

AGENDA
REGULAR DRAINAGE MEETING
Wednesday, May 19, 2021 9:30 AM
Large Conference Room

This meeting will be held electronically and in-person due to Covid-19 concerns.

To access the meeting call: 1-(312)-626-6799, when prompted enter meeting

ID code: 820 7567 2007

You can also access the meeting online at:

<https://us02web.zoom.us/j/82075672007>

1. Open Meeting
2. Approve Agenda
3. Approve Minutes
4. DD 86 WO 311 - Discuss W Possible Action - Observation Report

Documents:

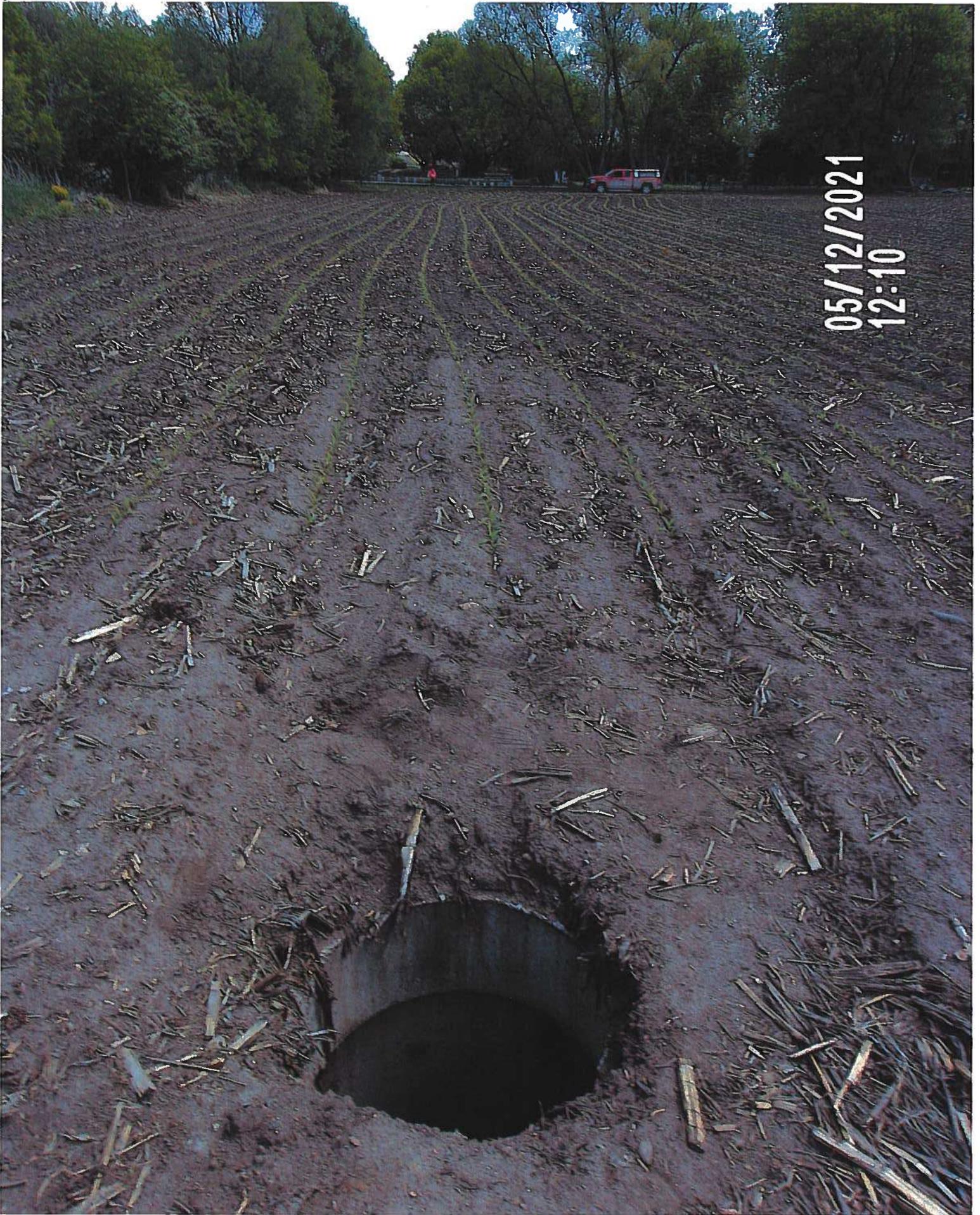
[DD 86 WO 311 OBSERVATION REPORT 6789.5 - 05_17_21.PDF](#)
[DD 86 - 2008 AGREEMENT \(UNRECORDED\) - 6789.5.PDF](#)

