



Le Sueur County, MN

Tuesday, September 18, 2018

Board Meeting

Item 6

10:00 a.m. Dani Blaschko, Ditch Manager (15 min)

RE: Contracts with H2Over Viewers - CD 22, 26, 35, 37, 41, 43, 44, 48, 49, 60, 61, 65

RE: Improvement Petition for CD41

RE: Improvement Petition for CD61

Staff Contact:

**VIEWING PROFESSIONAL SERVICES CONTRACT FOR
REDETERMINATION OF BENEFITS AND GRASS STRIP ACQUISITION ON
COUNTY DITCH 22 IN LE SUEUR COUNTY, MINNESOTA**

This Viewing Professional Services Contract (this “Agreement”) is made effective August 7, 2018 (the “Effective Date”) by and between **Bryan Murphy** (“Murphy”), **Shantel Hecht** (“Hecht”) and **Larry Murphy** (“Larry”) (collectively, the “Viewers”) acting through **H2Over Viewers, LLC**, a Minnesota limited liability company (the “Company”), and the **Drainage Authority of Le Sueur County for County Ditch 22** (the “Drainage Authority”), for the Redetermination of Benefits and Grass Strip Acquisition for County Ditch 22 (the “Drainage System”).

RECITALS

- A.** Viewers Murphy, Hecht and Larry were appointed by the Drainage Authority on August 7, 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 August 7, 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. The Drainage Authority will reimburse the Viewer the cost of this insurance.
 - 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 22 having duly approved this Agreement on the 18th day of September 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 Le Sueur
County Ditch 22

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

Bryan Murphy, Viewer

Shantel Hecht, Viewer

Larry Murphy, Viewer

H2Over Viewers, LLC

By Bryan Murphy
Its Authorized Agent

**VIEWING PROFESSIONAL SERVICES CONTRACT FOR
REDETERMINATION OF BENEFITS AND GRASS STRIP ACQUISITION ON
COUNTY DITCH 26 IN LE SUEUR COUNTY, MINNESOTA**

This Viewing Professional Services Contract (this “Agreement”) is made effective July 24, 2018 (the “Effective Date”) by and between **Bryan Murphy** (“Murphy”), **Shantel Hecht** (“Hecht”) and **Larry Murphy** (“Larry”) (collectively, the “Viewers”) acting through **H2Over Viewers, LLC**, a Minnesota limited liability company (the “Company”), and the **Drainage Authority of Le Sueur County for County Ditch 26** (the “Drainage Authority”), for the Redetermination of Benefits and Grass Strip Acquisition for County Ditch 26 (the “Drainage System”).

RECITALS

- A.** Viewers Murphy, Hecht and Larry were appointed by the Drainage Authority on July 24, 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 July 24, 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.
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- 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"):
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 - 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.
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 - 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. The Drainage Authority will reimburse the Viewer the cost of this insurance.
 - 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 26 having duly approved this Agreement on the 18th day of September 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 Le Sueur
County Ditch 26

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

Bryan Murphy, Viewer

Shantel Hecht, Viewer

Larry Murphy, Viewer

H2Over Viewers, LLC

By Bryan Murphy
Its Authorized Agent

**VIEWING PROFESSIONAL SERVICES CONTRACT FOR
REDETERMINATION OF BENEFITS AND GRASS STRIP ACQUISITION ON
COUNTY DITCH 35 IN LE SUEUR COUNTY, MINNESOTA**

This Viewing Professional Services Contract (this “Agreement”) is made effective August 7, 2018 (the “Effective Date”) by and between **Bryan Murphy** (“Murphy”), **Shantel Hecht** (“Hecht”) and **Larry Murphy** (“Larry”) (collectively, the “Viewers”) acting through **H2Over Viewers, LLC**, a Minnesota limited liability company (the “Company”), and the **Drainage Authority of Le Sueur County for County Ditch 35** (the “Drainage Authority”), for the Redetermination of Benefits and Grass Strip Acquisition for County Ditch 35 (the “Drainage System”).

RECITALS

- A.** Viewers Murphy, Hecht and Larry were appointed by the Drainage Authority on August 7, 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 August 7, 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. The Drainage Authority will reimburse the Viewer the cost of this insurance.
 - 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 35 having duly approved this Agreement on the 18th day of September 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 Le Sueur
County Ditch 35

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

Bryan Murphy, Viewer

Shantel Hecht, Viewer

Larry Murphy, Viewer

H2Over Viewers, LLC

By Bryan Murphy

Its Authorized Agent

**VIEWING PROFESSIONAL SERVICES CONTRACT FOR
REDETERMINATION OF BENEFITS AND GRASS STRIP ACQUISITION ON
COUNTY DITCH 37 IN LE SUEUR COUNTY, MINNESOTA**

This Viewing Professional Services Contract (this “Agreement”) is made effective July 24, 2018 (the “Effective Date”) by and between **Bryan Murphy** (“Murphy”), **Shantel Hecht** (“Hecht”) and **Larry Murphy** (“Larry”) (collectively, the “Viewers”) acting through **H2Over Viewers, LLC**, a Minnesota limited liability company (the “Company”), and the **Drainage Authority of Le Sueur County for County Ditch 37** (the “Drainage Authority”), for the Redetermination of Benefits and Grass Strip Acquisition for County Ditch 37 (the “Drainage System”).

