

WHEN RECORDED MAIL TO:

CITY OF SAN LUIS
P.O. BOX 1170
SAN LUIS, ARIZONA 85349
ATTN: CITY CLERK

OFFICIAL RECORDS OF
YUMA COUNTY RECORDER
SUSAN MARLER



FEE #: 2006 - 40790

10/06/2006 11:07 PAGES: 0003
FEES: 3.00 8.00 1.00 .00 .00
REQ BY: CITY SAN LUIS
REC BY: Johnna Erwin

The above area is to be reserved for recording information

CAPTION HEADING:

Resolution No. 699



Resolution

OFFICE OF THE
MAYOR
CITY OF SAN LUIS

RESOLUTION NO. 699

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SAN LUIS, ARIZONA APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SAN LUIS, ARIZONA AND WAL-MART STORES, INC.

Whereas, Wal-Mart Stores, Inc., a Delaware Corporation authorized to do business in the State of Arizona, ("Wal-Mart") desires to enter into a development agreement ("Development Agreement"), Exhibit "A" attached hereto, with the City of San Luis, Arizona ("City") to provide for the development and reimbursement for development of augmented public infrastructure improvements;

Whereas, A.R.S. §9-500.05 grants power to a municipality to enter into development agreements which provide conditions, terms, restrictions and requirements for public infrastructure and for subsequent reimbursements over time;

Whereas, the City is permitted by A.R.S. §9-500.11 to enter into a retail tax incentive agreement to facilitate the development of infrastructure in connection with economic development activities;

Whereas, the City has received the opinion of Economists.com, an independent third party, that the benefits from the development of the augmented public infrastructure improvements in connection with the development of the property at the southeast corner of Highway 95 and 22nd Street are anticipated to raise more revenue than the amount of the incentive within the duration of the agreement;

Whereas based upon said opinion of Economists.com the City Council of the City of San Luis finds that the benefits from the development of the augmented public infrastructure improvements in connection with the development of the property at the southeast corner of Highway 95 and 22nd Street are anticipated to raise more revenue than the amount of the incentive within the duration of the agreement;

Whereas the City Council finds that without the incentive contained within the Development Agreement, Wal-Mart would not develop the augmented public infrastructure improvements provided for by said agreement, and as a result the retail business facility would not be located in the City in the same manner as with the development of said infrastructure; and

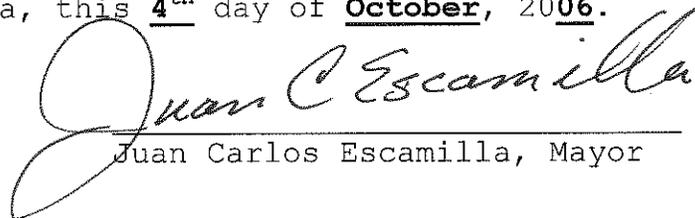
Whereas, the parties to the Development Agreement desire to enter into said agreement;

NOW THEREFORE BE IT RESOLVED, by the Mayor and Council of the City of San Luis, State of Arizona, as follows:

Section 1: That the Development Agreement between the City of San Luis, Arizona and Wal-Mart Stores, Inc., as attached hereto as Exhibit "A", is hereby approved.

Section 2: That the appropriate City officials are hereby authorized and directed to enter into said agreement on behalf of the City and take any and all actions as may be necessary to effectuate said agreement.

PASSED AND ADOPTED by the Mayor and Common Council of the City of San Luis, Arizona, this 4th day of October, 2006.



Juan Carlos Escamilla, Mayor

ATTEST:



Sonia Sanchez, City Clerk

APPROVED AS TO FORM:

 for

Glenn Gimbut, City Attorney

Page 2 of 2

WHEN RECORDED MAIL TO:

CITY OF SAN LUIS
P.O. BOX 1170
SAN LUIS, ARIZONA 85349
ATTN: CITY CLERK

OFFICIAL RECORDS OF
YUMA COUNTY RECORDER
SUSAN MARLER



FEE #: 2006 - 40789

10/06/2006 11:05 PAGES: 0021
FEES: 10.00 8.00 1.00 .00 .00
REQ BY: CITY SAN LUIS
REG BY: Johnna Erwin

The above area is to be reserved for recording information

CAPTION HEADING:

Development Agreement
(Wal-Mart Stores, Inc.)

