

Santa Maria (Orcutt), California  
Store No. 4576-00

Project: Union Valley Parkway  
Folio: 003618  
APN: 107-250-011, -012, &-013

**REAL PROPERTY PURCHASE CONTRACT  
AND ESCROW INSTRUCTIONS**

THIS REAL PROPERTY PURCHASE CONTRACT AND ESCROW INSTRUCTIONS (this "Contract") is made as of the \_\_\_\_ day of July, 2012, by and between the COUNTY of SANTA BARBARA, hereinafter referred to as "COUNTY," and WALMART STORES, INC., a Delaware Corporation, hereinafter referred to as "OWNER," with reference to the following:

**RECITALS**

WHEREAS, OWNER is the owner of that certain real property in the unincorporated area of the County of Santa Barbara, State of California, located on the east side of Orcutt Road and Highway 135, south of Foster Road and west of Hummel Drive, and more particularly described as County Assessor's Parcel Nos. 107-250-011, 107-250-012, and 107-250-013, hereinafter referred to as "Property"; and

WHEREAS, COUNTY has designed the plans and specifications for roadway improvements, repair, erosion protection, and related improvements (hereinafter "County Improvements") on a portion of the Property in connection with the proposed Union Valley Parkway Phase III Project, hereinafter referred to as "Project"; and

WHEREAS, in connection with the Project, COUNTY desires to purchase a certain portion of the Property (the "Road Area") in fee title for the present and future roadway construction, reconstruction, operation, repair, and maintenance of improvements required by the COUNTY for public roadway purposes; and

WHEREAS, COUNTY also recognizes and desires to reimburse OWNER for the loss, replacement, and moving of any improvements within the Road Area which may be affected by the Project.

WHEREAS, COUNTY further agrees to issue four (4) Certificates of Compliance and related Voluntary Merger document(s) to OWNER on the remaining portions of Property not affected by the OWNER'S conveyance of fee interest of Road Area to the COUNTY and to undertake certain other matters, all as fully set forth herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of which, and the other considerations hereinafter set forth, it is mutually agreed and understood as follows:

1. **SALE AND PURCHASE PRICE:** COUNTY hereby agrees to purchase, and OWNER hereby agrees to sell, to COUNTY fee title to the Road Area to be used for public road purposes which includes all of the County Improvements in, on, over, under, along, and across a portion of Assessor's Parcel Nos. 107-250-011, 107-250-012, and 107-250-013. The Road Area is legally described and shown on Exhibits "A" and "B" attached to the Grant Deed which is attached hereto and incorporated herein as Exhibit "C".

OWNER hereby grants to COUNTY, its authorized agents, contractors, and employees immediate possession and use of the Road Area upon execution of this Contract. This immediate possession and use includes the right to enter upon and move workers, equipment, and materials in, on, over, under, along, and across the Road Area which may be necessary due to said Project. In connection with such right of immediate possession, COUNTY agrees that the provisions of Section 4 (No Owner Liability), Section 5 (Indemnity), Section 7 (Insurance), and Section 10 (Compliance with Laws) of that certain Right of Entry Agreement dated December 27, 2010, by and between COUNTY and OWNER pertaining to the Property (the "Right of Entry Agreement"), shall apply during the period from the date hereof to the Close of Escrow, all of which are hereby incorporated herein by this reference, notwithstanding that the Right of Entry Agreement expired by its terms on June 1, 2011.

As consideration for granting fee title to the Road Area, and for the loss, replacement, and moving of any and all improvements, COUNTY shall, as OWNER's sole remedy for the conveyance of the Road Area:

- (a) pay OWNER the total purchase price sum of ONE MILLION THREE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$1,350,000.00);
- (b) approve and record four (4) Certificates of Compliance and the associated related Voluntary Merger document(s) (collectively, the "Certificates of Compliance") in order to ensure that OWNER's four (4) remaining parcels each constitute a separate legal parcel in compliance with the California Subdivision Map Act, as shown on the map depiction in the attached Exhibit "B," and based upon legal descriptions to be prepared by OWNER ("Remaining Parcels");
- (c) quitclaim to OWNER that certain flood control easement recorded on June 20, 1973 as Instrument Number 23989 in Book 2467, Page 1280 of the Official Records ("Flood Control Easement"), pursuant to an instrument in the form attached hereto as Exhibit "D" ("Quitclaim Deed"); and
- (d) in connection with the construction of the County Improvements, install a curb cut along the realigned Orcutt Frontage Road in the general location shown on Exhibit "B."

