

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND MIDWEST MOTOR EXPRESS, INC. FOR A TEMPORARY CONSTRUCTION EASEMENT**

This Agreement is made and entered into by and between the CITY OF RAPID CITY, a municipal corporation, of the State of South Dakota (hereafter called the "City,"), of 300 Sixth Street, Rapid City, South Dakota 57701, and , MIDWEST MOTOR EXPRESS, INC., a North Dakota corporation, of P.O. Box 1058, Bismark, North Dakota 58602.

**W I T N E S S E T H:**

WHEREAS, MIDWEST MOTOR EXPRESS, INC. owns Lot Two (2) in Block Two (2) of I-90 Heartland Business Park, Rapid City, Pennington County, State of South Dakota, and

WHEREAS, the City wishes to secure temporary use of a portion of the property for construction purposes, and

WHEREAS, MIDWEST MOTOR EXPRESS, INC. has agreed to grant a temporary construction easement to the City under certain terms and conditions which the City has agreed to accept; and

WHEREAS, the parties agree to enter into this Agreement to reduce their mutual agreements to writing.

NOW, THEREFORE, the parties hereby agree as follows:

1. Incorporation of Recitals. The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference as if fully set forth herein as agreements of the parties.
2. Temporary Construction Easement. MIDWEST MOTOR EXPRESS, INC. will convey to the City the temporary use of the property shown on Exhibit "A". It is agreed upon that this temporary construction easement is for the shared use of the property for construction activities by the City of Rapid City and MIDWEST MOTOR EXPRESS, INC., or its successors. The Temporary Construction Easement will expire on September 30, 2013.
3. Compensation. In exchange for the use of the Temporary Construction Easement as shown on Exhibit "A", The City agrees to pay MIDWEST MOTOR EXPRESS, INC. a sum of \$2000.
4. Transfer Fees and Costs of Recording. The Temporary Construction Easement will be filed at the Pennington County Courthouse. All recording fees shall be paid by City. Any attorneys fees shall be paid by the party incurring the same.
5. Survival of Representations and Warranties. All of the representations and warranties of the parties contained in this Agreement shall survive the date of this Agreement and the execution of the quitclaim deed contemplated by this Agreement.
6. Default. City shall have the right to maintain and exercise all legal and equitable rights available to it under the laws of the State of South Dakota for MIDWEST MOTOR EXPRESS, INC.'s breach of this Agreement, including the right to specific performance.

7. Waivers. The failure by one party to require performance of any provision herein shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.
8. Time. Time is of the essence of this Agreement.
9. Effect of Agreement. This Agreement shall be binding in all respects upon and shall inure to the benefit of City and MIDWEST MOTOR EXPRESS, INC. and their respective successors and assigns.
10. Integration. This Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.
11. Amendments. This Agreement may only be amended by a written document duly executed by all parties.
12. Counterparts. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.
13. Severability. If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, such holding shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.
14. Construction. This Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement
15. Headings. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision.
16. Governing Law and Venue. This Agreement shall be interpreted under the laws of the State of South Dakota. Any litigation under this Agreement shall be resolved in the Circuit Court of Pennington County, State of South Dakota.

**CITY OF RAPID CITY**

\_\_\_\_\_  
Mayor

ATTEST

\_\_\_\_\_  
Finance Officer

(seal)

State of South Dakota )  
 ) ss.  
County of Pennington )

On this the \_\_\_\_ day of \_\_\_\_\_, 2012, before me, the undersigned officer, personally appeared Sam Kooiker and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

(seal)

\_\_\_\_\_  
Notary Public - South Dakota  
My Commission Expires \_\_\_\_\_

MIDWEST MOTOR EXPRESS, INC.

By: Mal Kly  
Its: PRESIDENT

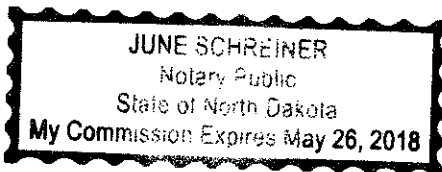
State of North Dakota )  
 ) ss.  
County of Burleigh )

On this the 20 day of JUNE, 2012, before me, the undersigned officer, personally appeared MARLIN KLING, who acknowledged him/herself to be the PRESIDENT of MIDWEST MOTOR EXPRESS, INC., and that as such PRESIDENT, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