RECITALS

- A.** Viewers Murphy, Hecht and Larry were appointed by the Drainage Authority on July 24, 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 July 24, 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. The Drainage Authority will reimburse the Viewer the cost of this insurance.
 - 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 37 having duly approved this Agreement on the 18th day of September 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 Le Sueur
County Ditch 37

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

Bryan Murphy, Viewer

Shantel Hecht, Viewer

Larry Murphy, Viewer

H2Over Viewers, LLC

By Bryan Murphy

Its Authorized Agent

**VIEWING PROFESSIONAL SERVICES CONTRACT FOR
REDETERMINATION OF BENEFITS AND GRASS STRIP ACQUISITION ON
COUNTY DITCH 41 IN LE SUEUR COUNTY, MINNESOTA**

This Viewing Professional Services Contract (this “Agreement”) is made effective July 24, 2018 (the “Effective Date”) by and between **Bryan Murphy** (“Murphy”), **Shantel Hecht** (“Hecht”) and **Larry Murphy** (“Larry”) (collectively, the “Viewers”) acting through **H2Over Viewers, LLC**, a Minnesota limited liability company (the “Company”), and the **Drainage Authority of Le Sueur County for County Ditch 41** (the “Drainage Authority”), for the Redetermination of Benefits and Grass Strip Acquisition for County Ditch 41 (the “Drainage System”).

RECITALS

- A.** Viewers Murphy, Hecht and Larry were appointed by the Drainage Authority on July 24, 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 July 24, 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. The Drainage Authority will reimburse the Viewer the cost of this insurance.
 - 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 41 having duly approved this Agreement on the 18th day of September 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 Le Sueur
County Ditch 41

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

Bryan Murphy, Viewer

Shantel Hecht, Viewer

Larry Murphy, Viewer

H2Over Viewers, LLC

By Bryan Murphy

Its Authorized Agent

**VIEWING PROFESSIONAL SERVICES CONTRACT FOR
REDETERMINATION OF BENEFITS AND GRASS STRIP ACQUISITION ON
COUNTY DITCH 43 IN LE SUEUR COUNTY, MINNESOTA**

This Viewing Professional Services Contract (this “Agreement”) is made effective July 24, 2018 (the “Effective Date”) by and between **Bryan Murphy** (“Murphy”), **Shantel Hecht** (“Hecht”) and **Larry Murphy** (“Larry”) (collectively, the “Viewers”) acting through **H2Over Viewers, LLC**, a Minnesota limited liability company (the “Company”), and the **Drainage Authority of Le Sueur County for County Ditch 43** (the “Drainage Authority”), for the Redetermination of Benefits and Grass Strip Acquisition for County Ditch 43 (the “Drainage System”).

RECITALS

- A.** Viewers Murphy, Hecht and Larry were appointed by the Drainage Authority on July 24, 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 July 24, 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. The Drainage Authority will reimburse the Viewer the cost of this insurance.
 - 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 43 having duly approved this Agreement on the 18th day of September 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 Le Sueur
County Ditch 43

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

Bryan Murphy, Viewer

Shantel Hecht, Viewer

Larry Murphy, Viewer

H2Over Viewers, LLC

By Bryan Murphy

Its Authorized Agent

**VIEWING PROFESSIONAL SERVICES CONTRACT FOR
REDETERMINATION OF BENEFITS AND GRASS STRIP ACQUISITION ON
COUNTY DITCH 44 IN LE SUEUR COUNTY, MINNESOTA**

This Viewing Professional Services Contract (this “Agreement”) is made effective July 24, 2018 (the “Effective Date”) by and between **Bryan Murphy** (“Murphy”), **Shantel Hecht** (“Hecht”) and **Larry Murphy** (“Larry”) (collectively, the “Viewers”) acting through **H2Over Viewers, LLC**, a Minnesota limited liability company (the “Company”), and the **Drainage Authority of Le Sueur County for County Ditch 44** (the “Drainage Authority”), for the Redetermination of Benefits and Grass Strip Acquisition for County Ditch 44 (the “Drainage System”).

RECITALS

- A.** Viewers Murphy, Hecht and Larry were appointed by the Drainage Authority on July 24, 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 July 24, 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. The Drainage Authority will reimburse the Viewer the cost of this insurance.
 - 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 44 having duly approved this Agreement on the 18th day of September 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 Le Sueur
County Ditch 44

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

Bryan Murphy, Viewer

Shantel Hecht, Viewer

Larry Murphy, Viewer

H2Over Viewers, LLC

By Bryan Murphy
Its Authorized Agent

**VIEWING PROFESSIONAL SERVICES CONTRACT FOR
REDETERMINATION OF BENEFITS AND GRASS STRIP ACQUISITION ON
COUNTY DITCH 48 IN LE SUEUR COUNTY, MINNESOTA**

This Viewing Professional Services Contract (this “Agreement”) is made effective July 24, 2018 (the “Effective Date”) by and between **Bryan Murphy** (“Murphy”), **Shantel Hecht** (“Hecht”) and **Larry Murphy** (“Larry”) (collectively, the “Viewers”) acting through **H2Over Viewers, LLC**, a Minnesota limited liability company (the “Company”), and the **Drainage Authority of Le Sueur County for County Ditch 48** (the “Drainage Authority”), for the Redetermination of Benefits and Grass Strip Acquisition for County Ditch 48 (the “Drainage System”).

RECITALS

- A.** Viewers Murphy, Hecht and Larry were appointed by the Drainage Authority on July 24, 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 July 24, 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. The Drainage Authority will reimburse the Viewer the cost of this insurance.
 - 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 48 having duly approved this Agreement on the 18th day of September 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 Le Sueur
County Ditch 48

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

Bryan Murphy, Viewer

Shantel Hecht, Viewer

Larry Murphy, Viewer

H2Over Viewers, LLC

By Bryan Murphy
Its Authorized Agent

**VIEWING PROFESSIONAL SERVICES CONTRACT FOR
REDETERMINATION OF BENEFITS AND GRASS STRIP ACQUISITION ON
COUNTY DITCH 49 IN LE SUEUR COUNTY, MINNESOTA**

This Viewing Professional Services Contract (this “Agreement”) is made effective August 7, 2018 (the “Effective Date”) by and between **Bryan Murphy** (“Murphy”), **Shantel Hecht** (“Hecht”) and **Larry Murphy** (“Larry”) (collectively, the “Viewers”) acting through **H2Over Viewers, LLC**, a Minnesota limited liability company (the “Company”), and the **Drainage Authority of Le Sueur County for County Ditch 49** (the “Drainage Authority”), for the Redetermination of Benefits and Grass Strip Acquisition for County Ditch 49 (the “Drainage System”).