5. Other Business
6. Adjourn Meeting

Inspector's Project Diary

Project: <u>00.86 H.</u>		Days Charged:	Report No.	Proj. Mgr. <input checked="" type="checkbox"/>
CGA PN: <u>6789.5</u>				
Contractor:		Date: <u>5/11/21</u>		
Superintendent:	Weather Conditions:	Precip.:	Temp. Hi: <u>70°</u>	
	<u>Day, CLEAR</u>	<u>0"</u>	Temp. Low: <u>32°</u>	
INSPECTOR: <u>RANDY B.</u>		Contractor:		
Time Arrived: <u>1:00</u>		Time Arrived:		Time Left:
Time Left: <u>1:09</u>				
<p>1. General Remarks and Work Accomplished: <u>X 3380</u> <u>DROVE OUT TO MONARCH LAKE FROM FIELD DRIVE BY RR TRACKS</u> <u>BY ETHANOL PLANT AS PER FARMERS INSTRUCTION, AND FOUND</u> <u>OPEN MH. WITH LID GONE WEST OF MONARCH LAKE IN FIELD.</u> <u>SHOT WITH GPS. #3514</u> <u>THIS MH. IS ON NEWER (2000±) HDPE DUAL WALL FOR ETHANOL RAN-</u> <u>DRAIN. THIS MAY NOT BE DISTRICT TIRE.</u></p>				
2. Changes or Extra Work Ordered:				
3. Test Samples Taken:				
4. Visitors to Site:				
5. Other Work Crews or Project (utilities, subcontractors, etc.) and Work Done:				
6. Attachments (total sheets attached <u>0</u>):				