Restoration shall be made only as expressly provided herein and the consideration includes all losses associated with improvements and/or vegetation, natural or cultivated.

The approval of funding by the City of Santa Maria City Council and the appropriation by the County Board of Supervisors is an express condition precedent to COUNTY'S duty to purchase. Notwithstanding any other provision in this Contract, COUNTY at COUNTY'S option may extend escrow up to sixty (60) days to permit the funding approval and appropriation by COUNTY. In the event COUNTY should decide to exercise this option, COUNTY shall do so in writing with copies to the Escrow Officer and to the OWNER.

COUNTY shall request withdrawal of existing total purchase price sum of ONE MILLION THREE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$1,350,000.00) in the State Condemnation Fund to be deposited into escrow.

At least one (1) day prior to the close of escrow, COUNTY shall deposit with the Escrow Officer (as hereinafter defined) the purchase price together with an amount sufficient to pay for COUNTY'S share of prorations, fees, costs, and expenses to be paid by COUNTY pursuant to this Contract.

**2. ESCROW AND FEES:**

a. Escrow shall be opened at Chicago Title Company, 3700 State Street, Suite 100, Santa Barbara, CA 93454 ("Escrow Officer"), with escrow instructions to be based upon the terms and conditions set forth herein. This Contract shall become a part of the Escrow and shall constitute the basic instructions of COUNTY and OWNER to the Escrow Officer. However, COUNTY and OWNER agree to execute such additional instructions and documents as are reasonably required to complete the closing of the transaction contemplated herein in accordance with the terms and conditions of this Contract. On behalf of the COUNTY, the Director of the General Services Department, or designee, shall execute the necessary escrow instructions and/or additional instructions, which may be required to complete the closing of this real property transaction. In case of conflict between this Contract and any of said escrow documents, the terms of this Contract shall govern.

COUNTY shall open Escrow and deliver this fully-executed Contract and an executed Quitclaim Deed to the Escrow Officer within two (2) weeks of the execution hereof by COUNTY. OWNER shall deliver an executed Grant Deed to the Escrow Officer within two (2) weeks of the execution hereof by COUNTY. The date of closing shall be the later of (i) sixty (60) days from the date of opening Escrow, or (ii) ten (10) days after the issuance of the Certificates of Compliance by COUNTY, unless otherwise mutually agreed to in writing by the parties. The "Close of Escrow" is defined as:

- (A) the recordation of the Grant Deed, which shall vest fee title in the Road Area to the COUNTY;
- (B) the concurrent recordation of the Certificates of Compliance;
- (C) the concurrent recordation of the Quitclaim Deed; and
- (D) the payment to OWNER of the purchase price stated in Section 1 herein above.

In the event the Close of Escrow does not occur on or before January 15, 2013, either OWNER or COUNTY shall have the right to terminate this Agreement, in which event neither party shall have any further rights or obligations hereunder.

b. The escrow fees shall be paid as follows:

1. COUNTY shall pay all escrow and recording fees as well as the documentary stamp tax, if any, incurred in the conveyance of the Road Area to COUNTY pursuant to the execution of this Contract. If a policy of title insurance is desired by COUNTY, the premium charged therefor shall be paid by COUNTY. Said escrow and recording charges shall include any partial reconveyance and subordination fees as may be required.

2. OWNER shall pay all escrow fees in the event that this escrow is canceled by OWNER prior to the conveyance of the Road Area to COUNTY.

3. COUNTY shall pay all escrow fees in the event that this escrow is canceled by COUNTY prior to the conveyance of the Road Area to COUNTY.

c. The Escrow Officer shall be obligated as follows:

1. To release to COUNTY a certified copy of the Grant Deed, as executed by OWNER, prior to the Close of Escrow in order to receive "acceptance" by COUNTY'S Board of Supervisors of the subject Road Area; and

2. To obtain reconveyances from any holders of liens against the Road Area; and

3. To record concurrently with the Santa Barbara County Recorder's Office (A) the executed Grant Deed, (B) the Certificates of Compliance as approved by the County Surveyor, and (C) the executed Quitclaim Deed; and deliver the recorded Grant Deed to COUNTY and deliver the recorded Certificates of Compliance and Quitclaim Deed to OWNER upon the Close of Escrow.

