

**N. SERVITE DRIVE TRAFFIC DIVERTER
LANDSCAPE MAINTENANCE AGREEMENT**

This agreement by and between the Wal-Mart Corporation, hereinafter known as “Wal-Mart”, and the City of Milwaukee, a municipal corporation, hereinafter known as the “City”.

Witnesseth

Whereas, Wal-Mart has developed a retail store at 8700 N. Servite Drive, Milwaukee; and

Whereas, Development of this store necessitated several alterations to nearby roadways including the construction of a traffic diverter on N. Servite Drive immediately south of the main entrance to the new store; and

Whereas, The purpose of the traffic diverter is to direct traffic leaving the store northward to the intersection of N. Servite Drive and W. Brown Deer Road; and

Whereas, The plan for the traffic diverter is attached hereto as Exhibit “A”; and

Whereas, The plan will result in an area of approximately square feet of unpaved surface in the N. Servite Drive right-of-way; and

Whereas, This new unpaved area could be attractively landscaped to create an amenity for the community; and

Whereas, Wal-Mart has offered to landscape and maintain the unpaved portion of the new traffic diverter at its expense; and

Whereas, The City will install the traffic diverter and be responsible for its maintenance, exclusive of landscaping; and

Whereas, The City and Wal-Mart shall agree upon a mutually acceptable plan for the landscape area; and

Whereas, The terms and conditions of the arrangement described above have been codified in a Maintenance Agreement between the City and Wal-Mart as outlined more fully hereinafter;

Now, therefore, in consideration of these premises and the mutual benefits herein accruing and for other good and valuable considerations;

It is acknowledged and agreed by and between the parties hereto that

1. The traffic diverter will be located in the N. Servite Drive public street right-of-way and the City shall accept all potential liability therefore except as specifically noted herein.
2. The City and Wal-Mart shall mutually agree upon a plan for landscaping and associated improvements. The City's Department of Public Works shall collaborate with Wal-Mart in preparing the plan.
3. The City shall be solely responsible for installation of any irrigation system improvements shown on the agreed upon plan while Wal-Mart shall be responsible for the cost of same.
4. Except for any potential irrigation system improvements, Wal-Mart shall be solely responsible for implementation of the landscape improvement plan including preparation and importation as needed of soil and mulch; construction of any retaining walls or other structural improvements; planting of plant materials; and installation of special lighting (if any).
5. After initial development of the landscape area, Wal-Mart shall be responsible for maintenance of the improvements it installed. Such maintenance shall include, but need not be limited to, periodic mulching, pruning, and fertilizing; annual and seasonal plantings; weeding; replacement of dead plant materials; keeping the area free from trash and litter; mowing of any lawn areas; and repair as needed of any special lighting.
6. No signing shall be allowed in the traffic diverter with the exception of normal traffic control signing installed and maintained by the City.
7. If an irrigation system is installed in the traffic diverter, the City shall turn it on in the spring and turn it off in the fall consistent with the City's operating schedule for boulevard medians. Plant materials selected should be those likely to thrive given the anticipated schedule of water availability. The City shall not charge Wal-Mart for the cost of any water used to irrigate the traffic diverter.
8. If an irrigation system is installed, Wal-Mart shall be responsible for repair of any damage to it unless such damage is clearly the fault of the City.
9. It is understood and acknowledged that Wal-Mart may hire a professional service to perform any or all of its obligations outlined herein.
10. Should Wal-Mart not maintain the landscaping to a standard generally consistent with the standard the City employs for its boulevard medians, the City shall notify Wal-Mart in writing of the maintenance deficiencies. If Wal-Mart does not rectify the maintenance deficiencies within the time allotted in the written notification (which shall not be less than 14 days), the City may take over

maintenance of the landscaping and may make any changes thereto it chooses in order to minimize the level of maintenance required.

11. Notwithstanding the notification provisions of point number 10 above, the City any make immediate repairs or alterations to the landscaping if the Commissioner of Public Works determines that conditions present a threat to public safety. The cost of such emergency repairs or alterations shall be charged to Wal-Mart if the required repairs or alterations are the result of Wal-Mart's failure to fulfill its obligations under this agreement.
12. Wal-Mart shall hold the City harmless and shall indemnify the City against all claims that may arise as a result of Wal-Mart's or Wal-Mart's agents' failure to perform the maintenance obligations as herein described.
13. It is hereby acknowledged and agreed that Wal-Mart may, upon the approval of the Commissioner of Public Works, assign its rights and obligations under this agreement to another entity. The Commissioner's approval shall not be unreasonably withheld.
14. This agreement shall have an indefinite term. The agreement may be terminated by either party for any reason and at any time upon issuance of a 30 day advance notice. However, unless Wal-Mart fails to fulfill its obligations hereunder, the City shall not terminate the agreement for a period of at least three (3) years from the effective date thereof. Upon termination of the agreement, the City may make alterations to the traffic diverter landscaping and perform maintenance as it deems appropriate.

FOR WAL-MART

Signature _____ Date _____

Print Name _____

Title _____

FOR THE CITY OF MILWAUKEE

Signature _____ Date _____

Print Name _____

Title _____