RECITALS

- A.** Viewers Murphy, Hecht and Larry were appointed by the Drainage Authority on August 7, 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 August 7, 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. The Drainage Authority will reimburse the Viewer the cost of this insurance.
 - 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 49 having duly approved this Agreement on the 18th day of September_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 Le Sueur
County Ditch 49

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

Bryan Murphy, Viewer

Shantel Hecht, Viewer

Larry Murphy, Viewer

H2Over Viewers, LLC

By Bryan Murphy
Its Authorized Agent

**VIEWING PROFESSIONAL SERVICES CONTRACT FOR
REDETERMINATION OF BENEFITS AND GRASS STRIP ACQUISITION ON
COUNTY DITCH 60 IN LE SUEUR COUNTY, MINNESOTA**

This Viewing Professional Services Contract (this “Agreement”) is made effective July 24, 2018 (the “Effective Date”) by and between **Bryan Murphy** (“Murphy”), **Shantel Hecht** (“Hecht”) and **Larry Murphy** (“Larry”) (collectively, the “Viewers”) acting through **H2Over Viewers, LLC**, a Minnesota limited liability company (the “Company”), and the **Drainage Authority of Le Sueur County for County Ditch 60** (the “Drainage Authority”), for the Redetermination of Benefits and Grass Strip Acquisition for County Ditch 60 (the “Drainage System”).

RECITALS

- A.** Viewers Murphy, Hecht and Larry were appointed by the Drainage Authority on July 24, 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 July 24, 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. The Drainage Authority will reimburse the Viewer the cost of this insurance.
 - 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 60 having duly approved this Agreement on the 18th day of September 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 Le Sueur
County Ditch 60

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

Bryan Murphy, Viewer

Shantel Hecht, Viewer

Larry Murphy, Viewer

H2Over Viewers, LLC

By Bryan Murphy
Its Authorized Agent

**VIEWING PROFESSIONAL SERVICES CONTRACT FOR
REDETERMINATION OF BENEFITS AND GRASS STRIP ACQUISITION ON
COUNTY DITCH 61 IN LE SUEUR COUNTY, MINNESOTA**

This Viewing Professional Services Contract (this “Agreement”) is made effective July 24, 2018 (the “Effective Date”) by and between **Bryan Murphy** (“Murphy”), **Shantel Hecht** (“Hecht”) and **Larry Murphy** (“Larry”) (collectively, the “Viewers”) acting through **H2Over Viewers, LLC**, a Minnesota limited liability company (the “Company”), and the **Drainage Authority of Le Sueur County for County Ditch 61** (the “Drainage Authority”), for the Redetermination of Benefits and Grass Strip Acquisition for County Ditch 61 (the “Drainage System”).

RECITALS

- A.** Viewers Murphy, Hecht and Larry were appointed by the Drainage Authority on July 24, 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 July 24, 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. The Drainage Authority will reimburse the Viewer the cost of this insurance.
 - 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 61 having duly approved this Agreement on the 18th day of September 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 Le Sueur
County Ditch 61

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

Bryan Murphy, Viewer

Shantel Hecht, Viewer

Larry Murphy, Viewer

H2Over Viewers, LLC

By Bryan Murphy
Its Authorized Agent

**VIEWING PROFESSIONAL SERVICES CONTRACT FOR
REDETERMINATION OF BENEFITS AND GRASS STRIP ACQUISITION ON
COUNTY DITCH 65 IN LE SUEUR COUNTY, MINNESOTA**

This Viewing Professional Services Contract (this “Agreement”) is made effective July 24, 2018 (the “Effective Date”) by and between **Bryan Murphy** (“Murphy”), **Shantel Hecht** (“Hecht”) and **Larry Murphy** (“Larry”) (collectively, the “Viewers”) acting through **H2Over Viewers, LLC**, a Minnesota limited liability company (the “Company”), and the **Drainage Authority of Le Sueur County for County Ditch 65** (the “Drainage Authority”), for the Redetermination of Benefits and Grass Strip Acquisition for County Ditch 65 (the “Drainage System”).

RECITALS

- A. Viewers Murphy, Hecht and Larry were appointed by the Drainage Authority on July 24, 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 July 24, 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. The Drainage Authority will reimburse the Viewer the cost of this insurance.
 - 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 65 having duly approved this Agreement on the 18th day of September 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 Le Sueur
County Ditch 65

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

Bryan Murphy, Viewer

Shantel Hecht, Viewer

Larry Murphy, Viewer

H2Over Viewers, LLC

By Bryan Murphy

Its Authorized Agent

**PETITION FOR AN IMPROVEMENT OF
LE SUEUR COUNTY DITCH NO. 41**

TO THE LE SUEUR COUNTY BOARD OF COMMISSIONERS AS DRAINAGE
AUTHORITY IN RELATION TO LE SUEUR COUNTY DITCH NO. 41

The Petitioners herein respectfully represent:

WHEREAS, this Petition relates to the mainline open ditch and subsurface tile of Le Sueur County Ditch No. 41 (“the system”) located in Sections 25 and 36 of Sharon Township and Sections 30 and 31 of Lexington Township with the intention of improving the system by increasing the drain capacity; and

WHEREAS, the system consists of mainline open ditch and subsurface mainline drainage tile, and the purpose of said Petition is to increase the drainage capacity of the existing open ditch and subsurface tile by cleaning the open ditch from the outlet in the Southeast Quarter of the Northwest Quarter (SE ¼ NW ¼) of Section 25 of Sharon Township to the southeast where the open ditch converts into subsurface tile in the Northeast Quarter of the Southeast Quarter (NE ¼ SE ¼) of Section 25 of Sharon Township. The open ditch currently has two (2) crossings that are proposed to be improved. The mainline subsurface tile will be improved commencing from its outlet into the mainline open ditch in the Northeast Quarter of the Southeast Quarter (NE ¼ SE ¼) of Section 25 of Sharon Township. The mainline will replace the existing 14-inch, 12-inch, 10-inch and 8-inch tile with 24-inch and 18-inch tile (“proposed Improvement Project”); and

