AGREEMENT BETWEEN THE CITY OF RAPID CITY AND ZCO INCORPORATED
FOR TRANSFER OF DRAINAGE LOT

This Agreement is made by and between the CITY OF RAPID CITY, a South Dakota
municipal corporation, of 300 Sixth Street, Rapid City, SD 57701 (the “City”) and ZCO
INCORPORATED, a South Dakota corporation, of PO Box 1940, Rapid City, SD 57709 (“ZCO”).

WHEREAS, ZCO owns certain property within the City’s platting jurisdiction that is
described below; and

WHEREAS, ZCO has filed with the City an application to plat the property; and

WHEREAS, ZCO’s proposed plat includes an undevelopable lot designated as a drainage
lot, which contains a regional detention facility; and

WHEREAS, the City generally does not favor the creation of undevelopable drainage lots
on plats; and

WHEREAS, the City, which operates a stormwater drainage utility to construct, operate
and maintain, inter alia, regional detention facilities, has agreed to accept title to the undevelopable
drainage lot upon plat approval; and

WHEREAS, the parties desire to reduce their mutual agreements and understandings to
writing.

NOW THEREFORE, in consideration of the mutual covenants and promises contained
herein, and other good and valuable consideration, the parties hereby agree as follows:

1. 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. Property. The property ZCO has proposed to plat is legally described as follows:

South Half of the Southeast Quarter (S½SE¼), Section 17, T1N, R8E,
BHM, Pennington County South Dakota

AND
North Half of the Northeast Quarter (N\%NE\%), Southeast Quarter of the Northeast Quarter (SE\%NE\%), and that portion of the East Half of the Southeast Quarter (E\%SE\%) lying North and East of the Railroad ROW, Section 20, T1N, R8E, BHM, Pennington County, South Dakota.

3. **Proposed Drainage Lot.** The Proposed Drainage Lot that ZCO shall transfer to the City upon approval and recording of the final plat will be described as follows:

   Tract 1 of Block 3 of Marlin Drive Commercial Park, located in T1N, R8E, BHM, Rapid City, Pennington County, South Dakota.

4. **Terms of Acceptance.** The City agrees to accept the Proposed Drainage Lot provided ZCO satisfies the following conditions:

   a. Before the land is transferred, the ZCO shall verify that the regional detention facility is constructed per the original design, per the plans approved by the City in 2008. Any improvements not found to comply with the original design shall be addressed by ZCO to the City Engineer’s satisfaction.

   b. ZCO shall provide a two-year warranty for the regional detention facility. The warranty shall conform to the warranty provisions of the City’s Standard Specifications for Public Works Construction, and the date of acceptance of the regional detention facility shall be deemed the date upon which the title is transferred from ZCO to the City. ZCO shall not be required to submit a separate warranty bond for the regional detention facility, but the City agrees that the warranty surety submitted for subdivision improvements related to the platting of the Property shall be sufficient to secure the warranty for the regional detention facility.

   c. Upon platting and completion of any repairs as contemplated in subparagraph a above, ZCO shall deliver a quitclaim deed for the Proposed Drainage Lot to the City. The deed shall be in substantially the same form as is contained in Exhibit A, attached hereto and incorporated herein by this reference.

   d. ZCO shall not charge, and the City shall not pay any monetary consideration for the transfer of the Proposed Drainage Lot.

5. **Consideration.** The parties agree that approval of the plat of the Property, in addition to the other covenants, agreements, and promises of the parties herein, is good and sufficient consideration for the transfer of the Proposed Drainage Lot. If the City should deny its approval of the proposed plat of the Property, ZCO shall have no obligations under this Agreement. The parties agree that denial of the proposed plat by the City, for whatever reason, shall not create a cause of action or be deemed a breach of this Agreement.

6. **Integration.** This Agreement and the agreements and documents referred to herein (including any exhibits and schedules incorporated herein) contain the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersede all prior agreements, negotiations, and understandings, whether written or oral, relating to the subject matter hereof.
7. **Amendments.** This Agreement may only be amended by a written document duly executed by all parties.

8. **Third Parties.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns. Nothing herein shall give or be construed to give any person or entity, other than the parties hereto, their respective successors, and permitted assigns, any legal or equitable rights hereunder.

9. **Waivers.** No waiver of any term or provision of this Agreement shall be binding unless executed in writing by the party waiving such term or provision.

10. **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.

11. **Further Action.** The parties covenant and agree that each shall execute and deliver such further instruments or documents as shall be necessary or convenient to effectuate the purposes contemplated by this Agreement.

12. **Construction.** The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against any party. 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. The parties agree that each party has reviewed this Agreement and has had the opportunity to have its counsel review the same. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

13. **Jurisdiction and Venue.** The parties hereto explicitly agree to submit to the personal jurisdiction of South Dakota state courts, and any dispute relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall be decided solely and exclusively by the Circuit Court located in Rapid City, South Dakota.

[Signature pages follow]
Dated this 23rd day of October, 2017.

ZCO INCORPORATED

By ________________________
Steve Zandstra, President

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

On this the 23rd day of October, 2017 before me, the undersigned officer, personally appeared Steve Zandstra, who acknowledged himself to be the President of ZCO Incorporated, a South Dakota corporation, and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as President.

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

________________________
Darcy Torres
Notary Public
My Comm’n Expires 8-26-2020
Dated this ____ day of ______________, 20__.

CITY OF RAPID CITY

________________________
Steve Allender, Mayor

Attest

________________________
Pauline Sumption, Finance Officer

(seal)

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

On this the ____ day of ______________, 20__, before me the undersigned officer appeared Steve Allender and Pauline Sumption, known to me or satisfactorily proven to be the persons described in the foregoing instrument, and acknowledged that they executed the same in the capacity therein stated and for the purposes therein contained.

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

(seal) ____________________________
Notary Public
My Comm’n Expires ____________________
QUITCLAIM DEED

ZCO INCORPORATED, a South Dakota corporation, of PO Box 1940, Rapid City, SD 57709, Grantor, for and in consideration of One and 00/100 Dollar ($1.00) and other valuable consideration, the receipt of which is hereby acknowledged, conveys and quitclaims to the CITY OF RAPID CITY, a municipal corporation of 300 Sixth Street, Rapid City, SD 57701, Grantee, all its right, title and interest, including any after-acquired title, in the following described real estate:

Tract 1 of Block 3 of Marlin Drive Commercial Park, located in T1N, R8E, BHM, Rapid City, Pennington County, South Dakota.

EXEMPT FROM TRANSFER FEE SDCL 43-4-22 (2).

Dated this 23rd day of October, 20___.

ZCO INCORPORATED

By ____________________________

Steve Zandstra, President

State of South Dakota

County of Pennington

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Darcy Torres
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