4. To deliver to OWNER at the Close of Escrow the purchase price as stated in Section 1, herein above.

3. **TITLE AND DEED:** Title is to be free of liens, encumbrances, restrictions, rights to possession or claims to possession, rights, and conditions (recorded and/or unrecorded) or known to OWNER, except:

a. Covenants, conditions, restrictions, and reservations of record approved by COUNTY.

b. Easements or rights of way over the Road Area for public or quasi-public utility or public street purposes, if any, approved by COUNTY.

c. Exceptions 1 through 6 inclusive contained in a Preliminary Title Report No. 0933000327-DL, issued by Chicago Title Company, with an effective date of July 31, 2009.

d. Property taxes for the fiscal year in which this escrow closes shall be satisfied in a manner consistent with California Revenue and Taxation Code Section 4986.(a)(6). Escrow Officer is authorized to pay all delinquent taxes from the amount shown in Section 1, SALE AND PURCHASE PRICE, herein above. OWNER understands that pursuant to Section 4986.(a)(6), OWNER may receive after the Close of Escrow, either, 1) an unsecured property tax bill from the COUNTY Treasurer-Tax Collector for real property taxes that may be due; or 2) a COUNTY warrant from the COUNTY Auditor-Controller to reimburse OWNER for any prepaid property taxes that may be canceled.

The COUNTY shall pay for the cost of a Preliminary Title Report covering said Property. COUNTY shall have the right to review the Preliminary Title Report and approve or disapprove in writing, those items disclosed in the Preliminary Title Report prior to the Close of Escrow. OWNER shall have the right (but not the obligation) within thirty (30) days from receipt of notice of disapproval to correct the condition(s) that adversely affect said Property as determined by COUNTY in its discretion. If OWNER does not correct any such objectionable conditions, COUNTY may, as its sole remedy, terminate this Contract.

Escrow shall be automatically extended for thirty (30) days where there is a need for OWNER to correct an adverse condition unless OWNER refuses to correct such condition or unless correction requires more than thirty (30) days in which case escrow shall be extended to the date of refusal or date of correction respectively.

**4. COUNTY'S CONDITIONS PRECEDENT:** COUNTY'S obligation to perform under this Contract and the Close of Escrow shall be subject to and contingent upon satisfaction of each of the following conditions precedent prior to the Close of Escrow:

a. COUNTY shall complete, consider, and approve the requirements of Government Code Section 65402, and California Environmental Quality Act (CEQA) environmental review process. In the event these requirements are not completed within forty-five (45) days of the opening of escrow, COUNTY shall have the right to extend the escrow period until such completion.

b. The COUNTY'S Board of Supervisors shall have authorized the COUNTY'S purchase of the Road Area, and issuance of the Certificates of Compliance.

In the event that these conditions precedent are not satisfied, COUNTY may terminate this Contract with no further liability.

**5. COUNTY OBLIGATIONS:** The COUNTY shall be obligated as follows:

a. COUNTY shall relocate and reconnect any public utilities serving OWNER'S remaining Property if said relocation becomes necessary because of said Project.

b. COUNTY shall repair any damage done to OWNER'S improvements or other property by COUNTY during said Project.

c. COUNTY shall coordinate with OWNER to deliver to escrow the

Certificates of Compliance.

- d. COUNTY shall coordinate with OWNER on the installation of a curb cut along the realigned Orcutt Frontage Road, in the general location shown on Exhibit "B."
- e. COUNTY shall quitclaim to OWNER the Flood Control Easement pursuant to the Quitclaim Deed.
- f. COUNTY shall timely deliver to Escrow Officer all documents and purchase price required to be deposited by COUNTY under this Contract. The purchase price sum shall be withdrawn from the State Condemnation Fund, in accordance with Section 1 above.

COUNTY's obligations hereunder shall survive the Close of Escrow.

