

LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made between the City of Othello, 500 East Main Street, Othello Washington, a municipal corporation of the State of Washington (Grantor), and Wal-Mart Stores, Inc., a Delaware Corporation, and affiliates, subsidiaries or parent entity of Wal-Mart Stores Inc., 2001 Southeast 10th Street, Bentonville, Arkansas 72712-6489 (Grantee). (name and address)

RECITALS

1. Grantor is a municipal corporation organized as a non-charter code city and as such is the entity in possession and control of public right of way within the corporate limits of the City of Othello.
2. Grantee wishes to occupy the public right way for purposes related to the Grantee's operations.
3. Grantees use of Grantors property, shall be limited to use of the portion and specific areas designated in writing by the Grantor for a definite period of time.

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The parties therefore agree as follows:

1. **Grant of License To Use and Consideration Therefor.**

Area of Occupancy: Grantor grants to Grantee a limited License to use the following described portions and specific areas of the public right of way controlled by Grantor: Commencing at the north east section corner of section 2, township 15 north, range 29 east, thence about 300 feet east along the section line; thence about 16 feet south to the location of an existing City of Othello sanitary sewer manhole, being the true point of beginning of this license; thence following a line being approximately parallel to and 16 feet south of the section line in an easterly direction for approximately 625 feet to the endpoint; thus describing the location of a private sewer pipe.

Type of Occupation: The sole purpose of occupying this right of way described above is: The grantor may construct, repair, maintain and/or replace a four inch pressure sewer pipe buried at this location. Grantee shall repair or replace improvement existing within this license area or adjacent thereto, if damaged either by the operation of the pressure sewer pipe or by construction, repair, maintenance and/or replacement of the sewer line.

Consideration: Grantee shall pay to the Grantor the amount of \$ 50.00 per year (period) for the duration of the License. Initial payment is due upon acceptance of this agreement and subsequently on or before January 15th of each year after the first full year that the License is in effect. Failure to pay within ten days after first notice shall terminates this agreement.

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2. **Scope of License.** The license is granted for the sole purpose described previous and Grantees occupation of the right of way shall comply with the following:

- Grantee shall comply with all applicable regulations, ordinances, resolution, and laws regarding the use of Grantor's property, including any regulations, regarding surface mining operations and rock crushing and those relating to emissions, noise, dust, surface and ground water issues.
- Grantee shall provide Grantor access to the license area in a timely manner after reasonable notice.
- The license premises shall be returned to Grantor, within 30 days after termination of this license, in a Grantor approved condition (written consent required), approximately equal to that condition existing prior to this use by Grantee. Grantor agrees that an approved condition may include abandonment of the sewer line in place provided the line is flushed of contaminates and plugged to prevent transmission of fluids between Grantee and Grantor properties.

License area is currently the site of Main Street, Othello, Wa. This street is built to high volume, heavy load standards and is in good, serviceable condition.

- Grantee shall comply with the following requirements:
 1. Within the duration of the License, a report about the then current use and condition of the license area may be requested by the Grantor and shall be provided by the Grantee upon reasonable request by the Grantor, not to exceed a frequency of once in each year. Report shall be addressed to the City Administrator and delivered to 500 East Main Street, Othello, Washington.

3. **Term of License.** The License shall continue for 30 year(s) from the date hereof. This license may be terminated by either party thirty days after written notice delivered to the address first entered above.

4. **Extent of Grantee's Interest.** This License is a grant to use Grantor's property for a specific use only, and does not constitute an interest in land. This License is not inheritable, assignable, nor transferable and is personal to the Grantee.

5. **Insurance and Indemnification.** The Grantee shall maintain throughout the term of this License Agreement liability insurance coverage for any liability or expense, including, but not limited to property damage and personal and bodily injury. The minimum amount of such insurance shall be \$1,000,000 (one million dollars). A copy of such insurance attached hereto and marked as Exhibit A. The Grantor shall be named as an additionally insured on such policies as respects the uses and responsibilities described herein. The insurance policy shall provide for coverage not only of the property, but also to the use of the property. The policy(s) shall stipulate that the Grantor shall be notified in writing, prior to cancellation of said policies. Alternate methods of insurance may be accepted at the sole discretion of the Grantor.

