

State: Oklahoma
County: Custer
City: Clinton
Store #4662-00

CONSTRUCTION AGREEMENT
BETWEEN THE CITY OF CLINTON, OKLAHOMA AND WAL-MART

This Construction Agreement (this “Agreement”) is entered into by and between the City of Clinton, Oklahoma (the “City”), a municipal corporation existing under the laws of the State of Oklahoma, and Wal-Mart Real Estate Business Trust (“Wal-Mart”), a Delaware Statutory Trust.

WHEREAS, Wal-Mart intends to purchase a tract of land, which it proposes to develop in the corporate limits of the City, north of Chapman Road and south of Interstate Highway 40, more particularly described on Exhibit A attached hereto (the “Property”), and to construct a Wal-Mart Supercenter thereupon;

WHEREAS, the City believes that it would be in the best interest of the traveling public and the citizens of the City: (i) to construct the proposed frontage road to Interstate Highway 40 between Red Wheat Street and Neptune Drive; (ii) to construct a road running north and south to connect the proposed frontage road to Chapman Road; (iii) to construct a waterline along the proposed frontage road to Interstate Highway 40 between Red Wheat Street and Neptune Drive; and (iv) to use its best efforts to coordinate with Federal, State and County governmental entities to make significant improvements to Chapman Road, which is located south of the Property.

NOW THEREFORE, the City and Wal-Mart, in consideration of the terms, covenants and conditions herein set forth, hereby agree as follows:

1. Frontage Road Projects to be Constructed by the City. The City, in accordance with the laws of the State of Oklahoma, has planned and engineered, and will obtain bids, contract for, administer the contracts for, inspect, permit and construct the frontage road to Interstate Highway 40 between Red Wheat Street and Neptune Drive (the “Frontage Road”), the proposed road from the Frontage

Road to Chapman Road (the “N-S Road”), and the waterline along the frontage road to Interstate Highway 40 (the “Waterline”) The Waterline shall be designed of sufficient size and capacity to serve a proposed Wal-Mart Supercenter. The scope of work to be performed by the City in connection with such construction is depicted on the Site Map attached hereto as Exhibit B. All of the work to be performed by the City with respect to the construction of the Frontage Road, the N-S Road, and the Waterline is hereinafter referred to as the “Frontage Road Projects.” All applicable inspections and testing of the Frontage Road Projects shall be conducted by the City pursuant to State and Federal regulations. Except as set forth in Section 9 below, the City shall be responsible for obtaining all rights of way necessary for the construction of the Frontage Road Projects.

2. Chapman Road Project. The City agrees to use its best efforts to coordinate with Federal, State and County governmental entities to significantly improve Chapman Road.
3. Delivery of Plans for the Frontage Road Projects. The City agrees to produce detailed plans for the work to be performed in connection with the Frontage Road Projects within thirty (30) days after Wal-Mart notifies the City that it intends to go out to bid on the Supercenter. The City shall deliver two sets of the Frontage Road Projects plans to Wal-Mart for its review, approval and coordination with the planned Supercenter. The City and Wal-Mart further agree to coordinate all plans, construction and other work undertaken in connection with the Frontage Road Projects in order to ensure that such construction and other work will cause as minimal interference as possible with Wal-Mart’s construction and operation of its planned Supercenter.
4. Funds for Frontage Road Projects. The City hereby represents and warrants to Wal-Mart that the City has sufficient funds available to pay for the costs of the

Frontage Road Projects. Wal-Mart shall have no liability to participate in or share in the costs of the Frontage Road Projects. The City represents and warrants that the estimated costs of each of the Frontage Road Projects is as follows:

Frontage Road - \$ _____
N-S Road - \$ _____
Waterline - \$ _____

and that at least \$ _____ is in the Economic Development Fund in the Industrial Authority as of June 1, 2008. The City will provide a surety letter to Wal-Mart confirming that the City has enough money set aside in its Economic Development Fund to cover the costs of engineering, construction, inspection and related costs for the Frontage Road Projects at the time of execution of this Agreement and at any time thereafter upon request by Wal-Mart.