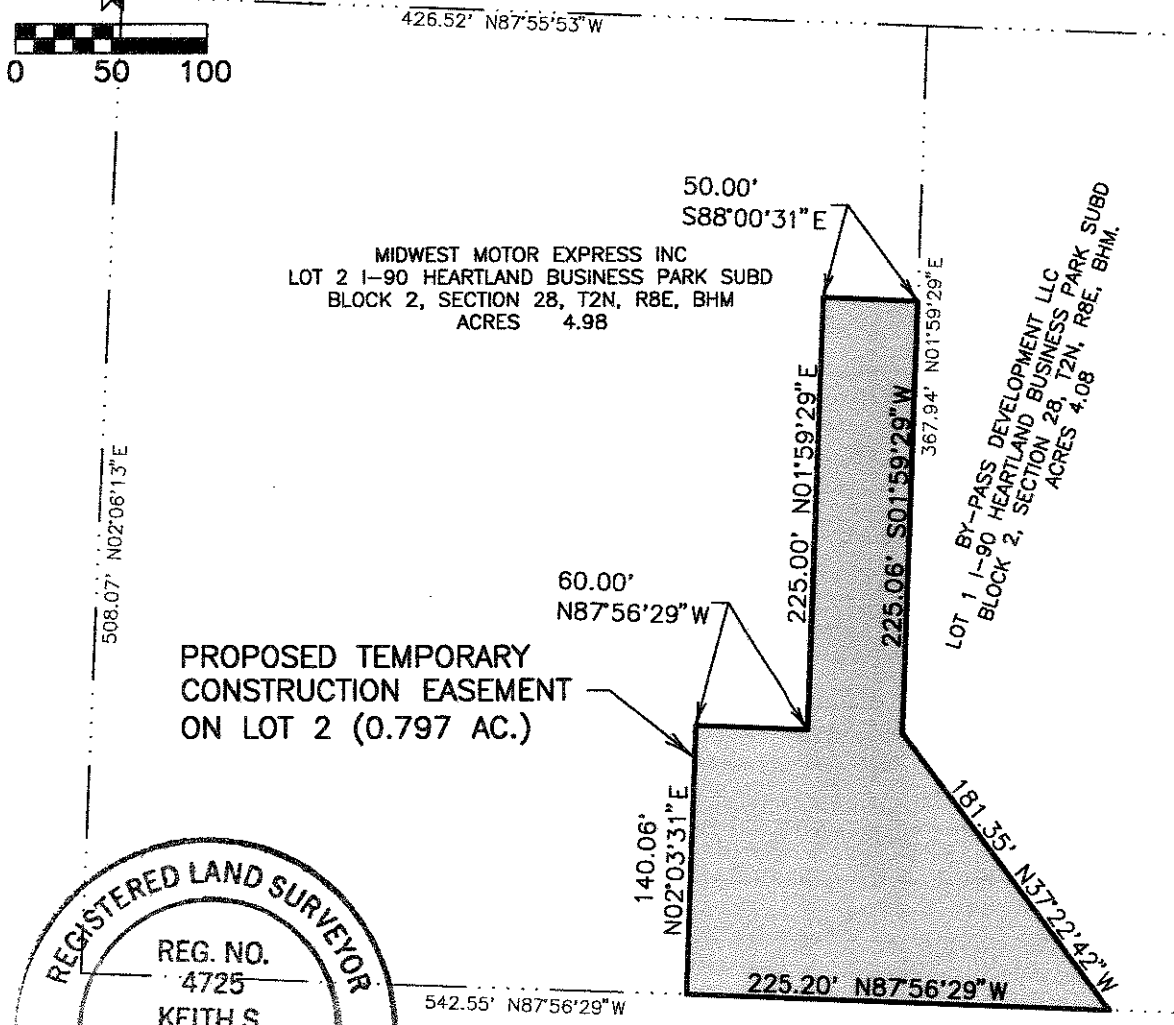
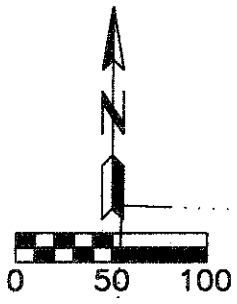
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(seal)

June Schreiner  
Notary Public - North Dakota  
My Commission Expires May 26, 2018



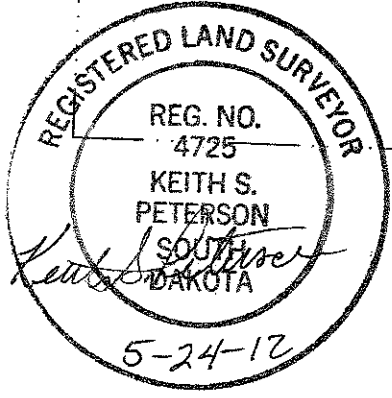
**EXHIBIT "A"**  
**TEMPORARY CONSTRUCTION EASEMENT IN**  
**LOT 2 I-90 HEARTLAND BUSINESS PARK SUBDIVISION**  
**BLOCK 2, SECTION 28, T2N, R8E, BHM.**  
**CITY OF RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA**



MIDWEST MOTOR EXPRESS INC  
 LOT 2 I-90 HEARTLAND BUSINESS PARK SUBD  
 BLOCK 2, SECTION 28, T2N, R8E, BHM  
 ACRES 4.98

LOT 1 BY-PASS DEVELOPMENT LLC  
 LOT 1 I-90 HEARTLAND BUSINESS PARK SUBD  
 BLOCK 2, SECTION 28, T2N, R8E, BHM.  
 ACRES 4.08

PROPOSED TEMPORARY  
 CONSTRUCTION EASEMENT  
 ON LOT 2 (0.797 AC.)



**SEGER DRIVE**