LOOKING EAST @ MONARCH LAKE



05/12/2021
12:10

LOOKING N. @ RR/TILE XING

05/12/2021
12:10



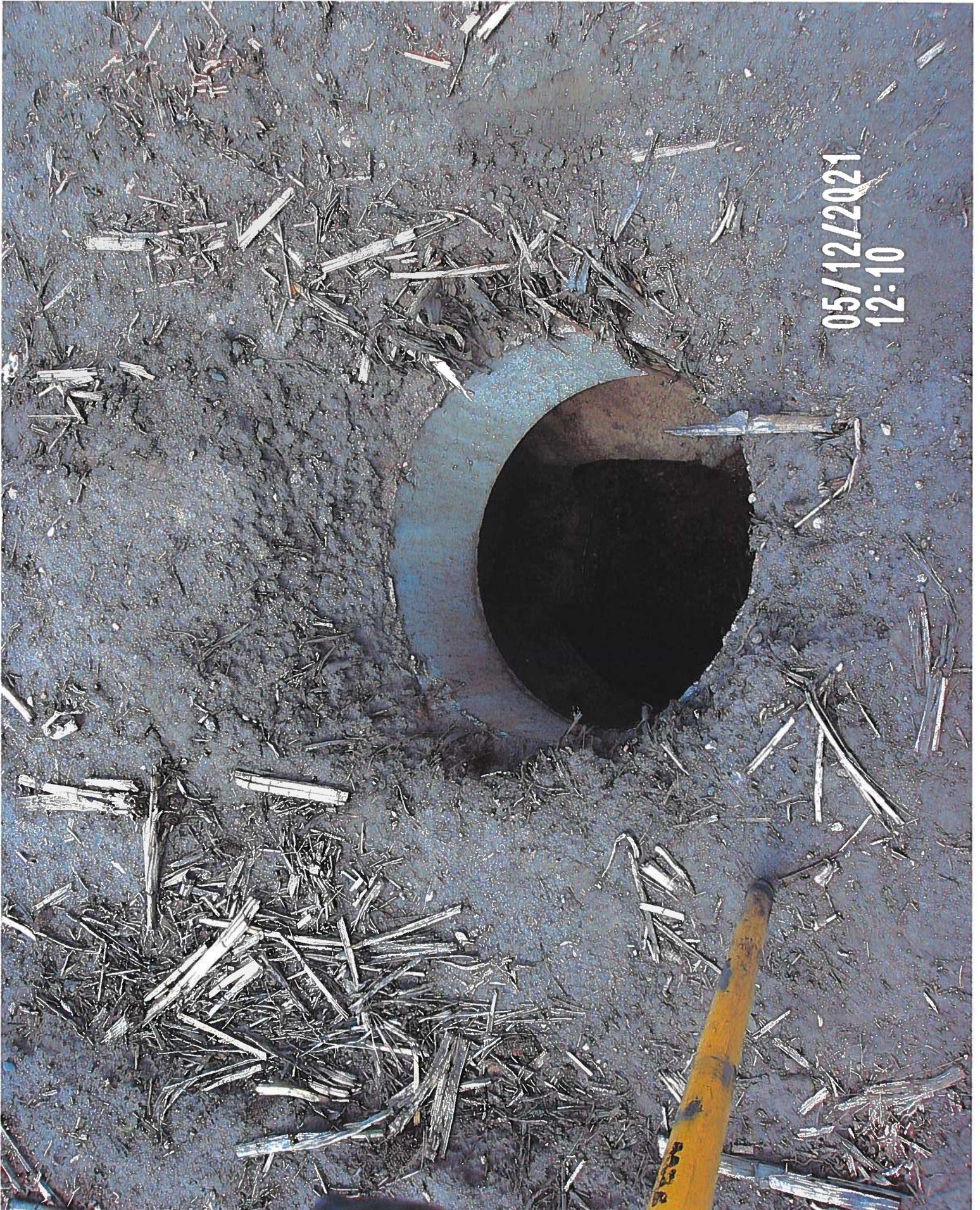
LOOKING WEST @ MH.

