

County Council Of Howard County, Maryland

2011 Legislative Session

Legislative Day No. 12

Resolution No. 173-2011

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 Ellicott Meadows, LLC, a Maryland limited liability company, for the design and construction of road improvements to North Ridge Road.

Introduced and read first time November 7, 2011.

By order Stephen LeGendre, Administrator

Read for a second time at a public hearing on November 21, 2011.

By order Stephen LeGendre, Administrator

This Resolution was read the third time and was Adopted, Adopted with amendments, Failed, Withdrawn, by the County Council on December 5, 2011.

Certified By Stephen LeGendre, 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-4179, FY 2000, North Ridge Road, authorizes the funding
7 for the design and construction of roadwork to improve the traffic conditions in the vicinity of
8 North Ridge Road and US40 by constructing North Ridge Road to connect US40 to Town and
9 Country Boulevard as the first phase of work, and a map showing the proposed connection is
10 attached as Exhibit A; and

11 **WHEREAS**, Ellicott Meadows, LLC, a Maryland limited liability company, its successors or
12 permitted assigns ("Ellicott Meadows"), is in the process of developing a parcel adjacent to
13 North Ridge Road at its intersection with Sonia Trial and is required to construct North Ridge
14 Road to connect between US40 and Town and Country Boulevard to the standard of a minor
15 collector road under the Howard County Design Manual Volume IV and the Howard County
16 Subdivision and Land Development Regulations (the "Regulations") and has submitted plans to
17 the County identified as "Final Construction Plans, Orchard Meadows (F-11-087)" (the "Road
18 Plan")for the subdivision; and

19
20 **WHEREAS**, pursuant to the Regulations, Ellicott Meadows is required to enter into a
21 development agreement, R/SW Agreement No. F-11-087, with the County to construct North
22 Ridge Road between stations 17+78.00 and 27+49.31(the "North Ridge Road Connection"); and

23
24 **WHEREAS**, the County determined North Ridge Road Connection should be
25 constructed to the standard of a major collector road and it is shown as such on the County's
26 General Plan 2000 Transportation Map 2000-2010 and the County has determined would be
27 most cost effective for Ellicott Meadows to design and to construct the North Ridge Road
28 Connection to the major collector standard; and

1 **WHEREAS**, the North Ridge Road Cost Sharing Agreement (the "Agreement"), the
2 form of which is attached hereto as Exhibit B, to be entered into by and between Ellicott
3 Meadows and the County, outlines each party's obligations under the Agreement related to the
4 funding of the design and construction of North Ridge Road Connection as a major collector
5 road; and

6
7 **WHEREAS**, Ellicott Meadows has modified the Road Plan to include the North Ridge
8 Road Connection as a major collector road and will provide the County with competitively bid
9 costs for the construction in accordance with the Road Plan and will, upon the County's
10 approval, share in such costs, as provided in the Agreement; and

