

DEVELOPMENT AGREEMENT

This Agreement is made and entered into by the City of Rapid City, a municipal corporation, hereafter called the "City", and Wal-Mart Stores, Inc., a Delaware corporation, hereafter called "Developer".

RECITALS

WHEREAS, the Developer has applied for a Major Amendment to the Planned Commercial Development (00PD32) which allows for an approximate 71,000 square foot expansion of Wal-Mart; and

WHEREAS, the real property on which this Major Amendment to the Planned Commercial Development (PCD) is located is more particularly described as follows:

Lots 4B and 5R of Meridian Subdivision, Section Thirty (30), Township Two North (T2N), Range Eight East (R8E) of the Black Hills Meridian, Pennington County, South Dakota; and

WHEREAS, the City has determined that additional improvements need to be constructed at the intersection of East Anamosa Street and LaCrosse Street (the "Intersection") as a result of this Major Amendment to the PCD; and

WHEREAS, the Developer acknowledges that certain improvements are required as a condition of this PCD; and

WHEREAS, the City approved this Major Amendment to the PCD at its September 18, 2000, Council meeting with certain stipulations regarding an agreement for such improvements and as set forth below.

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

1. Developer's Responsibilities:

A. Developer agrees that it will pay the City Two Hundred Fifty Five Thousand Seven Hundred Fifty Nine Dollars (\$255,759.00) as its sole contribution (the "Contribution") toward the costs (as estimated on Exhibit C attached hereto) of the City's completion of the design and construction of the improvements at the Intersection required pursuant to a Traffic Impact Study submitted by the Developer and completed by HDR Engineering dated July, 2000 and as shown on Exhibit B attached hereto (the "Improvements"). The City retains the right to modify the recommendations made in this Traffic Impact Study to best serve the interests of the City. In no event will the Contribution provided by Developer be used for any improvements other than those which will directly or indirectly improve the level of service at the Intersection.

B. Developer shall secure its payment obligation hereunder by delivering the Contribution to the Escrow Agent (hereinafter defined). Prior to the issuance of any building permit needed for the expansion of Wal-Mart as part of the project described in the Major Amendment to the PCD, Wal-Mart will deposit the Contribution in an interest bearing escrow account (the "Escrow") at Pennington Title Company (the "Escrow Agent").

C. At such time as the City incurs costs for the design and construction of the Intersection, City (or its agent) shall submit to Developer and Escrow Agent on a calendar-month basis, applications for payment describing the work completed on the Intersection during the prior calendar month. If no work was completed in the prior calendar month, no application is needed. Developer shall have the opportunity to review and approve the payment application and or the completed work. Wal-Mart's approval shall not be unreasonably withheld. Upon ten (10) days from receipt of the payment application, Escrow Agent shall pay the amount thereof to the City or to such person[s] as shall be designated by the City. The form of Escrow Agreement is attached hereto as Exhibit "A" and incorporated by reference. All interest accrued on the Contribution shall be paid to Developer on a periodic basis, but no less frequently than annually, or within thirty (30) days of the depletion of the Contribution from the Escrow.

2. City's Responsibilities.

A. The parties agree that the City will hire a consultant, which will be selected at the City's sole discretion, to manage the design contract for the Intersection.

B. The parties also agree that the City will hire a contractor to construct the Intersection, and the contractor hired will be selected at the City's sole discretion.

C. In addition, the parties agree that the Intersection contemplated by this Agreement will be completed by the City in a timeframe determined appropriate by the City but not to exceed five (5)

years from the date hereof, which shall be the term of this Agreement. At the end of the term of this Agreement, any unexpended portion of the escrow plus all accrued interest thereon shall be refunded promptly to Developer.

D. Costs of items A and B above, shall be paid by the City out of the Contribution, by submission of payment applications to Escrow, as set forth above.

- 3. **Notices.** All notices and other communications hereunder shall be in writing and shall be mailed by certified or registered mail, postage prepaid, or by Federal Express, Airborne Express, or similar overnight delivery service, addressed as follows:

If to City:

If to Developer:

Wal-Mart Stores, Inc.
2001 S.E. 10th Street
Bentonville, AR 72712
Attn: Legal Dept.

With Copy to:
Katz & Strausbaugh, L.C.
6700 Antioch Road, Suite 410
Shawnee Mission, KS 66204-1200
(913) 312-5040 / (913) 312-5047 fax
Attention: Lynn Russell, Esq.