WHEREAS, the existing system has insufficient capacity or requires enlarging to furnish sufficient capacity or a better outlet; and

WHEREAS, it is the Petitioners’ intention to improve the existing system by increasing the drain capacity and/or changing the realignment of portions of the existing system in order to provide improved drainage benefit; and

WHEREAS, the starting point, general course and terminus of the proposed improvement project for the system is depicted on Exhibit A which is attached hereto for reference; and

WHEREAS, this Petition is signed by: (1) at least 26% of the owners of the property affected by the proposed improvements; (2) at least 26% of the owners of the property that the proposed improvement passes over; (3) the owners of at least 26% of the property area affected by the proposed improvement; and (4) the owners of at least 26% of the property area that the proposed improvement passes over; and

WHEREAS, Petitioners further request that the engineer be specifically ordered to determine and offer alternative proposals for the consideration of the Drainage Authority which relate to the improvement of the drain capacity of the system that the engineer deems feasible, if any, including repairs to branches and alternative outlets, if any; and

WHEREAS, Petitioners provide herewith a corporate surety bond in the face amount of \$50,000 payable to the Drainage Authority of Le Sueur County Ditch No. 41 said bond conditioned to pay the costs incurred if the proceeding are dismissed or a contract is not awarded to allow the costs incurred to exceed the amount of the bond and that they will cause additional bond to be filed if it appears that the costs exceed the amount of the bond; and

WHEREAS, Petitioners have been informed and understand that they may not withdraw as a Petitioner at any time after this Petition is accepted by the Drainage Authority. Petitioners further acknowledge that if the proposed drainage project is not constructed, they are, and each Petitioner is, liable to the Drainage Authority for all of the costs incurred including engineering, legal and miscellaneous fees and expenses in relation to this Petition as outlined under Minnesota Statutes 103E; and

WHEREAS, Petitioners assert that the proposed Improvement Project will benefit and be useful to the public and will promote the public health; and

WHEREAS, Petitioners recognize that water storage benefits the entire system and requests that the engineer appointed by the Drainage Authority consider water storage designs into the Improvement Project. Petitioners further request and will support actively seeking outside funding for said water storage; and

WHEREAS, Petitioners request, pursuant to Minn. Stat. §103E.215, subd. 6, that separable maintenance be used for those locations where existing tiles are being replaced with open ditch and/or new tile. Petitioners request that the engineer be ordered to determine a proportionate share of life span based on the existing condition versus the tiles original designed capacity. It is recommended by Petitioners that the separable maintenance to be paid by the entire system is that percentage of the in-place tile whose life span capacity has been used and that the improvement pay for that percentage of the tile, life span or capacity that still is in repair. The landowners are requesting that a percentage be paid as separable maintenance by the entire system and a percentage be paid for by the improvement benefits as determined by the engineer and viewers; and

WHEREAS, a separable part of the drainage system may need repair. The engineer appointed by the Drainage Authority is asked to include in detailed survey report and statement showing the proportionate estimated cost of the proposed improvement required to repair the separable part of the existing system and the estimated proportionate share of the cost of the added work required for the improvement; and

WHEREAS, the names and addresses of owners of the 40 acre tracts that the Improvement passes over (indicated with a *) and affects, as depicted on the attached Exhibit A, are as follows:

Tract 1*
Owner/Address: Douglas R. & Barbara Traxler
25602 Le Sueur Creek Rd.
Le Sueur, MN 56058

Tract 1
Owner/Address: Karl & Sandra Germscheid Trust
510 Woods Trl.
Le Center, MN 56057

Tract 2
Owner/Address: Thomas E. Wieland
82 Maple Ave S.
Le Center, MN 56057

Tract 2
Owner/Address: Douglas & Peggy Stern
18590 Laser Ave.
Sanborn, MN 56083

Tract 3
Owner/Address: Thomas E. Wieland
82 Maple Ave S.
Le Center, MN 56057

Tract 4
Owner/Address: Michael A. & Susan Macho
25316 376th St.
Le Center, MN 56057

Tract 4*
Owner/Address: William J. Wieland
25823 Le Sueur Creek Rd.
Le Sueur, MN 56058

Tract 5
Owner/Address: Brandon T. & Abby Beer
25586 E State Hwy 112
Le Center, MN 56057

Tract 5*
Owner/Address: Delores M. Beer
76 S. Lexington Ave. Apt. 108
Le Center, MN 56057

Tract 5*
Owner/Address: Donald A. & Kathryn M. Holicky
22466 360th St.
Le Center, MN 56057

Tract 6*
Owner/Address: Donald A. & Kathryn M. Holicky
22466 360th St.
Le Center, MN 56057

Tract 6
Owner/Address: Patrick & Patricia Simonette
38668 251st Ave.
Le Center, MN 56057

Tract 6*
Owner/Address: Timothy G. Simonette and BJMCC, LLP
140 Mill Ave. N.
Le Center, MN 56057

Tract 7
Owner/Address: Thomas G. Simonette
38605 251st Ave.
Le Center, MN 56057

Tract 7
Owner/Address: Timothy G. Simonette and BJMCC, LLP
140 Mill Ave. N.
Le Center, MN 56057

Tract 8
Owner/Address: Brandon T. & Abby Beer
25586 E State Hwy 112
Le Center, MN 56057

Tract 8*
Owner/Address: Delores M. Beer
76 S. Lexington Ave. Apt. 108
Le Center, MN 56057

Tract 9*
Owner/Address: Delores M. Beer
76 S. Lexington Ave. Apt. 108
Le Center, MN 56057

Tract 9*
Owner/Address: Thomas H. & Mariane B. Beer
38774 251st Ave.
Le Center, MN 56057