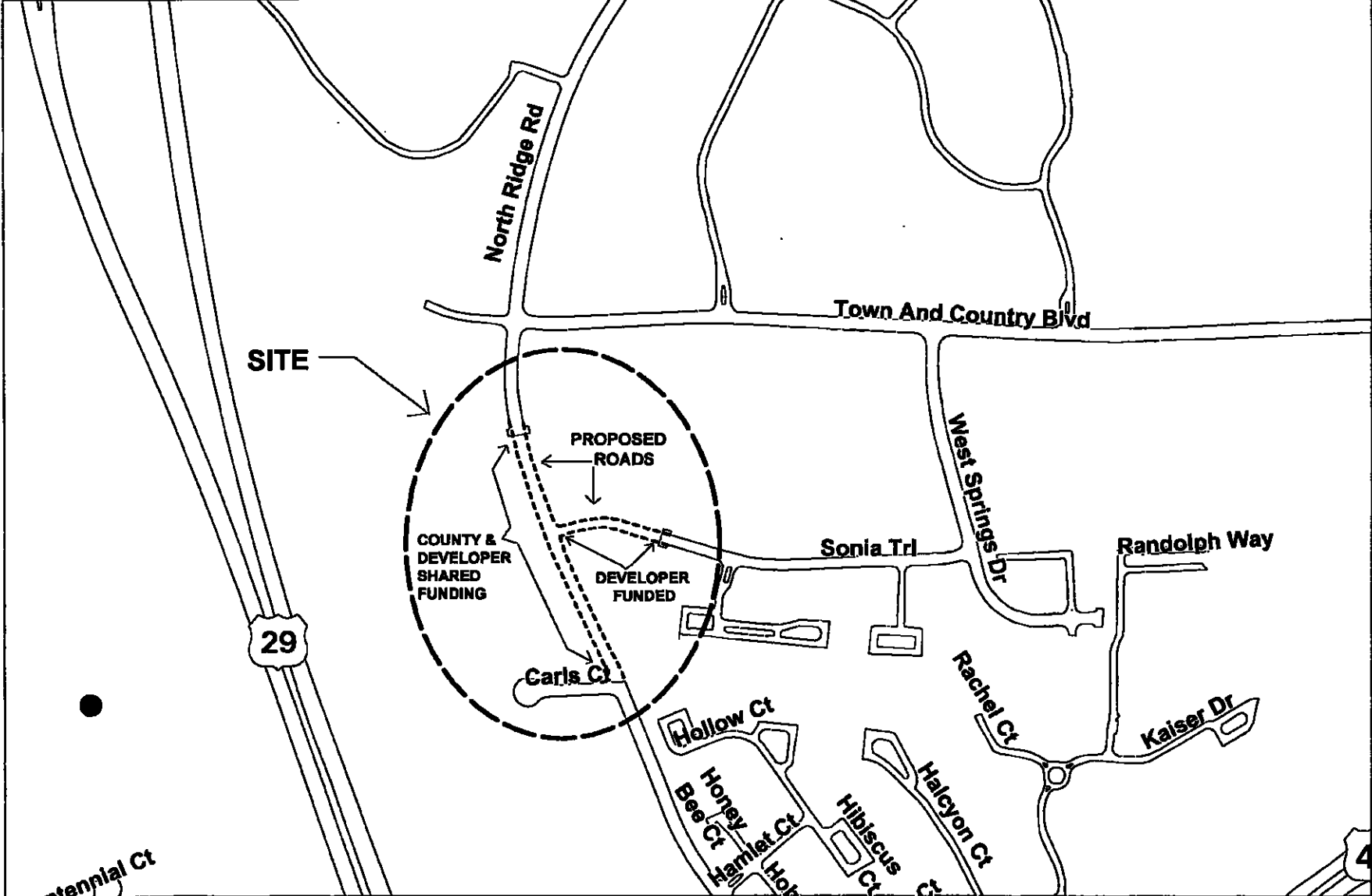
11 **WHEREAS**, the Howard County Department of Public Works desires to provide
12 additional improvements and recommends that one contractor with one set of contract
13 documents will provide the best coordination and scheduling of construction and Ellicott
14 Meadows can schedule these improvements in conjunction with its work under the developer
15 agreement; and

16
17 **WHEREAS**, the Department of Public Works submits that it is in the best interests of
18 the County to enter into the North Ridge Road Cost Sharing Agreement with Ellicott Meadows
19 for the construction of the North Ridge Road Connection as a major collector as shown on the
20 Road Plan.

21
22 **NOW, THEREFORE, BE IT RESOLVED** by the County Council of Howard County,
23 Maryland, this 5th day of December, 2011, pursuant to Section 4.106(d)(2) of the
24 Howard County Code, that it declares that the best interests of the County will be served by
25 hereby authorizing the County Purchasing Agent to waive the competitive bidding requirements
26 of Subtitle 1, "Purchasing", of Title 4, "Contracts, Purchasing and Property", of the Howard
27 County Code in order to allow the County to contract with Ellicott Meadows for the construction
28 of the improvements to North Ridge Road in accordance with the North Ridge Road Cost
29 Sharing Agreement.