5. Timeframes and Self-Help Remedy. The City shall commence the Frontage Road Projects within five (5) days of receipt of Wal-Mart's Notice to Proceed and Notice of Intent to begin construction of Wal-Mart's proposed Supercenter. The City agrees that all construction and other work to be performed in connection with each of the following Frontage Road Projects shall be completed and operational in the following number of days after receipt of such notice:

Frontage Road - 180 days
N-S Road - 60 days
Waterline - 30 days

The parties agree that the Waterline must be completed for Wal-Mart to undertake its construction and that the base of the N-S Road must be completed to the satisfaction of Wal-Mart's engineer, SMC Consulting Engineers, P.C., of Oklahoma City, Oklahoma ("SMC") to be used as construction access to the Property. If each of the Frontage Road Projects is not completed and operational

within the number of days listed above in the good faith opinion of SMC, then Wal-Mart shall have the right, at its sole option, at any time thereafter and upon ten (10) days' written notice to the City, to enter upon the Property and areas of each of the Frontage Road Projects which are not completed and operational and perform such portion of the uncompleted work as pertains to or is necessary in Wal-Mart's sole discretion for Wal-Mart to construct and open its Supercenter on the Property (the "Self Help Work"). Nothing contained herein shall in any way be construed as requiring Wal-Mart to undertake or complete any element of the Self Help Work. In the event that Wal-Mart exercises its right to undertake the Self Help Work, the City agrees that it shall reimburse Wal-Mart, within forty-five (45) days after receipt of Wal-Mart's invoice(s), for Wal-Mart's actual costs incurred in connection with the Self Help Work together with an administrative and mobilization expense equal to fifteen percent (15%) of all such costs.

6. Wal-Mart's Ownership as Contingency to Performance. Wal-Mart agrees that the City's duty to perform any and all of the obligations contained within the terms and provisions of this Agreement is contingent upon the acquisition of fee title ownership to the Property by Wal-Mart for the purpose of the construction of a Wal-Mart Supercenter thereon and the delivery of a Notice to Proceed and Notice of Intent to begin construction, and that if Wal-Mart fails to so acquire ownership to the Property and begin construction of a Supercenter thereon, then the City's duty to perform any obligation under the terms and provisions of this Agreement shall become null, void and unenforceable.
7. No Covenant to Commence Construction or Operate a Business. The City hereby acknowledges that Wal-Mart, as of the date hereof, does not own fee title to the Property, and the City has executed this Agreement in order to induce Wal-Mart to close the acquisition of the Property. The City further agrees that none of the

obligations of Wal-Mart set forth herein shall be binding against Wal-Mart until and unless Wal-Mart acquires fee title to the Property and begins construction of a Supercenter thereon. Notwithstanding anything to the contrary contained herein, the City agrees that the Property may be used for any lawful purpose. Notwithstanding anything to the contrary contained herein, it is expressly agreed that if Wal-Mart decides to purchase the Property, nothing contained in this Agreement shall be construed to contain a covenant, either expressed or implied, to either commence the construction of a building or the operation of a business or thereafter continuously operate a business by Wal-Mart on the Property. The City recognizes and agrees that Wal-Mart may, at Wal-Mart's sole discretion, decide not to construct a building or operate a business on the Property or cease the operation of its business on the Property; and the City hereby waives any legal action for damages or for equitable relief resulting from any such actions.

