

AUGUST 4, 2005

SPECIAL MEETING

PAGE TWO

MAYOR REPORTS ON EFFORTS TO BRING WAL-MART SUPERCENTER TO ANDALUSIA:

Mayor Andrews gave a report on the efforts of the past and current administration to bring a Wal-Mart Supercenter to Andalusia. He then outlined the details of the most recent changes in the development agreement between the City of Andalusia, the Andalusia Industrial Development Board, and Wal-Mart. The Mayor asked City Attorney Ben Bowden to address those changes and to answer any questions from the council.

Alabama - Andalusia
Store # 1091-04

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 STORES EAST, LP, a Delaware limited partnership 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 seeks to build a new private road extending from U.S. Highway 84 (the "Bypass") to the parking lot of the Store as depicted on **Exhibit D** attached hereto and incorporated herein to serve the Site, outparcels and future development ("Avant Drive"); and

WHEREAS, the City and Wal-Mart desire to install traffic signals (the "Traffic Signals") at the intersection of the Bypass and Avant Drive, 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 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 Road Improvements and the Utilities up to a maximum amount of \$466,000.00; 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 Drive" shall mean that certain private 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 D** 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.

"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 Four Hundred Sixty Six Thousand and no/100ths Dollars (\$466,000.00).

"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 and the Infrastructure.

"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, and the Road Improvements, as more particularly described in **Exhibits B** and **C** hereof.

“Road Improvements” shall mean construction of right turn lanes and drainage improvements at the intersection of the Bypass and Avant Drive and the intersection of 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 Drive 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 Stores East, LP, a Delaware limited partnership, 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.
- (b) All references herein to particular articles or sections are references to articles or sections of this Agreement.
- (c) The captions and heading herein are solely for convenience of references and shall not constitute part of this Agreement, nor shall they affect its meaning, construction or effect.
- (d) The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” or any similar terms as used in this Agreement refer to the Agreement in its entirety and not the particular article or section of this Agreement in which they appear, and the term “hereafter” means after and the term “heretofore” means before the date of execution of this Agreement.

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 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.

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 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

IDB'S REPRESENTATIONS

Section 5.01. Representations of the IDB. The IDB makes the following representations to Wal-Mart, which representations shall survive the termination or expiration of this Agreement:

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

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) Upon completion of the Wal-Mart Project and issuance of a Certificate of Occupancy by the City, reimburse Wal-Mart over a period not to exceed two (2) years from the date of the Certificate of Occupancy (such date referred to herein as the "Completion Date") for funds expended by Wal-Mart not to exceed Four Hundred Sixty Six Thousand Dollars (\$466,000.00) for the costs of constructing the Infrastructure, including without limitation costs of warrant studies, with one-third (1/3) paid on the Completion Date, one-third (1/3) on the first anniversary of the Completion Date, and one-third (1/3) on the second anniversary of the Completion Date, all of which shall be evidenced by the Evidence of Indebtedness and guaranteed by the City. No interest shall be owed on this obligation.
- (2) Should the City seek to reduce the cost of a portion of the installation of the Utilities by using City personnel and by subcontracting the work, such savings proposal(s) must be

approved in advance by Wal-Mart in its sole discretion. Such proposal must contain, at a minimum, (i) a detailed cost breakdown, (ii) detailed descriptions of any required bidding procedures, (iii) a specific deadline for the completion of such work, and (iv) a binding, express acknowledgment and agreement that if the work is not completed by such deadline, that Wal-Mart and its Contractor may immediately complete the work without further action by the City or any other party.

- (3) Provided that such efforts will not delay the installation of the Traffic Signals, Wal-Mart will cooperate with the City in efforts to seek reimbursement from the State of Alabama (either to the City or to Wal-Mart) for all or a portion of the cost of acquiring and installing the Traffic Signals.

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 incorporated into the contract for the Wal-Mart Project. Wal-Mart will select the General Contractor to construct the Wal-Mart Project and the Infrastructure. Wal-Mart's representatives include Wal-Mart employees and the General Contractor.
- (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) Permit Wal-Mart to secure required permit(s) from ALDOT for construction work related to the Traffic Signals and drives.
- (2) Permit Wal-Mart to enter into a contract with the General Contractor to perform the Infrastructure work.
- (3) Upon satisfactory inspection by authorized representatives of the City, accept the completed Infrastructure.
- (4) Permit Wal-Mart through its General Contractor to construct 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.

- (5) Guarantee the IDB's obligations under this Agreement as evidenced by the Evidence of Indebtedness up to a maximum amount of \$466,000.00.

ARTICLE VII

ASSIGNMENT

Section 7.01. Assignment. The parties hereto shall not transfer or assign this Agreement or transfer or assign any or all of their rights or delegate any or all of their duties hereunder, without the consent of each of the other parties to this Agreement.

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 8.01 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

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
1208 West Bypass
Andalusia, AL 36420
Attention: Chairman Joe Bratton
Facsimile: (334) 222-7844

With a copy to:

James R. Clifton, Esq.
Albrittons, Clifton, Alverson, Moody & Bowden, P.C.
109 Opp Avenue
Andalusia, Alabama 36420

Facsimile: (334) 222-2696

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:

Thomas B. Albritton, Esq.
Albrittons, Clifton, Alverson, Moody & Bowden, P.C.
109 Opp Avenue
Andalusia, Alabama 36420
Facsimile: (334) 222-2696

If to Wal-Mart:

Wal-Mart Stores East, LP
2001 S.E. 10th Street
Department 05-8313
Bentonville, AR 72716-0550
Attention: Jim Cole, Esq.
Facsimile: (479) 277-5991

With a copy to:

Karen B. Johns, Esq.
Miller, Hamilton, Snider, and Odom L.L.C.
505 North 20th Street, Suite 1200
Birmingham, AL 35203
Facsimile: (205) 226-5226

Section 11.09. 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 7.01 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

CITY OF ANDALUSIA

By: _____
Jerry Andrews
Its Mayor

Attest: _____
Its: City Clerk

Date: _____, 2005

WAL-MART STORES EAST, LP,
a Delaware limited partnership

By: WSE MANAGEMENT, LLC, a Delaware
limited liability company, its General Partner

By: _____(seal)
Robert M. Bedard, Asst. Vice President and
Assistant Secretary

Date: _____, 2005

EXHIBIT A
LEGAL DESCRIPTION OF SITE

A parcel of land situated in part the Northeast one-quarter of the Northeast one-quarter of Section 16, Township 4 North, Range 16 East, the Northwest one-quarter of the Northwest one-quarter of Section 15, Township 4 North, Range 16 East, the Southwest one-quarter of the Southwest one-quarter of Section 10, Township 4 North, Range 16 East and the Southeast one-quarter of the Southeast one-quarter of Section 9, Township 4 North, Range 16 East, Covington County, Alabama, being more particularly described as follows:

Begin at the Southwest corner of said Section 10 and run North 37 degrees 02 minutes 20 seconds East for a distance of 901.17 feet; thence run South 52 degrees 57 minutes 40 seconds East for a distance of 245.33 feet; thence run South 89 degrees 49 minutes 46 seconds East for a distance of 531.80 feet; thence run South 00 degrees 01 minutes 21 seconds West for a distance of 554.02 feet to a point on the South line of the Southeast one-quarter of the Southwest one-quarter; thence run South 89 degrees 16 minutes 49 seconds West along the South line of said quarter-quarter for a distance of 133.66 feet; thence leaving said South line, run South 00 degrees 42 minutes 58 seconds West for a distance of 823.92 feet to a point on the Northernmost right of way line of U.S. Highway 84 (right of way varies); thence run South 89 degrees 42 minutes 58 seconds West along said right of way for a distance of 100.02 feet; thence leaving said right of way, run North 00 degrees 42 minutes 58 seconds East for a distance of 191.33 feet; thence run South 88 degrees 00 minutes 04 seconds West for a distance of 1017.66 feet to a point on the West line of said Section 15; thence run South 01 degrees 01 minutes 03 seconds East along said West line for a distance of 119.41 feet to a point on the Northernmost right of way line of U. S. Highway 84 (right of way varies); thence leaving said West line, run North 75 degrees 51 minutes 10 seconds West along said right of way for a distance of 123.94 feet; thence leaving said right of way, run North 01 degrees 02 minutes 47 seconds West for a distance of 746.67 feet to a point on the North line of said Section 16; thence run South 88 degrees 28 minutes 22 seconds East along said North line for a distance of 120.12 feet to the POINT OF BEGINNING. Said parcel contains 1,448,700 square feet or 33.26 acres more or less.

**EXHIBIT B
DEPICTION OF INFRASTRUCTURE**

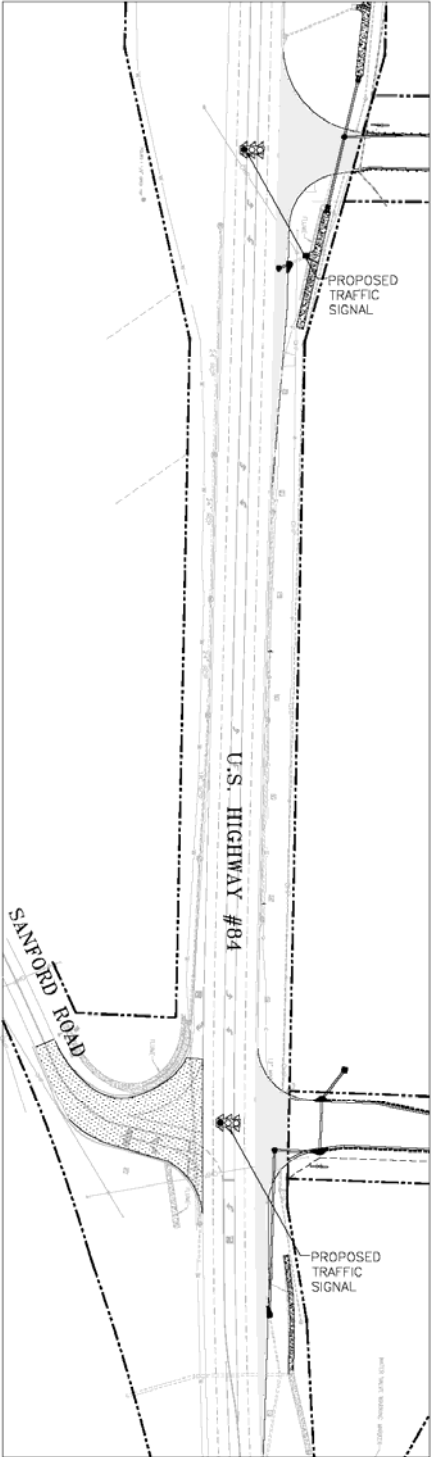
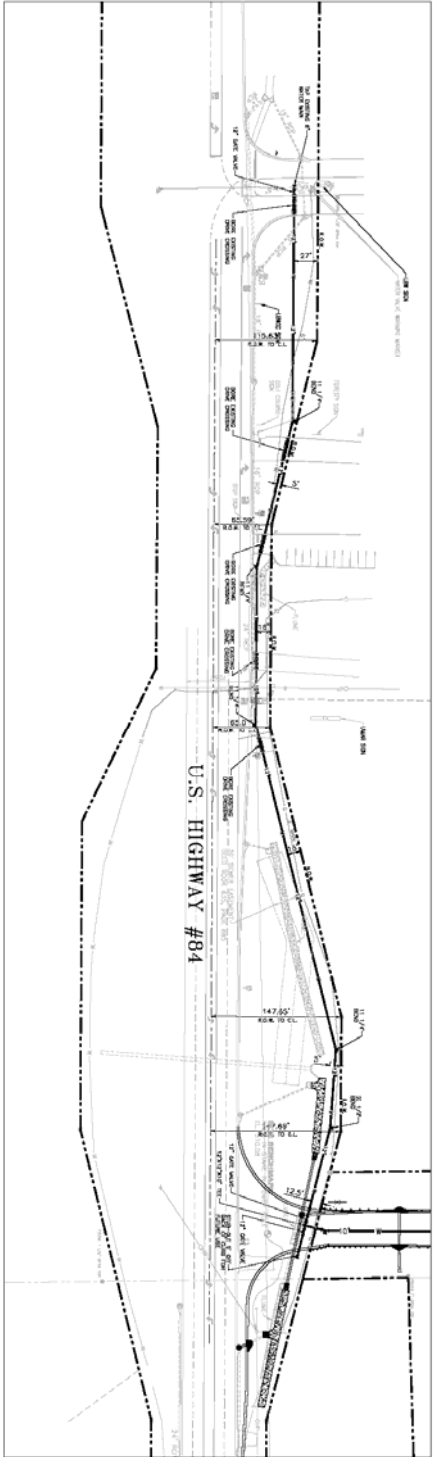


EXHIBIT C
DESCRIPTION OF INFRASTRUCTURE

The proposed Infrastructure shall consist of the following:

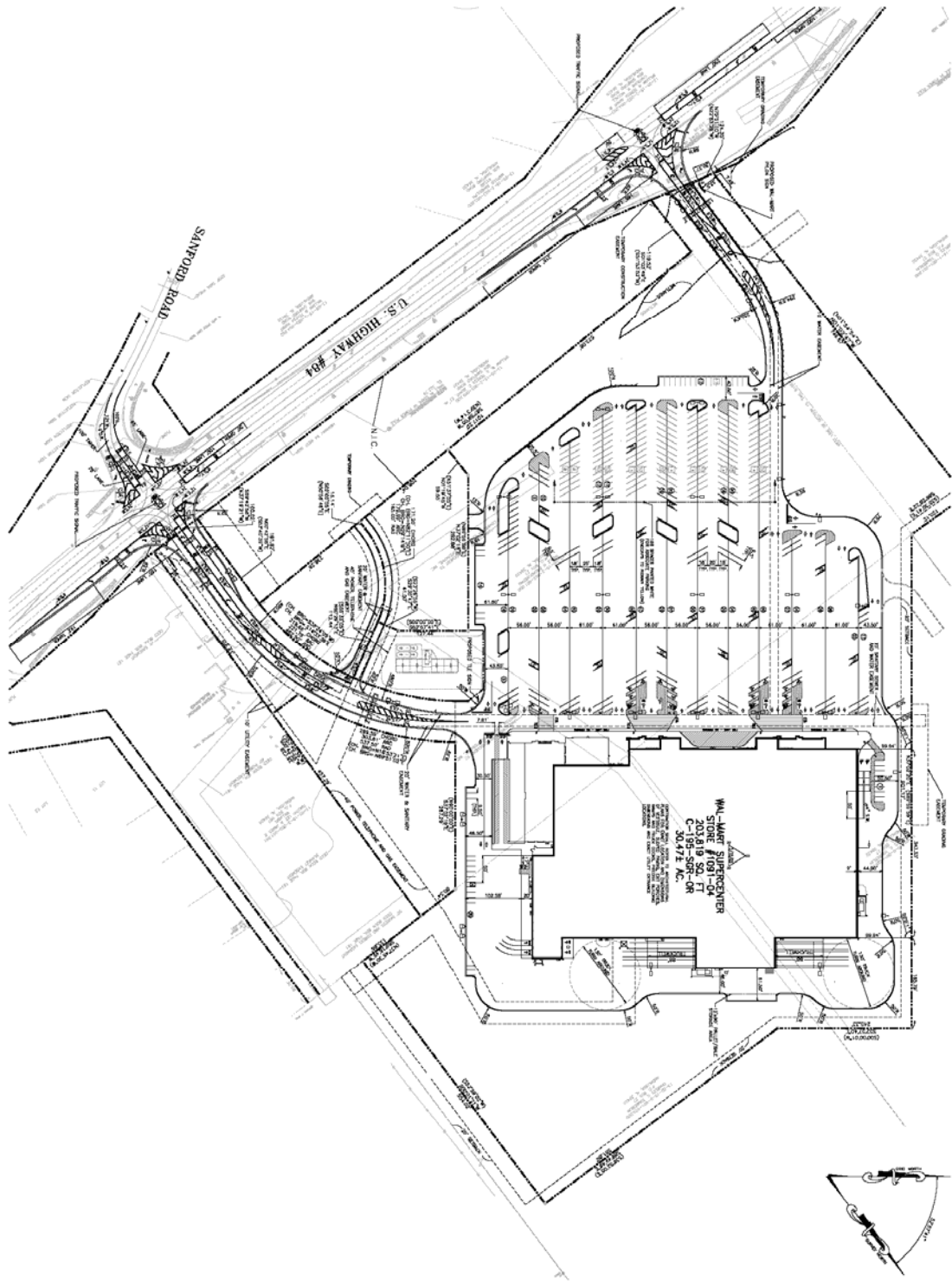
- I. Utilities:** Extension of approximately 1250 linear feet of 12" water main along Highway 84 from Danelly Blvd to the site's west access road.

- II. A.D.O.T. Turn lanes and Intersections:** Construction of turn lanes and intersection improvements in Highway 84 for the Access Road and Avant Drive, including earthwork, drainage, paving, curb and gutter, and related improvements.

- III. Traffic Signals:** Installation of two traffic signals on Highway 84, one at the intersection of the Access Road and one at the intersection of Avant Drive.

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

**EXHIBIT D
WAL-MART PROJECT**



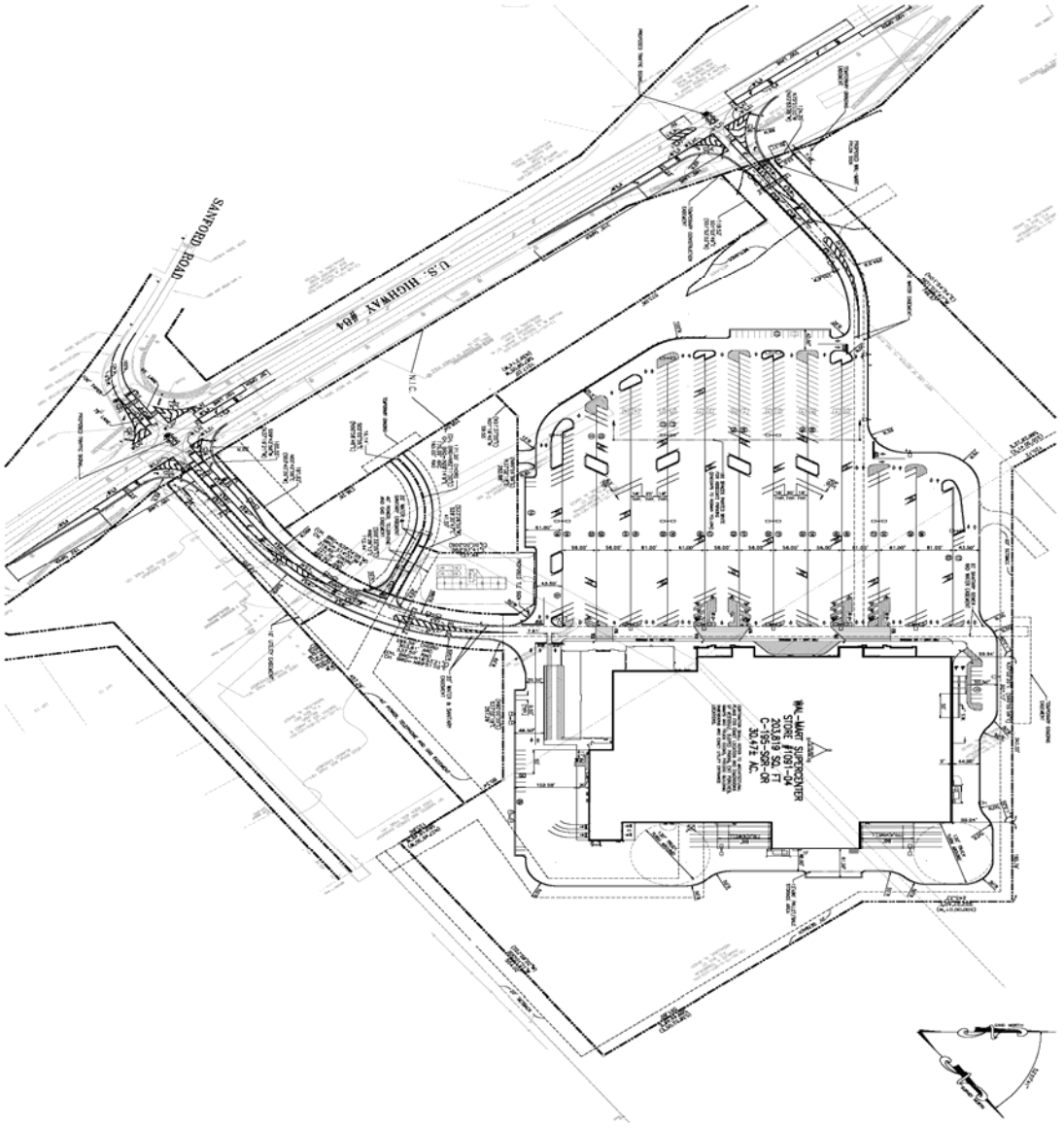


EXHIBIT E
CITY RESOLUTION

Following some discussion, Councilman Jones made a motion to table consideration of the development agreement until the next regular council meeting on August 16, 2005. For lack of a second, the motion failed.

Councilman Cotton motioned that the development agreement be adopted as presented. Councilman Powell seconded the motion which was approved by the council.

Upon being put to a vote, the following was recorded:

YEAS:

Mayor Andrews
Councilman Anderson
Councilman Alexander
Councilman Cotton
Councilman Powell

NAYS:

Councilman Jones

MAYOR INTRODUCES RESOLUTION NO. 2005-22:

Mayor introduced Resolution No. 2005-22 as follows:

**CITY OF ANDALUSIA
ANDALUSIA, ALABAMA**

RESOLUTION NO. 2005-22

WHEREAS, The Alabama Department of Transportation ("ALDOT") has requested the City of Andalusia, Alabama to execute a permit for the existing roadway lighting on the north side of U.S. Highway 84 between Danelly Boulevard and Sunrise Street, pursuant to Exhibit A attached hereto; and

WHEREAS, the Andalusia City Council has considered the request of the ALDOT to authorize the Mayor to enter into an agreement to permit the modification of the existing roadway lighting as identified herein above;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Andalusia, Alabama, at a regular meeting, duly assembled, a quorum being present, as follows:

1. That the mayor and city clerk are hereby authorized to execute the permit (Exhibit A) with the Alabama Department of Transportation to permit the following:

- a. Modification of the existing roadway lighting on the north side of U.S. Highway 84 between Danelly Boulevard and Sunrise Street: and
 - b. Continued operation and maintenance of the existing roadway lighting on the north side of U.S. Highway 84 between Danelly Boulevard and Sunrise Street.
2. That the mayor and city clerk are authorized to execute any documents necessary to permit the construction of the modification of the existing roadway lighting provided herein above as required by the Alabama Department of Transportation, including, but not limited to, filling with the state and acceptable certified check or bond in penal amount of \$12,000.
 3. That this resolution is contingent upon the adoption of the city's development agreement with Wal-Mart and execution thereof.
 4. That this resolution shall become effective immediately upon its adoption by the City Council of the City of Andalusia, Alabama.

ADOPTED AND APPROVED this 2nd day of August, 2005.

THE CITY OF ANDALUSIA, ALABAMA

BY: _____
Jerry B. Andrews, Mayor

ATTEST:

John M. Thompson, City Clerk

ALABAMA DEPARTMENT OF TRANSPORTATION
Permit Agreement for the Accommodation of Utility
Facilities on Public Right-of-Way

Project Number: _____
Permit No. _____
P.E. _____
R.O.W. _____
Utilities _____
Construction _____
Maintenance Section U.S. Highway 84
Location of Accommodation: Milepost 135.2 to 135.6

THIS AGREEMENT is entered into this the _____ day of _____, 20_05__, by and between the Alabama Department of Transportation acting by and through its Transportation Director hereinafter referred to as the STATE and _____ City of Andalusia, Alabama _____ a Utility hereinafter referred to as the APPLICANT.

WITNESSETH

WHEREAS, the APPLICANT desires to have its facilities accommodated on public highway right-of-way in _____ Covington _____ County, Alabama, said project or maintenance section being designated as U.S. Highway 84, and consisting approximately of the following: removing two existing roadway lighting poles with offset luminaires and one existing roadway lighting pole with a cobra head luminaire on the north side of U.S. Highway 84; relocating one existing roadway lighting pole with an offset luminaire on the north side of U.S. Highway 84.; and

WHEREAS, the STATE hereby grants to the APPLICANT approval to cross or locate its facilities on the public right-of-way at the location and in the manner hereinafter set forth:

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. The APPLICANT will install its facilities on public right-of-way in accordance with plans and specifications of the APPLICANT as approved by the STATE which plans and specifications are hereby made a part hereof by reference.

2. In the installation of facilities and performing work under this agreement, the APPLICANT will conform to the provisions of the latest edition of the Alabama Department of Transportation Utility Manual, which manual is of record in the Department of Transportation and is hereby a part hereof by reference.

3. The national Manual on Uniform Traffic Control Devices, latest edition, is hereby made a part hereof by reference and will be conformed to as the provisions thereof are applicable to such work. Such Manual is of record in the Alabama Department of Transportation at the execution of this Agreement.

4. The Clean Water Act, 1987 and the Alabama Nonpoint Source Management Program, 1989 are hereby made a part hereof by reference and will be conformed to by the APPLICANT as the provisions thereof are applicable hereto.

The APPLICANT will conform to the regulations of the Environmental Protection Agency (EPA) and of the Alabama Department of Environmental Management (ADEM), latest edition, for both installation and maintenance of such facilities.

