

MINUTES, CITY OF ANDALUSIA COUNCIL

WALTON BUSINESS FORMS EDITION

PAGE ONE

STATE OF ALABAMA  
COUNTY OF COVINGTON

ANDALUSIA, ALABAMA  
May 19, 2005

SPECIAL COUNCIL MEETING

The City Council of the City of Andalusia, Alabama, convened in a Special Meeting on Thursday, May 19, 2005, at 9:30 a.m., in the auditorium in City Hall Building at 505 East Three Notch Street, for the purpose of discussing and voting on Resolutions 2005-15 and 2005-16. The roll was checked by City Clerk John Thompson and those present and those absent were as follows:

PRESENT:

Jerry B. Andrews, Mayor  
Bridges D. Anderson, Councilman  
Michael L. Jones, Jr., Councilman  
Andy Alexander, Councilman  
Don Cotton, Councilman  
Terry Powell, Councilman  
Tom Albritton, City Attorney

ABSENT:

None

Mayor Andrews presided at the meeting and called the meeting to order. The Mayor stated that a quorum was present and asked the Councilmembers to join in signing the following Waiver, after which the meeting would be open for business.

WAIVER OF NOTICE

We, the undersigned members of the City Council of the City of Andalusia, Alabama, do hereby waive notice of a Special Meeting of the City Council of the City of Andalusia, at 9:30 a.m., May 19, 2005 for the above purposes. Witness our hands this 19<sup>th</sup> day of May, 2005.

  
Jerry B. Andrews, Mayor

  
Bridges D. Anderson, Councilman

  
Michael L. Jones, Jr., Councilman

  
Andy Alexander, Councilman

  
Don Cotton, Councilman

  
Terry Powell, Councilman

# MINUTES, CITY OF ANDALUSIA COUNCIL

WALLER BUSINESS FORMS 89111025

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## COUNCIL DISCUSSES RESOLUTION 2005-15:

After discussion relating to Resolution No. 2005-15, indicating the City of Andalusia's desire to enter into a development agreement with Wal-Mart, Inc., Councilman Jones moved that the adoption of the resolution be delayed until the next regularly scheduled council meeting. Lacking a second, the motion failed.

CITY OF ANDALUSIA  
ANDALUSIA, ALABAMA

RESOLUTION NO. 2005-15

WHEREAS, the City of Andalusia, Alabama, recognizes the importance of economic development for the continued prosperity of Andalusia; and

WHEREAS, the City of Andalusia, Alabama desires to work with Wal-Mart Stores, East, LP a Delaware limited partnership qualified to do business in Alabama in order to facilitate the location of a Wal-Mart Supercenter within the city limits of the City of Andalusia, Alabama; and

WHEREAS, the City of Andalusia, Alabama feels that the continued prosperity of the City will be furthered by the location of a Wal-Mart Supercenter within the city limits of the City of Andalusia, Alabama to include increased sales tax revenue as well as the creation of jobs; and

WHEREAS, in order to accomplish the location of this Supercenter within the city limits of the City of Andalusia, Alabama it may be necessary for the City to enter into a Development Agreement with Wal-Mart Stores, East, LP, the Industrial Board for the City of Andalusia, Alabama, and possibly other parties, which said Agreement may provide for the development of certain roads and improvements for the benefit of Wal-Mart Stores, East, LP, and the City of Andalusia; and

WHEREAS, certain third parties have agreed to contribute to the funding of these above-referenced improvements and that fact is important to the City of Andalusia;

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The City of Andalusia, Alabama desires to enter into a Development Agreement that substantially conforms to the Agreement attached hereto as Exhibit "A" with certain exceptions as herein further resolved, although the City does not grant the authority to any individual to enter into such an agreement at this time;
2. With respect to paragraph 5.03 of said Agreement, the City resolves that in no event will it be responsible for any contribution that exceeds the amount of \$700,000.00;
3. The City reserves the right to use like-kind exchanges or City labor to satisfy its obligations under whatever Development Agreement is ultimately negotiated between the parties; and
4. Authority to enter into a Development Agreement will be granted to the Mayor upon the negotiation of a Development Agreement that is satisfactory to the governing body of the City of Andalusia, Alabama.