When recorded return to:

Glen Gimbut
City Attorney
San Luis City Hall
767 N. 1st Ave.
San Luis, AZ 85349

San Luis AZ #4337

PUBLIC INFRASTRUCTURE REPAYMENT DEVELOPMENT AGREEMENT

This Public Infrastructure Repayment Development Agreement ("**Agreement**") is entered into as of the 4th day of October, 2006, by and between the **CITY OF SAN LUIS**, an Arizona municipal corporation (the "**City**"), and **WAL-MART STORES, INC.**, a Delaware corporation ("**Wal-Mart**").

RECITALS:

A. Barkley Farms Limited Partnership, an Arizona limited partnership ("**Barkley**") is the owner of approximately 38.87 acres of real property located within the limits of the City, which property is more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "**Barkley Property**").

B. Wal-Mart has the contractual right to purchase approximately 19.8410 acres of the Barkley Property on which Wal-Mart intends to develop a Wal-Mart Supercenter retail facility and related improvements (the "**Supercenter**"), which property is legally described on Exhibit B and is depicted on the conceptual site plan (the "**Site Plan**") attached hereto as Exhibit C and incorporated herein by reference (the "**Wal-Mart Property**").

C. Barkley intends to develop commercial lots on the Barkley Property adjacent to Highway 95 as tentatively set forth on the Site Plan and to also develop commercial lots on the southerly portion of the Barkley Property adjacent to Piceno Drive. The Barkley Property was previously zoned to C-2 commercial use by the City Council of the City of San Luis.

D. The San Luis General Plan (the "**Plan**") was adopted by the City Council of the City of San Luis on December 27, 2001, and was ratified by the citizens of San Luis at a general election on March 19, 2002. The San Luis General Plan calls for commercial

development of the Barkley Property. In addition, said Plan, at page 50, calls for the development of 22nd Street from State Route 95 to 10th Avenue, including the crossing of the Yuma Valley Main Drain and the East Main Canal, as a minor arterial and for Piceno Drive to be a minor collector.

E. Wal-Mart and the City wish to enter into this Agreement to provide for the construction by Wal-Mart of certain public infrastructure improvements associated with the Wal-Mart Property and the Barkley Property as well as implement the legislative decisions described in Recital D.

F. Arizona Revised Statutes § 9-500.05 authorizes the City to enter into a development agreement with a landowner or any other person having an interest in real property to facilitate development of the real property by providing for, among other things, the conditions, terms, restrictions and requirements for public infrastructure and the financing of public infrastructure.

G. On October 4, 2006 (the "**Effective Date**"), the City Council adopted Resolution No. 699, which approved and authorized the execution and delivery of this Agreement.

NOW THEREFORE, in consideration of the promises and premises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENTS:

1. Accuracy of the Recitals. The parties hereby acknowledge the accuracy of the Recitals, which are incorporated herein by this reference.

2. Term. Once executed by the parties, the term of this Agreement shall be deemed to commence as of the Effective Date and shall continue for twenty (20) years thereafter.

3. Development and Operation. If Wal-Mart elects to not develop the Wal-Mart Property or not to construct the Supercenter, Wal-Mart shall provide the City written notice of its decision and this Agreement shall thereafter automatically terminate as to Wal-Mart's obligations and Wal-Mart shall have no further obligation under this Agreement.

4. Public Infrastructure for the Wal-Mart Property and the Barkley Commercial Property.

(a) In the event Wal-Mart commences construction of the Supercenter on the Wal-Mart Property, then Wal-Mart shall construct (or cause to be constructed) certain public infrastructure improvements which will serve the City and the general public ("**Augmented Public Infrastructure Improvements**") and associated costs (collectively, the "**Augmented Public Infrastructure Improvements Costs**") as described on Exhibit D incorporated herein by this reference. This infrastructure is related to proper vehicular traffic

circulation and to avoid undue traffic congestion and is in addition to those improvements ("**Required Public Infrastructure Improvements**") required pursuant to that special use permit granted by the City to Wal-Mart on September 13, 2006 ("SUP").