1 **AND BE IT FURTHER RESOLVED**, that the County Executive is hereby authorized
2 to execute and deliver the North Ridge Road Cost Sharing Agreement in the name and on behalf
3 of the County in substantially the same form of the Agreement attached hereto as Exhibit B.

EXHIBIT 'A'



NORTH RIDGE ROAD COST SHARING AGREEMENT

THIS NORTH RIDGE ROAD COST SHARING AGREEMENT (this "Agreement") is made this ____ day of _____, 2011, by and between **ELLICOTT MEADOWS, LLC**, a limited liability company 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, Wilder Building Corporation is the owner of certain real property located in Ellicott City, Howard County, Maryland and described in the deed dated 6/19/1990 and recorded among the land records of Howard County, Maryland at liber 02202, folio 0694 (the "Property") and

WHEREAS, Wilder Building Corporation has engaged Ellicott Meadows, LLC as the Developer of the Property pursuant to a final plat of subdivision entitled "Orchard Meadows" (the "Developer") and pursuant to the "Howard County Subdivision and Land Development Regulations" the Developer is required to construct North Ridge Road as a minor collector road between stations 17+78.00 and 27+49.31 to connect US 40 and Town and Country Boulevard; and

WHEREAS, the County's General Plan 2000 Transportation Map 2000-2010 indicates that North Ridge Road is a major collector road and the County established Capital Project Number J-4179 FY2000 North Ridge Road to allow the County and Developer to cooperate in the construction of public road improvements; and

WHEREAS, at the request of the County, the Developer has designed the road plans for North Ridge Road between stations 17+78.00 and 27+49.31 as a major collector road (the "North Ridge Road Connection") as shown on the "Final Construction Plans, Orchard Meadows (F-11-087) (the "Road Plan"); and

WHEREAS, the Director of the Department of Public Works has determined the most cost effective and efficient way to complete the required public road improvements is for the Developer to construct the North Ridge Road Connection, as shown on the Road Plan; and

WHEREAS, the County has agreed to fund an estimated amount of Seven Hundred Eighty-seven Thousand Five Hundred Ninety-two Dollars and Seventy-three Cents (\$787,592.73) for land acquisition and construction of the North Ridge Road Connection as a major collector road rather than a minor collector road; and

WHEREAS, the County Council of Howard County, Maryland adopted Resolution Number _____-2011 that authorizes the County to waive the formal competitive bidding requirements and to enter into this Agreement with Ellicott Meadows, LLC for the construction of the North Ridge Road Connection.

NOW, THEREFORE, IN CONSIDERATION of 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. Specifications for Design and Construction of North Ridge Road. The segment of North Ridge Road between stations 17+78.00 and 27+49.31 has been designed by the Developer in accordance with the provisions of the Howard County Design Manual (the "Design Manual") as a major collector road, as shown on the Road Plan and shall be constructed by the Developer pursuant to the Developer Agreement F-11-087 (the "Developer Agreement").

SECTION 2. Reimbursement by the County. The Developer shall bear all of the costs for land acquisition, design and construction associated with constructing the North Ridge Road Connection as a major collector and may request reimbursement from the County for a portion of the construction costs in accordance with the following:

a) The County's share of the cost to acquire the necessary right of way was agreed upon to be 50% of all of the costs of the acquisition of the land for the road right-of-way (1.515 acres). The pro-rated cost of the land required for the road right-of-way, using the cost of the land to the Developer is \$352,934.00.

b) The County's share of the construction costs are based on an agreement that the County will pay 50% of all of the costs of the construction of the road improvements within the right-of-way of the new North Ridge Road except for the water and sewer lines. The water and sewer line improvements may be covered by other developer agreements with the County. The County's share of the storm water management for the road shall be 62% of Surface Sand Filter #6, 20% of Quantity Facility #6 and 52% of Micro Bio-retention #2. The estimated construction costs are outlined in the spreadsheet titled CONSTRUCTION COST ESTIMATE, PROJECT: North Ridge Road (Part of Orchard Meadows Subdivision), DATE PREPARED: 8/26/2011, "Adjusted Spreadsheet" tab. The pro-rated estimated cost to the County is \$434,658.73.