ADOPTED AND APPROVED by the Andalusia City Council in a public meeting on this 19<sup>th</sup> day of May, 2005.

THE CITY OF ANDALUSIA, ALABAMA

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## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is by and among THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF ANDALUSIA, ALABAMA, a public corporation under the laws of the State of Alabama (the "IDB"), the CITY OF ANDALUSIA (the "City"), a municipal corporation organized under the laws of the State of Alabama, and WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware business trust qualified to do business in Alabama ("Wal-Mart").

WHEREAS, Wal-Mart owns or is under contract to acquire those certain parcels of real property in fee simple title which are located in the City of Andalusia, Alabama, and are more particularly described on Exhibit A attached hereto, and which are situated in Covington County, Alabama (hereinafter the "Site"); and

WHEREAS, Wal-Mart intends to construct a Wal-Mart Supercenter (hereinafter referred to as "Store") on the Site; and

WHEREAS, Wal-Mart and the City desire that adjacent roads bordering the Site be improved and modified in order to facilitate traffic flow, enhance traffic safety, and to provide access to the Site, outparcels and future development; and

WHEREAS, Wal-Mart and the City seek to build a new road extending from U.S. Highway 84 (the "Bypass") to the parking lot of the Store as depicted on Exhibit B attached hereto and incorporated herein to serve the Site, outparcels and future development, and dedicate such road to the City upon its completion ("Avant Road"); and

WHEREAS, the City and Wal-Mart desire to install traffic signals (the "Traffic Signals") at the intersection of the Bypass and Avant Road, and at the intersection of a road to be constructed parallel to the western boundary of the Site connecting the Bypass and the southwest boundary of the parking lot of the Store (the "Access Road");

WHEREAS, Wal-Mart desires to construct certain storm drainage, sanitary sewer and water improvements deemed necessary to service the Store (collectively the "Utilities"); and

WHEREAS, Wal-Mart desires to construct the Road Improvements as defined herein; and

WHEREAS, the IDB is willing to reimburse Wal-Mart for the costs of constructing Avant Road, purchasing and installing the Traffic Signals (to the extent such costs are not funded or reimbursed to the City or Wal-Mart by the State of Alabama), constructing the Access Road, the Road Improvements and the Utilities; and

WHEREAS, in order to effectuate the foregoing and to set out each party's rights, responsibilities and obligations with connection thereto, the IDB, the City and Wal-Mart desire to enter into this Agreement.

## ARTICLE I.

## DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.01. Definitions. As used herein the following terms shall have the following meanings unless the context otherwise requires, and such meanings shall be equally applicable to both singular and plural forms of the terms herein defined:

"Access Road" shall mean the road for ingress and egress to be constructed roughly parallel to the western boundary of the Site which will connect the Bypass and the southwest boundary of the parking lot of the Store and provide access to outparcels and future development.

"Agreement" shall mean this Development Agreement and any amendment or modifications thereto.

"Avant Road" shall mean that certain road to be constructed upon the Site extending from the Bypass to the parking lot of the Store, the anticipated location of which is depicted on Exhibit B attached hereto and incorporated herein, which will provide access to the Site, outparcels and future development.

"City" shall mean city of Andalusia, Alabama, a municipal corporation.

"City Engineer" shall mean \_\_\_\_\_.

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"Effective Date" shall mean the \_\_\_\_ of \_\_\_\_\_, 2005.

"Engineer" shall mean Henry Engineering Associates, Inc., an Alabama corporation.

"Evidence of Indebtedness" shall mean any bonds, notes, or other obligations payable to Wal-Mart, issued by the IDB and not exceeding \_\_\_\_\_ Dollars (\$ \_\_\_\_\_ .00).