05/12/2021
12:11



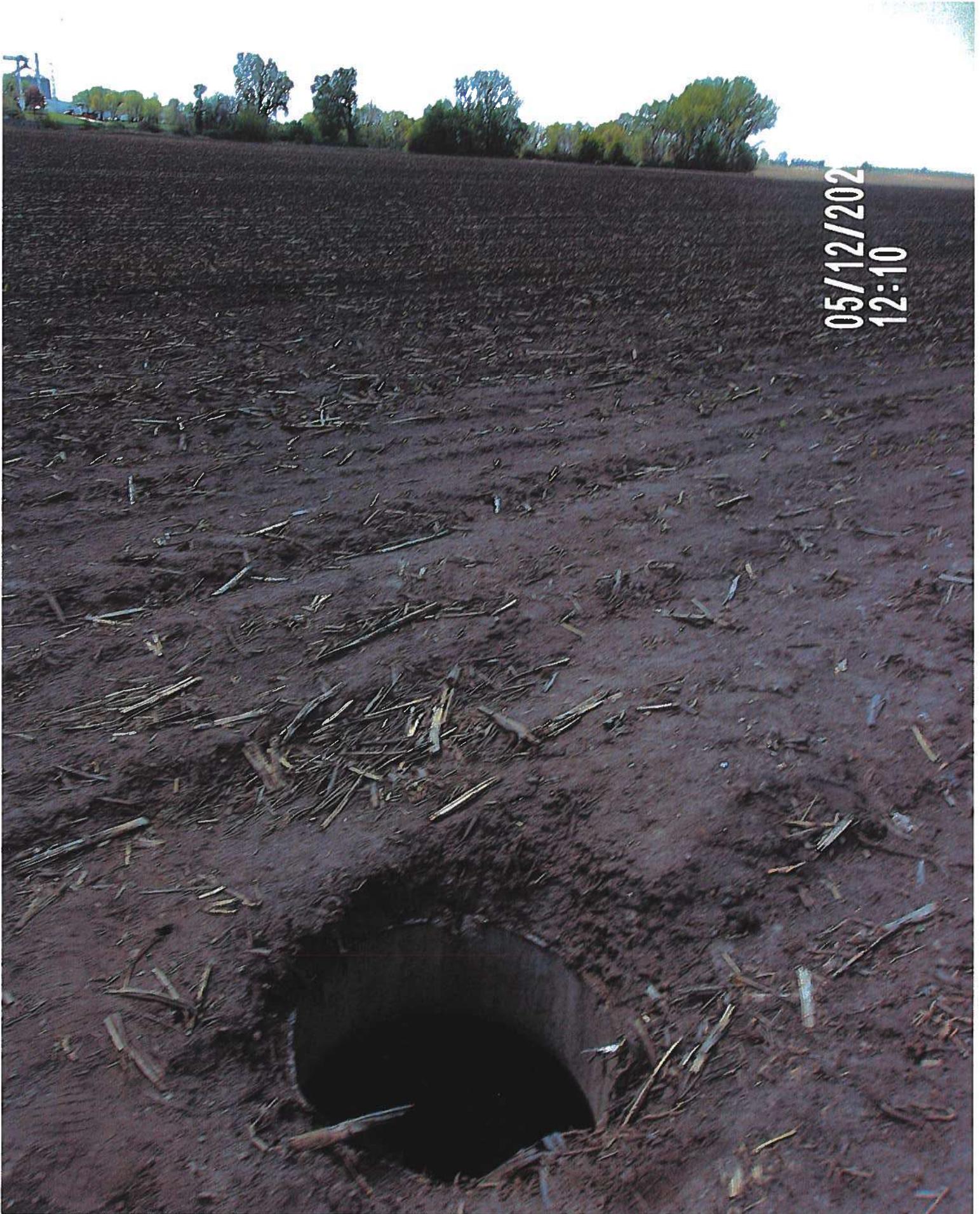
MH WITH LID CASTING GONE

05/12/2021
12:10



LOOKING SW TOWARD DAGO LAKE

05/12/202
12:10



FILED

RESTATED AGREEMENT

THIS RESTATED AGREEMENT ("Agreement") is made and entered into, effective as of the date set forth above the signatures to this Agreement by and between the Hardin County Board of Supervisors acting as Trustees of Hardin County Drainage District No. 86 (the "District"), and Hawkeye Renewables, LLC, a Delaware limited liability company which is the successor to the assets of Iowa Falls Ethanol Plant, L.L.C. ("Plant LLC").

RECITALS:

- A. District and Plant LLC are parties to that certain Agreement dated January 26, 2005 (the "Prior Agreement"), which sets forth the agreement of District and Plant LLC with respect to, in general, the connection of the Plant (as that term is defined in Section 1) to the District Tile (as that term is defined in Section 1) and the release and discharge of Outfall Water and Surface Runoff (as those terms are defined in Section 1) into the District Tile.
- B. Plant LLC now desires to construct and maintain a tile for the release and discharge of Outfall Water and Surface Runoff, and District desires to have Plant LLC construct and maintain such tile, all upon the terms and conditions set forth in this Agreement, and with this Agreement to supersede and replace the Prior Agreement effective on the Project Completion Date (as that term is defined in Section 1) as provided in Section 7.

NOW, THEREFORE, in consideration of the Recitals and the mutual agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by District and Plant LLC, District and Plant LLC agree as follows:

1. Definitions. The following terms shall have the following meanings for purposes of this Agreement:

(a) Agreement. The term "Agreement" means this Restated Agreement, as it may be amended and/or restated from time to time in accordance with Section 10.

(b) Crossings. The term "Crossings" is defined in Section 2(b).

(c) District. The term "District" means the Hardin County Board of Supervisors acting as Trustees of Hardin County Drainage District No. 86, and its successors and assigns.

(d) District Tile. The term "District Tile" means the fourteen inch drainage tile of District which is utilized by Plant LLC pursuant to the Prior Agreement.

