

County Council Of Howard County, Maryland

2013 Legislative Session

Legislative Day No. 11

Resolution No. 115-2013

Introduced by: The Chairperson at the request of the County Executive

A RESOLUTION authorizing the County Purchasing Agent to waive the formal competitive bidding requirements of Title 4, Subtitle 1 of the Howard County Code in order to enter into an agreement with Autumn Development Corporation, a Maryland corporation, to stabilize the slope that supports the roadbed of College Avenue in the vicinity of 3961 College Avenue.

Introduced and read first time Sept. 3, 2013.

By order Sheila M. Tolliver
Sheila M. Tolliver, Administrator

Read for a second time at a public hearing on Sept. 14, 2013.

By order Sheila M. Tolliver
Sheila M. Tolliver, Administrator

This Resolution was read the third time and was Adopted , Adopted with amendments , Failed , Withdrawn , by the County Council on October 7, 2013.

Certified By Sheila M. Tolliver
Sheila M. Tolliver, Administrator

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment.

1 **WHEREAS**, Section 4.106(d)(2) of the Howard County Code provides that the County
2 Council may, by resolution, authorize the County Purchasing Agent to waive the formal
3 competitive bidding requirements for any single purchase or sale if, in the judgment of the
4 County Council, the waiver will best serve the interest of the County; and

5
6 **WHEREAS**, Capital Project J-4213, FY 2007, College Avenue Slope Stabilization,
7 authorizes the funding for the construction of the Slope Stabilization of College Avenue and a
8 map showing the area of the stabilization work is attached as Exhibit A (the "Project"); and

9
10 **WHEREAS**, Autumn Development Corporation, (the "Developer") has submitted
11 subdivision plans to the County entitled "Autumn Overlook Lots 1-20 & Open Space Lot 21, a
12 subdivision of TM 25 Parcels 56 & 309 (L. 12833, F 446) and TM 25 Parcel 95 (L. 13244, F. 37)
13 (the "Subdivision"); and

14
15 **WHEREAS**, as required by the Howard County Subdivision and Land Development
16 Regulations ("Regulations"), the Developer shall enter into a Developer Agreement with the
17 County to construct certain public improvements to serve the lots within the proposed
18 Subdivision; and

19
20 **WHEREAS**, Open Space Lot 21 is the area adjacent to the Project and will be dedicated
21 to the County as shown on the Subdivision; and

22
23 **WHEREAS**, the College Avenue Slope Stabilization Cost Sharing Agreement (the
24 "Agreement"), the form of which is attached hereto as Exhibit B, to be entered into by and
25 between the Developer and the County, outlines each party's obligations related to the funding of
26 the construction of the Project; and

27
28 **WHEREAS**, the Department of Public Works submits that it is in the best interests of the
29 County to enter into an Agreement with the Developer for the construction of the Project to
30 avoid having two projects constructed in the same location at the same time and to take
31 advantage of the developer providing an area for staging of equipment and supplies.

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NOW, THEREFORE, BE IT RESOLVED by the County Council of Howard County, Maryland, this _____ day of _____, 2013, pursuant to Section 4.106(d)(2) of the Howard County Code, it declares that the best interests of the County will be served by authorizing the County Purchasing Agent to waive the competitive bidding requirements of Subtitle 1, “Purchasing”, of Title 4, “Contracts, Purchasing and Property”, of the Howard County Code in order to allow the County to contract with Autumn Development Corporation for the construction of College Avenue Slope Stabilization in accordance with the College Avenue Slope Stabilization Cost Sharing Agreement.

AND BE IT FURTHER RESOLVED, that the County Executive is hereby authorized to execute and deliver the College Avenue Slope Stabilization Cost Sharing Agreement in the name and on behalf of the County in substantially the same form of the Agreement attached hereto as Exhibit B.

COLLEGE AVENUE SLOPE STABILIZATION
COST SHARING AGREEMENT

THIS COLLEGE AVENUE SLOPE STABILIZATION COST SHARING AGREEMENT (this "Agreement") is made this _____ day of _____, 2013, by and between **AUTUMN DEVELOPMENT CORPORATION**, a corporation formed in accordance with the laws of the State of Maryland (the "Developer"), and **HOWARD COUNTY, MARYLAND**, a body corporate and politic (the "County").

WHEREAS, the Developer is developing parcels 56, 309, and 95 as shown on Tax Map 25 and described in the deeds recorded among the Land Records of Howard County, Maryland (the "Land Records") at Liber 12833, folio 446 and Liber 13244, folio 037(the "Property").