Tract 10*
Owner/Address: George Beer
90 Solberg St. W.
Le Center, MN 56057

Tract 11
Owner/Address: James F. & Theresa David
25199 E. State Hwy 112
Le Center, MN 56057

Tract 11
Owner/Address: James L. Selly
25507 E. State Hwy 112
Le Center, MN 56057

Tract 12*
Owner/Address: George Beer
90 Solberg St. W.
Le Center, MN 56057

Tract 13
Owner/Address: Jerome P. & John Cooney
25421 400th St.
Le Center, MN 56057

Tract 14
Owner/Address: Brian M. & Tiffany L. Schmidt
39386 251st Ave.
Le Center, MN 56057

Tract 14
Owner/Address: James L. Selly
25507 E. State Hwy 112
Le Center, MN 56057

Tract 15*

Owner/Address:

George Beer
90 Solberg St. W.
Le Center, MN 56057

Tract 16

Owner/Address:

Genesis Co-op Association
1273 W. Derrynane St.
Le Center, MN 56057

Tract 16

Owner/Address:

Jerome P. & John Cooney
25421 400th St.
Le Center, MN 56057

Tract 17

Owner/Address:

George Beer
90 Solberg St. W.
Le Center, MN 56057

Tract 18

Owner/Address:

Emil Knish, Jr.
c/o Mamie K. Knish
P.O. Box 122
Le Center, MN 56057

Tract 18

Owner/Address:

Kathleen Schloesser and Andrew Schlosser
80 Sports St. E.
Le Center, MN 56057

Tract 18

Owner/Address:

Wayne L. & Barbara J. Krohn Trust
39577 251st Ave.
Le Center, MN 56057

Tract 19

Owner/Address:

Genesis Co-op Association
1273 W. Derrynane St.
Le Center, MN 56057

Tract 19
Owner/Address: Kathleen Schloesser and Andrew Schlosser
80 Sports St. E.
Le Center, MN 56057

Tract 19
Owner/Address: Willa Bratsch
391 Tyrone St. E.
Le Center, MN 56057

Tract 20
Owner/Address: Michael & Darcy Schloesser
40527 S. Maple Ave.
Le Center, MN 56057

Tract 21
Owner/Address: Kathleen Schloesser and Andrew Schlosser
80 Sports St. E.
Le Center, MN 56057

Tract 22
Owner/Address: Kathleen Schloesser and Andrew Schlosser
80 Sports St. E.
Le Center, MN 56057

NOW THEREFORE, we, as Petitioners, ask the Le Sueur County Auditor to present this petition to the county board (after examined by the Le Sueur County attorney) for the appointment of Chuck Brandel, I+S Group, or, in the alternative, another engineer skilled in drainage matters to examine the proposed work.



Bruce E. Sellers
Attorney for Petitioners
Wendland Sellers Law Office
825 East Second Street, P.O. Box 247
Blue Earth, MN 56013
507-526-2196

This petition is prepared by:
Bruce E. Sellers, Attorney at Law
Wendland Sellers Law Office
825 East Second Street, P.O. Box 247
Blue Earth, MN 56013
507-526-2196

- 7 -

STATE OF MINNESOTA
LE SUEUR COUNTY BOARD OF COMMISSIONERS
DRAINAGE AUTHORITY FOR THE IMPROVEMENT OF COUNTY DITCH 41

The matter of the petition for the improvement of Le Sueur County Ditch 41

Preliminary Findings and Order

The Le Sueur County Board of Commissioners, at its regular meeting on September 18, 2018, considered the petition for the improvement of Le Sueur County Ditch 41. Upon review of the petition for improvement and the accompanying bond, Commissioner _____ moved, seconded by Commissioner _____, for adoption of the following:

Findings:

1. The petition for the improvement of Le Sueur County Ditch 41 (CD 41) was filed with the Auditor-Treasurer pursuant to statutes section 103E.215.
2. The Board verified the signatures and ownership interests of the petitioners and finds that the Petitioners are the owners of at least 3 of the 11 40-acre parcels that the proposed improvement may pass over. As such, Petitioners are at least 26 percent of the owners of the property area that the proposed improvement passes over.
3. The petition properly designated the drainage system proposed to be improved by number or another description that identifies the drainage system.
4. The petition alleges that the drainage system has insufficient capacity or needs enlarging to furnish sufficient capacity.
5. The petition describes the improvement, including the names and addresses of owners of the 40-acre tracts or government lots and property that the improvement passes over.
6. The petition alleges that the proposed improvement is necessary and will be of public utility and promote the public health.
7. The petition contains an agreement by the petitioners that they will pay all costs and expenses that may be incurred if the improvement proceedings are dismissed.
8. The petition alleges that the existing drainage system needs repair and further petitions the Board to consider separable maintenance when determining the allocation of costs of the improvement.

[15741-0056/3113510/1]

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9. The petition was accompanied by a bond from the petitioners of \$50,000 in the form of a commercial bond payable to the County. The bond is adequate surety and has been reviewed and approved by Board's attorney. The bond is conditioned to pay the costs incurred if the proceedings are dismissed or a contract is not awarded to construct the drainage system proposed in the petition.
10. The costs incurred before the proposed drainage project is established may not exceed the amount of the petitioners' bond. A claim for expenses greater than the amount of the bond may not be paid unless an additional bond is filed. If the drainage authority determines that the cost of the proceeding will be greater than the petitioners' bond before the proposed drainage project is established, the drainage authority shall require an additional bond to cover all costs to be filed within a prescribed time. The proceeding will be stopped until the additional bond prescribed by the drainage authority is filed. If the additional bond is not filed within the time prescribed, the proceeding will be dismissed.
11. The Board's attorney has reviewed the petition and bond and has determined they meet the requirement of these proceedings.