Notice shall be deemed to have been given upon receipt. Refusal of delivery or undeliverable for any reason shall be deemed receipt.

- 4. **Modifications:** This Agreement may be amended only by written agreement of the parties hereto.
- 5. **Binding Effect:** This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.
- 6. **Counterparts:** This Agreement may be executed in any number of counterparts which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.

Dated this ____ day of _____, 2000.

CITY OF RAPID CITY

WAL-MART STORES, INC.

By: _____
Jim Shaw, Mayor

By: _____
Its: _____

ATTEST:

Finance Officer

(SEAL)

LIST OF EXHIBITS:

- EXHIBIT A FORM OF ESCROW AGREEMENT
- EXHIBIT B DRAWING OF IMPROVEMENTS
- EXHIBIT C COST ESTIMATE

ACKNOWLEDGMENTS:

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

On this the ____ day of _____, 2000, before me, the undersigned officer, personally appeared Jim Shaw and James F. Preston, 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.

Notary Public, South Dakota

My Commission Expires:
(SEAL)

State of _____)
) SS.
County of _____)

On this the ____ day of _____, 2000, before me, the undersigned officer, personally appeared _____, who acknowledged her/himself to be the _____ of Wal-Mart Stores, Inc., a corporation, and that he/she as such _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by her/himself as _____.

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

Notary Public

My Commission Expires:
(SEAL)

Prepared By: CITY ATTORNEY'S OFFICE

ESCROW AGREEMENT

This Escrow Agreement is entered into as of the _____ day of _____, 2000 by and between Wal-Mart Stores, Inc., a Delaware corporation ("Wal-Mart") with an address of 2001 S.E. 10th Street, Bentonville, Arkansas 72716, and the City of Rapid City, South Dakota ("City").

Covenants

- A. Wal-Mart and City have entered into a Development Agreement (the "DA") concerning the payment by Wal-Mart of certain intersection improvements to be constructed by the City, the terms of which are incorporated herein.
- B. Pursuant to Paragraph 1 (A) of the DA, Wal-Mart shall deposit Two Hundred Fifty Five Thousand Seven Hundred Fifty-nine and 00/100 Dollars (\$255,759.00) into an escrow account (the "Escrow Account") with Pennington Title Company ("Escrow Agent") for payment of said intersection improvements.

NOW, THEREFORE, intending to be legally bound hereby, the parties hereto agree as follows:

1. **Deposit of Funds.** Wal-Mart will deliver into Escrow with the Escrow Agent, the sum of Two Hundred Fifty Five Thousand Seven Hundred Fifty-nine and 00/100 Dollars (\$255,759.00). The Escrow Account is to be deposited in a federally insured interest-bearing account and any and all such interest shall accrue for the benefit of and shall be paid to Wal-Mart. City and Wal-Mart shall designate the type of account to be utilized for this purpose.

2. **No Third Parties.** No part of the Escrow Account will at any time be subject or liable to attachment or levy at the suit of any creditor of City, or of any other interested party, or at the suit of any contractor or any of its creditors. This Agreement is solely for the benefit of Wal-Mart and the City and no third parties shall have any rights herein or hereunder.

3. **Pay Applications.** Escrow Agent agrees not to release the Escrow Account or any portion thereof without first having received a written pay application from the City, or its agent as provided in the DA.

4. **Distribution of Funds.** Ten (10) days from the receipt of a pay application, the Escrow Agent shall pay from the Escrow, to the City or such other person as it shall direct, the amount set forth in the pay application, unless Escrow Agent has received a written objection from Wal-Mart setting forth reasons why said payment shall not be made. In such event, the disputed portion of said payment application shall not be paid until such time as Wal-Mart shall deliver to the Escrow Agent, written authorization to pay same.

5. **Authenticity of Documentation.** Escrow Agent may rely absolutely upon the genuineness and authority of any pay application from the City, not only as to its due execution and validity, but also as to the truth and acceptability of any information therein contained. In connection with any action taken relative to this Agreement, Escrow Agent shall not be held liable for anything done or omitted to be done other than its negligence or willful misconduct.

6. **Interest on deposit.** All interest accrued on the Contribution shall be paid to Developer on a periodic basis, but no less frequently than annually, or within thirty (30) days of the depletion of the Contribution from the Escrow.

7. **Duration.** This Agreement shall remain in full force and effect for a period of five (5) years from the date of the deposit of the funds into escrow. At the end of the term of this Agreement, any unexpended portion of the escrow, plus all accrued interest thereon shall be refunded promptly to Developer.