8. Temporary Construction Easement. Wal-Mart agrees, at the appropriate time, upon request by the City, to grant a Temporary Construction Easement to the City, for the City to construct the Frontage Road Projects. Such Temporary Construction Easement shall cover the property more particularly described on Exhibit C attached hereto.
9. Roadway Dedication. Provided that Wal-Mart acquires ownership of the Property and commences construction of a building on the Property, Wal-Mart agrees to dedicate to the City at no cost to the City property along the northern frontage of the Property for the Frontage Road, and the City agrees to accept such dedication.
10. No Joint Venture. This Agreement is not intended and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association as between the City and Wal-Mart nor between the City and any officer, employee, contractor or representative of Wal-Mart. No joint

employment is intended or created by this Agreement for any purpose. The City agrees to so inform its employees, agents, contractors and subcontractors who are involved in the implementation of or construction under this Agreement.

11. Indemnification. The City agrees to indemnify, defend (at Wal-Mart's option), and hold harmless Wal-Mart, its respective employees, officers, agents, representatives, contractors and subcontractors from and against any and all liabilities, damages, injuries (including death), property damage (including loss of use), claims, liens, judgments, costs, expenses, suits, actions, or proceedings and reasonable attorney's fees, and actual damages of any kind or nature, arising out of or in connection with any aspect of the acts, omissions, negligence or willful misconduct of the City, its employees, officers, agents, representatives, contractors or subcontractors, or the City's performance or failure to perform under the terms and conditions of this Agreement, to the extent allowed by the Oklahoma Governmental Tort Claims Act. Such indemnification, hold harmless and defense obligation shall exclude only such liability actions as arise directly out of the negligence or willful misconduct of Wal-Mart, its employees, officers, agents, representatives, contractors or subcontractors. The indemnification and defense obligations set forth herein shall survive the termination of this Agreement.
12. Default. If the City defaults in the performance of any provision contained herein, Wal-Mart shall have, in addition to the "self help" remedy set forth in Section 5 above, all other remedies available at law or equity, including, without limitation, the remedy of specific performance. No remedy shall exclude any other remedy. All remedies shall be cumulative.

13. Notices. All notices and communications required or permitted to be given hereunder shall be in writing and hand delivered or mailed by Federal Express, Airborne Express, or similar overnight delivery service, addressed as follows:

If to the City:

The City of Clinton
Attention: Grayson Bottom
City Manager
415 Gary Blvd.
Clinton, OK 73601

With a copy to:

Ryan A. Meacham
City Attorney
City of Clinton
525 South 30th
Clinton, OK 73601

If to Wal-Mart:

Wal-Mart Real Estate Business Trust
Attention: Hunter Hart
(Store No. 4662-00)
2001 S.E. 10th Street
Bentonville, Arkansas 72716-0550

With a copy to:

Wal-Mart Real Estate Business Trust
Attention: Gregory Tesoro
(Store No. 4662-00)
2001 S.E. 10th Street
Bentonville, Arkansas 72716-0550

With a copy to:

Conner & Winters, LLP
4000 One Williams Center
Tulsa, Oklahoma 74172-0148
Attention: Beverly K. Smith
or Elizabeth G. Zeiders

Notice shall be deemed to have been given upon receipt or refusal of receipt.

14. Construed Under Oklahoma Law. This Agreement shall be construed under the laws of the State of Oklahoma.
15. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto.
16. Execution in Counterparts. This Agreement may be executed in any number of identical counterparts, each of which for all purposes shall be deemed an original, and all of which shall constitute collectively one agreement.

17. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Neither party will assign this Agreement or any interest herein without the express written consent of the other party; provided however, that such consent shall not be unreasonably withheld with respect to assignments to Wal-Mart's affiliated or subsidiary companies.
18. Agreement Severable. The provisions of this Agreement shall be deemed severable. If any part of this Agreement shall be held invalid, illegal or unenforceable, the remainder shall remain in full force and effect, and such invalid, illegal or unenforceable provision shall be reformed in order to give maximum legal effect to the intention of the parties as expressed therein.
19. Authorization. Wal-Mart represents, covenants and warrants that the making and execution of this Agreement and all other documents and instruments required or related hereunder have been fully authorized by the necessary action of Wal-Mart and are valid, binding and enforceable obligations of Wal-Mart in accordance with their respective terms. The City represents, covenants and warrants that the making and execution of this Agreement and all other documents and instruments required or related hereunder have been fully authorized by the necessary organizational action of the City and are valid, binding and enforceable obligations of the City in accordance with their respective terms.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the dates hereinafter set forth.