"Force Majeure" shall mean weather conditions, natural disasters, national emergencies, war, civil strife, labor strikes, work stoppages, material or transportation shortages, actions or inaction of governmental authorities, bodies or agencies, acts of terrorism, and any other cause beyond the control of the party whose performance is due, which prevent or delay a party's performance of its obligations hereunder.

"General Contractor" shall mean the contractor selected by Wal-Mart to construct the Wal-Mart Project.

"IDB" shall mean The Industrial Development Board of the City of Andalusia, Alabama, a public corporation under the laws of the State of Alabama.

"Infrastructure" shall mean, collectively, the construction and installation of the Utilities, the Traffic Signals, the Access Road, the Road Improvements, and Avant Road, as more particularly described in Exhibits B and C hereof.

"Infrastructure General Contractor" shall mean the contractor selected by Wal-Mart to construct the Infrastructure.

"Road Improvements" shall mean construction of right turn lanes and drainage improvements at the intersections of the Bypass and Avant Road and the Bypass and the Access Road.

"State" shall mean the State of Alabama.

"Store" shall mean the approximately 203,000 square feet Wal-Mart Supercenter located across from the intersection of the Bypass and Business Highway 84 in the City.

"Traffic Signals" shall mean the traffic signals to be installed at the intersection of the Bypass and Avant Road and at the intersection of the Bypass and the new road tying the western portion of the Store parking lot to the Bypass.

"Utilities" shall mean the water and sanitary sewer improvements to be located on the Site and which shall service the Store.

"Wal-Mart" shall mean Wal-Mart Real Estate Business Trust, a Delaware business trust, its successors and assigns and any surviving, resulting or transferee corporation, partnership, company, or individual.

"Wal-Mart Project" shall mean the acquisition, construction, and equipping of the Store, as more particularly described in Exhibit D attached hereto and incorporated herein.

**Section 1.02. Use of Defined Terms.** Terms defined in this Agreement shall have their defined meanings when used herein and in any documents, certificate, report or agreement furnished from time to time in connection with this Agreement unless the context otherwise requires.

**Section 1.03. Rules of Interpretation.** Unless the context clearly indicates to the contrary, the following rules shall apply to the interpretation and construction of the Agreement:

- (a) Words importing the singular number shall include the plural number and vice versa.

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## ARTICLE II

## AUTHORITY OF THE PARTIES AND SCOPE OF AGREEMENT

## Section 2.01. Authority of Parties.

A. Pursuant to Amendment 725 of the Alabama Constitution, the City and the IDB are empowered to, among other things, promote commercial development and business and to grant public moneys in connection therewith, provided that certain actions are taken prior thereto.

B. Wal-Mart has requested financial assistance for construction of the Infrastructure in order to make the Wal-Mart Project on property located within the corporate limits of the City economically feasible. The City and the IDB acknowledge and agree that such improvements would result in significant economic benefits to the City, including increased employment from the creation of construction jobs and other new non-construction jobs, increases to the tax base for ad valorem taxation, and significant increase in sales and use tax collections as well as other ancillary financial and economic development benefits, such as the potential mitigation of the condition of unemployment or underemployment in the surrounding geographical area.

C. The IDB has agreed to implement the actions contemplated by this Agreement.

D. The City has agreed to guarantee the IDB's financial obligations under this Agreement and undertake any additional actions contemplated by this Agreement pursuant to an authorizing resolution by the City Council of the City dated the      day of     , 2005, a copy of which is attached hereto as Exhibit E and incorporated herein by this reference.

## ARTICLE III

## WAL-MART'S REPRESENTATIONS

Section 3.01. Representations of Wal-Mart. Wal-Mart hereby represents, covenants and agrees as follows:

A. Wal-Mart is a Delaware limited partnership, duly organized and existing and qualified to do business in and is in good standing under the laws of the State, has full power and authority to enter into this Agreement and any other document to which it is a party and to carry out its obligations hereunder and thereunder and has duly authorized the execution and delivery of this Agreement and all other documents contemplated hereby and thereby.

