



September 8, 2010

Joshua Rogers  
Director of Real Estate  
Wal-Mart Stores, Inc  
1275 Washington St., Suite 106  
Tempe, AZ 85281

Mr. Rogers:

On behalf of the City of Commerce City, Colorado, I am writing to request an official response from you and your company providing a date certain that the proposed Wal-Mart on 104th Avenue and Tower Road will break ground at this location.

I assume you are aware that building plans for the 104th/Tower store were submitted to Commerce City by Kimley-Horn and Associates on Wal-Mart's behalf on May 5, 2010. The Commerce City Building and Planning Divisions reviewed those plans and submitted comments back to Kimley-Horn less than a week after being received. Since that time, we have repeatedly contacted representatives at Kimley-Horn, Josh Phair in your office, and Christopher Burton at Legend Retail Group for an official response from Wal-Mart on when construction will begin. Your representatives are not returning our emails or phone calls. As a result of this lack of response from your staff and consultants, the City requests a formal response from you and Wal-Mart establishing a date upon which you plan to break ground and start construction.

Furthermore, we understand that a typical new Wal-Mart takes a full year to construct. We thereby request a formal acknowledgement from you and Wal-Mart that if you do not break ground by January 1, 2011, Wal-Mart will not meet the January 1, 2012, opening deadline found within the Incentive Agreement dated February 14, 2007, and therefore the City will be under no obligation to provide Wal-Mart the incentives outlined within that agreement. I have attached a copy of the Incentive Agreement for your review.

I am sure you understand the City's need during these difficult economic times for certainty regarding the development of such a significant retail business. The citizens of Commerce City, in Reunion specifically, have been living in this area for almost a decade without easy access to necessary goods and services, and I believe they deserve a response. Forgive my impatience, but I think that the residents of the Northern Range have been given mixed messages long enough and therefore your answer to this simple request is warranted immediately. I look forward to receiving your written response within ten (10) business days of the date of this letter.

Sincerely,

Jerry Flannery  
City Manager

cc: Bob Gehler, City Attorney  
Brittany Morris, Economic Development Director  
John Kilrow, Shea Properties  
Tom Halter, Gust Rosenfeld P.L.C.



**CITY OF COMMERCE CITY/WAL-MART REAL ESTATE BUSINESS TRUST  
 CONTRACT FOR DEVELOPMENT INCENTIVES IN  
 COMMERCE CITY, COLORADO**

THIS CONTRACT is made and entered into effective the 14<sup>th</sup> day of February, 2007 by and between the City of Commerce City, Colorado, a municipal corporation, 5291 E. 60<sup>th</sup> Avenue, Commerce City, Colorado 80022 ("Commerce City"), and Wal-Mart Real Estate Business Trust, a Delaware business trust and Wal-Mart Stores, Inc., a Delaware corporation, each of which is duly authorized to do business in the State of Colorado, 2001 SE 10<sup>th</sup> Street, Bentonville, AR 72716-0550 (collectively "Wal-Mart") and collectively referred to herein as "the Parties".

**RECITALS:**

WHEREAS, Wal-Mart may (but is not obligated to) construct capital improvements to include a retail store of not less than 190,000 square feet (the "Wal-Mart Store") on an approximate 27.7-acre site at 104<sup>th</sup> Avenue and E-470 Highway in Commerce City, Colorado (the "Capital Improvements"); and

WHEREAS, Commerce City has agreed to provide incentives to Wal-Mart as follows contingent upon construction of the Capital Improvements as herein provided:

A. Incentives herein referred to as "One-Time Reimbursement Incentives:"

|    |                              |                |
|----|------------------------------|----------------|
| 1. | Permit and plan check fees - | \$100,000      |
| 2. | Use Tax -                    | <u>336,000</u> |
|    | Total                        | \$436,000      |

B. Sales Tax Reimbursement Incentives:

|    |   |                  |
|----|---|------------------|
| 5. | Infrastructure and landscaping incentives | 600,000          |
| 6. | Capital Improvement incentives            | <u>1,005,000</u> |
|    | Total                                     | 1,605,000        |

TOTAL ECONOMIC INCENTIVE PACKAGE: \$2,041,000

; and

WHEREAS, Commerce City finds and determines that construction of the Capital Improvements and the One-Time Reimbursement Incentives and the Sales Tax Reimbursement Incentives herein authorized will be for the public benefit and in the public interest of the citizens of Commerce City; and

WHEREAS, Shea Homes Limited Partnership ("Shea Homes") is the owner of the property on which the Capital Improvements are to be constructed and, pursuant to the Consolidated Development Agreement for Buffalo Hills Ranch PUD dated December 17, 2001

and recorded January 23, 2002 at Reception No. CO917475 in the real estate records of Adams County, Colorado (the "Consolidated Development Agreement"), is entitled to receive 33-1/3% of any sales tax collected within or in connection with the Buffalo Hills Ranch PUD; and

NOW, THEREFORE, in consideration of the mutual promises and conditions herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Conditions for Payment of the Incentives.