Approved as to form and legality:

Ryan A. Meacham, City Attorney

CITY OF CLINTON, OKLAHOMA

Date: _____, 2008

City Clerk

By: _____
Mayor

WAL-MART REAL ESTATE BUSINESS
TRUST, a Delaware Statutory Trust

Date: _____, 2008

By: _____
Name: Shannon Letts
Title: Regional Vice President

EXHIBIT A

The Property

A tract of land lying in the South Half of Section 22, Township 12 North, Range 17 West, I.M., Custer County, Oklahoma, more particularly described as follows:

BEGINNING at the Southwest Corner of the Southeast Quarter;

THENCE North 89°39'29" West, along the South line of said South Half, a distance of 60.19 feet;

THENCE North 00°38'02" East, parallel with the West line of said Southeast Quarter, a distance of 924.12 feet;

THENCE South 89°21'58" East a distance of 60.20 feet, to a point on the West line of said Southeast Quarter;

THENCE North 47°23'50" East a distance of 302.17 feet, to a point on the Southerly Right of Way line of Interstate No. 40;

THENCE North 77°20'17" East, along said Right of Way line, a distance of 412.46 feet;

THENCE South 12°39'43" East a distance of 231.40 feet;

THENCE South 00°38'02" West, parallel with the West line of said Southeast quarter, a distance of 994.65 feet, to a point on the South line of said Southeast Quarter;

THENCE North 89°51'35" West, along said South line, a distance of 674.79 feet to the POINT OF BEGINNING.

Said tract contains 811,997 square feet or 18.6409 acres more or less.

EXHIBIT B

Site Map (showing scope of work for Frontage Road Projects)