5. If hazardous materials, wastes, substances, or as otherwise defined by Code of Alabama § 6-5-332.1 (a)(2) (1993 Repl. Vol.) are encountered in the execution of this Agreement it will be the responsibility of the APPLICANT to notify the proper agency responsible for said hazardous materials and to comply with any and all environmental regulations as established by the Environmental Protection Agency (EPA), Alabama Department of Environmental Management (ADEM), and of the Occupational Safety and Health Administration (OSHA) in the proper disposition of the hazardous materials encountered.

6. The APPLICANT will file with the STATE an acceptable certified check or bond in the penal amount of \$ 12,000.00 to guarantee the faithful performance of this permit contract in its entirety. Upon satisfactory completion and acceptance of all work provided for in this permit contract, the check or bond, as applicable, will be returned to the APPLICANT; otherwise, the proceeds from the check, or any amount received by the STATE as a result of the bond, will be applied to complete and fulfill the permit contract terms.

7. Reimbursement for future relocations of the APPLICANT'S facilities will be in accordance with State law in effect at the time such relocations are made.

8. The APPLICANT will be obligated for the payment of damages occasioned to private property, public utilities or the general public, caused by the legal liability (in accordance with Alabama and/or Federal law) of the APPLICANT, its agents, servants, employees or facilities.

9. The APPLICANT will have a copy of this Agreement on the project site at all times while said work is being performed.

10. Nothing contained in this Permit Agreement, nor the issuance or receipt thereof, shall be construed to alter or affect the title of the STATE to the public right-of-way nor to increase, decrease or modify in any way the rights of the APPLICANT provided by law with respect to the construction, operation or maintenance of its facilities on the public right-of-way.

11. The installation of the facilities and related work covered by this Agreement shall be completed within one year from the date shown on this Agreement, otherwise this Agreement becomes null and void. Once work is begun the APPLICANT shall pursue the work continuously and diligently until completion.

12. The APPLICANT will perform or cause to be performed the work applied for in this permit contract and will restore the highway in the work area in as good condition as the same was prior to the work and will maintain the accomplished work and highway work area in a condition satisfactory to the Alabama Department of Transportation for a period of one year from acceptance by the Department of the completion of work applied for by APPLICANT.

13. The Applicant must provide a copy of the *Notice of Registration (NOR) Received* issued by ADEM upon receipt of the applicant's Notice of Registration. This will assure compliance with Phase II of stormwater construction requirements. In the event a NOR is not required, Applicant must submit to ALDOT a Best Management Practices (BMP) plan to control sediment run-off.

14. In the event that ALDOT is issued a citation or any other enforcement document by ADEM/EPA for failure to comply with applicable requirements, it shall be the responsibility of the applicant to bring all BMPs into compliance and to pay for any fines, assessments, etc. that may be issued to ALDOT by ADEM/EPA.

15. The APPLICANT stipulates that the specific use of these facilities located upon public right-of-way is roadway lighting including conduit and cable

APPLICANT further stipulates that should this specific use change at any time in the future that the APPLICANT will notify the STATE immediately of the change.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers, officials and persons thereunto duly authorized, to be effective on the day and year first above stated.

WITNESS:

City of Andalusia, Alabama

Legal Name of Applicant

By: _____

Signature and Title

Mayor Jerry Andrews

Typed or Printed Name

505 East Three Notch Street

Address

Andalusia, Alabama 36420

(334) 222-3313

Telephone Number

RECOMMENDED FOR APPROVAL:

District Engineer & Date

Division Engineer & Date

ALABAMA DEPARTMENT OF TRANSPORTATION
ACTING BY AND THROUGH ITS TRANSPORTATION
DIRECTOR

By: _____

Maintenance Engineer / Division Engineer

Date: _____

City Attorney Ben Bowden summarized and answered questions about the permit agreement with the Alabama Department of Transportation as referenced in the resolution. Councilman Powell motioned that Resolution No. 2005-22 be adopted. Councilman Anderson seconded the motion which passed unanimously.

MAYOR COMMENDS THE ANDALUSIA INDUSTRIAL DEVELOPMENT BOARD:

Mayor Andrews commended the Andalusia Industrial Development Board and recognized its chairman Joe Bratton for their dedication and hard work in the Wal-Mart development.

ADJOURNMENT:

There being no further business, the meeting was adjourned.

THE CITY OF ANDALUSIA, ALABAMA

**BY: _____
Jerry B. Andrews, Mayor**

ATTEST:

Jackie Williams, Assistant City Clerk