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# **Le Sueur County, MN**

**Tuesday, March 6, 2018**

**Board Meeting**

## **Item 6**

**10:00 a.m. Pam Simonette, Auditor - Treasurer (5 min)**

*RE: CD 54 Contract with H2Over Viewers*

Staff Contact:

**VIEWING PROFESSIONAL SERVICES CONTRACT FOR  
REDETERMINATION OF BENEFITS AND GRASS STRIP ACQUISITION ON  
COUNTY DITCH 54 IN LE SUEUR COUNTY, MINNESOTA**

This Viewing Professional Services Contract (this "Agreement") is made effective February 1st, 2018 (the "Effective Date") by and between **Bryan Murphy** ("Murphy"), **Dustin Srnsky** ("Srnsky") and **Larry Murphy** ("Larry") (collectively, the "Viewers") acting through **H2Over Viewers, LLC**, a Minnesota limited liability company (the "Company"), and the **Drainage Authority in Le Sueur County for County Ditch 54** (the "Drainage Authority"), for the Redetermination of Benefits and Grass Strip Acquisition for County Ditch 54 (the "Drainage System").

**RECITALS**

- A. Viewers Murphy, Srnsky and Larry were appointed by the Drainage Authority on January 23rd, 2018.
- B. The Viewers' proposal contained a per acre cost estimate for the Redetermination of Benefits of \$3.85 per acre within the watershed of the Drainage System.
- C. The Viewers operate and coordinate their administrative functions, through the Company.
- D. The Drainage Authority has funds available to purchase the services.
- E. The Drainage Authority desires to purchase the services of the Viewers and Company in connection with the redetermination of benefits and grass strip acquisition for the Drainage System.

**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. Term and Cost of the Agreement**

- a. Agreement Term. The Viewers agree to furnish services as more fully described in Paragraph 3 during the period commencing on or about February 1st, 2018 and, unless earlier terminated, this Agreement shall continue until the Redetermination of Benefits is complete and the Final Order, adopting the Viewers' reports and statements of benefits and damages, are adopted by the Drainage Authority.

- b. General Fees. The Viewers shall be compensated for performing the General Viewing Services (see Paragraph 3) at the rate of \$3.85 per acre within the watershed of the Drainage System (the “Per Acre Charge”).
- c. Hourly Charge. In addition to the foregoing Per Acre Charge, each of the Viewers shall be compensated at the rate of \$50/hour (the “Hourly Charge”) for the Hourly Services (see Paragraph 3).
- d. Additional Service Fees. Viewers shall be compensated at the rate of \$90/hour (the “Additional Service Fee”) for work performed for 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.
- e. Payment for Services. All hourly charges shall be recorded to the nearest ¼ hour. The Drainage Authority shall make prompt payment for the Viewers’ services directly to the Company upon the Company’s presentation of a claim for the Viewers’ services performed and expenses incurred in the manner provided by law for payment of claims against the Drainage Authority. The Company shall submit pay requests monthly. With respect to the Per Acre Charge, the Drainage Authority agrees that monthly payments shall be made based on the estimated watershed acreage of the Drainage System as prorated over the course of the estimated time to complete the Redetermination of Benefits, as reasonably determined by the Company and Drainage System.

## **2. Company Administration**

- 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 services identified herein. 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. 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.

## **3. Services to be Provided**

- a. General Viewing Services. The Viewers will provide professional services in connection with the development of the viewing procedures for the redetermination of benefits within the watershed of the Drainage System. The Viewers' services will consist of professional analysis, viewing, meeting facilitation and report preparation services. Viewers' duties, individually and as part of the viewing team, shall include, but not be limited to the following general tasks (collectively 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 Viewers' Report: Follow standards of Minnesota Statutes Section 103E.321; prepare exportable digital format for Drainage Authority's use; and ensure organization of parcels/owners by PID, legal description, property address, etc.
  - vi. Prepare Benefited Area Map: Prepare map identifying benefited areas for use by Drainage Authority and prepare exportable digital format for Drainage Authority's use.

- vii. Attend and Participate in Public Meeting: Attend and participate in one public meeting.
  - viii. Attend and Participate in Final Hearing: Present determination of benefits and damages to Drainage Authority and public; explain viewing methodology and basis of benefit and damage determinations; answer questions of Drainage Authority and public regarding specific determinations; schedule reviewing as necessary to validate determinations.
- b. Hourly Services. The Viewers shall also furnish the following services (the "Hourly Services") that each of the Viewers shall be compensated for at the Hourly Charge provided for within Paragraph 1(c) of this Agreement:
- i. Attendance/Participation at Landowner's Meetings. Attend and participate in informational meeting with landowners to explain the viewing process and value determinations.
  - ii. Preparation of Owners' Report. Prepare owners' reports consistent with requirements of Minnesota Statutes Section 103E.323.
  - iii. Additional Revisions. Conduct reviewing; prepare summaries of reviewing; submit changes and revise report, if necessary; and provide explanation of changes, if necessary, revise viewers' report to address issues raised at Final Hearing and present changes, if any, to viewers' report (collectively, "Additional Revisions").
  - iv. Attendance/Participation at Additional Meetings. Attend and participate in any additional public meetings.
- c. 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 or Hourly Services above, or which are not covered by the Additional Service Fee under Paragraph 1(d) 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.
- 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.

#### **4. 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, 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.

#### **5. 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 and Professional Liability. In the amount of \$500,000 per individual and \$1,500,000 per occurrence; or such other liability amounts as established in Minnesota Statutes 466, as amended.
  - ii. Business Automobile Liability. In the same amounts as established above.
  - iii. Workers' Compensation Insurance. If applicable, in such amounts as required by Minnesota Statute.

- 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.

## **6. 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' work.
- 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.

## **7. 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 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 years from the date of termination of this Agreement.

## **8. Merger and Modification.**

- 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. 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.

## **9. Termination.**

- a. 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 work performed and expenses incurred through the date of termination based on the compensation and reimbursement rates recited above.
- b. 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 compensation and reimbursement rates recited above.

**10. Legal Fees and Costs.** Should the Drainage Authority, the Viewers, or Company have to bring legal action to secure compliance with any provision of this Agreement, each party shall pay its own attorney fees and costs in such an action.

**11. Subcontracting and Assignment.** The Viewers shall not enter into any subcontract for performance of any services contemplated under this Agreement 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.

**12. Nondiscrimination.** During the performance of this Agreement, 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.



- 13. 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.
- 14. 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.
- 15. 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]*

Viewers and Company having signed this Agreement, the Drainage Authority of Le Sueur County for County Ditch 54 having duly approved this Agreement on the \_\_\_\_\_ day of \_\_\_\_\_ 2018, 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 County Ditch 54

By: \_\_\_\_\_

Chair/President of Le Sueur  
County/Drainage Authority

\_\_\_\_\_  
Bryan Murphy, Viewer

\_\_\_\_\_  
Dustin Snsky, Viewer

\_\_\_\_\_  
Larry Murphy, Viewer

H2Over Viewers, LLC

\_\_\_\_\_  
By Bryan Murphy  
Authorized Representative