8. **Disputes.** In the event of an unresolved dispute between the parties, Escrow Agent is authorized to seek an order from the Circuit Court as to how to proceed. Attorneys' fee and court costs incurred by Escrow Agent, will be shared equally by the Wal-Mart and the City.

9. **Binding Effect.** The obligations of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to the benefit of, the successors and assigns of the parties hereto.

10. **Defined Terms.** Any capitalized terms which are not defined herein shall be defined pursuant to the DA.

11. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

CITY OF RAPID CITY, SOUTH DAKOTA

Witness

By: _____
Printed Name: _____
Title: _____
("City")

ATTEST

WAL-MART STORES, INC..

Its Assistant Secretary

By: _____
Kim Lane
Assistant Vice President
("Wal-Mart")

_____ joins in this Agreement for the purpose of acknowledging its receipt of the Escrow Account and there terms and conditions hereof and agreeing to abide and comply with the terms, provisions and conditions of this Agreement.

PENNINGTON TITLE COMPANY

By: _____
("Escrow Agent")

EXHIBIT "B"

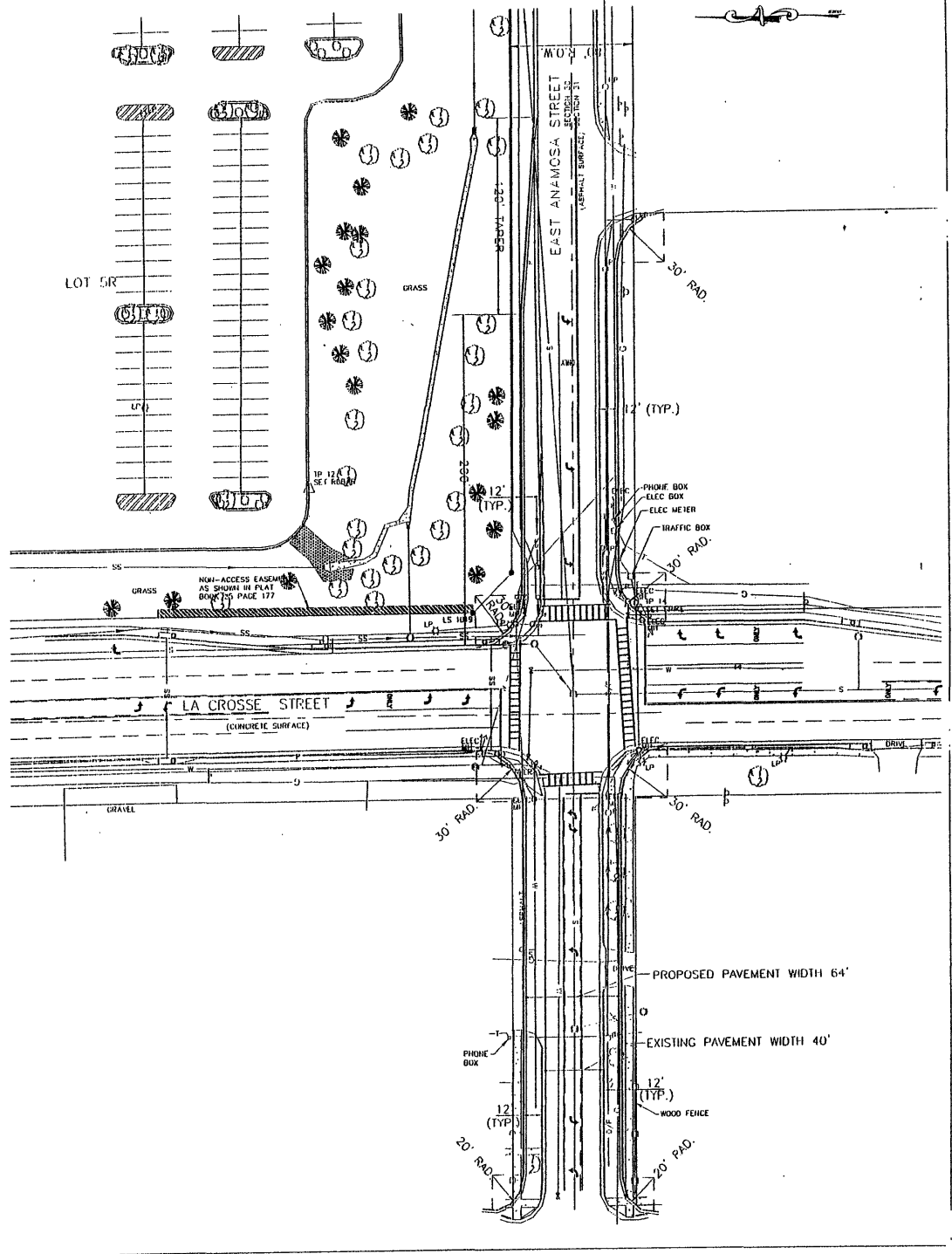


EXHIBIT C

Expand Anamosa Street from 3-lane Section to 5-lane Section							ENGINEER'S ESTIMATE	
NO.	ITEM NO.	ITEM DESCRIPTION	APPROX QUANTITY	UNIT	UNIT BID PRICE	EXTENDED PRICE	UNIT BID PRICE	EXTENDED PRICE
1	9.0001	MOBILIZATION	1.0	L.S.			\$7,500.00	\$7,500.00
2	100.0001	CLEARING	1.0	L.S.			\$100.00	\$100.00
3	109.0001	SAW EXISTING ASPHALT	500.0	LFT			\$3.50	\$1,750.00
4	109.0003	SAW EXISTING PCC CONCRETE	1,100.0	LFT			\$7.00	\$7,700.00
5	110.0001	REMOVAL OF CONCRETE SIDEWALK	270.0	SQYD			\$19.26	\$2,770.20
6	110.0002	REMOVAL OF CONC APP PAVEMENT	38.0	SQYD			\$7.50	\$285.00
7	110.0003	REMOVAL OF CONC CURB & GUT.	1,600.0	LFT			\$4.00	\$6,400.00