Based on the foregoing findings, the Board of Managers adopts the following:

Order:

- a. The Board appoints engineering firm of ISG, Inc. and Chuck Brandel, P.E., to make a preliminary survey and file and report.
- b. The engineer shall serve as the engineer for the drainage project throughout the proceedings and construction unless otherwise ordered.
- c. The engineer shall file an oath to faithfully perform the assigned duties in the best manner possible and file a bond with the Board.
- d. The engineer shall include in his preliminary survey and report an investigation of the scope of improvement to include consideration of alternative improvement configurations and the impact of regulatory permitting requirements related to wetlands or other environmental factors on the possible alternatives.
- e. The engineer shall include in his preliminary survey and report an investigation of the current condition of the portion of the drainage system proposed to be improved and provide a recommendation on the propriety of a separable maintenance allocation of project costs.

After discussion, the Chairman called the question. The question was on the adoption of the Findings and Order and there were __ yeas and __ nays.

[15741-0056/3113510/1]

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Upon vote, the Chairman declared the Resolution approved.

Dated: September 18, 2018

Chairman, Board of Commissioners

* * * * *

I, Pam Simonette, Auditor-Treasurer of Le Sueur County, do hereby certify that I have compared the above resolution with the original thereof as the same appears of record and on file with the County and find the same to be a true and correct transcript thereof.

IN TESTIMONY WHEREOF, I hereunto set my hand this 18th day of September, 2018.

Pam Simonette, Auditor-Treasurer

**PETITION FOR AN IMPROVEMENT OF
LE SUEUR COUNTY DITCH NO. 61**

TO THE LE SUEUR COUNTY BOARD OF COMMISSIONERS AS DRAINAGE
AUTHORITY IN RELATION TO LE SUEUR COUNTY DITCH NO. 61

The Petitioners herein respectfully represent:

WHEREAS, this Petition relates to the mainline open ditch of Le Sueur County Ditch No. 61 and its branches (“the system”) located in Sections 14, 15, 22, 23, 24, 26, and 27 of Cordova Township with the intention of improving the system by increasing the drain capacity; and

WHEREAS, the system consists of mainline open ditch and subsurface branch drainage tile, the purpose of said Petition is to increase the drainage capacity of the existing open ditch and subsurface tiles by a combination of cleaning, enlarging, and/or deepening of the open ditch from the outlet in the Northeast Quarter of the Northeast Quarter (NE ¼ NE ¼) of Section 27 of Cordova Township to Branch 2 tile outlet in the Southeast Quarter of the Northwest Quarter (SE ¼ NW ¼) of Section 23 of Cordova Township. The open ditch currently has two (2) culvert crossings within the open ditch that are proposed to be improved. The subsurface tiles are also proposed to be improved for Branches 1, 2, 3, 4, and 4-A.

WHEREAS, the existing system has insufficient capacity or requires enlarging to furnish sufficient capacity or a better outlet; and

WHEREAS, it is the Petitioners’ intention to improve the existing system by increasing the drain capacity and/or changing the realignment of portions of the existing system in order to provide improved drainage benefit; and

WHEREAS, the starting point, general course and terminus of the proposed improvement project for the system is depicted on Exhibit A which is attached hereto for reference; and

WHEREAS, this Petition is signed by: (1) at least 26% of the owners of the property affected by the proposed improvements; (2) at least 26% of the owners of the property that the proposed improvement passes over; (3) the owners of at least 26% of the property area affected by the proposed improvement; and (4) the owners of at least 26% of the property area that the proposed improvement passes over; and

WHEREAS, Petitioners further request that the engineer be specifically ordered to determine and offer alternative proposals for the consideration of the Drainage Authority which relate to the improvement of the drain capacity of the system that the engineer deems feasible, if any, including repairs to branches and alternative outlets, if any; and

WHEREAS, Petitioners provide herewith a corporate surety bond in the face amount of \$50,000 payable to the Drainage Authority of Le Sueur County Ditch No. 61 said bond conditioned to pay the costs incurred if the proceeding are dismissed or a contract is not awarded to allow the

costs incurred to exceed the amount of the bond and that they will cause additional bond to be filed if it appears that the costs exceed the amount of the bond; and

WHEREAS, Petitioners have been informed and understand that they may not withdraw as a Petitioner at any time after this Petition is accepted by the Drainage Authority. Petitioners further acknowledge that if the proposed drainage project is not constructed, they are, and each Petitioner is, liable to the Drainage Authority for all of the costs incurred including engineering, legal and miscellaneous fees and expenses in relation to this Petition as outlined under Minnesota Statutes 103E; and

WHEREAS, Petitioners assert that the proposed Improvement Project will benefit and be useful to the public and will promote the public health; and

WHEREAS, Petitioners recognize that water storage benefits the entire system and requests that the engineer appointed by the Drainage Authority consider water storage designs into the Improvement Project. Petitioners further request and will support actively seeking outside funding for said water storage; and

WHEREAS, Petitioners request, pursuant to Minn. Stat. §103E.215, subd. 6, that separable maintenance be used for those locations where existing tiles are being replaced with open ditch and/or new tile. Petitioners request that the engineer be ordered to determine a proportionate share of life span based on the existing condition versus the tiles original designed capacity. It is recommended by Petitioners that the separable maintenance to be paid by the entire system is that percentage of the in-place tile whose life span capacity has been used and that the improvement pay for that percentage of the tile, life span or capacity that still is in repair. The landowners are requesting that a percentage be paid as separable maintenance by the entire system and a percentage be paid for by the improvement benefits as determined by the engineer and viewers; and

WHEREAS, a separable part of the drainage system may need repair. The engineer appointed by the Drainage Authority is asked to include in detailed survey report and statement showing the proportionate estimated cost of the proposed improvement required to repair the separable part of the existing system and the estimated proportionate share of the cost of the added work required for the improvement; and

WHEREAS, the names and addresses of owners of the 40 acre tracts that the Improvement passes over (indicated with a *) and affects, as depicted on the attached Exhibit A, are as follows:

| | |
|---------------------------|--|
| Tract 1 Owner/Address: | Barbara A. McCabe 40790 Silver Lake Rd. Le Sueur, MN 56058 |
|---------------------------|--|