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Grantor will accept as an alternate Grantee self insurance provided that such insurance indemnifies the Grantor as prescribed herein and provided that Grantor maintains a net worth of not less than one hundred million dollars and provided that the Grantee shall provide Grantor upon reasonable request the following documentation: most current Independent Auditor's Report of Grantee's Financial Statement.

The Grantee shall defend, indemnify and hold harmless Grantor, its officers, employees, officials, and successors and assigns, from and against any and all liability, loss, damage, expense, injury, action and claims to the extent asserted or arising directly or indirectly on account of or out of acts or omissions of Grantee, its agents, contractors, employees, licensees or invitees in the exercise of the rights granted in this License.

6. **Governing Law and Venue.** This License Agreement shall be governed by and construed in accordance with the laws of the State of Washington, and any litigation arising out of this License Agreement shall be in U.S. District Court for Eastern District Eight, Washington.

7. **Entire Agreement.** This License Agreement is the complete and exclusive agreement between the parties, which supersedes all proposals or prior oral agreements, and all other communications between them relating to the Grantor's property. Amendments or modifications to this Agreement shall only be effective if they are in writing and signed by both parties.

8. **Attorney's Fees and Costs.** In the event of any action by Grantor or Grantee brought to interpret this Agreement or to enforce any of the provisions herein, then the unsuccessful party in such action shall pay to the prevailing party a reasonable attorney's fee and costs fixed by the Court, including attorney's fees and costs on appeal, if such be had.

In the event one party is required to expend fees on an attorney's services because of a breach or default by the other party, then the breaching/defaulting party shall pay to the other party the actual attorney's fees incurred as a result of that breach and/or default, provided, however, that the defaulting/breaching party be given thirty (30) days' prior written notice of the breach and/or default so that it may have a reasonable opportunity to cure the breach and/or default before attorney's fees are incurred.

DATED this 24 day of AUGUST, 2000.

City of Othello, Grantor:

By: _____

Title: City Administrator

Grantee:

By: Robert M. Fisher

Assistant Vice President

Title: _____



AGREEMENT BETWEEN CITY OF OTHELLO, WASHINGTON, AND
WAL-MART STORES, INC DEFINING THE RELATIONSHIP OF THE
PARTIES AS RESPECTS THE RELOCATION OF A USBR FACILITY

1. **Preamble.** THIS AGREEMENT is made and entered into this day by and between The City of Othello, a municipal corporation of the State of Washington, herein known as "City," and Wal-Mart Stores, Inc., a Delaware Corporation, and affiliates, subsidiaries or parent entity of Wal-Mart Stores, Inc., 2001 Southeast 10th Street, Bentonville, Arkansas 72712-6489, a corporation registered to do business in Washington, herein known as "Owner."

2. **Recitals.**

2.1 City has imposed on the Owner certain obligations related to the platting of certain real property located within City's limits.

2.2 The United States Bureau of Reclamation (USBR) requires the execution by the City and Owner of a Relocation Agreement and Consent to Use in connection with a portion of the platting obligations of the Owner.

2.3 The City and Owner wish to clarify their relationship as respects work done pursuant to the USBR Relocation Agreement and Consent to Use to avoid any later dispute between them.

3. **Agreement.** In consideration of the mutual benefits and covenants described herein, the parties agree as follows:

3.1 **Purpose.** The purpose of this Agreement is to clarify the relationship between the City and the Owner as respects any work done by the Owner pursuant to the USBR Relocation Agreement and Consent to Use which both parties have signed or will sign.

3.2 **Owner's Obligations.** The City and the Owner agree that all work required to be done and all guarantees required with respect to such work as relates to the USBR Relocation Agreement and Consent to Use will be the sole obligations of the Owner. The Owner will not make demands upon or look to the City or makes claims against the City as a result of the work the Owner is required to perform under the USBR Relocation Agreement and Consent to Use. The term City includes all the City's officials, employees and agents acting in their official capacities.

Executed this 24 day of August, 2000.

CITY

By: _____

Its: City Administrator

OWNER

By: Robert M. Keadel

Its: _____

Assistant Vice President