B. Wal-Mart shall make a good faith effort to obtain all necessary approvals required to be obtained by Wal-Mart from federal, state and local governmental agencies in connection with Wal-Mart's acquisition and construction of the Wal-Mart Project and Wal-Mart's construction of the Infrastructure.

C. Wal-Mart has all requisite power and authority to enter into this Agreement and to carry out the terms hereof and thereof, under applicable law, and has or will have complied with all provisions of applicable law in all matters related to such actions of Wal-Mart as are contemplated by this Agreement, and this Agreement constitutes a valid and legally binding obligation of Wal-Mart.

D. The execution and delivery by Wal-Mart of this Agreement and Wal-Mart's consummation of the transactions contemplated hereby and thereby will not violate any indenture, mortgage, deed of trust or note to which Wal-Mart is a party or by which it is bound or, to Wal-Mart's knowledge, any judgment, decree, order, statute, rule or regulation applicable to Wal-Mart, and all governmental or regulatory consents, approvals, authorizations and orders applicable to Wal-Mart (excluding those which are applicable only to the other parties hereto) which are required for Wal-Mart's consummation of the transactions contemplated hereby have been or will be obtained in due course.

E. Wal-Mart has taken or will take or cause to be taken all necessary and proper action to authorize the execution, issuance and delivery hereof, and the performance of its obligations under any other instruments and documents required to be executed or delivered pursuant hereto or in connection herewith.

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F. To the best of Wal-Mart's knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or threatened against Wal-Mart, or, to the best knowledge of Wal-Mart, any basis therefor, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby or which in any way would adversely affect, with respect to Wal-Mart, the validity of this Agreement or any agreement or instrument to which Wal-Mart is a party which is used or contemplated for use in the consummation of the transactions contemplated hereby.

G. Wal-Mart presently intends to complete the Infrastructure and the Wal-Mart Project substantially as described in Exhibits C and D hereto, except to the extent delayed or prevented by Force Majeure or other factors beyond the control of Wal-Mart.

## ARTICLE IV

### CITY'S REPRESENTATIONS

Section 4.01. Representations of the City. The City makes the following representations to Wal-Mart, which representations shall survive the termination or expiration of this Agreement:

A. The City has authority to enter into this Agreement and all other documents contemplated hereby, and to carry out the terms hereof.

B. The City is a municipal corporation and a body politic. The City is in full compliance with all of the terms and conditions of this Agreement and no default hereunder has occurred and is continuing, and no event, act or omission has occurred and is continuing which, with the lapse of time, the giving of notice, or both, would constitute such a default.

C. The City has taken or caused to be taken all necessary and proper action to authorize the execution, issuance and delivery of, and the performance of its obligations under this Agreement and any and all instruments and documents required to be executed or delivered pursuant hereto or in connection herewith.

D. The execution and delivery of this Agreement and all other documents contemplated hereby and the performance by the City of its obligations hereunder and thereunder will not conflict with or constitute a breach of or default under any bond, debenture, note or other evidence of indebtedness or any contract, loan agreement or lease to which the City is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance upon any of the property or assets of the City pursuant to any other instrument other than as contemplated by this Agreement.

E. The City has authorized the execution, delivery and due performance of this Agreement and the taking of any and all action required of the City to carry out, give effect to and consummate the transactions contemplated hereby, have been taken, granted or received. This Agreement constitutes a valid and legally binding obligation of the City.

F. There is no action, suit, investigation or proceeding pending of which the City has been served notice, or to its best knowledge, threatened, against the City, before any court, arbitrator, or administrative or governmental body, or insurance underwriting agency which could reasonably be expected to materially adversely affect the ability of the City to comply with its obligations hereunder or in connection with the transactions contemplated hereby.

## ARTICLE V

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B. The IDB is a public corporation and an instrumentality of the City. The IDB is in full compliance with all of the terms and conditions of this Agreement and no default hereunder has occurred and is continuing, and no event, act or omission has occurred and is continuing which, with the lapse of time, the giving of notice, or both, would constitute such a default.