(b) Wal-Mart shall have the right to add to the scope and extent of the Augmented Public Infrastructure Improvements through change orders approved in advance by the City, which approval shall not be unreasonably withheld or delayed. Wal-Mart shall submit actual plans and specifications for the Augmented Public Infrastructure Improvements to the City as well as bids or proposals received by Wal-Mart to construct the Augmented Public Infrastructure Improvements for the City's review and approval; provided, however, if the City does not provide written objection to the plans and specifications or the bids within ten (10) days after receipt thereof, such plans and specifications or bids, as applicable, shall be deemed approved. Wal-Mart shall competitively solicit the contract or contracts for the actual construction of all or portions of the Augmented Public Infrastructure Improvements in accordance with the competitive solicitation requirements of A.R.S. Section 34-201, *et seq.* or A.R.S. § 34-601, *et seq.*

(c) The City will use its best efforts to assist Wal-Mart in obtaining all permits and approvals which are issued by any third party public or quasi-public entity and which are necessary for the development, construction and operation of the Augmented Public Infrastructure Improvements. Without limitation of the foregoing, the City shall be solely responsible for obtaining any necessary encroachment permit or other applicable authorization from the Yuma County Water Users Association or other applicable entity relating to any affected canals as required for Wal-Mart to construct the Augmented Public Infrastructure Improvements, and Wal-Mart's obligations under this Agreement shall be subject to the timely and proper issuance of such permit or authorization. The parties acknowledge that the best efforts of the City shall not require the appropriation and expenditure of any funds by the City other than expenditures in the ordinary course of business of the City.

5. Reimbursement for Public Infrastructure Costs.

(a) The City acknowledges that the Augmented Public Infrastructure Improvements once fully constructed by Wal-Mart under this Agreement are of a size or scope, which is greater than the City could currently exact for the development of the Wal-Mart Property under the authorities set forth in A.R.S. §§ 9-500.12 and 9-500.13, as amended. Accordingly, the City will reimburse Wal-Mart the Augmented Public Infrastructure Improvements Costs, either directly with a payment of sales tax pursuant to this Section or indirectly with a development fee credit pursuant to this Section, pursuant to A.R.S. §§ 9.463.05 and 9-500.05(H)(1)(g) and in accordance with the reimbursement terms hereof (the "**Reimbursement**").

(b) Wal-Mart shall initially pay all the Augmented Public Infrastructure Improvements Costs, which include the costs associated with the design, engineering, permitting, acquisition, construction and installation of the Augmented Public Infrastructure Improvements.

(c) With respect to the portion of costs of the Augmented Public Infrastructure Improvements Costs for which Wal-Mart is reimbursed pursuant to this Agreement, the City intends to impose development fees upon the land benefited by the construction of said infrastructure. The Wal-Mart Property will receive a credit against such development fees to the extent permitted by A.R.S. § 9-463.05.B.3.

(d) The City, in consideration of Wal-Mart's construction of the Augmented Public Infrastructure Improvements, beginning with the first calendar quarter after the opening of the Supercenter, and continuing for each calendar quarter thereafter, within thirty (30) days after the last day of each quarter pay to Wal-Mart the first one percent (1%) of the City sales tax collected based on retail sales on and from the Wal-Mart Property ("**Quarterly Payment**"), until the Reimbursement is fully paid or credited pursuant to Section 5(c) of this Agreement.

(e) The first Quarterly Payment shall be paid no later than 30 days after the end of the first calendar quarter after the opening of the Supercenter, and each subsequent Quarterly Payment shall be made no later than thirty (30) days after the end of the immediately preceding calendar quarter end. All Quarterly Payments shall be mailed to Wal-Mart at the address set forth in Section 11 below, or other address provided by Wal-Mart.

(f) If the laws that entitle the City to receive the City sales tax based upon retail sales from the Wal-Mart Property are repealed or modified after the date of this Agreement, or if the City's right to receive the City sales tax based on the retail sales on the Wal-Mart Property is totally or partially replaced with another source of revenue, then the City's obligation to pay the Quarterly Payments shall be deemed modified and shall thereafter be based on any form of tax or revenue which the City receives with regard to the applicable quarter, in total or partial replacement of the City sales tax based on retail sales at or from the Wal-Mart Property. In that event, Wal-Mart and the City shall fully cooperate with one another in amending this Agreement as is necessary or appropriate to facilitate the timely and full payment of the Quarterly Payments pursuant to this Agreement.