Tract 2

Owner/Address:

Milo C. & Carolyn Wondra Trust
42862 209th Ave.
Le Center, MN 56057

Tract 3

Owner/Address:

Milo C. & Carolyn Wondra Trust
42862 209th Ave.
Le Center, MN 56057

Tract 4

Owner/Address:

Matthew L. & Jill E. Stauff
54 Savidge Lake Rd.
Cleveland, MN 56017

Tract 4

Owner/Address:

Milo C. & Carolyn Wondra Trust
42862 209th Ave.
Le Center, MN 56057

Tract 5

Owner/Address:

Francis A. & Mary L. Androli
19779 460th St.
Waterville, MN 56096

Tract 6

Owner/Address:

David G. Novotony
40556 221st Ave.
Le Center, MN 56057

Tract 7*

Owner/Address:

David G. Novotony
40556 221st Ave.
Le Center, MN 56057

Tract 8*

Owner/Address:

John E. & Pamela K. McGillen
14103 Dodd Rd.
Kilkenny, MN 56052

Tract 8*

Owner/Address:

Milo C. & Carolyn Wondra Trust
42862 209th Ave.
Le Center, MN 56057

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Tract 9*
Owner/Address: Scott & Roxanne Collier Trust
36365 165th Ave.
Montgomery, MN 56069

Tract 10*
Owner/Address: Francis A. & Mary L. Androli
19779 460th St.
Waterville, MN 56096

Tract 11
Owner/Address: Curtis C. Bohlen
44107 Sabre Lake Ln.
Kilkenny, MN 56052

Tract 12
Owner/Address: James R. & Barbara Brandt
44339 221st Ave.
Le Center, MN 56057

Tract 13
Owner/Address: David G. Novotony
40556 221st Ave.
Le Center, MN 56057

Tract 13
Owner/Address: Mark & Lisa Frederick
21336 436th St.
Le Center, MN 56057

Tract 14
Owner/Address: David G. Hackman
P.O. Box 35
Le Center, MN 56057

Tract 14
Owner/Address: David G. Novotony
40556 221st Ave.
Le Center, MN 56057

Tract 14
Owner/Address: Mark & Lisa Frederick
21336 436th St.
Le Center, MN 56057

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Tract 15*
Owner/Address: John E. & Pamela K. McGillen
14103 Dodd Rd.
Kilkenny, MN 56052

Tract 15*
Owner/Address: John L. & Candi L. Theis
43362 209th Ave.
Le Center, MN 56057

Tract 16*
Owner/Address: John E. & Pamela K. McGillen
14103 Dodd Rd.
Kilkenny, MN 56052

Tract 17*
Owner/Address: Curtis D. & Pamela Schwartz
36480 295th Ave.
Le Center, MN 56057

Tract 18
Owner/Address: Curtis D. & Pamela Schwartz
36480 295th Ave.
Le Center, MN 56057

Tract 18
Owner/Address: Jonathan R. & Andi M. Goettl
43264 201st Ave.
Le Center, MN 56057

Tract 18
Owner/Address: Richard G. & Joanne M. Kopet
43404 201st Ave.
Le Center, MN 56057

Tract 19
Owner/Address: Curtis C. Bohlen
44107 Sabre Lake Ln.
Kilkenny, MN 56052

Tract 20
Owner/Address: Kyle O'Malley
43747 211th Ave.
Le Center, MN 56057

Tract 21
Owner/Address: Domonoske Family Trust
c/o Donald & Judy Domonoske
45848 Rice Lake Rd.
Waterville, MN 56096

Tract 21
Owner/Address: Thomas G. & Lori Jindra
39317 185th Ave.
Le Center, MN 56057

Tract 22*
Owner/Address: Charles Haefner
469 4th Ave. NW
Waseca, MN 56093

Tract 22*
Owner/Address: Thomas G. & Lori Jindra
39317 185th Ave.
Le Center, MN 56057

Tract 22
Owner/Address: Bernard & Claranita Haefner
818 Heathgate Dr.
Houston, TX 77062

Tract 22
Owner/Address: Joann Kortuem
24097 610th Ave.
Madison Lake, MN 56063

Tract 22*
Owner/Address: Marilyn J. Holicky
20343 State Hwy 99
Le Center, MN 56057

Tract 23
Owner/Address: Charles Haefner
469 4th Ave. NW
Waseca, MN 56093

Tract 23

Owner/Address:

Marilyn J. Holicky
20343 State Hwy 99
Le Center, MN 56057

Tract 24

Owner/Address:

Florence Peach
426 Lake St. W.
Waterville, MN 56096

Tract 25

Owner/Address:

Curtis C. Bohlen
44107 Sabre Lake Ln.
Kilkenny, MN 56052

Tract 26

Owner/Address:

Curtis C. Bohlen
44107 Sabre Lake Ln.
Kilkenny, MN 56052

Tract 27

Owner/Address:

Kyle O'Malley
43747 211th Ave.
Le Center, MN 56057

Tract 28

Owner/Address:

Domonoske Family Trust
c/o Donald & Judy Domonoske
45848 Rice Lake Rd.
Waterville, MN 56096

Tract 28

Owner/Address:

Kyle O'Malley
43747 211th Ave.
Le Center, MN 56057

Tract 28

Owner/Address:

Thomas G. & Lori Jindra
39317 185th Ave.
Le Center, MN 56057

Tract 29

Owner/Address:

Bernard & Claranita Haefner
818 Heathgate Dr.
Houston, TX 77062

Tract 29

Owner/Address:

Joann Kortuem
24097 610th Ave.
Madison Lake, MN 56063

Tract 29*

Owner/Address:

Marilyn J. Holicky
20343 State Hwy 99
Le Center, MN 56057

Tract 30

Owner/Address:

Andrew J. Skluzacek
20542 440th St.
Le Center, MN 56057

Tract 30

Owner/Address:

Marilyn J. Holicky
20343 State Hwy 99
Le Center, MN 56057

Tract 31

Owner/Address:

Florence Peach
426 Lake St. W.
Waterville, MN 56096

Tract 32

Owner/Address:

Mark S. & Nancy A. Sheehy II
1040 Maple Dr.
Waterville, MN 56096

Tract 33

Owner/Address:

Mark S. & Nancy A. Sheehy II
1040 Maple Dr.
Waterville, MN 56096

Tract 34

Owner/Address:

Curtis C. Bohlen & Bradley C. Bohlen
44107 Sabre Lake Ln.
Kilkenny, MN 56052

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Tract 34

Owner/Address:

Joseph F. & Valerie Zimprich III
43932 211th Ave.
Le Center, MN 56057

Tract 35

Owner/Address:

Curtis C. Bohlen & Bradley C. Bohlen
44107 Sabre Lake Ln.
Kilkenny, MN 56052

Tract 36

Owner/Address:

Joann Kortuem
24097 610th Ave.
Madison Lake, MN 56063

NOW THEREFORE, we, as Petitioners, ask the Le Sueur County Auditor to present this petition to the county board (after examined by the Le Sueur County attorney) for the appointment of Chuck Brandel, I+S Group, or, in the alternative, another engineer skilled in drainage matters to examine the proposed work.



Bruce E. Sellers
Attorney for Petitioners
Wendland Sellers Law Office
825 East Second Street, P.O. Box 247
Blue Earth, MN 56013
507-526-2196

This petition is prepared by:
Bruce E. Sellers, Attorney at Law
Wendland Sellers Law Office
825 East Second Street, P.O. Box 247
Blue Earth, MN 56013
507-526-2196

STATE OF MINNESOTA
LE SUEUR COUNTY BOARD OF COMMISSIONERS
DRAINAGE AUTHORITY FOR THE IMPROVEMENT OF COUNTY DITCH 61

The matter of the petition for the improvement of Le Sueur County Ditch 61

Preliminary Findings and Order

The Le Sueur County Board of Commissioners, at its regular meeting on September 18, 2018, considered the petition for the improvement of Le Sueur County Ditch 61. Upon review of the petition for improvement and the accompanying bond, Commissioner _____ moved, seconded by Commissioner _____, for adoption of the following:

Findings:

1. The petition for the improvement of Le Sueur County Ditch 61 (CD 61) was filed with the Auditor-Treasurer pursuant to statutes section 103E.215.
2. The Board, by its attorney, verified the signatures and ownership interests of the petitioners and finds that the Petitioners are the owners of 6 of the 13 40-acre parcels that the proposed improvement passes over. As such, Petitioners are at least 26 percent of the owners of the property area that the proposed improvement passes over.
3. The petition properly designated the drainage system proposed to be improved by number or another description that identifies the drainage system.
4. The petition alleges that the drainage system has insufficient capacity or needs enlarging to furnish sufficient capacity.
5. The petition describes the improvement, including the names and addresses of owners of the 40-acre tracts or government lots and property that the improvement passes over.
6. The petition alleges that the proposed improvement is necessary and will be of public utility and promote the public health.
7. The petition contains an agreement by the petitioners that they will pay all costs and expenses that may be incurred if the improvement proceedings are dismissed.
8. The petition alleges that the existing drainage system needs repair and further petitions the Board to consider separable maintenance when determining the allocation of costs of the improvement.

[15741-0057/3112709/1]

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9. The petition was accompanied by a bond from the petitioners of \$50,000 in the form of a commercial bond payable to the County. The bond is adequate surety and has been reviewed and approved by Board's attorney. The bond is conditioned to pay the costs incurred if the proceedings are dismissed or a contract is not awarded to construct the drainage system proposed in the petition.
10. The costs incurred before the proposed drainage project is established may not exceed the amount of the petitioners' bond. A claim for expenses greater than the amount of the bond may not be paid unless an additional bond is filed. If the drainage authority determines that the cost of the proceeding will be greater than the petitioners' bond before the proposed drainage project is established, the drainage authority shall require an additional bond to cover all costs to be filed within a prescribed time. The proceeding will be stopped until the additional bond prescribed by the drainage authority is filed. If the additional bond is not filed within the time prescribed, the proceeding will be dismissed.
11. The Board's attorney has reviewed the petition and bond and has determined they meet the requirement of these proceedings.

Based on the foregoing findings, the Board of Managers adopts the following:

Order:

- a. The Board appoints engineering firm of ISG, Inc., and Chuck Brandel, P.E., to make a preliminary survey and file and report.
- b. The engineer shall serve as the engineer for the drainage project throughout the proceedings and construction unless otherwise ordered.
- c. The engineer shall file an oath to faithfully perform the assigned duties in the best manner possible and file a bond with the Board.
- d. The engineer shall include in his preliminary survey and report an investigation of the scope of improvement to include consideration of alternative improvement configurations and the impact of regulatory permitting requirements related to wetlands or other environmental factors on the possible alternatives.
- e. The engineer shall include in his preliminary survey and report an investigation of the current condition of the portion of the drainage system proposed to be improved and provide a recommendation on the propriety of a separable maintenance allocation of project costs.

After discussion, the Chairman called the question. The question was on the adoption of the Findings and Order and there were __ yeas and __ nays.

[15741-0057/3112709/1]

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Upon vote, the Chairman declared the Resolution approved.

Dated: September 18, 2018

Chairman, Board of Commissioners

* * * * *

I, Pam Simonette, Auditor-Treasurer of Le Sueur County, do hereby certify that I have compared the above resolution with the original thereof as the same appears of record and on file with the County and find the same to be a true and correct transcript thereof.

IN TESTIMONY WHEREOF, I hereunto set my hand this 18th day of September, 2018.

Pam Simonette, Auditor-Treasurer