

RESOLUTION NO. 2118
AS AMENDED ON NOVEMBER 14, 2008

A RESOLUTION OF THE CITY OF SALISBURY AUTHORIZING THE MAYOR OF THE CITY OF SALISBURY TO SIGN A "LAW ENFORCEMENT SERVICES AGREEMENT" BETWEEN WAL-MART AND THE CITY OF SALISBURY.

WHEREAS, the City of Salisbury and Wal-Mart find that the performance of this agreement is in the best interest of both parties, that the undertaking of the agreement will benefit the public; and

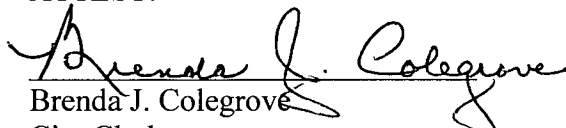
WHEREAS, the City of Salisbury shall provide law enforcement services to Wal-Mart at the Wal-Mart Supercenter Store located at 2702 N. Salisbury Blvd., subject to the terms and conditions set forth in the attached agreement; and


WHEREAS, Wal-Mart shall pay an agreed cost to the City of Salisbury for law enforcement services provided; and

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF SALISBURY, MARYLAND, that the Mayor of the City of Salisbury is authorized to sign a "Law Enforcement Services Agreement" between Wal-Mart and the City of Salisbury, contingent upon written verification to the City of legal signing authority on the part of Owner.

THE ABOVE RESOLUTION was introduced at the regular meeting of the Council of the City of Salisbury held on this 14th day of November, 2011, and is to become effective immediately upon adoption.

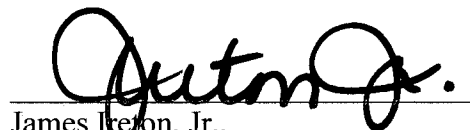
ATTEST:


Brenda J. Colegrove
City Clerk


Terry E. Cohen
Council President

APPROVED BY ME THIS

15th day of November 2011


James Iteon, Jr.,
Mayor of the City of Salisbury

Law Enforcement Services Agreement

This Law Enforcement Services Agreement (referred to herein as the "Agreement"), is made as of this 15 day of November, 2011, by and between the Wal-Mart Supercenter Store, (referred to herein as "Manager") and the City of Salisbury Police Department (referred to herein as "Agency"), based upon the following facts and circumstances.

- A. Manager is the managing agent on behalf of the owner(s) of the Wal-Mart Supercenter Store located at 2702 North Salisbury Boulevard, Salisbury, Maryland and commonly known as Wal-Mart Supercenter (referred to herein as Wal-Mart); and
- B. Manager desires to retain Agency to perform Law Enforcement Services (as defined below) at the Wal-Mart pursuant to the terms of this Agreement. In consideration of the fees to be paid by Manager to Agency and the covenants to be performed by each of the parties hereunder. Manager and Agency do hereby enter into this Agreement upon the terms and conditions hereinafter set forth.

1. **Law Enforcement Services.** Subject to the terms and conditions set forth in this Agreement, Agency hereby agrees to provide Manager with uniformed officers ("Officers") to perform law enforcement functions at the Wal-Mart (referred to herein as the "Law Enforcement Services") at the times and for the amounts set forth and further described in **Exhibit A**, attached hereto and incorporated herein by this reference, which exhibit may be modified by the parties from time to time to meet the specific need of Wal-Mart. Agency's primary responsibility is to provide Officers to protect life and property, to keep the peace, and to enforce local, state and federal laws. Officers working at Wal-Mart are subject to Agency's policies and procedures and, as such, are required to observe Agency's standards of conduct and uniform and shall not be required to perform tasks that are outside the routine services provided by Agency to the general public. Discipline for Officers will be initiated by Agency only and Manger shall have no liability with respect to any disciplinary action taken against any Officer. It is understood by the parties that Agency and its Officers do not owe a greater level of police services or protection under this Agreement than is owed to the public generally.
2. **Term.** The term of this Agreement shall commence upon the execution date of this Agreement ("Commencement Date") and shall expire on March 31, 2012, unless sooner terminated as provided for herein. Either party may terminate this Agreement at any time and without cause upon thirty (30) days' prior written notice. Agency may, at its discretion, cancel any or all contracted Law Enforcement Services at any time due to unavailability of Officers or emergencies.
3. **Payment for Services.** Manager shall pay to Agency, within thirty (30) days of receipt of an invoice from Agency, the agreed upon costs (as set forth in **Exhibit A**) to Agency for providing the Law Enforcement Services at Wal-Mart. Agency requires at least 48 hours advance notification in order to cancel any request to provide Law Enforcement Services. If such cancellation notice is not provided to Agency, Manager shall pay to Agency the required minimum for each Officer.