6. Approvals and Future Impact Taxes and Fees. The City shall obtain, and shall maintain all necessary approvals, permits, consents and authorizations from all governmental authorities and other persons or entities necessary for the City ownership, maintenance, operation, repair and replacement of the Augmented Public Infrastructure Improvements.

7. City Representations and Warranties. The City represents, warrants and covenants to Wal-Mart that all the City's representations, findings, warranties, and covenants set forth in this agreement are true in all material respects as of the date of this Agreement.

(a) That the City is a duly organized, validly existing municipal corporation in the State of Arizona. The transactions contemplated by this Agreement, the execution of this Agreement and the City's performance hereunder have been duly authorized by all requisite action of the City and no other approval or consent is required for this Agreement to be binding upon the City. The individuals executing this Agreement have all necessary authority

to enter into this Agreement and to bind the City. The execution of this Agreement and the consummation of the transactions contemplated hereby will not result in any violation of, or default under, any term or provision of any applicable Agreement, instrument, law, rule, regulation or official policy to which the City is a party or by which the City is bound.

(b) That before entering into this Agreement, the City determined, pursuant to A.R.S. § 9-500.05, that the City has the authority to enter into this infrastructure repayment agreement for infrastructure not associated with the Wal-Mart Property. In the alternative, the City has determined pursuant to A.R.S. § 9-500.11(D) that the proposed repayment is anticipated to raise more revenue than the amount of the incentive.

8. Wal-Mart Representations and Warranties. Wal-Mart represents, warrants and covenants to the City that each of their respective representations, warranties and covenants set forth in this Agreement are true in all material respects as of the date of this Agreement.

(a) That Wal-Mart is a duly organized, validly existing Delaware corporation, licensed to do business in the State of Arizona. The transactions contemplated by this Agreement, the execution of this Agreement and Wal-Mart's performance hereunder have been duly authorized by all requisite action of Wal-Mart and no other approval or consent is required for this Agreement to be binding upon Wal-Mart. The individuals executing this Agreement have all necessary authority to enter into this Agreement and to bind Wal-Mart. The execution of this Agreement and the consummation of the transactions contemplated hereby will not result in any violation of, or default under, any term or provision of any applicable Agreement, instrument, law, rule, regulation or official policy to which Wal-Mart is a party or by which Wal-Mart is bound.

9. Cooperation and Alternative Dispute Resolution.

(a) Appointment of Representatives. To further the commitment of the parties to cooperate in the implementation of this Agreement, the City and Wal-Mart each shall designate and appoint a representative to act as a liaison between the City and its various departments and Wal-Mart. The initial representative for the City (the "**City Representative**") shall be its City Manager, Lee Maness, and the initial representative for Wal-Mart shall be Kevin Sweet, its Real Estate Manager. The representatives shall be available at all reasonable times to discuss and review the performance of the parties' respective obligations under this Agreement.

(b) Expedited City Decisions. The City and Wal-Mart agree that Wal-Mart must be able to proceed expeditiously with the construction of the Augmented Public Infrastructure Improvements as set forth in this Agreement and that, accordingly, an expedited City review process is necessary. The City shall review all such matters in an expedited manner. The City shall publish, post and give all required notices relating to the same in a diligent and expeditious manner. The parties agree that if at any time Wal-Mart believes that an impasse has been reached with the City staff concerning any issue affecting the Augmented Public Infrastructure Improvements, the City shall assign said dispute to the appropriate board or commission having jurisdiction over the same for adjudication and disposition on an expedited basis. If the issue on which an impasse has been reached is an issue where a final decision can be

reached by the City staff, the City Representative shall give Wal-Mart a final decision within fourteen (14) days after the request for an expedited decision is made. If the issue on which an impasse has been reached is one where a final decision requires action by the City Council, the City Representative shall be responsible for scheduling a City Council hearing on the issue at the next regularly scheduled City Council meeting after the request for an expedited decision is made; provided however, that if the issue is appropriate for review by the City's Planning and Zoning Commission, the matter shall be submitted to the Commission first, and then to the City Council. All parties agree to continue to use reasonable good faith efforts to resolve any impasse pending any such expedited decision.

