virtually and participate in a Landowners' Meeting (as hereinafter defined). A "**Landowners' Meeting**" shall mean one virtual 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) virtually 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.
 - ix. *Final Hearing*. The Viewers shall attend and present virtually, 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**").
- b. **General Viewing Services Charge**. The Drainage Authority shall pay the Company for the Viewers' performance of the General Viewing Services an amount based upon the Per Acre Rate multiplied by all acres evaluated by the Viewers or otherwise determined to be benefitted or damaged (the "**Per Acre Charge**").
- c. **Surcharges**. The following additional charges shall apply to the total amounts due to the Company under this Agreement from the Drainage Authority:
- i. *Minimum Per Acre Charge*. The Per Acre Charge assumes that all acres evaluated by the Viewers or otherwise determined to be benefitted or damaged shall total at least 3,500 acres. In the event the actual acreage evaluated by the Viewers or otherwise determined to be benefitted or damaged is less than 3,500 acres, a flat fee of \$13,475.00 (the "**Minimum Per Acre Charge**").
 - ii. *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 \$1,500.00 per Authorized Discharge Facility.

- iii. *Lakes and Large Ponds.* In the event the Drainage System includes a lake or a large pond, requiring additional data requests from the Company’s engineering team, an additional charge of \$2,500.00.
 - iv. *Out-Letting Systems.* An additional charge of 50% of the Per Acre Rate multiplied by all acres evaluated by the Viewers or otherwise determined to be benefited 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.
2. **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 Systems 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.
- 3. ADDITIONAL SERVICES.** The Viewers may also furnish such 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, including, but not limited to, attending hearings, litigation or landowner meetings in-person as opposed to virtually, or revising reports to address issues raised at the Final Hearing (the "**Additional Services**"). The Viewers and the Company will provide an estimate of costs and fees for any Additional Services to the Drainage Authority and receive approval to proceed from the Drainage Authority before furnishing such Additional Services.
- 4. IMPROVEMENTS.** The Services provided under this Agreement are limited to Services for the Redetermination of Benefits. In the event the Drainage Authority requests the Company to perform viewing services for improvements to the Drainage System, including, but not limited to tiling, enlarging, extending, straightening, or deepening of the Drainage System or at the outlet of the Drainage System, construction of ditches to reline or replace tile and construction of tile to replace a ditch, such viewing services are not included as part of the Services provided under this Agreement and the Company and the Drainage Authority shall enter into a separate agreement for such viewing services related to the improvements.
- 5. TERM AND TERMINATION.**

 - a. Term.** 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. Termination.** The Company or Drainage Authority 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 Drainage Authority shall promptly compensate the Company for work performed and expenses incurred under this Agreement

through the date of termination based on the amounts provided for under this Agreement.

6. 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 are a member of a three-viewer team and 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 will ensure a unity and consistency of effort in the viewing process. Viewers will provide a consensus recommendation to the Drainage Authority in the proceedings.
- c. **Alternate Viewers.** 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 or Ken serve in place of any of the Viewers, the Company may utilize Robert or Ken as a Viewer in place of any of the other Viewers, and the Drainage Authority authorizes appointment of Robert 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.

7. INSURANCE

- a. **Required Insurance.** The Company agrees that in order to protect itself as well as the Drainage Authority, the Company will at all times during this Agreement's term, 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.
 - v. Umbrella. An umbrella policy of insurance with limits of not less than \$1,000,000.
- 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 Company will furnish the Drainage Authority with Certificates of Insurance listing the Drainage Authority as a certificate holder.

8. DATA PRACTICES

- a. **Work Product**. The Company and the 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 the Company or 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 Company agrees that the Drainage Authority, the State Auditor, the County Auditors for the Drainage Authority 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 Company 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 Company 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 Company shall be responsible for the performance of all subcontractors.
- e. Nondiscrimination.** During this Agreement's performance, the Company agrees 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 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.

[Signature Page to Follow]

The Company having signed this Agreement, the Drainage Authority of Le Sueur County for County Ditch 62, 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 Drainage Authority for
Le Sueur County Ditch 62**

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

H2Over Viewers, LLC

By Bryan Murphy
Its President