

County Council Of Howard County, Maryland

2014 Legislative Session

Legislative Day No. 2

Resolution No. 17 -2014

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 the Columbia Association, Inc., a Maryland corporation, to make certain improvements to the storm drainage channel under the Cradlerock Way Bridge.

Introduced and read first time Feb. 3, 2014.

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

Read for a second time at a public hearing on Feb. 18, 2014.

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 March 5, 2014.

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**, the County owns and maintains a public right-of-way named Cradlerock
7 Way, including but not limited to bridge #HO-112, (the “Cradlerock Way Bridge”) located in
8 Columbia, Howard County, Maryland and described in the deed dated June 19, 1990 and
9 recorded among the Land Records of Howard County, Maryland at Liber 0757, folio 403 and the
10 associated Developer/Owner Road Conveyance Agreement between the County and recorded
11 among the Land Records at Liber 757, folio 394; and

12
13 **WHEREAS**, under the Cradlerock Way Bridge is (i) a pedestrian pathway for
14 community use which was constructed by and maintained by the Columbia Association, Inc. (the
15 “Association”) and (ii) a storm water easement in a drainage channel connecting to Lake Elkhorn
16 (the “Drainage Channel”); and

17
18 **WHEREAS**, the Association desires to repave the Pathway and remove and replace the
19 retaining wall supporting the Pathway and maintain the Drainage Channel in accordance with the
20 plans titled “Columbia Association Cradlerock Way Retaining Wall Repairs” (the “Construction
21 Plan”); and

22
23 **WHEREAS**, the Association has requested to share in the cost of grading and
24 stabilizing the ground with an approved soil stabilization matting on the east side of the Drainage
25 Channel (the “Project”); and

26
27 **WHEREAS**, Capital Project D-1124, Drainage Improvement Program, authorizes
28 funding for the construction of drainage improvements requested by citizens; and

29
30 **WHEREAS**, the Cradlerock Way Cost Sharing Agreement (the “Agreement”), the form
31 of which is attached hereto as Exhibit 1, to be entered into by and between the Association and

1 the County, outlines each party's obligations related to the funding of the construction of the
2 Project; and

3
4 **WHEREAS**, the Department of Public Works submits that it is in the best interests of the
5 County to enter into an Agreement with the Association for the construction of the Project to
6 avoid having two projects constructed in the same location at the same time and to take
7 advantage of the Association providing an area for staging of equipment and supplies.

8
9 **NOW, THEREFORE, BE IT RESOLVED** by the County Council of Howard County,
10 Maryland, this 5th day of March, 2014, pursuant to Section 4.106(d)(2) of the
11 Howard County Code, it declares that the best interests of the County will be served by
12 authorizing the County Purchasing Agent to waive the competitive bidding requirements of
13 Subtitle 1, "Purchasing", of Title 4, "Contracts, Purchasing and Property", of the Howard
14 County Code in order to allow the County to contract with Columbia Association, Inc., for the
15 grading and stabilizing of the Drainage Channel in accordance with the Cradlerock Way Cost
16 Sharing Agreement.

17
18 **AND BE IT FURTHER RESOLVED**, that the County Executive is hereby authorized
19 to execute and deliver the Cradlerock Way Cost Sharing Agreement in the name and on behalf of
20 the County in substantially the same form of the Agreement attached hereto as Exhibit 1.

CRADLEROCK WAY COST SHARING AGREEMENT

THIS CRADLEROCK WAY COST SHARING AGREEMENT (this "Agreement") is made this _____ day of _____, 2014, by and between **COLUMBIA ASSOCIATION, INC.**, a Maryland corporation (the "Association"), and **HOWARD COUNTY, MARYLAND**, a body corporate and politic (the "County").

WHEREAS, the County owns and maintains a public right-of-way named Cradlerock Way, including but not limited to bridge #HO-112, (the "Cradlerock Way Bridge") located in Columbia, Howard County, Maryland and described in the deed dated June 19, 1990 and recorded among the Land Records of Howard County, Maryland (the "Land Records") at Liber 0757, folio 403 and the associated Developer/Owner Road Conveyance Agreement between the County and recorded among the Land Records at Liber 757, folio 394 (the "Property").

WHEREAS, under the Cradlerock Way Bridge is (i) a pedestrian pathway for community use which was constructed by and maintained by the Association (the "Pathway") and (ii) a storm water easement in a drainage channel connecting to Lake Elkhorn (the "Drainage Channel").

WHEREAS, the County has established Capital Project D-1124 for the construction of drainage improvements requested by citizens.

WHEREAS, the Association desires to repave the Pathway and remove and replace the retaining wall supporting the Pathway and maintain the Drainage Channel in accordance with the plans titled "Columbia Association Cradlerock Way Retaining Wall Repairs" (the "Construction Plan").

WHEREAS, the Association has requested (i) the County to convey to the Association an easement for the portion of the Pathway and Drainage Channel under the Cradlerock Way Bridge, and (ii) to share in the cost of grading and stabilizing the ground with an approved soil stabilization matting on the east side of the Drainage Channel.

WHEREAS, the County Council of Howard County, Maryland adopted Resolution Number _____ - 2014 that authorizes the County to waive the formal competitive bidding requirements and to enter into this Agreement with the Association for the construction of the Cradlerock Way improvements in accordance with the Construction Plan.

WHEREAS, the County Council of Howard County, Maryland adopted Resolution Number _____ - 2014 that authorizes the County to convey to the Association an easement for the operation, maintenance, and repair of the Pathway and Drainage Channel.