C. The IDB has taken or caused to be taken all necessary and proper action to authorize the execution, issuance and delivery of, and the performance of its obligations under this Agreement and any and all instruments and documents required to be executed or delivered pursuant hereto or in connection herewith.

D. The execution and delivery of this Agreement and all other documents contemplated hereby and the performance by the IDB of its obligations hereunder and thereunder will not conflict with or constitute a breach of or default under any bond, debenture, note or other evidence of indebtedness or any contract, loan agreement or lease to which the IDB is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance upon any of the property or assets of the IDB pursuant to any other instrument other than as contemplated by this Agreement.

E. The IDB has authorized the execution, delivery and due performance of this Agreement and the taking of any and all action required of the IDB to carry out, give effect to and consummate the transactions contemplated hereby, have been taken, granted or received. This Agreement constitutes a valid and legally binding obligation of the IDB.

F. There is no action, suit, investigation or proceeding pending of which the IDB has been served notice, or to its best knowledge, threatened, against the IDB, before any court, arbitrator, or administrative or governmental body, or insurance underwriting agency which could reasonably be expected to materially adversely affect the ability of the IDB to comply with its obligations hereunder or in connection with the transactions contemplated hereby.

## ARTICLE VI

## OBLIGATIONS

Section 6.01. Obligations of the IDB. To induce Wal-Mart to construct the Wal-Mart Project, the IDB hereby covenants that it will budget annually amounts necessary to comply with the obligations set forth in this section and do the following:

- (1) Reimburse Wal-Mart for all costs associated with services provided by the Engineer as described in subsection 6.03(1) below.
- (2) Upon completion of the Infrastructure and approval by authorized representatives of the City, which approval shall not be unreasonably withheld, delayed, or denied, reimburse Wal-Mart over a period not to exceed two (2) years from the date of dedication of Avant Road and its acceptance by the City (such date referred to herein as the "Dedication") for funds expended by Wal-Mart not to exceed Seven Hundred Thousand Dollars (\$700,000.00) for the costs of constructing the Infrastructure, including without limitation costs of warrant studies, with one-third (1/3) paid contemporaneously with the Dedication, one-third (1/3) on the first anniversary of the Dedication, and one-third (1/3) on the second anniversary of the Dedication, all of which shall be evidenced by the Evidence of Indebtedness and guaranteed by the City. No interest shall be owed on this obligation.

Section 6.02. Obligations of Wal-Mart. Wal-Mart hereby agrees to do the following:

- (1) Design and construct the Wal-Mart Project as described in Exhibit D attached hereto.
- (2) Contract for, administer the contract for, and construct the Infrastructure described in Exhibits B and C hereof. The Infrastructure will be contracted separately from the Wal-Mart Project. Wal-Mart will select a general contractor ("General Contractor") to construct the Wal-Mart Project, who will also act as Wal-Mart's representative with regard to direction of the construction of the Infrastructure. Wal-Mart shall separately contract for the construction of the Infrastructure with a general contractor of its choosing (the "Infrastructure General Contractor"). Wal-Mart's representatives include Wal-Mart employees, the Engineer, the General Contractor, and the Infrastructure General Contractor.

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- (3) Indemnify and hold harmless the City and the IDB, and their respective employees, officials, agents, representatives and volunteers from and against any and all liabilities, damages, injuries, (including death), property damage (including loss of use), claims, liens, judgments, costs, expenses, suits, actions, or proceedings and reasonable attorney's fees, and actual damages of any kind or nature, arising out of or in connection with any aspect of the acts, omissions, negligence or willful misconduct of Wal-Mart, its employees, agents, officers, contractors or subcontractors, or Wal-Mart's performance or failure to perform under the terms or conditions of this Agreement. Such indemnification, hold harmless and defense obligation shall exclude only such liability actions as arise directly out of the acts, omissions, or the negligence or willful misconduct of the City and/or the IDB. The indemnification and defense obligations set forth herein shall survive the termination of this Agreement.