4. **Indemnity/Release.** Manager agrees to indemnify, defend and hold Agency harmless from and against injury, loss, damage or liability (including reasonable attorneys' fees and court costs) which may be imposed upon or incurred by or asserted against Agency occurring during the term of this Agreement arising from Agency's performance of the Law Enforcement Services under this Agreement, except for liability, loss, claims, costs or damages caused by the negligence or willful misconduct of Agency and/or its Officers. Agency hereby releases Manager, the owner(s) of Wal-Mart and their respective agents, employees, officers, directors, shareholders and partners (collectively the "Releasees") from, and shall not hold Releasees liable for, any liability for personal injury, consequential damages, loss of income or damage to or loss of property, or loss of use of any property, as a result of Agency providing the Law Enforcement Services hereunder, except for liability, loss, claims, costs or damages caused by the gross negligence or willful misconduct of the Releasees.

5. **Notices.** All notices, demands, requests and other communications hereunder shall be in writing either personally delivered or mailed via certified mail, return receipt requested, or sent by reputable overnight courier to the following addresses:

If to Manger, to: Wal-Mart Supercenter Store
2702 North Salisbury Boulevard
Salisbury, Maryland 21801
Attn: Manager

If to Agency, to: City of Salisbury Police Department
699 West Salisbury Parkway
Salisbury, Maryland 21801
Attn: Captain Paul Simon

or to such other address as either party may direct by notice given to the other as hereinabove provided. Notices will be deemed to have been given upon either receipt or rejection. For notices to be delivered to Manager, a copy shall also be sent to the manager for Wal-Mart.

6. **Miscellaneous.**

A.If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

B.This Agreement shall be governed by and construed in accordance with the laws of the state in which Wal-Mart is located.

C.In the event of any dispute or legal proceeding between the parties arising out of or relating to this Agreement or its breach, the prevailing party shall be entitled to recover from the non-prevailing party all fees, costs and expenses, including but not limited to attorneys' and expert witness fees, incurred in connection with such dispute or legal proceeding.

- D. Except as the parties may specify in writing, neither party shall have the authority, express or implied, to act on behalf of the other party in any capacity whatsoever as an agent. Neither party shall have any authority, express or implied, pursuant to this Agreement to bind the other to any obligation whatsoever.
- E. Agency's relationship to Manager shall be that of an independent contractor. All Officers furnished by Agency will be employees of Agency only, and will at all times be subject to the direct supervision and control of Agency. Agency shall have the sole responsibility of paying the salaries, statutory benefits (including Worker's Compensation), insurance, taxes (including, but not limited to, Federal Social Security Taxes and Federal and State Unemployment Taxes) and all other expenses relating to each such employee of Agency, as applicable.
- F. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent or any other right thereunder.
- G. This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations and other agreements. There are no representations or understanding of any kind not set forth herein. Any amendment to this Agreement must be in writing and executed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date aforesaid.

MANAGER: Wal-Mart Supercenter Store

By: MONICA MULLINS

Name: Monica Mullins

Title: VICE PRESIDENT A.P. + SAFETY

AGENCY: City of Salisbury - Police Department

By: James O. Trotter, Mayor

Name: James Trotter, Jr.

Title: Mayor, City of Salisbury, MD.

EXHIBIT A

Internal Services will set-up a separate account for police contractual overtime and will manage funds by pay period. The City of Salisbury will bill Wal-Mart. The following will be taken into consideration for billing purposes:

- Officer's overtime rate of pay (this will vary due to different salary amounts).
- Law Enforcement Officers Pension System (LEOPS) 30.03% based on officer's pay rate.
- FICA at 7.65% based on officer's pay rate.
- Workman's Compensation Insurance at 4.5% based on officer's pay rate.

These percentages as listed above will fluctuate due to increases in: officers pay, cost of LEOPS, FICA and Workman's Compensation Insurance. The City of Salisbury will give Wal-Mart management as much notice as possible when such increases are forthcoming.

Wal-Mart overtime assignments will be offered to lower ranking Police Officers and Corporals first and if the assignments are not filled within a reasonable period of time, they will be opened up to more senior officers holding the ranks Sergeants and Lieutenants. Officers above the rank of Lieutenant will not be permitted to work this assignment.

Example #1: An Officer with the rank of Officer with an overtime rate of \$25.95 per/hr. plus 42.18% = Total \$36.89 per/hr. Wal-Mart would pay this amount per/hrs. to the City.

Example #2: An officer with the rank of Sergeant with an overtime rate of \$41.98 per/hr. plus 42.18% = Total: \$59.68 per/hr. Wal-Mart would pay this amount per/hrs. to the City.

Example #3: An officer with the rank of Lieutenant with an overtime rate of \$50.10 per/hr. plus 42.18% = Total: \$71.23 per/hr. Wal-Mart would pay this amount per/hr. to the City.

Officers working this overtime will complete Form SPD-025, (Request for Overtime Pay) the same as other overtime assignments. The officer will have the Wal-Mart management sign the overtime request to verify hours worked.

