AGREEMENT BETWEEN THE CITY OF RAPID CITY AND ZCO INCORPORATED FOR MARLIN DRIVE OVERSIZE WATER TRANSMISSION MAIN COST REIMBURSEMENT

THIS AGREEMENT is made and entered into by and between the CITY OF RAPID CITY, a municipal corporation, 300 Sixth Street, Rapid City, South Dakota, 57701, hereinafter referred to as the "City," and ZCO Incorporated, a South Dakota corporation, of P.O. Box 1940, Rapid City, South Dakota, 57709-1940, hereinafter referred to as the "Developer."

WHEREAS, the Developer desires to construct a water main to provide water service and fire protection for the Developer's Elks Crossing Subdivision and future development projects generally located in the SW ½ Section 16, NE1/4 Section 20 and NE ¼ Section 21 along Marlin Drive and East Minnesota Street, Rapid City, South Dakota; and

WHEREAS, the Developer's property is located within the City of Rapid City; and

WHEREAS, the City and the Developer agree to construct a 16" water transmission main rather than an 8" water main, which is the minimum size required to meet the Developer's needs. The 16" water transmission main will allow future water main extension within the area in accordance with the City's Utility System Master Pan.

WHEREAS, it is in the City's interest to have the Developer construct the 16" water transmission main; and

WHEREAS, the Developer has submitted cost estimates to oversize the requested water transmission main and City staff has reviewed and concurs with the costs, and

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein set forth, it is agreed by the parties as follows:

- 1. 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. The City shall reimburse the Developer a maximum of \$177,252.44 for the Marlin Drive 16" water transmission main oversize costs. This maximum dollar amount is based upon lengths, quantities and costs provided in exhibit A. If actual lengths, quantities, and costs are less than specified in Exhibit A, the amount of reimbursement shall be adjusted accordingly.
- 3. Prior to project acceptance the Developer shall submit documentation certifying actual costs incurred. If actual lengths, quantities, and costs are less than specified in exhibit A, the amount of reimbursement shall be adjusted accordingly.
- 4. Prior to project acceptance by the City, a warranty bond, or other equivalent surety, in an amount equivalent to ten percent (10%) of the total cost of the 16" water transmission main

project/improvement shall be provided to the City to secure the warranty for a period of two years.

- 5. The City shall make payment to the Developer within 90 calendar days of the project being completed, tested, as-builts submitted, and project acceptance. Acceptance will be documented by issuance of an acceptance letter from the City.
- 6. In the event that any section(s), or provision(s) of this Agreement is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision(s) of this Agreement if it can be given effect without the invalid section(s) or provision(s).
- 7. The parties agree that the terms of this Agreement shall be governed by the laws of the State of South Dakota. In the event of any conflict of laws, the law of the State of South Dakota shall be controlling. Any legal action arising out of or relating to this agreement shall be brought only in the Circuit Court of Pennington County, South Dakota.
- 8. The parties agree that this writing constitutes the entire agreement between them and that there are no other oral or collateral agreements or understandings of any kind or character except those contained herein. No modification or amendment to this Agreement shall be valid, unless evidenced by a writing signed by the parties hereto.

Dated this day of _	, 2013.	
	ZCO INCORORATED	
	Its President	
STATE OF SOUTH DAKOTA))ss.	
COUNTY OF PENNINGTON)	
On this 19th day of		
IN WITNESS WHEREOF I hereunto set my hand and official seal.		
(seal)	Notary Public, South Dakota My Commission Expires: 8-26-14	

ATTEST:	Mayor
Finance Officer	
(seal)	
personally appeared Sam Kooiker and	, 2013, before me, the undersigned officer, I Pauline Sumption, who acknowledged themselves to be
the Mayor and Finance Officer, respectand that they as such Mayor and Finance Officer, respectant that they are such Mayor and Finance Officer, respectant to the Mayor and Finance Officer, respectant t	ctively, of the City of Rapid City, a municipal corporation, nee Officer, being authorized to do so, executed the therein contained by signing the name of the city of Rapid
IN WITNESS WHEREOF I h	ereunto set my hand and official seal.
(seal)	Notary Public, South Dakota My Commission Expires:

CITY OF RAPID CITY