**6. OWNER'S REPRESENTATION AND WARRANTIES:**

- a. There is no suit, action, arbitration, legal, administrative, or other proceeding or inquiry pending against the Road Area or pending against OWNER which could affect OWNER'S title of the Road Area, or subject an owner of the Road Area to liability.
- b. There are not attachments, execution proceeding, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceeding pending against the OWNER restricting the Close of Escrow.
- c. OWNER will not subject the Road Area to any additional liens, encumbrances, covenants, conditions, easements, rights of way or similar matters after the execution of this Contract that will not be eliminated prior to the Close of Escrow.
- d. OWNER hereby agrees to indemnify, protect, hold harmless, and defend COUNTY, its Board of Supervisors, officers, employees, and agents ("Indemnified Parties"), from and against any and all actual losses, expenses, damages and liabilities suffered by the Indemnified Parties arising from the existence of hazardous substance (as defined by CERCLA) on the Road Area as of the Close of Escrow (collectively, "Liabilities"), after asserting on COUNTY'S behalf any applicable defenses to such Liabilities, and excepting therefrom Liabilities arising out of the negligent acts or omissions of the Indemnified Parties. COUNTY ACKNOWLEDGES that oil storage tank bottom material (i.e. asphaltic sand or tar sand) exists in the Road Area, which will need to be removed as part of the COUNTY's construction in the Road Area ("Tar Sand"). COUNTY acknowledges and agrees that OWNER shall have no obligation to the Indemnified Parties as the result of the existence of such Tar Sand, and that this indemnity shall not apply to any Liabilities arising out of the existence or removal of such Tar Sand, all of which shall be undertaken by COUNTY, at COUNTY's sole cost. OWNER'S duty to indemnify COUNTY shall survive the Close of Escrow.

**7. OWNER'S OBLIGATIONS:**

- a. OWNER shall be obligated to remove any and all personal property within the Road Area within thirty (30) days from execution of this Contract.

b. OWNER shall be obligated to clear any and all tenant or lessee interests in the Road Area whether the interest is recorded or unrecorded prior to Close of Escrow.

c. OWNER shall ensure that the Road Area is free and clear of any and all liens and encumbrances including the removal of financial indebtedness (excepting taxes, which will be prorated to the Close of Escrow). Any and all monies payable to OWNER under this Contract shall, upon demand, be made payable to the mortgagees and beneficiaries of any notes secured by mortgages or deeds of trust up to and including the total amount of unpaid principal and interest together with penalty, if any, for payment in full in advance of maturity. Escrow Officer shall obtain from said mortgagees or beneficiaries good and sufficient receipt showing said monies credited against the indebtedness secured by said mortgages or deeds of trust. Escrow Officer shall obtain any and all executed full reconveyances, partial reconveyances, subordinations and/or releases of liens that may have been given on said Road Area covered by deeds of trust.

d. OWNER shall deliver to escrow an executed Grant Deed conveying fee interest to the Road Area set forth in the attached Exhibit "A", which is the subject of this transaction. The Grant Deed shall be vested in "County of Santa Barbara".

e. OWNER shall pay, if and when the same are due, all payments on any encumbrances or assessments presently affecting the Road Area and any and all taxes, assessments, and levies in respect to the Road Area prior to the Close of Escrow. COUNTY acknowledges and agrees that there shall be no special assessment against the Property that relate to the period prior to the Close of Escrow as a result of the Project.

f. OWNER shall not record any covenants, conditions or restrictions against the Property and Road Area, including without limitation any application for annexation or development of the Property until Close of Escrow.

g. OWNER shall coordinate with COUNTY to deliver the Certificates of Compliance to Escrow. OWNER shall take the lead and pay the cost associated with the submittal of an application for the Certificates of Compliance and Voluntary Merger processes through the County Surveyor's Office, and the preparation and cost of a land surveyor providing four (4) legal descriptions for the Remaining Parcels, all of which costs, inclusive of all applicable fees, are estimated to total approximately Ten Thousand and 00/100 Dollars (\$10,000.00).

h. OWNER shall be responsible to pay for any and all cost identified as OWNER'S costs as contained in this Contract. OWNER'S costs associated with this Contract shall be paid by OWNER at the Close of Escrow from the purchase price as stated in Section 1, herein above.

i. OWNER shall timely deliver to Escrow Officer all documents required to be deposited by OWNER under this Contract.

8. **TERMINATION:** COUNTY shall have the right to terminate this Contract at

any time prior to the Close of Escrow. OWNER shall have the right to terminate this Contract only following COUNTY'S failure to cure a material breach following ten (10) days written notice.

9. **WAIVER**: No waiver of any of the provisions of this Contract shall be deemed or shall constitute a waiver of any other provisions of this Contract, whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

10. **ENTIRE CONTRACT**: Time is of the essence in this Contract. This Contract supersedes all prior agreements, understandings, negotiations, and discussions of the parties, whether express or implied, and there are no warranties, representations, covenants, or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein. The parties hereto have set forth the whole of their agreement. The performance of this Contract constitutes the entire consideration for the Road Area and shall relieve COUNTY of all further obligation or claims on this account. No amendment, supplement, modification, waiver, or termination of this Contract shall be binding unless executed in writing by both parties.