The officer will forward the overtime request, via chain of command, to the Administrative Commander or designee for processing. The Administrative Commander or designee will monitor funds paid for authorized overtime and coordinate with Internal Services concerning quality control of this account.

A Request for Secondary Employment form will need to be completed and approved prior to officers working this assignment. Officers will wear the patrol officer's uniform of the day along with authorized equipment including a patrol vehicle.

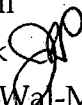
The Salisbury Police Department will not restrict the rank or pay classification of officers desiring to work this assignment. A minimum of two (2) officers must be scheduled at any given time for officer safety purposes except for exterior traffic control as requested.

INTER

OFFICE

MEMO

Office of the Mayor

To: City Council
From: John R. Pick 
Subject: MOU with Wal-Mart
Date: November 14, 2011

Mr. Muir Boda, Asset Protection Manager for the Wal-Mart Supercenter Store located on North Salisbury Boulevard, has reinstated his request for an MOU with the City for the provision of uniformed Police Officers to provide store security on Thanksgiving Day and the day after Thanksgiving. Mr. Boda withdrew his earlier request on the basis that Wal-Mart would be able to work out an arrangement with the Sheriff's Department; however, they were unable to reach agreement.

We request that the Council add this item to your agenda for this evening's meeting. I apologize for the lack of advance notice; however, I did not receive confirmation of this request from Mr. Boda until 3:00 this afternoon. Mr. Boda stated that his supervisor, Mr. Chad R. Markley, Market Asset Protection Manager, will sign this agreement on behalf of Wal-Mart if the City Council authorizes the Mayor to sign on behalf of the City. This agreement is identical to the agreement that was approved by the City for the provision of security services to The Centre at Salisbury several years ago except for the changes to customize it for Wal-Mart.

Attached is a copy of the proposed agreement, the resolution for consideration by the Council and an e-mail from Paul Wilber addressing the question of the authority of Mr. Markley to sign this agreement on behalf of Wal-Mart.

cc: Mayor Ireton
Lore' Chambers
Chief Barbara Duncan
Paul Wilber
Brenda Colegrove

John Pick

From: Paul D. Wilber [pwilber@webbnetlaw.com]
Sent: Monday, November 14, 2011 4:39 PM
To: John Pick
Subject: Wal-Mart

John:

Attached is a revised Law Enforcement Services Agreement. The City needs to verify the correct name of the owner. I have adjusted the agreement to reflect "Owner" as opposed to "Manager" in the Mall Agreement. The balance of the language is the same as the Mall Agreement.

Mr. Mackley has indicated to the City that he is the Market Account Protection Manager with full authority to sign this agreement. Legally, he has apparent authority. The City could request that Wal-Mart acknowledge in writing that he is vested with actual authority to sign this agreement. PDW

Paul D. Wilber, Esquire

Webb, Burnett, Cornbrooks,
Wilber, Vorhis, Douse & Mason, LLP
(410) 742-3176
pwilber@webbnetlaw.com
115 Broad Street
P.O. Box 910
Salisbury, MD 21803-0910

NOTICE: THIS E-MAIL MESSAGE AND ANY ATTACHMENTS THERETO ("E-MAIL") CONTAINS INFORMATION THAT MAY BE LEGALLY PRIVILEGED, AND/OR CONFIDENTIAL UNDER LAW, AND WHICH IS INTENDED SOLELY FOR THE PERSONAL AND/OR OFFICIAL, CONFIDENTIAL USE OF THE INTENDED RECIPIENT(S) (AND THEIR AUTHORIZED AGENTS) DESIGNATED HEREINABOVE. IF YOU ARE NOT AN INTENDED RECIPIENT OF THIS E-MAIL OR AN AUTHORIZED AGENT OF AN INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT YOUR REVIEW, STORAGE, RETENTION, COPYING, DISTRIBUTION, OR DISSEMINATION OF THE CONTENTS OF THIS E-MAIL IN ANY FORM -- AND/OR YOUR TAKING ANY ACTION IN RELIANCE THEREON -- IS STRICTLY PROHIBITED AND MAY SUBJECT YOU TO SUCH CRIMINAL PENALTIES AND/OR CIVIL LIABILITY AS MAY BE PROVIDED BY LAW. IF YOU HAVE RECEIVED THIS E-MAIL IN ERROR, PLEASE IMMEDIATELY (I) RETURN TO THE SENDER THE E-MAIL MESSAGE AND ANY ATTACHMENTS THAT YOU HAVE RECEIVED BY REPLY E-MAIL, AND THEN (II) DELETE THE ORIGINAL E-MAIL MESSAGE AND YOUR REPLY FROM YOUR PERSONAL COMPUTER SYSTEM E-MAILBOX/NETWORK. THANK YOU FOR YOUR COOPERATION. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY MARTHA MINTON at (410)742-3176.

11/14/2011