(e) District Outlet. The term "District Outlet" means the point at which the District Tile empties into the Iowa River.

(f) Outfall Water. The term "Outfall Water" means iron filter backwash after

settling, cooling tower blowdown water, reverse osmosis reject water, softener regeneration water and other similar, related or other waste water generated at the Plant.

(g) Plant. The term "Plant" means Plant LLC's eighty million gallons per year nameplate production capacity ethanol plant located at the Site (as that term is defined below), as the ethanol plant may be expanded or otherwise constituted from time to time.

(h) Plant LLC. The term "Plant LLC" means Hawkeye Renewables, LLC and its successors and assigns. Plant LLC is the successor to the assets of Iowa Falls Ethanol Plant, L.L.C.

(i) Plant Tile. The term "Plant Tile" means the fifteen inch gravity drainage tile that will be constructed and installed as part of the Project.

(j) Project. The term "Project" is defined in Section 2.

(k) Project Completion Date. The term "Project Completion Date" means the date Plant LLC determines, in its sole discretion, to begin utilizing the Plant Tile on a full time, permanent basis.

(l) Related Improvements. The term "Related Improvements" is defined in Section 2(b).

(m) Retention Basin. The term "Retention Basin" means the site water retention basin for the Plant, as the same may be expanded or otherwise constituted from time to time.

(n) Site. The term "Site" means the approximate eighty acres of land on which the Plant is located, which land is located in or near Iowa Falls, Iowa and more particularly in the N $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 23-89-21 in Hardin County, Iowa. The Site is located within Hardin County Drainage District No. 86.

(o) Surface Runoff. The term "Surface Runoff" means all surface water and runoff collected in the Retention Basin.

Other terms used in this Agreement may be defined in other Sections of this Agreement.

2. Project. The term "Project" for purposes of this Agreement means the design, engineering, installation and construction of the Plant Tile and all Related Improvements in accordance with this Agreement.

The Project shall be designed, engineered, installed and constructed in accordance with the following:

(a) The Plant Tile shall be constructed from the Retention Basin north and east through property included within Hardin County Drainage District No. 86 to the District Outlet, but bypassing the bodies of water locally known as Dago Lake and Monarch

Pond.

(b) Plant LLC shall provide, either directly or through third persons selected by Plant LLC, and at its cost, the engineering, surveying, construction staking and observation and other design, installation and construction of the Plant Tile and all related materials, equipment and other improvements (collectively, the "Related Improvements"), including two railroad crossings and Iowa Falls street crossings (collectively, the "Crossings"), manholes, valves, trash rakes and piping. The costs payable by Plant LLC shall include any railroad crossing permit fees, inspection fees and any payments for any crop damage which are agreed to by Plant LLC.

(c) Plant LLC shall direct the Project, but Plant LLC shall reasonably cooperate with District in connection with the Project by (i) consulting with District regarding (1) the design, surveying and engineering of the Project, (2) the selection of the contractors for the Project, and the ongoing work of such contractors, all of whom will be required to maintain insurance coverage which is customary for the type of work being provided by the contractor and which is mutually agreeable to Plant LLC and District, including workers compensation and any insurance required of a contractor by a railroad in order to work on railroad right-of-ways, and (3) any legal or regulatory requirements for the Project; and (ii) notifying District with as much advance notice as is practical under the circumstances of the estimated dates and time periods over which work regarding the Project will occur on property located within Hardin County Drainage District No. 86, other than solely on the Site.

(d) District shall reasonably cooperate with Plant LLC in connection with the Project, including by (i) consulting with Plant LLC with respect to the matters specified in subparagraph (c) immediately above; (ii) allowing, and taking all actions as are necessary or appropriate to permit and allow, the installation and construction of the Plant Tile and the Related Improvements on and across property located within Hardin County Drainage District No. 86 as contemplated by this Agreement, including with respect to the Crossings and holding any necessary hearings and/or contacting property owners within Hardin County Drainage District No. 86 to advise them of this Agreement, the Project or of the portions of the Project that will occur on such property owner's land; and (iii) arranging for access to property located within Hardin County Drainage District No. 86 as necessary to permit the full and timely completion of the Project.