**Section 6.03. Obligations of the City.**

To induce Wal-Mart to construct the Wal-Mart Project, the City hereby covenants that it will do the following:

- (1) Authorize Wal-Mart to contract with the Engineer for the following professional services related to the Infrastructure as described in Exhibits B and C attached hereto:
- Boundary and Topographical Surveying
  - Engineering and Design
  - Preparation of ALDOT Permit Application(s) and assist in securing approvals.
  - Reviewing and approving pay applications for the Infrastructure ensuring accuracy and completeness.
- (2) Review and approve, through the City Engineer, the drawings and specifications for the Infrastructure prepared by the Engineer.
- (3) Authorize Wal-Mart to secure required permit(s) from ALDOT for construction work related to the Traffic Signals.
- (4) Authorize Wal-Mart to enter into a contract with the Infrastructure General Contractor to perform the Infrastructure work, which Infrastructure General Contractor shall be reasonably satisfactory to the IDB and the City.
- (5) Upon satisfactory inspection by authorized representatives of the City, accept the completed Infrastructure.
- (6) Request that the cost of the Traffic Signals be borne by the State of Alabama. Wal-Mart shall cooperate with the City in the City's efforts to seek reimbursement for the cost (or a portion thereof) of such signals and installation from applicable governmental entities. It is understood and agreed by the parties that Wal-Mart shall not seek reimbursement for the cost of any traffic signal installation from any governmental entity.
- (7) At its sole expense, cause the construction of the intersection improvements located at the intersection of Business U.S. Highway 84 and the Bypass across from Avant Drive, as depicted on Exhibit B hereof.
- (8) Guarantee the IDB's obligations under this Agreement as evidenced by the Evidence of Indebtedness.

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### ARTICLE VIII

#### DEFAULT

Section 8.01. Default. If any party to this Agreement has made a material misrepresentation and such misrepresentation is not cured within ten (10) days after written notice thereof from the other party, or otherwise defaults hereunder and such default is not cured within forty-five (45) days after written notice thereof from the other party, then the non-defaulting party may thereupon terminate this Agreement by written notice to the defaulting party or may seek such other rights and remedies as may be available to it at law. The City and the IDB hereby irrevocably waive any right to seek specific performance from Wal-Mart. If any such default cannot with due diligence be cured within the applicable cure period, and such defaulting party, prior to the expiration of the applicable cure period, commences to eliminate the cause of such default, and diligently pursues same to its reasonable completion, then such action shall constitute a cure of such default.

### ARTICLE IX

#### TERM AND TERMINATION

Section 9.01. Term. The term of this Agreement shall extend from the Effective Date until the IDB's obligation to reimburse Wal-Mart, as evidenced by the Evidence of Indebtedness, is paid in full.

Section 9.02. Termination. Any party hereto may terminate this Agreement for cause based upon any event of default as provided in Section 7.01 herein.

### ARTICLE X

#### ADDITIONAL PROVISIONS

Section 10.01. Entire Agreement. This Agreement and the exhibits hereto shall constitute the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements. There is no representation or warranty of any kind made in connection with the transactions contemplated hereby that is not expressly contained in this Agreement. This Agreement is not intended and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association as between the City and Wal-Mart nor the IDB and Wal-Mart nor between the City or IDB and any officer, employee, contractor or representative of Wal-Mart. No joint employment is intended or created by this Agreement for any purpose. Wal-Mart agrees to so inform its employees, agents, contractors, and subcontractors who are involved in the implementation of or construction under this Agreement.

### ARTICLE XI

#### MISCELLANEOUS

Section 11.01. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

Section 11.02. Amendments. Supplements and Modifications. This Agreement may not be amended, supplemented or modified, except in writing and with the unanimous consent of all parties affected by such amendment, supplement or modification.

Section 11.03. No Personal Liability of Wal-Mart or IDB or City Officials. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any official, trustee, officer, agent or employee of any party hereto in his or her individual capacity, and neither the officers of any party hereto nor any official executing this Agreement shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason of the execution and delivery of this Agreement except to the extent required by law.