c) To the extent funds are available in Capital Project J-4179 pursuant to Section 3 herein; the County agrees to reimburse the Developer for fifty percent of all land acquisition and construction costs (estimated to be \$787,592.73) other than water and sewer for North Ridge Road between stations 17+78.00 and 27+49.31 (the "North Ridge Road Connection"). The final reimbursement amount will be based on the final construction costs as verified by a review of the reimbursement request documentation and inspection logs.

d) The Developer may only request reimbursement from the County upon the County's acceptance of the North Ridge Road Connection in accordance with the provisions of the Developer Agreement and invoices evidencing the payment of the contractors performing the construction.

e) The Developer shall select the contractor(s) for the construction of North Ridge Road through a solicitation of bids process, acquiring at least 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 North Ridge Road that has not been approved by the County.

f) Upon the completion of the work required under the Developer Agreement, the Developer shall convey to the County, at no additional cost, the right-of-way and associated improvements for North Ridge Road.

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-4179 shall be contingent upon the County Council's approval of the Agreement and the annual appropriation of funds to the County's budget by the County Council. 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: Josh E. Fidler, Managing Member of Ellicott Meadows OP, LLC, c/o Chesapeake Realty Partners, 4750 Owings Mills Blvd., Owings Mills, Maryland, 21117. The name and telephone number of Developer's contact person for this Agreement is Jonathan Mayers and his or her telephone number is 410-356-9900. 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. County's contact person for this Agreement and his or her telephone number is James Irvin, 410-313-4401. Either party to this Agreement may change its address by written notice to the other party.

SECTION 5. Binding Effect. 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 contains 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 each of the Developers.

SECTION 7. Conflict of Interest. Developer certifies that it 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".

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:

Ellicott Meadows, LLC
a Maryland limited liability company

By: _____ (SEAL)
Josh E. Fidler
Managing Member

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

Stanley Milesky,
- Director Department of Finance

APPROVED for Form and Legal Sufficiency:
this ____ day of _____, 201_.

Margaret Ann Nolan
County Solicitor

[Notaries follow on the next page.]

STATE OF MARYLAND, HOWARD COUNTY, TO WIT:

I HEREBY CERTIFY that on this _____ day of _____, 201_, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared **Josh E. Fidler, Managing Member of Ellicott Meadows, LLC**, who acknowledged to me that he executed the foregoing Agreement on behalf of said corporation for the purposes therein contained, and he further acknowledged the same to be the act of said corporation, the party to the Agreement.

AS WITNESS my Hand and Notarial Seal.

Notary Public

My Commission Expires: _____

STATE OF MARYLAND, HOWARD COUNTY, TO WIT:

I HEREBY CERTIFY that on this _____ day of _____, 201_, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, 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: _____

EXHIBIT A

**Howard County Charter
Section 901. Conflict of Interest.**

(a) **Prohibitions.** No officer or employee of the County, whether elected or appointed, shall in any manner whatsoever be interested in or receive any benefit from the profits or emoluments of any contract, job, work, or service for the County. No such officer or employee shall accept any service or thing of value, directly or indirectly, from any person, firm or corporation having dealings with the County, upon more favorable terms than those granted to the public generally, nor shall he receive, directly or indirectly, any part of any fee, commission or other compensation paid or payable by the County, or by any person in connection with any dealings with the County, or by any person in connection with any dealings with or proceedings before any branch, office, department, board, commission or other agency of the County. No such officer or employee shall directly or indirectly be the broker or agent who procures or receives any compensation in connection with the procurement of any type of bonds for County officers, employees or persons or firms doing business with the County. No such officer or employee shall solicit or accept any compensation or gratuity in the form of money or otherwise for any act or omission in the course of his public work; provided, however, that the head of any department or board of the County may permit an employee to receive a reward publicly offered and paid for, for the accomplishment of a particular task.

(b) **Rules of construction; exceptions by Council.** The provisions of this Section shall be broadly construed and strictly enforced for the purpose of preventing officers and employees from securing any pecuniary advantages, however indirect, from their public associations, other than their compensation provided by law.