NOW, THEREFORE, IN CONSIDERATION of the mutual promises of the Association and the County set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Association and the County agree as follows:

SECTION 1. Construction Plans. The Construction Plans specify (i) removing and disposing of the existing deteriorated stone wall on the east and west sides of the Drainage Channel; (ii) extending of a "Alan Block" wall along the east side of the Drainage Channel; (iii) installing Class II rip-rap under the bridge, and stabilizing it with a non-shrink grout; and (iv) grading and stabilizing the ground with an approved soil stabilization matting (SSM) on the east side of the Drainage Channel.

SECTION 2. Construction by Association and Reimbursement by the County. The Association shall manage the construction and bear all of the costs of the construction in accordance with the Construction Plan. The Association and the County agree as follows with respect to the construction and reimbursement from the County for a portion of the construction costs:

a. The County's share of the construction costs is up to \$50,000 and is limited to the costs of grading and stabilizing the ground adjacent to the Drainage Channel with an approved soil stabilization matting on the east side of the Drainage Channel which are outlined in the sheet titled "June 4, 2013, Cradlerock Way", Exhibit "A", attached hereto and made a part hereof (the "County Work")

b. The Association shall select the contractor for the construction of the Pathway and Drainage Channel improvements 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 Association. The Association shall not accept a bid for the construction of the Pathway and Drainage Channel Improvements that has not been approved by the County.

c. Upon completion of the County Work, the Association shall notify the County and shall provide a properly documented invoice (including affidavits from all subcontractors regarding payment in full for the County Work completed). The County shall inspect the County Work and determine if the County Work is satisfactory to the County. The Association shall promptly correct any defects in the County Work. Upon satisfactory completion of the County Work, the County shall, to the extent funds are available in Capital Project D-1124, reimburse the Association up to Fifty Thousand Dollars (\$50,000.00) for the satisfactory construction of the County Work.

d. The Association 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 Association or its employees, contractors, or agents' activities in performing this Agreement.

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 Association from Capital Project D-1124 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 Association pursuant to this Agreement.

SECTION 4. Easement. The County shall execute a Deed of Easement to the Association for the Pathway and Drainage Channel. The Easement shall be recorded among the Land Records prior to the start of the construction of the Pathway and Drainage Channel Improvements.

SECTION 5. Notice. All correspondence regarding this Agreement and the work to be performed hereunder shall be mailed or personally delivered in the case of the Association to: Columbia Association, Inc., 10221 Wincopin Circle, Columbia, Maryland 21044. The name and telephone number of the Association's contact person for this Agreement is Dennis Ellis, 410-381-0383. 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 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 6. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Association and the County. References to the Association or the County shall be deemed to refer to each person hereinabove named and their respective designees, successors, and assigns.

SECTION 7. Final Agreement; Amendment. This Agreement contains the final and entire agreement between the Association 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 Association.

SECTION 8. Conflict of Interest. Association 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 "B".

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

WITNESS/ATTEST:

COLUMBIA ASSOCIATION, INC.
a Maryland corporation

Corporate Secretary

By: _____ (SEAL)

Name: _____
President & CEO

Date: _____

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

I **HEREBY CERTIFY** that on this ____ day of _____, 2014, before me, the subscriber, a Notary Public of the State of Maryland, in and for _____ County/City, personally appeared _____, who acknowledged himself to be the President and CEO of Columbia Association, Inc. (the "Corporation"), a Maryland corporation, and that he, as such officer being authorized so to do, executed the within Deed of Easement for the purposes therein contained by signing the name of the Corporation as such officer and certified that this conveyance is not part of a transaction in which there is a sale, lease, exchange, or other transfer of all or substantially all of the property and assets of the Corporation.

AS WITNESS my Hand and Notarial Seal.

Notary Public

My Commission Expires: _____

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 _____, 2014.

Margaret Ann Nolan
County Solicitor

Reviewing Attorney:

Lisa S. O'Brien
Senior Assistant County Solicitor

COUNTY EXECUTIVE:
STATE OF MARYLAND, _____ COUNTY, TO WIT:

I HEREBY CERTIFY that on this _____ day of _____, 2014, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared Ken Ulman, the County Executive for Howard County, Maryland, the Grantee in the within Agreement, who acknowledged the same to be the act of the County and that he executed the foregoing Agreement for the purposes therein contained by signing in my presence the name of Howard County, Maryland as County Executive.

AS WITNESS my Hand and Notarial Seal.

Notary Public

My Commission Expires: _____

Exhibit A

June 4, 2013
Cradlerock Way

County portion:

Excavation:

2'X100'X10' = 2000cft/27 = 74.07 cyd.

Unit price from County Requirement contractors for Class III excavation = \$50.00

74.07 cyd. X \$50.00 = \$3,703.70

Class II Rip-rap:

10' X 100' = 1000 sq. ft. /9 = 111.11 sq. yd.

Unit price from County Requirement contractors for Class III excavation = \$100.00

111.11 sq. yd. X \$100.00 = \$11,111.11

Removing portion of the wall within the public right-of-way = 100 ft. and add 75 sq. ft. Allan Block Wall:

Lump Sum = \$10,000.00

Total cost for the County = \$24,814.81 Say \$25,000.00

Non-shrink Grout, Jute Matting, Mobilization, Sediment control and miscellaneous =
\$20,000.00

GRAND TOTAL = \$45,000.00

Say **\$50,000.00**

EXHIBIT B

**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.

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.