11. **EMINENT DOMAIN ACTION**: Parties agree that the pending Eminent Domain litigation in the Santa Barbara County Superior Court (Case No. 1391920, County of Santa Barbara v. Wal-Mart Stores, Inc.) will be dismissed upon Close of Escrow on this purchase and each party shall be responsible for their own costs and attorneys' fees in that litigation.

In the event OWNER is unable to deliver title in a reasonable time under the terms of the Contract, this Contract shall constitute a stipulation which may be filed in said proceedings as final and conclusive evidence of the total amount of damages for the taking and the terms thereof, including all of the items listed in Section 1260.230 of the Code of Civil Procedure, regarding said property rights

12. **CONSTRUCTION**: The parties agree that each party and its respective counsel have reviewed and approved this Contract to the extent that each party in its sole discretion has desired, and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Contract. The terms and provisions of this Contract embody the parties' mutual intent, and this Contract shall not be construed more liberally in favor of, nor more strictly against, any party hereto.

13. **SECTION HEADINGS**: The headings of the several sections, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction, or effect hereof.

14. **REAL PROPERTY DOCUMENTS**: Each party agrees to execute and deliver any instrument or to perform any act reasonably necessary to carry out the provisions of this Contract.

15. **CONDITIONS ARE COVENANTS**: Each of the conditions to the Close of Escrow set forth herein shall be deemed to be covenants and the conditions required to be satisfied herein.



16. **SUCCESSORS AND ASSIGNS:** The rights under this Contract shall also extend to and bind the heirs, devisees, executors, administrators, successors, and assigns of the parties.

17. **CERTIFICATION OF SIGNATORY(IES):** OWNER represents and warrants that it is the owner of the Property or is authorized by the OWNER of the Property to execute this Contract and that no additional signatures are required to carry out the duties contemplated herein.

18. **CONTRACT APPROVAL:** This Contract is subject to the approval of the COUNTY Board of Supervisors. Execution of this Contract by the chairperson, or designee, of the Board of Supervisors shall evidence said approval by the Board.

19. **SURVIVAL OF REPRESENTATIONS:** The representations of each of the parties and their executory covenants shall survive the Close of Escrow and shall not be merged in the deeds delivered to and accepted by the COUNTY.

20. **EXECUTION IN COUNTERPARTS:** The Contract may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many or them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

21. **FACSIMILE SIGNATURES:** In the event that the parties hereto utilize facsimile transmitted documents which include signatures, such documents shall be accepted as if they bore original signatures provided that documents bearing ORIGINAL SIGNATURES are provided within seventy-two (72) hours of transmission of the facsimile signature, except that funds shall not be released upon a facsimile signature nor shall facsimile signed documents be accepted for recordation by the Clerk Recorder of the County of Santa Barbara.

Project: Union Valley Parkway Phase III  
APN: 107-250-011,-012 & -013

**IN WITNESS WHEREOF**, COUNTY and OWNER have executed this Real Property Purchase Contract and Escrow Instructions by the respective authorized officers as set forth below to be effective as of the date executed by the COUNTY.

"COUNTY"  
COUNTY OF SANTA BARBARA

ATTEST:  
CHANDRA L. WALLAR  
CLERK OF THE BOARD

By: \_\_\_\_\_  
Doreen Farr, Chair  
Board of Supervisors

By: \_\_\_\_\_  
Deputy

Dated: \_\_\_\_\_

APPROVED:

By: \_\_\_\_\_  
Scott McGolpin, Director  
Public Works Department

APPROVED AS TO FORM:  
DENNIS A. MARSHALL  
COUNTY COUNSEL

APPROVED AS TO ACCOUNTING FORM:  
ROBERT W. GEIS, CPA  
AUDITOR-CONTROLLER

By \_\_\_\_\_  
Kevin E. Ready, Sr.  
Senior Deputy County Counsel

By: \_\_\_\_\_  
Auditor-Controller  
Gregory Eric Levin  
Advanced and Specialty Accounting

APPROVED:

APPROVED:

By \_\_\_\_\_  
Ronn Carlentine,  
Real Property Manager

By: \_\_\_\_\_  
Ray Aromatorio, ARM, AIC  
Risk Program Administrator

**(signature page continued)**

Project: Union Valley Parkway Phase III

APN: 107-250-011,-012,-013

"OWNER"

WALMART STORES, INC.

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_