8	110.0006	REMOVAL OF CONC. PAVEMENT	49.0	SQYD			\$7.50	\$367.50
9	110.0008	REMOVAL OF PIPE CULVERT	100.0	LFT			\$8.00	\$800.00
10	110.0012	RELOCATION OF DROP INLET	3.0	EACH			\$2,300.00	\$7,300.00
11	110.0022	REMOVAL OF ASPHALT CONCRETE	100.0	SQYD			\$3.50	\$350.00
12	110.0202	REMOVAL OF STREET LIGHT SHAFT	4.0	EACH			\$500.00	\$2,000.00
13	110.0203	REMOVAL OF STREET LIGHT WIRE	1,000.0	LFT			\$0.50	\$500.00
14	110.0205	REMOVAL OF STREET LIGHT FOOTING	4.0	L.S.			\$400.00	\$1,600.00
15	SPECIAL	REMOVE PVMT MKG	0.0	L.S.			\$200.00	\$0.00
16	SPECIAL	REMOVE / RESET SIGN	10.0	EACH			\$200.00	\$2,000.00
17	120.0001	UNCLASSIFIED EXCAVATION	500.0	CUYD			\$10.70	\$5,350.00
18	120.0091	WATER FOR GRANULAR MATERIAL	3.3	MGAL			\$15.00	\$49.50
19	120.0092	WATER FOR SOD AND/OR PLANTS	16.0	MGAL			\$80.00	\$1,280.00
20	120.0094	SCARIFY & RECOMPACT SUBGRADE	1,400.0	SQYD			\$1.50	\$2,100.00
21	230.0002	PLACING CONCR FURN TOPSOIL	120.0	CUYD			\$20.00	\$2,400.00
22	260.0030	GRAVEL CUSHION	1,160.0	TON			\$13.28	\$15,404.80
23	320.0065	ASPHALT CONC FOR PATCHING	24.0	TON			\$100.00	\$2,400.00
25	380.0015	CONCRETE APPR PAVEMENT	111.0	SQYD			\$50.00	\$5,550.00
26	380.0041	CONCRETE FILLET SECTION 9"	276.0	SQYD			\$60.00	\$16,560.00
26	380.0127	TAST TRACK CONCRETE	1,350.0	SQYD			\$38.00	\$51,300.00
27	380.0133	INST #1 EEL BAR IN CONC PVMT	200.0	EACH			\$10.00	\$2,000.00
28	450.0207	18" RCP CL III	FURN 100.0	LFT			\$25.00	\$2,500.00
29	450.0254	18" RCP CL III	INST 200.0	LFT			\$25.00	\$2,500.00
30	462.0002	CLASS M6 CONCRETE	11.2	CUYD			\$550.00	\$6,160.00
31	480.0001	REINFORCING STEEL	2,065.0	LB.			\$1.00	\$2,065.00
32	633.1011	PVMT MARKING PAINT 4" YELLOW	100.0	LFT			\$0.50	\$50.00
33	633.1020	COLD PLASTIC PVMT MKG 4"	246.0	LFT			\$2.50	\$615.00
34	633.1023	COLD PLASTIC PVMT MKG 12"	197.0	LFT			\$7.00	\$1,379.00