Section 11.04. Approvals. Should approval be necessary for any purpose as required by this Agreement, such approval shall be considered effective when received from an Executive Officer of the City, from the Chair of the IDB, or from a duly authorized representative of Wal-Mart.

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Section 11.05. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which when taken together shall be deemed one and the same Agreement.

Section 11.06. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Alabama.

Section 11.07. Further Assurances. From time to time hereafter, the parties hereto shall execute and deliver such additional instruments, certificates or documents, and take all such actions as the other party hereto may reasonably request for the purpose of fulfilling its obligations hereunder.

Section 11.08. Addresses for Notices. Any notice required or permitted to be given under or in connection with this Agreement shall be in writing and shall be either hand-delivered or mailed, postage prepaid by first-class mail, registered or certified, return receipt requested, or by private, commercial carrier, express mail, such as Federal Express, or sent by telex, telegram, telecopy or other similar form or rapid transmission confirmed by written confirmation mailed (postage prepaid by first-class mail, such as Federal Express) at substantially the same time as such rapid transmission, or personally delivered to an officer of the receiving party. All such communications shall be mailed, sent or delivered to the address or numbers set forth below, or as to each party at such other address or numbers as shall be designated by such party in written notice to the other party.

If to the IDB:

The Industrial Development Board  
Of the City of Andalusia, Alabama  
\_\_\_\_\_  
(NEED STREET ADDRESS)  
Andalusia, AL 36420  
Attention: Chairman Joe Bratton  
Facsimile: (334) 222-7844

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Facsimile: (334) \_\_\_\_\_

If to the City:

City of Andalusia  
505 East Three Notch Street  
Andalusia, AL 36420  
Attention: Mayor Jerry Andrews  
Facsimile: (334) 222-5114

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Facsimile: (334) \_\_\_\_\_

If to Wal-Mart:

Wal-Mart Real Estate Business Trust  
2001 S.E. 10<sup>th</sup> Street  
Department 05-8313  
Andalusia, AL 36420-0550

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WALKER BUSINESS FORMS EDITIONS

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**Section 11.9. Delay or Omission.** No delay or omission in the exercise of any right or remedy accruing to either party upon any breach by the other party under this Agreement shall impair such right or remedy or be construed as a waiver of any breach theretofore or thereafter occurring. The waiver of any condition or the breach of any term, covenant, or condition herein or therein contained shall not be deemed to be a waiver of any other condition or of any subsequent breach of the same or any other term, covenant or condition herein or therein contained.

**Section 11.10. Venue.** The District Court for the Southern District of Alabama shall be deemed to be the exclusive court of jurisdiction and venue for any litigation or other proceeding as between the parties that may be brought, or arise out of, in connection with, or by reason of this Agreement.

**Section 11.11. Successors and Assigns.** Subject to the provisions of Section 6.01 hereof, this Agreement shall be binding upon and inure to the benefit of the City and its permitted assigns, the IDB, its successors and permitted assigns, and Wal-Mart, its contractors, subcontractors, successors and permitted assigns.

This Agreement has been executed by the parties on the dates indicated but effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE CITY OF ANDALUSIA, ALABAMA

By: \_\_\_\_\_  
Joe Bratton  
Its Chairman

Attest: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_, 2005

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CITY OF ANDALUSIA

By: \_\_\_\_\_  
Jerry Andrews  
Its Mayor

Attest: \_\_\_\_\_  
Its: City Clerk

Date: \_\_\_\_\_, 2005

WAL-MART REAL ESTATE BUSINESS  
TRUST,  
a Delaware business trust

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_, 2005

FORM 55 (FORMER EPM111010)

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EXHIBIT A  
LEGAL DESCRIPTION OF SITE

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BUSINESS FORMS EPW11035

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EXHIBIT B  
DIPICITION OF INFRASTRUCTURE

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### EXHIBIT C DESCRIPTION OF INFRASTRUCTURE

The proposed Infrastructure shall consist of the following:

I. Roadway Improvements:

A.

II. Utilities:

A. Sanitary Sewer:

- i. Gravity Sewer: [describe]
- ii.