In order, however, to guard against injustice, the Council may, by resolution, specifically authorize any County officer or employee to own stock in any corporation or to maintain a business in connection with any person, firm or corporation dealing with the County, if, on full public disclosure of all pertinent facts to the County Council by such officer or employee, the Council shall determine that such stock ownership or connection does not violate the public interest.

The County Council may, by ordinance, delegate to the Howard County Ethics Commission the power to make such determinations and to authorize the ownership or connection. Any ordinance which delegates this power shall provide for procedures including a public hearing, and shall establish criteria for determining when the ownership or connection does not violate the public interest.

(c) **Penalties.** Any officer or employee of the County who willfully violates any of the provisions of this Section shall forfeit his office. If any person shall offer, pay, refund or rebate any part of any fee, commission, or other form of compensation to any officer or employee of the County in connection with any County business or proceeding, he shall, on conviction, be punishable by imprisonment for not less than one or more than six months or a fine of not less than \$100.00 or more than \$1,000.00, or both. Any contract made in violation of this Section may be declared void by the Executive or by resolution of the Council. The penalties in this Section shall be in addition to all other penalties provided by law.

Howard County Code
Section 22.204. Prohibited Conduct and Interests.

(a) **Participation Prohibitions:** County official and employees subject to this subtitle shall not:

(1) Except in the exercise of an administrative or ministerial duty which does not affect the disposition or decision with respect to the matter, participate on behalf of the county in any matter which would, to their knowledge, have a direct financial impact as distinguished from the public generally, on them, their spouse, parent, child, sibling or upon any business interest with which they are affiliated;

(2) Except as exempted by the county council pursuant to Section 901(b) of the Howard County Charter, hold or acquire an interest in a business entity that has or is negotiating a contract with the county or is regulated by the official or employee;

(3) Except in the exercise of an administrative or ministerial duty which does not affect the disposition or decision with respect to the matter, participate in any matter involving a business entity with which they, their spouse, parent, child or sibling are negotiating or have an arrangement concerning prospective employment.

(b) **Employment Prohibitions:** Except as exempted by the county council pursuant to section 901(b) of the Howard County Charter or when the employment or interest does not create an actual or apparent conflict of interest, officials and employees shall not:

(1) Be employed by:

(i) Any entity subject to their official authority;

(ii) Any entity subject to the authority of the Howard County agency, board or commission with which they are affiliated;

(iii) Any entity which is negotiating or has entered into a contract with the Howard County agency, board or commission with which they are affiliated.

(2) Represent any party for a fee, commission or other compensation before any county body;

(3) Within one (1) year following termination of county service, act as a compensated representative of another in connection with any specific matter in which they participated substantially as a county official or employee.

Exhibit B

Capital Project J-4179

The employment provisions listed above do not apply to:

(1) An official or employee who is appointed to a regulatory or licensing authority pursuant to a requirement that persons subject to its jurisdiction be represented in appointments to it;

(2) Subject to other provisions of law, a member of a board or commission who publicly disclosed a financial interest or employment to the appointing authority at the time of appointment;

(3) Employees or officials whose duties are ministerial, provided that the private employment or financial interest does not create a conflict of interest or the appearance of such a conflict.

(c) **Solicitation/Acceptance of Gifts or Compensation:** No employee or official shall solicit any gifts. No employee or official shall accept any gift or compensation, directly or indirectly from any person that he/she knows or has reason to know, has financial interests, distinguishable from the interest of the public, that would be affected by the actions of the employee or official.

(d) **Use of Prestige of Office:** No county officials or employees subject to this subtitle shall intentionally use the prestige of their office for their own gain or that of another. The performance of usual and customary constituent services without additional compensation does not constitute the use of prestige of office for an official or employee's private gain or that of another.

(e) **Disclosure of Confidential Information:** Other than in the discharge of official duties, officials or employees may not disclose or use, for their own gain or that of another, confidential information acquired by reason of public position and which is not available to the public.