Expand Anamosa Street from 3-lane Section to 5-lane Section							ENGINEER'S ESTIMATE	
NO.	ITEM NO.	ITEM DESCRIPTION	APPROX QUANTITY	UNIT	UNIT BID PRICE	EXTENDED PRICE	UNIT BID PRICE	EXTENDED PRICE
35	633.1034	COLD PLASTIC PVMF MKG 24"	64.0	LFT			\$15.52	\$992.28
36	633.1026	COLD PLASTIC PVMF ARROW	2.0	EACH			\$275.00	\$550.00
37	633.1051	GROOVE PVMF FOR PVMF MKG 4"	246.0	LFT			\$0.75	\$184.50
38	SPECIAL	GROOVE PVMF FOR PVMF MKG 12"	197.0	LFT			\$1.00	\$394.00
39	SPECIAL	GROOVE PVMF FOR PVMF MKG 24"	64.0	LFT			\$5.00	\$320.00
40	634.0109	TRAFFIC CONTROL	1,000.0	UNIT			\$4.50	\$4,500.00
41	634.0101	TRAFFIC CONTROL MISC.	1.0	L.S.			\$500.00	\$500.00
42	634.0116	TYPE B ADV WARGN ARROW PANEL	2.0	EACH			\$1,705.00	\$3,410.00
43	SPECIAL	FLAGGING	15.6	HRS			\$15.00	\$235.00
44	635.0037	FOOTING - 2 FT DIAMETER	4.0	LFT			\$125.00	\$500.00
45	635.0524	1/C #8 AWG COPPER	F&I 120.0	LFT			\$0.60	\$75.20
46	635.0571	7/C #14 IMSA AWG COPPER	F&I 1,600.0	LFT			\$3.25	\$5,200.00
47	635.0574	20/C #14 IMSA AWG COPPER	F&I 188.0	LFT			\$5.50	\$1,034.00
48	635.0785	5 SECT. SIG. HEAD	WI 2.0	EACH			\$800.00	\$1,600.00
49	SPECIAL	CONNECT SIGNAL WIRE	1.0	L.S.			\$150.00	\$150.00
50	635.0795	1 1/2" RIGID GALV STEEL CONDUIT	F&I 15.0	LFT			\$20.00	\$300.00
51	635.0850	RESET STREET LIGHT SHAFT	4.0	EACH			\$650.00	\$2,600.00
52	635.0852	HOOK UP STREET LIGHT WIRE	4.0	EACH			\$160.00	\$640.00
53	635.0856	TIE INTO EXISTING CONDUIT	4.0	EACH			\$50.00	\$200.00
54	650.0002	CONC CURB & GUT TYPE SF66	0.0	LFT			\$12.00	\$0.00
55	650.0008	CONC CURB & GUT TYPE SF69	1,600.0	LFT			\$15.00	\$24,000.00
56	651.0005	CONCRETE SIDEWALK 4"	2,400.0	SQFT			\$3.00	\$7,200.00
57	671.0001	ADJUST MANHOLE	3.0	EACH			\$180.00	\$540.00
57	671.0011	MANHOLE FRAME AND COVER	1.0	EACH			\$300.00	\$300.00
57	671.0018	MANHOLE FRAME & COVER TYPE Y	1.0	EACH			\$240.00	\$240.00
58	731.0002	FERTILIZING	6.0	LB.			\$10.00	\$60.00
59	733.0001	SODDING	262.0	SQYD			\$4.50	\$1,179.00
60	950.0325	LOCATING UTILITIES	1.0	EACH			\$150.00	\$150.00
61	950.0326	VERIFY UTILITIES	1.0	EACH			\$150.00	\$150.00
62		24" JUNCTION BOX	4.0	EACH			\$450.00	\$1,800.00
63		PREFORMED DETECTOR LOOPS	16.0	EACH			\$1,000.00	\$16,000.00
64	999.0100	TAX ON CITY TURN. MATERIALS	1.0	L.S.	\$56.10	\$56.10	\$56.10	\$56.10
TOTAL GROSS SUM BID =								\$236,813.83