10. Representatives, Mediation, Arbitration and Default.

(a) Representatives. To further the cooperation of the parties in implementing this Agreement, San Luis and Wal-Mart each shall designate and appoint a representative to act as a liaison between San Luis and its various departments and Wal-Mart. The initial representative for San Luis (the "**San Luis Representative**") shall be the City Manager of San Luis or his designee and the initial representative for Wal-Mart shall be its project manager, as identified by Wal-Mart from time to time (the "**Wal-Mart Representative**"). The representatives shall be available at all reasonable times to discuss and review the performance of the parties to this Agreement and the development of the Property.

(b) Mediation. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try to settle the dispute through mediation before resorting to arbitration, litigation or some other dispute resolution procedure. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, either party may request the presiding judge of the Superior Court of Yuma County to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool.

(c) Arbitration. If the mediation procedure set forth in Section 10(b) of this Agreement does not resolve a dispute, then the parties may, without obligation to do so, jointly agree to subject such dispute to arbitration pursuant to the rules of the American Arbitration Association ("AAA") or other arbitration organization acceptable to the parties. If the parties cannot jointly agree to subject such dispute to such arbitration, then such dispute shall be subject to litigation through judicial process.

(d) If the parties do jointly agree to subject such dispute to such arbitration, then the decision of the arbitrator(s) shall be in accordance with the laws of the State of Arizona and the United States. The arbitrator(s) shall prepare written findings of fact and conclusions of law upon which the decision and award shall be based.

- (i) The arbitration shall occur within the County of Yuma unless the parties agree otherwise in writing.
- (ii) Unless otherwise agreed in writing, and notwithstanding any other rights or obligations of either of the parties under the Agreement, San Luis and Wal-Mart shall carry on with

the performance of their respective duties, obligations and services hereunder during the pendency of any claim, dispute or other matter in question giving rise to arbitration or mediation, as the case may be.

(iii) The dispute resolution process set forth in this Section 12(d) shall not apply to an action by San Luis to condemn or acquire by inverse condemnation all or any portion of the Wal-Mart Property or to claims for injunctive relief or mandamus by either party.

(e) The failure by either party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days (the "**Cure Period**") after written notice thereof from the other party shall constitute a default. In the event such default is not cured with the Cure Period, the non-defaulting party shall have the right to seek all its rights and remedies, including injunctive relief or mandamus in a court of competent jurisdiction.

(f) Notices And Filings. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be sent by: (i) certified or registered mail, postage prepaid, return receipt requested; (ii) personal delivery; or (iii) a recognized overnight carrier that provides proof of delivery, and shall be addressed as follows, or to such other addresses as any party hereto may from time to time designate in writing and deliver in a like manner:

THE CITY:

City Administrator, City Of San Luis
San Luis City Hall
767 N. 1st Ave.
San Luis, AZ 85349

And a copy to:

Glen Gimbut
City Attorney
San Luis City Hall
767 N. 1st Ave.
San Luis, AZ 85349

WAL-MART:

Wal-Mart Stores, Inc.
2001 S.E. 10th Street
Bentonville, AR 72716
Attention: Michael Tomlin, Esq. #8313 (Store
No. 4337)

And a copy to:

Wal-Mart Stores, Inc.
2001 S.E. 10th Street
Bentonville, AR 72712
Mr. Kevin Sweet #8703 (Store No. 4337)

And a copy to:

Christopher M. McNichol
Gust Rosenfeld P.L.C.
201 East Washington, Suite 800
Phoenix, AZ 85004-2327

Notice shall be deemed to have been given upon receipt or refusal. The telephone numbers listed above are for purposes of providing the same to overnight delivery services and are not to be otherwise used for notice purposes.