(e) Plant LLC shall not alter, damage or remove any of the District Tile or other District property without the prior approval of District, except that District consents to (i) any alterations to, or removals of, the District Tile located on the Site and/or any manholes and related equipment as are reflected in any engineering or other plans for the Project which are provided to District and which are not objected to by District, and (ii) any alterations or removals as are otherwise necessary or appropriate in order for Plant LLC to discontinue utilizing the District Tile for Outfall Water and Surface Runoff and to instead utilize the Plant Tile for Outfall Water and Surface Runoff, including the removal of manholes and any of the tile that was installed on the Site by Plant LLC pursuant to the Prior Agreement.

(f) Plant LLC shall be responsible for obtaining any discharge or other permits as may be required for the Project by the Iowa Department of Natural Resources or the U.S. Environmental Protection Commission.

3. Maintenance of Plant Tile and Related Improvements. During all periods when the Plant Tile and Related Improvements are for the sole and exclusive use and benefit of Plant LLC as provided in Section 4, Plant LLC shall be responsible, at its cost, for the repair and maintenance, including any necessary replacement, of the Plant Tile and the Related Improvements. Any repairs or maintenance of or to the Plant Tile or the Related Improvements shall be done at such times as are determined by Plant LLC, and shall be done by District repair crews or by contractors mutually acceptable to District and Plant LLC and, in either event, for such fees and other amounts as are reasonably acceptable to Plant LLC. If any repair or maintenance activities are provided by District, Plant LLC shall pay all invoices of District for such activities within thirty days of Plant LLC's receipt of the invoice for the activities in question.

District shall also reasonably cooperate with Plant LLC in connection with all repair and maintenance activities, including by (i) consulting with Plant LLC and any contractors with respect to the repair or maintenance activities in question, including with respect to the design, surveying, engineering, installation or other construction occurring as part of the repair and maintenance activities in question; (ii) allowing, and taking all actions as are necessary or appropriate to permit and allow, the repair or maintenance activities in question; and (iii) arranging for access to the property located within Hardin County Drainage District No. 86 as necessary to permit the full and timely completion of the repair and maintenance activities in question.

4. Ownership and Use of Plant Tile and Related Improvements. Subject only to the following paragraph, the Plant Tile and all of the Related Improvements, as any and all of the same may be repaired, maintained or replaced from time to time, shall be for the sole and exclusive use and benefit of Plant LLC. All of the Plant Tile and Related Improvements which are located on the Site shall also at all times be the property of Plant LLC.

In the event that Plant LLC determines, in its sole discretion, to permanently discontinue any operations of any type at the Site, District shall, within ninety days of the date of receiving written notice of such decision from Plant LLC, assume responsibility for the repair and maintenance of the Plant Tile and the Related Improvements, and District may in that event utilize the Plant Tile and Related Improvements for the general benefit of the properties located within Hardin County Drainage District No. 86. In such event, District shall accept the Plant Tile and Related Improvements on an "as is, where is" basis and shall assume all liability and responsibility whatsoever with respect to the Plant Tile and Related Improvements, and shall defend, indemnify and hold Plant LLC harmless from and against any and all suits, actions, claims, counterclaims, demands, costs, expenses, liabilities, damages, obligations or other amounts whatsoever (including attorneys' fees) in any way arising in connection with or related to the Plant Tile or Related Improvements.

Notwithstanding the foregoing paragraph, Plant LLC shall at all times have the right to again have the Plant Tile and the Related Improvements dedicated to its sole and exclusive use

and benefit if Plant LLC at any time determines, in its sole discretion, to recommence any type of operations at the Site, in which case the Plant Tile and the Related Improvements shall again be for the sole and exclusive use and benefit of Plant LLC effective ninety (90) days after the giving of written notice thereof by Plant LLC to District; provided, however, that Plant LLC reimburses District for any out-of-pocket costs and expenses that were paid by District in order to repair and maintain the Plant Tile and Related Improvements during the period the District was responsible for such costs and expenses as provided in the preceding paragraph. Any costs and expenses payable by Plant LLC pursuant to the preceding sentence shall be paid by Plant LLC within thirty days of Plant LLC's receipt of an invoice and reasonable substantiating documentation from District.

