

This Document Prepared By:
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LIMITED LICENSE FOR USE OF ROAD RIGHT-OF-WAY

THIS LICENSE AGREEMENT is made and entered into between [check one or both as may apply]:

Davison County, South Dakota,

_____ Township, located within Davison County, South Dakota,
both being political subdivisions of the State of South Dakota (hereinafter collectively “Political
Subdivisions”) and

_____, (hereinafter “Licensee”.)

RECITALS:

WHEREAS, Licensee, operates a Concentrated Animal Feeding Operation, located in Section
_____, Township _____, Range _____, Davison County, South
Dakota; and

WHEREAS, as part of its manure disposal system, Licensee uses hoses or pipes to transport manure to
other locations for purposes of treatment or disposal; and

WHEREAS, Licensee desires to place one of its manure hoses or pipes along, across, over, or through
the right-of-way of the following Davison County Highways:

and/or the following _____ Township Highways:

at the locations as shown in Exhibit “A” attached hereto and by this reference incorporated herein; and

WHEREAS, one or both of the Political Subdivisions, as the circumstances may require, are willing to
grant to Licensee a License for the use of such right-of-ways for such purposes on the terms and
conditions as hereafter set forth.

THEREFORE, in consideration of the mutual agreements herein set forth, the Parties agree as follows:

1. The Political Subdivisions hereby grant to Licensee the non-exclusive right to use Davison
County Highway(s) # _____ and _____ Township Highway(s)

_____ right-of-way for the purpose of placing a manure disposal hose or pipe at the location identified in Exhibit "A" under the following conditions:

- (a) The term of this license shall be for _____ days, commencing at 12:00 a.m. on the _____ day of _____, 20____, and ending at 11:59 p.m. on the _____ day of _____, 20____;
 - (b) The exact location and manner of placing the manure disposal hose or pipe shall be as approved by the Davison County Highway Superintendent;
 - (c) The hose or pipe shall not be placed upon the road surface but shall remain in the ditches, culverts, drainways, and otherwise away from and off the road surface;
 - (d) The manure hose or pipe shall be placed so as to prevent the manure from entering areas of drainage or drainage detention;
 - (e) The Licensee shall at all times at its sole cost properly maintain the manure hose or pipe so as to prevent leaks;
 - (f) The Licensee shall inspect the manure hoses or pipes on a daily basis while land application of process wastewater or manure is occurring. This inspection is to ensure that the manure hoses or pipes are not leaking and runoff from the land application site and irrigation system is not occurring. If a discharge or leaks are found where process wastewater or manure is reaching any surface waters of the state or flowing onto property not owned by the Licensee or not included in the Licensee's nutrient management plan, the Licensee is responsible for taking immediate steps to stop the discharge or leaks and to immediately report such discharge to the Davison County Highway Superintendent. The Licensee shall maintain documentation of these inspections consistent with the requirements of the Department of Environment and Natural Resources, which documentation shall be available for inspection by the Political Subdivisions upon request.
 - (g) The Licensee shall at its sole cost restore the road right-of-way, and road surface if necessary, to its condition prior to the exercise of permitted use under this license, such restoration to be done to the satisfaction of the Davison County Highway Superintendent;
 - (h) In the event the road right-of-way or road surface at any time thereafter collapses or deteriorates as a result of Licensee's operations under this license, Licensee shall at its sole cost restore such road right-of-way or road surface; and
 - (i) In the event either Political Subdivision determines it necessary to grade or otherwise improve such County or Township Highway which grading or improvement requires the removal and/or relocation of such manure hose or pipe, the County Highway Superintendent shall give notice Licensee of such requirement and Licensee shall, at Licensee's sole expense, promptly remove and/or relocate such manure hose or pipe as per the specifications of the County Highway Superintendent;
 - (j) This license shall be personal to Licensee. In the event Licensee sells the Concentrated Animal Feeding Operation which benefits from this license, then this license and all rights thereunder shall cease and Licensee at its sole expense shall remove the manure hose or pipe and restore the road right-of-way to the satisfaction of the County Highway Superintendent, unless a new license is entered with the purchaser of such operation.
2. In the event at any time Licensee fails to perform any of the obligations under ¶1., above, including the obligation to properly maintain the manure hose or pipe, then and in such event either of the County Highway Superintendent may terminate this license and Licensee shall remove such manure hose or pipe and restore the road right-of-way. In the event Licensee, upon demand of the County Highway Superintendent, fails to remove such manure hose or pipe and restore the road right-of-way, the Political Subdivisions or either of them may do so

and whichever entity shall have done so shall be entitled to recover from Licensee all costs for such removal and restoration.