11. General.

(a) Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the City or Wal-Mart of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

(b) Attorneys' Fees. In the event any party finds it necessary to bring any action at law or other proceeding, including arbitration, against the another party to enforce any of the terms, covenants or conditions hereof, or by reason of any breach or default hereunder, the party prevailing in any such action or other proceeding shall be paid all reasonable costs and reasonable attorneys' fees by the other party, and in the event any judgment is secured by said prevailing party, all such costs and attorneys' fees shall be included therein, such fees to be set by the court and not by jury.

(c) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signature of all parties may be physically attached to a single document.

(d) Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

(e) Exhibits. The following exhibits are attached hereto and are incorporated by this reference with the same force and effect as if fully set forth in the body hereof.

Exhibit A	Legal Description of the Barkley Property
Exhibit B	Legal Description of the Wal-Mart Property
Exhibit C	Site Plan of the Wal-Mart Property
Exhibit D	Augmented Public Infrastructure Improvements and Associated Costs for Public Infrastructure

(f) Further Acts. Each of the parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement. Without limiting the generality of the foregoing, each of the parties shall cooperate in good faith regarding the prompt processing of any requests and applications for plan and specification, plat or permit approvals or revisions, and other necessary approvals relating to the development of the Wal-Mart Property by Wal-Mart and its successors.

(g) Time of the Essence. Time is of the essence of this Agreement.

(h) Successors and Assigns. All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the parties hereof. Any party shall have the right to assign any of its rights or obligations hereunder to any person or entity without the consent of any other party to this Agreement. Any party may record this Agreement the provisions of which are a covenant and condition to run with the ownership of the real property set forth in this Agreement.

(i) No Partnership and Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other similar arrangement between Wal-Mart and the City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

(j) Entire Agreement. This Agreement constitutes the entire Agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein.

(k) Amendment. No change or additions are to be made to this Agreement except by a written amendment executed by the parties hereto. Within ten (10) days after any amendment to this Agreement, such amendment shall be recorded, at Wal-Mart's expense, in the Official Records of Yuma County, Arizona.

(l) Governing Law. This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona. In particular, this Agreement is subject to the provisions of A.R.S. § 38-511.

(m) Recordation. No later than ten (10) days after this Agreement has been executed by the City and Wal-Mart, it shall be recorded in its entirety, at Wal-Mart's expense, in the Official Records of Yuma County, Arizona.

(n) Reformation. Should any term, provision, covenant or condition of this Agreement be held to be void or invalid, the parties shall reform this Agreement to conform as closely as possible to the original intent thereof.

(o) Excused Delay in Performance. In addition to specific provisions of this Agreement, for a period of time equal to the period of the *force majeure* delay, untimely performance by a party hereto shall not be deemed to be a default where delays or inability to perform are due to war, insurrection, strikes, slowdowns, lockouts, riots, floods, earthquake, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority (including, but not by way of limitation, referendums), litigation, severe weather, inability (when the party which is unable to perform is substantially without fault) of any contractor, subcontractor or supplier to perform acts of the other party, acts or the failure to act of any utility, public or governmental agent or entity and/or other causes beyond the reasonable control of said party. In the event that a

party hereto is unable to perform due to an event constituting *force majeure* as provided for above, then the time for performance by said party shall be extended as necessary for a period of time up to the period of the *force majeure* delay.

(p) Venue. Any legal action relating to this Agreement shall be brought in either the Yuma County Superior Court or in the United States District Court for the district of Arizona at the election of the plaintiff in such legal action, provided, however, that nothing in this paragraph will be deemed to have authorized the bringing of any legal action in a court which does not otherwise have jurisdiction to adjudicate the legal action.

(q) Severability. Every provision of this Agreement is, and will be construed to be, a separate and independent covenant. If any provision of this Agreement or the application of the same is, to any extent, found to be invalid or unenforceable, then the remainder of this Agreement or the application of that provision to circumstances other than those to which it is invalid or unenforceable, will not be affected by that invalidity or unenforceability, and each provision of this Agreement will be valid and will be enforced to the extent permitted by the law, and the parties will negotiate in good faith for such amendments of this Agreement which may be necessary to achieve its intent, notwithstanding such invalidity or unenforceability.

(r) Rights of Successors. This Agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the date and year first above written.