5. Use of the Plant Tile and Related Improvements by Plant LLC. Plant LLC may utilize the Plant Tile and all of the Related Improvements for, without limitation, the release and discharge of Outfall Water and Surface Runoff at such times and in such amounts as are determined by Plant LLC from time to time.

6. Termination of Agreement. This Agreement is subject to termination by Plant LLC or District, as the case may be, solely and only in accordance with the following paragraph.

This Agreement may be terminated by Plant LLC or District, as the case may be, only in the event of a material breach of any material term or condition of this Agreement by the other (in either case, the "breaching party"), and which material breach is not cured by the breaching party within sixty days of the breaching party's receipt of written notice of the breach from the nonbreaching party; provided, however, that if such breach is not susceptible of cure, or is otherwise not cured, within said sixty day period utilizing commercially reasonable efforts, the breaching party shall have such additional period of time as is necessary to cure such breach so long as the breaching party utilizes commercially reasonable efforts throughout said additional period of time to pursue the cure of such breach.

The termination of this Agreement shall not affect any liability or obligation of Plant LLC or District under this Agreement which shall have accrued prior to such termination, including any liability for loss or damage on account of breach of any term or condition of this Agreement, or the obligations of District under Section 4 or of Plant LLC and District under Section 8.

7. Termination of Prior Agreement. Plant LLC and District agree that the Prior Agreement shall be automatically terminated, without notice from or to or other action by either Plant LLC or District, on the Project Completion Date; and, accordingly, neither Plant LLC nor District shall have any further duties, obligations or liabilities under the Prior Agreement from and after the Project Completion Date, except only that Plant LLC and District shall be and remain liable and responsible for the applicable statute of limitations period for any breach of the Prior Agreement by them which occurred prior to the Project Completion Date. Plant LLC shall provide District with not less than five days prior notice of the Project Completion Date.

Without limiting the generality of the preceding paragraph, Plant LLC shall not discharge or release any Outfall Water or Surface Runoff into the District Tile from and after the Project Completion Date without the prior consent of District, which consent may be withheld in District's sole discretion; provided, however, that District acknowledges that there may be

incidental running of water through the District Tile arising from normal seepage and draining of water on the Site.

8. Indemnification. District shall defend, indemnify and hold Plant LLC harmless from and against any claim, counterclaim, demand, suit, action, proceeding, loss, liability, damage, cost or expense, including court costs and attorneys' fees, arising in connection with or resulting from any breach or nonfulfillment of or default under any term or condition of this Agreement by District.

Plant LLC shall defend, indemnify and hold District harmless from and against any claim, counterclaim, demand, suit, action, proceeding, loss, liability, damage, cost or expense, including, court costs and attorneys' fees, arising in connection with or resulting from any breach or nonfulfillment of or default under any term or condition of this Agreement by Plant LLC.

9. Notices. All notices, demands, requests and other communications desired or required to be given under this Agreement ("Notices") shall be in writing and shall be given by: (i) hand delivery to the address for Notices; (ii) delivery by overnight courier service to the address for Notices; or (iii) sending the Notice by United States mail, postage prepaid, certified mail, return receipt requested, addressed to the address for Notices.

All Notices shall be deemed given and effective upon the earliest to occur of: (i) the hand delivery of the Notice to the address for Notices; (ii) one business day after the deposit of the Notice with an overnight courier service by the time deadline for next day delivery addressed to the address for Notices; or (iii) three business days after depositing the Notice in the United States mail as set forth in the paragraph immediately above.

All Notices shall be addressed to the addresses set forth below the signatures to this Agreement or to such other person or at such other place as Plant LLC or District may by Notice designate to the other as a place for service of Notice.

10. No Waiver; Modifications in Writing. No failure or delay on the part of Plant LLC or District in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No amendment, modification, supplement, termination or waiver of or to any provision of this Agreement, or consent to any departure therefrom, shall be effective unless the same shall be in writing and signed by Plant LLC and District. Any amendment, modification or supplement of or to any provision of this Agreement, any waiver of any provision of this Agreement, and any consent to any departure from the terms of any provision of this Agreement, shall be effective only in the specific instance and for the specific purpose for which made or given.