WHEREAS, the Developer intends to subdivide and develop the Property as depicted in a final plat of subdivision entitled "Autumn Overlook Lots 1-20 & Open Space Lots 21-24 a subdivision of TM 25 Parcels 56 & 309 (L. 12833 F. 446) and TM 25 Parcel 95 (L. 13244, F. 37) (F-13-081)" which will be recorded among the Land Records (the "Subdivision Plat").

WHEREAS, pursuant to the "Howard County Subdivision and Land Development Regulations" (the "Regulations"), the Developer is required to construct "Old Leaf Court" the public access place and "Red Stage Court", the public access place serving the lots within the subdivision and certain other public and private improvements pursuant to a Developer Agreement between the Developer and the County.

WHEREAS, the County's Plan Howard 2030 Functional Road Classifications indicates that College Avenue is a minor collector road and the County established Capital Project Number J-4213 FY2007 College Avenue Slope Stabilization to construct road improvements along west bound College Avenue from station 100+45 to station 105+16 (the "Slope Stabilization").

WHEREAS, the design of the College Avenue Slope Stabilization, the "Final Construction Plans, College Avenue Slope Stabilization J-4213" prepared by the County's consultant, Johnson, Mirmiran & Thompson dated August 2013 were approved by the County (the "Road Plan") and the estimated cost to construct the improvements shall not exceed \$650,000.00.

WHEREAS, the Developer has reviewed the Road Plan and determined that the Slope Stabilization can be completed as part of the road improvements under the Developer Agreement.

WHEREAS, pursuant to the Subdivision Plat, the land required for the Slope Stabilization is a part of Open Space Lot 21 and will be dedicated to the County.

WHEREAS, the Director of the Department of Public Works has determined the most cost effective and efficient way to complete the Slope Stabilization is to request the Developer to complete the Slope Stabilization.

WHEREAS, the County Council of Howard County, Maryland adopted Resolution Number ____ - 2013 which authorizes the County to waive the formal competitive bidding requirements and to enter into this Agreement with the Developer for the construction of the County's Slope Stabilization Improvements (Capital Project J-4213).

NOW, THEREFORE, IN CONSIDERATION of the foregoing recitals which are a material part of this Agreement and are hereby incorporated herein, the mutual promises of the Developer and the County set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer and the County agree as follows:

SECTION 1. Design and Construction of the Slope Stabilization.

a) The segment of College Avenue as shown on the Capital Project J-4213 construction plans between stations 100+45 and 105+16 has been designed by the County's consultant in accordance with the provisions of the Howard County Design Manual (the "Design Manual") to repair the failing slope area along west bound College Avenue as shown on construction plans entitled "Capital Project J-4213, College Avenue Slope Repair" (the "Construction Plans")

b) The County shall provide the Construction Plans to the Developer at no cost to the Developer. The slope stabilization detailed in the Construction Plans shall be a part of the Autumn Overlook Development constructed by the Developer and incorporated into the Developer Agreement.

c) The County shall regulate and inspect the construction of the Slope Stabilization in accordance with the terms of the Developer Agreement, Design Manual, Regulations, and Howard County Code. Any changes to the Construction Plans shall be approved by the County prior to the construction of such changes.

d) The Developer shall select the contractor(s) for the construction of the Slope Stabilization shown on the Capital Project J-4213 construction plans through a solicitation of bids process, obtaining at least three (3) independent bids. The County shall have the right to review and approve the bids received by the Developer. The Developer shall not accept a bid for the construction of the Construction Plans that has not been approved by the County.

e) The Developer covenants to indemnify and save the County harmless from and against any and all claims, actions, damages, liability and expense of any nature, including reasonable attorney's fees and the County's costs of defense, in connection with loss of life, personal injury and/or damage to or loss of property that arises from any work or activity related to the construction of the Developer's or its employees, contractors, or agents' activities in performing this Agreement.

SECTION 2. Reimbursement by the County. The Developer shall bear all of the costs for construction associated with constructing the Slope Stabilization as detailed in the Construction Plans and may request reimbursement from the County for the material and construction cost attributable to the Slope Stabilization in accordance with the following:

a) The County owns the fee simple interest or easements in the property required for the Slope Stabilization and accordingly the parties expect that there are no costs associated with acquiring right of way along College Avenue.

b) The County's share of the construction costs shall be limited to the costs of the materials and construction of the Slope Stabilization as shown on the Construction Plans.

c) The County shall reimburse Developer for the costs incurred by the Developer to complete the Slope Stabilization. Upon the County's receipt of a properly documented invoice (including affidavits from all subcontractors regarding payment in full for work completed) and the County's inspection and acceptance of the work thirty (30) days after the invoiced work is determined to be satisfactory by the County.

d) Upon the satisfactory completion of the work required under the Developer Agreement, as determined by the County, the Developer shall deliver the as-built construction plans for the College Avenue Slope Stabilization project to the County.