A. Reimbursement of the One-Time Reimbursement Incentives and the Sales Tax Reimbursement Incentives shall be made to Wal-Mart only in the event the Wal-Mart Store is constructed and open for business to the public by January 1, 2012.

B. Reimbursement of the One-Time Reimbursement Incentives and the Sales Tax Reimbursement Incentives by Commerce City shall be subject to confirmation by Commerce City that the Capital Improvements have been constructed and completed in accord with the building codes and land use ordinances and plans approved by Commerce City.

2. One-Time Reimbursement Incentives to Wal-Mart. Commerce City agrees to provide the One-Time Reimbursement Incentives to Wal-Mart within thirty (30) days after payment by Wal-Mart to Commerce City of the \$436,000 described above.

3. Sales Tax Reimbursement Incentives to Wal-Mart. Commerce City agrees to provide the Sales Tax Reimbursement Incentives to Wal-Mart in the form of rebate of sales taxes collected by Wal-Mart from its customers. The City shall collect the same sales tax revenue generated by the business activity conducted at the Wal-Mart Store that Commerce City would otherwise have collected pursuant to the Code of Ordinances of Commerce City. The City shall then rebate to Wal-Mart (by check on a monthly basis) 66-2/3% of said sales tax revenues until the Sales Tax Reimbursement Incentive has been paid in full.

4. Verification of Retail Sales. Commerce City shall have the right, upon reasonable notice, to audit the financial records of Wal-Mart to confirm the liability of Wal-Mart to Commerce City for payment of sales and use taxes pursuant to the Commerce City Sales and Use Tax Code. The audit right granted for purposes of this Contract is expressly limited to the right to audit Wal-Mart's financial records applicable to sales and use tax generated at the Wal-Mart Store.

5. No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement shall be strictly reserved to the Parties and nothing contained in this Contract shall give or allow any such claim or right of action by any other or third person on this Contract. It is the express intention of the Parties that any person other than Commerce City and Wal-Mart shall be deemed to be only an incidental beneficiary under this Contract.

6. Authority. Each Party represents and warrants that it has taken all actions that are necessary or that are required by its procedures, bylaws or applicable law, to legally authorize the undersigned signatory to execute this Contract on behalf of the Parties and to bind the Parties to its terms.

7. Venue and Applicable Law. Any action arising out of this Contract shall be brought in the Adams County District Court and the laws of the State of Colorado shall govern the interpretation and enforcement of this Contract.

8. No Partnership or Agency. Notwithstanding any language in this Contract or any representation or warranty to the contrary, neither Commerce City nor Wal-Mart shall be deemed or constitute a partner or joint venturer of the other. Neither Commerce City nor Wal-Mart shall be the agent of the other and any actions taken pursuant to this Contract shall be deemed actions as an independent contractor of the other.

9. Waiver. No waiver by either of the Parties of any covenant, term, condition or agreement contained herein shall be deemed or construed as a waiver of any other covenant, term, condition or agreement nor shall a waiver of any breach hereof be deemed to constitute a waiver of any subsequent breach whether of the same or of a different provision of this Contract.

10. Notices. A notice, demand or other communication under this Contract by either Party to the other shall be in writing and sufficiently given if delivered in person or if it is delivered by Certified Mail, Return Receipt Requested, postage prepaid, or by facsimile transmission with a confirmation thereof as follows:

a. In the case of Commerce City:

City Manager  
City of Commerce City  
5291 E. 60<sup>th</sup> Avenue  
Commerce City, CO 80022

b. In the case of Wal-Mart:

Wal-Mart Stores, Inc.  
2001 SE 10<sup>th</sup> Street  
Bentonville, AR 72716-0550  
Attention: Realty Management, State of Colorado

c. The foregoing addresses may be changed by written notice given to the addressee.

11. Integrated Contract. This Contract is intended as the complete integration of all understandings between the Parties concerning the subject matter hereof. No prior or contemporaneous addition, deletion or other amendment hereto shall have any force or effect whatsoever unless in writing.

12. Legal Fees and Court Costs. In the event of any default by either Party in the performance of its obligations pursuant to this Contract, the non-defaulting party shall be paid by the party in default an amount for reasonable legal fees and court costs incurred by the non-defaulting party as a result of such default.

13. Successors and Assigns. This Contract shall inure to the benefit of and be binding upon the Parties, their successors and assigns.

IN WITNESS WHEREOF, Commerce City and Wal-Mart have caused this Contract to be duly executed as of the day first above written.

COMMERCE CITY:

CITY OF COMMERCE CITY, COLORADO,  
A Municipal Corporation

BY:   
Gregg Clements, Acting City Manager

WAL-MART:

WAL-MART REAL ESTATE BUSINESS TRUST

BY: Shannon Feltz 2.14.07  
Signature

Shannon Feltz, Regional Vice President  
Printed Name and Title

WAL-MART STORES, INC.

BY: Shannon Feltz 2.14.07  
Signature

Shannon Feltz, Regional Vice President  
Printed Name and Title

Approved as to legal terms only

by Mary Keenan  
Wal-Mart Legal Team

Date: 2/14/07