Approved as to legal terms only
by RLM
WAL-MART LEGAL DEPT.
Date: 10.10.06

WAL-MART STORES, INC., a Delaware corporation

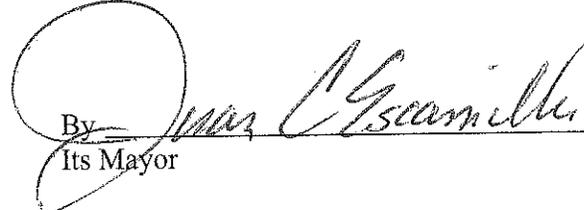
By 
Its Assistant Vice President

ATTEST:

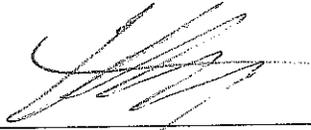


City Clerk

THE CITY OF SAN LUIS

By 
Its Mayor

APPROVED AS TO FORM:



City Attorney

State of Arkansas

County of Benton

The foregoing instrument was acknowledged before me this 10 day of October, 2006, by Daniel Malloy, an Assistant Vice President of Wal-Mart Stores, Inc., a Delaware corporation, on behalf of the corporation.

(Seal and Expiration Date)



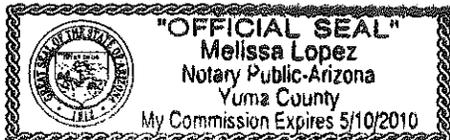
Laura Kathleen Cathey
Notary Public

State of Arizona

County of Yuma

The foregoing instrument was acknowledged before me this 6th day of October 2006, by Juan Carlos Escamilla, the Mayor of the City of San Luis, an Arizona municipal corporation, on behalf of the corporation.

(Seal and Expiration Date)



Melissa Lopez
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE BARKLEY PROPERTY

Government Lot 4 (NW¼NW¼) of Section 1, Township 11 South, Range 25 West, Gila and Salt River Base and Meridian, Yuma County, Arizona,

EXCEPT any existing dedicated roadway right-of-way.

EXHIBIT B

LEGAL DESCRIPTION OF THE WAL-MART PROPERTY

That portion of Government Lot 4 (NW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 1, Township 11 South, Range 25 West, Gila and Salt River Base and Meridian, Yuma County, Arizona more particularly described as follows:

Beginning at the Northwest Corner of Government Lot 4 of Section 1, said Corner also being the Northwest Corner of the Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 1;

thence South 89°40'20" East along the North line of said Lot 4, Section 1 a distance of 100.00 feet;

thence South 03°01'16" West a distance of 50.06 feet;

thence South 89°40'20" East parallel with and 50.00 feet southerly of the North Line of said Lot 4, Section 1 a distance of 245.85 feet to the TRUE POINT OF BEGINNING;

thence continuing South 89°40'20" East parallel with and 50.00 feet southerly of the North Line of said Lot 4, Section 1 a distance of 973.93 feet to the Northeast corner of Government Lot 4, Section 1;

thence South 00°21'28" West along the East line of said Lot 4, Section 1 a distance of 875.00 feet;

thence North 89°40'20" West a distance of 1,259.05 feet to the easterly right-of-way line of US Highway 95;

thence North 02°52'58" East along said easterly right-of-way of US Highway 95 a distance of 46.07 feet;

thence South 89°40'20" East a distance of 45.87 feet;

thence South 83°57'44" East a distance of 60.31 feet;

thence South 89°40'20" East a distance of 132.65 feet to the beginning of a curve, concave northwesterly having a radial bearing of South 00°19'40" West;

Thence along said curve, concave northwesterly of radius 45.00 feet through a central angle of 90°00'00" an arc distance of 70.69 feet to the end of said curve;

thence North $00^{\circ}19'40''$ East a distance of 789.98 feet to the TRUE POINT OF BEGINNING,
Containing 19.8410 acres.

EXHIBIT D

AUGMENTED PUBLIC INFRASTRUCTURE IMPROVEMENTS AND AUGMENTED PUBLIC INFRASTRUCTURE IMPROVEMENTS COSTS

The following is a list and description of the proposed public improvement projects which will serve the City and the general public and are part of the General Plan but are neither required under the City's development code nor necessary in connection with the construction, development or operation of the Supercenter on the Wal-Mart Property.