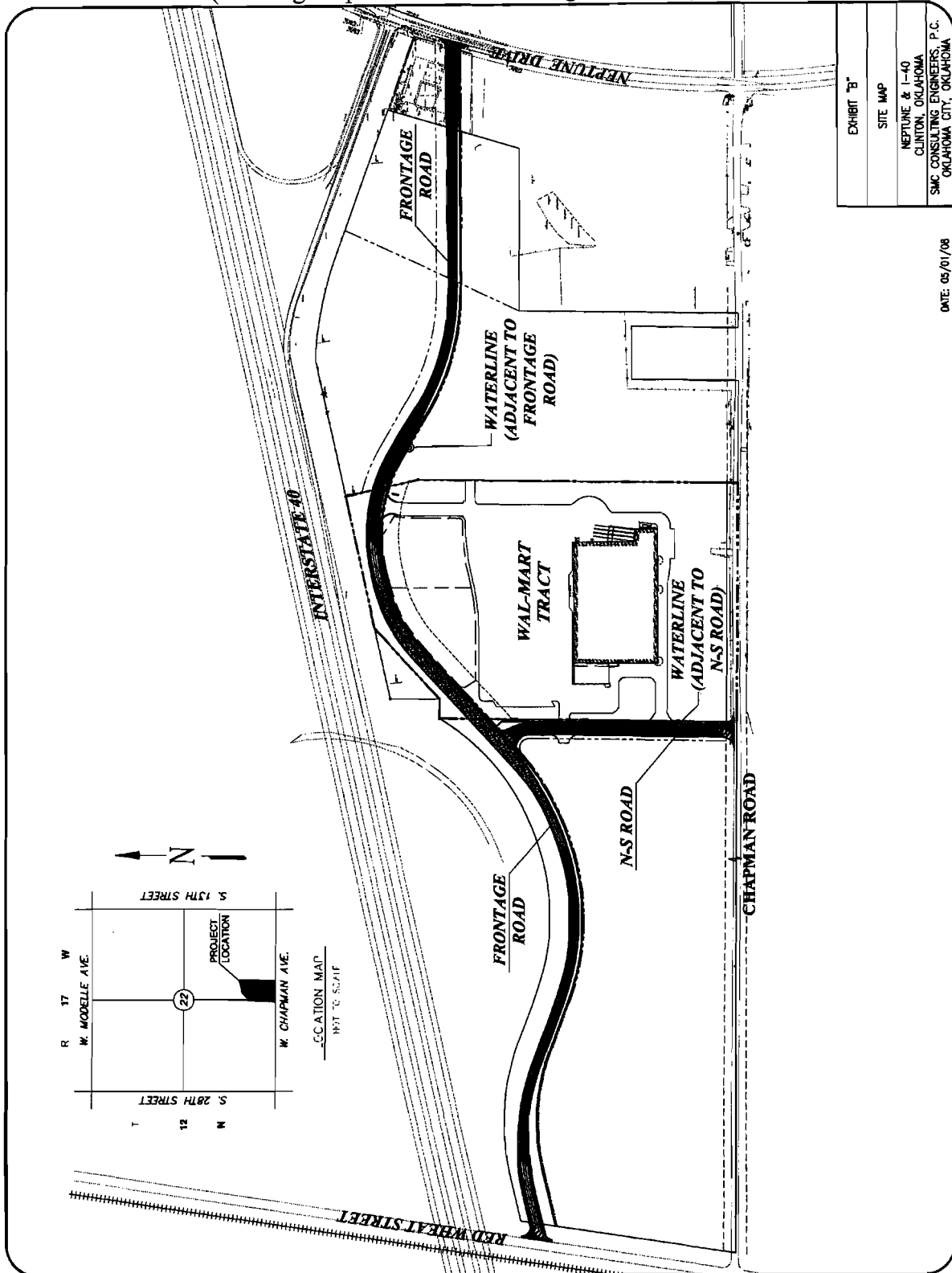


EXHIBIT "B"
SITE MAP
NEPTUNE & I-40 CLINTON, OKLAHOMA
SMC CONSULTING ENGINEERS, P.C. OKLAHOMA CITY, OKLAHOMA

DATE: 05/01/08

EXHIBIT C (1 of 2)

Temporary Construction Easement
Legal Description

May 1, 2008

A tract of land lying in the South Half of Section 22, Township 12 North, Range 17 West, I.M., Custer County, Oklahoma, more particularly described as follows:

COMMENCING at the Southwest Corner of the Southeast Quarter;

THENCE North 89°39'29" West, along the South line of said South Half, a distance of 60.19 feet;

THENCE North 00°38'02" East, parallel with the West line of said Southeast Quarter, a distance of 697.63 feet to the POINT OF BEGINNING;

THENCE continuing North 00°38'02" East, parallel with the West line of said Southeast Quarter, a distance of 226.49 feet;

THENCE South 89°21'58" East a distance of 60.20 feet, to a point on the West line of said Southeast Quarter;

THENCE North 47°23'50" East a distance of 302.17 feet, to a point on the Southerly Right of Way line of Interstate No. 40;

THENCE North 77°20'17" East, along said Right of Way line, a distance of 412.46 feet;

THENCE South 12°39'43" East a distance of 202.62 feet to a point of non-tangent curvature;

THENCE northwesterly along a curve to the left, having a radius of 420.00 feet (said curve being subtended by a chord bearing North 84°52'41" West a chord distance of 255.93 feet) an arc length of 260.07 feet;

THENCE South 77°22'58" West a distance of 24.18 feet to a curve to the left;

THENCE southwesterly along a curve to the left, having a radius of 420.00 feet (said curve being subtended by a chord bearing South 62°23'24" West a chord distance of 217.31 feet) an arc length of 219.81 feet;

THENCE South 47°23'50" West a distance of 354.45 feet to the POINT OF BEGINNING.

Said tract contains 110,923 square feet or 2.5464 acres more or less.