B. Water: [describe]

III. Traffic Signals:

IV. Avant Road:

V. Access Road:

VI. Road Improvements:

VII. Miscellaneous:

The above includes but is not limited to costs for preparing plans and specifications, reproduction of drawings, document recordation, filing fees, and warrant studies.

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EXHIBIT D  
WAL-MART PROJECT

MINUTES FORMS (P.11/11/05)

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EXHIBIT E  
CITY RESOLUTION

# MINUTES, CITY OF ANDALUSIA COUNCIL

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After discussion, the motion was made by Councilman Cotton that Resolution 2005-15 be adopted, Councilman Powell seconded the motion and Mayor Andrews called for a vote. The resolution passed with one dissenting vote as follows:

YEAS  
Alexander  
Anderson  
Cotton  
Powell  
Andrews

NAYS  
Jones

### COUNCIL DISCUSSES RESOLUTION 2005-16:

Mayor Andrews reported the results of a public meeting on May 19, 2005 concerning an application for a Community Development Block Grant Disaster Recovery Fund administered through the Alabama Department of Economic and Community Affairs. Paul Darnell, of DMD Engineers Inc., then contributed further details regarding the proposed projects. A motion was made by Councilman Powell, seconded by Councilman Jones to approve Resolution 2005-16. The resolution was then unanimously approved as follows:

City of Andalusia  
Andalusia, Alabama  
Resolution No. 2005-16

A RESOLUTION AUTHORIZING THE MAYOR TO MAKE APPLICATION ON BEHALF OF THE CITY FOR A DRAINAGE MITIGATION IMPROVEMENTS PROJECT THROUGH THE DISASTER RECOVERY FUND CDBG PROGRAM ADMINISTERED BY ADECA.

WHEREAS, the City of Andalusia, AL has been determined to be eligible to request financial assistance through the FY 2005 Community Development Block Grant (CDBG) Disaster Recovery Fund as made available through the Housing and Community Development Act of 1974, as amended, as administered by the Alabama Department of Economic and Community Affairs (ADECA) and overseen by the U.S. Department of Housing and Urban Development, and

WHEREAS, it has been determined that the greatest need related to impact of Hurricane Ivan that exists in the City and that can be best addressed by the CDBG Disaster Recovery Fund is the provision of drainage and flood mitigation improvements within multiple locations in the City.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Andalusia, Alabama that:

Section 1. The City of Andalusia shall submit an application for financial assistance to the Alabama Department of Economic and Community Affairs for a FY 2005 Community Development Block Grant through Disaster Recovery Fund in amount of \$4000,000.00 for the primary purpose of implementing a drainage and flooding mitigation improvements project within the designated project locations.

Section 2. The City of Andalusia recognizes that completion of the project activities will require the City to provide matching cash funds in the amount of no less than \$40,000.00, or 10% of the grant requested, if less than \$4000,000.00.

Section 3. Jerry B. Andrews, in his capacity as Mayor, is hereby authorized and directed to execute all required application documents on behalf of the City, and take such other actions as may be required to have the same submitted for funding consideration by ADECA. Further that the Mayor is authorized to take all action necessary to implement the project with all due speed in the event of funding approval.

Attest:

  
John M. Thompson, City Clerk

MAYOR ANNOUNCES ANDALUSIA FIRE DEPARTMENT RECLASSIFICATION TO CLASS "FIVE":

Mayor Andrews announced that after recent investments were made to the Andalusia Fire Department, which resulted in a reclassification to class "Five", citizens should notice a decrease in fire insurance premiums effective September 1, 2005. The Mayor commended Fire Chief Ethan Dorsey for his diligence and hard work in achieving this reclassification.

ADJOURNMENT:

There being no further business to come before the Council, the meeting was adjourned.

The City of Andalusia, Alabama

By:   
Jerry B. Andrews

Attest:

  
John Thompson, City Clerk

# MINUTES, CITY OF ANDALUSIA COUNCIL

WALLER BUSINESS FORMS EP4111045