11. Governing Law. This Agreement is entered into and performable in substantial and material part in Iowa and shall be governed by and construed in accordance with the laws of the State of Iowa, but without regard to provisions thereof relating to choice of law or conflicts of law.

12. Relationship. Nothing contained in this Agreement and no action taken or failed

or omitted to be taken by Plant LLC or District pursuant to this Agreement shall be deemed to constitute Plant LLC and District a partnership, an association, a joint venture or other entity.

13. Headings and Captions. The titles or captions of sections and paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such titles or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions.

14. Construction; Certain Definitions. This Agreement shall not be construed more strongly against Plant LLC or District regardless of who was more responsible for its preparation.

Words and phrases in this Agreement shall be construed as in the singular or plural number and as masculine, feminine or neuter gender, according to the context.

The use of the words "herein," "hereof," "hereunder" and other similar compounds of the word "here" mean and refer to this entire Agreement and not to any particular section, paragraph or provision. The term "person" as used in this Agreement includes natural persons and firms, associations, partnerships, limited partnerships, limited liability companies, joint ventures, trusts, corporations and all other entities, including public or governmental bodies, agencies or instrumentalities. The words "include", "includes", and "including" are used in this Agreement in a non-exclusive fashion and manner, that is so as to include, but without limitation, the facts, items or matters in question. Any reference in this Agreement to a "Section" means the referenced section from this Agreement.

15. Binding Effect on Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of Plant LLC and District and their respective heirs, successors, legal representatives and assigns. Nothing in this Agreement, express or implied, is intended to confer upon any person other than Plant LLC and District (and their respective heirs, successors, legal representatives and assigns) any rights, remedies, liabilities or obligations under or by reason of this Agreement.

16. Counterparts. This Agreement may be executed in counterparts (including by e-mail or facsimile transmission), each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

17. Severability. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. In the event any provision of this Agreement is held to be invalid, illegal or unenforceable as written, but valid, legal and enforceable if modified, then such provision shall be deemed to be amended to such extent as shall be necessary for such provision to be valid, legal and enforceable and it shall be enforced to that extent. Any finding of invalidity, illegality or unenforceability in any jurisdiction shall not invalidate or render illegal or unenforceable such provision in any other jurisdiction.

18. Expenses. Plant LLC and District shall each pay their own expenses incidental to the planning, negotiation, preparation, execution and performance of this Agreement, including

the fees and expenses of their respective legal counsel and accountants.

19. Entire Agreement. This Agreement constitutes the entire agreement between Plant LLC and District pertaining to the subject matters hereof and supersedes all negotiations, preliminary agreements and all prior or contemporaneous discussions and understandings of Plant LLC and District in connection with the subject matters hereof. No course of dealing (including under the Prior Agreement) or usage of trade shall be relevant or admissible to supplement or vary any of the terms of this Agreement, and this sentence may not be waived by a course of dealing.

20. Waiver of Jury Trial. PLANT LLC AND DISTRICT EACH UNCONDITIONALLY WAIVE ANY RIGHT TO A JURY TRIAL WITH RESPECT TO AND IN ANY SUIT, ACTION, PROCEEDING, CLAIM, COUNTERCLAIM, DEMAND OR OTHER MATTER WHATSOEVER ARISING OUT OF THIS AGREEMENT.

IN WITNESS WHEREOF, Plant LLC and District have executed this Agreement as of the 15th day of October, 2008.

HARDIN COUNTY BOARD
OF SUPERVISORS/HARDIN COUNTY
DRAINAGE DISTRICT NO. 86

By: [Signature]
Name: Ed Bear, Chairman
Title: Hardin County Supervisor
1215 Edgington Ave., Suite 1 Eldora, IA
Address 50627

HAWKEYE RENEWABLES, LLC

By: [Signature]
Name: J.D. Schlieman
Title: President
Address
224 So. Bell Ave
P.O. Box 2523
Ames, IA 50010