SECTION 3. Appropriation of Funds. In addition to all other conditions and contingencies set forth in this Agreement, the County's obligations under this Agreement to reimburse funds to the Developer from Capital Project J-4213 shall be contingent upon the County Council's approval of the annual appropriation of funds to the County's budget. Notwithstanding the foregoing, the Department of Public Works of the County will use reasonable efforts to obtain and subsequently maintain the funds necessary to reimburse funds to the Developer pursuant to this Agreement.

SECTION 4. Notice. All correspondence regarding this Agreement and the work to be performed hereunder shall be mailed or personally delivered in the case of the Developer to:

Autumn Development Corporation
5401 Twin Knolls Road
Suite 7
Columbia, MD 21045

The name and telephone number of the Developer's contact person for this Agreement is Donald R. Reuwer, Jr., (410) 707-7054.

All correspondence regarding this Agreement and the work to be performed hereunder shall be mailed or personally delivered in the case of the County to:

Director of Public Works
George Howard Building
3430 Court House Drive
Ellicott City, Maryland 21043

The name and telephone number of the County's contact person for this Agreement is James M. Irvin, (410) 313-4401.

Either party to this Agreement may change its address by written notice to the other party.

SECTION 5. Assignment; Binding Effect. This Agreement may not be assigned without the express prior written consent of the County. In the event the Developer intends to sell or assign any interest in the Property, the Developer and the new owner shall request the County to consent to the completion of the obligations herein by the Developer and the new owner. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Developer and the County. References to the Developer or the County shall be deemed to refer to each person hereinabove named and their respective designees, successors, and assigns.

SECTION 6. Final Agreement; Amendment. This Agreement and the Developer Agreement contain the final and entire agreement between the Developer and the County, and neither they nor their agents shall be bound by any terms, conditions or representations not contained herein. Any amendment to this Agreement shall be written and signed by the County and the Developer. Each writing or plat referred to in this Agreement is hereby made a part of this Agreement

SECTION 7. Conflict of Interest. Developer certifies that he has read and understands the provisions of Section 901(a) of the Howard County Charter and Section 22.204 of the Howard County Code relating to conflicts of interest and attached hereto as Exhibit "A".

[Signatures follow on the next page.]

IN WITNESS WHEREOF, the duly authorized officers of the Developer and the County hereto have set their hand and seals to this instrument on the day and year first above written.

WITNESS/ATTEST:

AUTUMN DEVELOPMENT CORPORATION

Name: _____
Corporate Secretary

By: _____(SEAL)
Ronald L. Spahn, President

STATE OF MARYLAND, HOWARD COUNTY/CITY, TO WIT:

I **HEREBY CERTIFY** that on this _____ day of _____, 2013, before me, the subscriber, a Notary Public of the State of Maryland, in and for _____ County/City , personally appeared Ronald L. Spahn, the President of Autumn Development Corporation, who acknowledged to me that he executed the foregoing Agreement on behalf of said corporation for the purposes therein contained.

AS WITNESS my Hand and Notarial Seal.

Notary Public

My Commission Expires: _____

[Signatures follow on the next page.]

ATTEST:

HOWARD COUNTY, MARYLAND

Lonnie R. Robbins
Chief Administrative Officer

By: _____ (SEAL)
Ken Ulman
County Executive

APPROVED: Department of
Public Works

APPROVED for Sufficiency of Funds:

James M. Irvin, Director
Date:

Stanley J. Milesky
Director of Finance
Date:

APPROVED for Form and Legal Sufficiency:
this _____ day of _____ 2013.

Margaret Ann Nolan
County Solicitor

Lisa S. O'Brien, Reviewing Attorney

STATE OF MARYLAND, HOWARD COUNTY/CITY, TO WIT:

I **HEREBY CERTIFY** that on this _____ day of _____, 2013, before me, the subscriber, a Notary Public of the State of Maryland, in and for _____ County/City, personally appeared Ken Ulman, County Executive for HOWARD COUNTY, MARYLAND, who acknowledged to me that he executed the foregoing Agreement for the purposes therein contained, and he further acknowledged the same to be the act of Howard County, Maryland.

AS WITNESS my Hand and Notarial Seal.

Notary Public

My Commission Expires: _____