RESOLUTION NO. 2016 – 54

RESOLUTION OF THE TOWNSHIP OF LITTLE EGG HARBOR, COUNTY OF OCEAN, STATE OF NEW JERSEY, AUTHORIZING THE EXECUTION OF A TRAFFIC SIGNAL AGREEMENT FOR ROUTE U.S. 9 AND OTIS BOG ROAD, BETWEEN THE NEW JERSEY DEPARTMENT OF TRANSPORTATION, WAL-MART REAL ESTATE BUSINESS TRUST AND THE TOWNSHIP OF LITTLE EGG HARBOR

WHEREAS, a traffic condition exists at the intersection of Route U.S. 9 and Otis Bog Road, in the Township of Little Egg Harbor, County of Ocean, State of New Jersey, which requires the installation of a traffic signal in order to improve safety and to expedite the safe movement and conduct of pedestrian and vehicular traffic; and

WHEREAS, the New Jersey Department of Transportation and Wal-Mart Real Estate Business Trust have indicated their willingness to install a traffic control signal at said intersection; and

WHEREAS, the New Jersey Department of Transportation has proposed a form of agreement pertaining to maintenance of said traffic signal, a copy of said Agreement being attached hereto and made a part hereof; and

WHEREAS, the governing body desires to authorize the execution of the traffic signal agreement for Route U.S. 9 and Otis Bog Road with the New Jersey Department of Transportation and Wal-Mart Real Estate Business Trust.

NOW, THEREFORE, BE IT RESOLVED, by the governing body of the Township of Little Egg Harbor, County of Ocean, State of New Jersey as follows:

1. That the Township hereby authorizes the execution of a traffic signal agreement with the New Jersey Department of Transportation and Wal-Mart Real Estate Business Trust with regard to the traffic signal to be located at Route U.S. 9 and Otis Bog Road,

a copy of said Agreement being attached hereto and made a part hereof in the attached Schedule A.

2. That the Mayor is authorized to execute and the Township Clerk to attest to the traffic signal agreement with the New Jersey Department of Transportation and Wal-Mart Real Estate Business Trust for the traffic improvements at Route U.S. 9 and Otis Bog Road.

3. That a certified copy of this resolution shall be forwarded the New Jersey Department of Transportation, Wal-Mart Real Estate Business Trust and the Township Engineer.

Motion to Approve: Gormley Second: Kehm Roll Call:

Gormley	yes
Kehm	yes
Kobryn	yes
Schlick	yes
Stevens	yes

CERTIFICATION

I, **DIANA K. MCCRACKEN, RMC,** Municipal Clerk of the Township of Little Egg Harbor, do herby certify that the foregoing resolution was duly adopted by the Township of Little Egg Harbor Township Committee at a meeting held on the 28th day of **January, 2016**.

Diana K. McCracken, RMC

DIANA K. MCCRACKEN, RMC, Clerk
Township of Little Egg Harbor

GILMORE & MONAHAN
A Professional Corporation
COUNSELLORS AT LAW
Allen Street Professional Center
Ten Allen Street
P.O. Box 1540
Toms River, New Jersey 08754

ACKNOWLEDGEMENT FORM

STATE OF NEW JERSEY :
:
County of Ocean :

I CERTIFY that on January 28, 2016, Eugene Kobryn, Mayor of the Township of Little Egg Harbor, personally came before me, and acknowledged under oath, to my satisfaction, that he signed and had sealed and delivered the foregoing Agreement as the voluntary act and deed of the Township of Little Egg Harbor,

Signed and sworn to before me
on January 28, 2016

Diana K McCracken, RMC

DIANA K. MCCRACKEN, RMC, Township Clerk
Township of Little Egg Harbor

NEW JERSEY DEPARTMENT OF TRANSPORTATION
BUREAU OF TRAFFIC ENGINEERING
TRAFFIC SIGNAL AGREEMENT

Route U.S. 9 and Otis Bog Road

Little Egg Harbor Township, Ocean County

THIS AGREEMENT, made the _____ day of _____ two thousand fifteen (2015), among Wal-Mart Real Estate Business Trust, a Delaware Statutory Trust, located at 2001 SE 10th Street, Bentonville, AR 72716, hereinafter referred to as **DEVELOPER**, the Township of Little Egg Harbor, located at Administrative Justice Complex, 665 Radio Road, Little Egg Harbor, NJ 08087, hereinafter referred to as **MUNICIPALITY**, and the State of New Jersey, acting through its Commissioner of Transportation, New Jersey Department of Transportation, located at 1035 Parkway Avenue, P.O. Box 600, Trenton, New Jersey 08625, hereinafter referred to as **STATE**, witnesses that:

WHEREAS, a traffic condition exists at the intersection of Route U.S. 9 and Otis Bog Road, in the Township of Little Egg Harbor, in the County of Ocean, which requires the installation and operation of a semi-actuated traffic control signal with pedestrian push buttons and areas of presence detection; and

WHEREAS, the **DEVELOPER** and the **MUNICIPALITY** have expressed a willingness to cooperate with the **STATE** in achieving the overall objective of safe and efficient movement of traffic on the said highway; and

WHEREAS, it is the purpose of this Agreement to provide for the participation of the **DEVELOPER**, the **MUNICIPALITY** and the **STATE** in the cost of installation, maintenance and operation of the said traffic signal; and

WHEREAS, the Commissioner, under the powers vested in him by law and as more particularly set forth in N.J.S.A. 27:1A-5 and 27:7-21, has determined that it is in the **STATE**'s best interest to enter into this Agreement;

NOW, THEREFORE, in consideration of the covenants contained herein, and pursuant to all applicable federal, state, and local laws and ordinances, the **DEVELOPER**, the **MUNICIPALITY**, and the **STATE** agree as follows:

1. The **STATE** will determine the character, type, location, and operation of the traffic signal system in accordance with N.J.S.A. 39:4-120.

2. The **DEVELOPER** shall, at its own expense, cause the construction of the aforesaid traffic signal at no cost to the **STATE** or the **MUNICIPALITY**, pursuant to the Developer Agreement denoted with Access Permit Numbers A-9-C-C086-2007, S-9-C-C026-2007, S-9-C-C027-2007 and S-9-C028-2008, dated October 27, 2014, issued to the **DEVELOPER**, (hereafter "Developer Agreement") which is incorporated herein by reference and is on file at the State's address above, and made a part of this Agreement.

3. The construction will be in accordance with the latest plans and supplementary specifications approved by the **STATE.**

4. The **DEVELOPER** will provide all material and equipment and will perform all labor, by its own or by contract forces, necessary to the installation of the traffic signal.

5. The **DEVELOPER** will paint such lane and pavement markings and erect such signs as the **STATE** deems to be required to properly direct the flow of traffic.

6. The **MUNICIPALITY** shall maintain or replace the lane and pavement markings and signs within its areas of jurisdiction, in accordance with the latest edition of the Manual on Uniform Traffic Control Devices. The **STATE** will maintain and replace the lane and pavement markings and signs within the **STATE**'s jurisdiction.

7. When construction of the traffic signal is completed, the **DEVELOPER** shall so notify the **STATE**. The **STATE** will inspect the facility and, if found acceptable, the **STATE** will then assume full ownership of said facility.

8. The **MUNICIPALITY** shall allow the placement of any facility associated with the traffic signal system within areas of its jurisdiction, where necessary, and further agree to allow the **STATE**, with its own or contract forces, to perform maintenance on these facilities or to open roadways or other areas under its jurisdiction, without the need for permits.

9. The **MUNICIPALITY** shall pay all cost for the future relocation or removal and reinstallation of any portion of the traffic signal system, if the relocation or removal and reinstallation of this equipment is made necessary by changes, such as excavations, resurfacings, widenings and corner radius changes, authorized or effectuated by the **MUNICIPALITY**.

10. The **STATE** will pay all costs for the future relocation or removal and reinstallation of any portion of the traffic signal system, if the relocation or removal and reinstallation of this equipment is made necessary by changes, such as excavations, resurfacings, widenings and corner radius changes, authorized or effectuated by the **STATE**.

11. The **STATE** reserves the right to terminate this Agreement, for cause or for convenience, upon six months' written notice of its intention to terminate, which notice shall be served upon the Secretary of the **DEVELOPER** and the Clerk of the **MUNICIPALITY**. However, upon a determination by the **STATE** that emergency conditions exist, the **STATE** may terminate this Agreement with less than the six months' notice specified above.

12. The **STATE** will, at its own expense, periodically inspect and maintain the complete installation, including the relamping thereof.

13. The **MUNICIPALITY** shall, at its own expense, provide through the utility company for electric current necessary to the operation of the traffic signal system.

14. The **DEVELOPER** shall defend, indemnify, protect and save harmless the **STATE** and its agents, servants and employees from and against any and all suits, claims, losses, demands, or damages whatever kind or nature arising out of or claimed to arise out of the performance of any services, actions or operations by the **DEVELOPER** in connection with this Agreement or any breach or default of this Agreement by the **DEVELOPER.**

15. Subject to the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., the **MUNICIPALITY** shall be responsible for personal injuries and property damage caused by the actions of the **MUNICIPALITY** and its employees, which arises out of this Agreement. Any claim for such personal injury or property damage must be filed in accordance with N.J.S.A. 59:8-1 et seq.

16. Subject to the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., the **STATE** shall be responsible for personal injuries and property damage caused by the actions of the **STATE** and its employees, which arises out of this Agreement. Any claim for such personal injury or property damage must be filed in accordance with N.J.S.A. 59:8-1 et seq.

17. The **MUNICIPALITY** shall cause to be provided, upon 72 hours written notice to the Clerk of the **MUNICIPALITY** by the **STATE**, police to direct traffic during installation of, inspection of, or repairs related to the traffic signal system. Further, the **MUNICIPALITY** shall cause police to be provided to direct traffic during emergency repairs, on telephonic notice to the **MUNICIPALITY** by the **STATE** at no cost to the **STATE**.

18. In the event that any party fails to make any payments required hereunder to the **STATE**, the said party authorizes the **STATE**, without the need for prior notice, to deduct the amount of such payment due from any funds payable or to be payable by the Department of Transportation to said party.

19. Written notice shall be sent, when required, by certified mail, return receipt, to the addresses set forth above, or to such other address or addresses as is set forth, in writing, in any notice of change of address, which has been sent to all parties of this Agreement.

20. The **DEVELOPER** shall provide the necessary corporate resolution or certificate of partnership and/or incorporation authorizing it to enter into this Agreement.

21. The **MUNICIPALITY** shall provide the necessary resolution authorizing it to enter into this Agreement.

22. This Agreement shall not become binding on any party until it is fully executed by the Commissioner of Transportation or designee.

23. This Agreement is subject to appropriations and the availability of funds to the **STATE**.

END OF TEXT

Traffic Signal Agreement
Route U.S. 9 and Otis Bog Road
Little Egg Harbor Township, Ocean County

IN WITNESS WHEREOF, all parties have caused this instrument to be Signed, Attested, and Seal Affixed.

ATTEST/WITNESSED/AFFIX SEAL

Richard H. Martin, Esq.
Assistant Secretary

Date: 11/17/15

WAL-MART REAL ESTATE BUSINESS TRUST

By: Michael Thomas
Director of Project Design and Management

Date: 11/17/15

ATTEST/WITNESSED/AFFIX SEAL

Diana McCracken
Township Clerk

Date: January 28, 2016

TOWNSHIP OF LITTLE EGG HARBOR

By: ~~Arthur R. Midgley~~ Eugene Kobryn
Mayor

Date: January 28, 2016

ATTEST/WITNESSED/AFFIX SEAL

Jeanne M. Victor
Acting Department Secretary
New Jersey
Department of Transportation

Date: _____

STATE OF NEW JERSEY

Approved:
By: _____
Richard Hammer
Assistant Commissioner
Capitol Program Management

Date: _____

This Agreement has been reviewed and approved as to form.

John Jay Hoffman, Acting
Attorney General of New Jersey

By: _____
Nonee Lee Wagner
Deputy Attorney General

Date: _____