3. In the event of a leak or spill of manure from the manure hose or pipe, Licensee shall promptly clean up such leak or spill and shall be solely responsible for and shall pay all costs involved in such cleanups.
4. In the event a civil lawsuit arising from the acts or omissions of the Licensee, its officers, employees, agents, and representatives in the placing or maintaining of such manure hose or pipe under this License or arising in any manner regarding the operation of the Concentrated Animal Feeding Operation of Licensee, the Licensee shall defend, indemnify, and hold harmless the Political Subdivisions, their officers, employees, agents, and representatives from and against any and all liability, claims, damages, actions, judgment, losses, costs, and expenses, including costs of litigation and attorney's fees, whether at law, in equity before an administrative agency or otherwise.
5. Licensee shall provide and at all times maintain General Liability Insurance in the amount of at least \$1,000,000.00, with an Environmental Protection Insurance rider in the amount of at least \$100,000.00; to clean up any spills or environmental damages which might occur as a result of the operation of the Concentrated Animal Feeding Operation. Such insurance shall name either Davison County or _____ Township(s) or both, as circumstances may require, as additional insured(s) as related to this license.
6. This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous oral or written understandings, agreements, promises, or other undertakings by and among the parties. This Agreement may not be modified or amended, nor any rights thereunder waived, other than by a written document signed by all parties.
7. This Agreement shall be governed by, interpreted and construed in accordance with the laws of South Dakota. The venue of any mediation or suit or other proceedings arising under this Agreement shall be in Mitchell, Davison County, South Dakota.
8. Nothing herein shall be construed to constitute or establish any type of joint venture, partnership, or any other type of legal relationship between the parties relating to such manure pipe or hose and the use of the Political Subdivisions' rights-of-way.

Dated this _____ day of _____, 20__

[Check and sign one or both as may apply.]

Davison County, South Dakota

By: _____
Chairman, Board of Commissioners

ATTEST:

County Auditor

_____ Township

By: _____
Chairman, Board of Supervisors

ATTEST:

Clerk, Township Board of Supervisors

LICENSEE

By: _____
Its: _____

STATE OF SOUTH DAKOTA)
 : SS
COUNTY OF DAVISON)

On this the ___ day of _____, 20____, before me, the undersigned officer, personally appeared _____ and _____ known to me to be the chairman of the Board of County Commissioners and County Auditor, respectively, of Davison County, South Dakota, which county executed the within and foregoing instrument and acknowledged to me that said county executed the same and that they signed and executed said instrument for and on behalf of such county.

In Witness Whereof, I hereunto set my hand and official seal.

(SEAL)

Notary Public, South Dakota
My Commission Expires:

STATE OF SOUTH DAKOTA)
 : SS
COUNTY OF DAVISON)

On this the ___ day of _____, 20____, before me, the undersigned officer, personally appeared _____ and _____ known to me to be the chairman of the Board of Supervisors and Clerk of the Board of Supervisors, respectively, of _____ Township, Davison County, South Dakota, which township executed the within and foregoing instrument and acknowledged to me that said county executed the same and that they signed and executed said instrument for and on behalf of such township.

In Witness Whereof, I hereunto set my hand and official seal.

(SEAL)

Notary Public, South Dakota
My Commission Expires:

STATE OF SOUTH DAKOTA)
 : SS
COUNTY OF DAVISON)

On this the ____ day of _____, 20____, before me, the undersigned officer, personally appeared _____ who acknowledged himself to be the _____ of _____, a _____, and acknowledged to me that, being fully authorized to do so, he executed the within and foregoing instrument on behalf of _____ by signing its name and his name as its _____.

In Witness Whereof, I hereunto set my hand and official seal.

(SEAL)

Notary Public, South Dakota
My Commission Expires: