

County Council Of Howard County, Maryland

2011 Legislative Session

Legislative Day No. 3

Resolution No. 23 -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 a contract with 3330 Rogers Avenue, LLC, a Maryland limited liability company, for the design and construction of road improvements to Ellicott Center Drive.

Introduced and read first time _____, 2011.

By order _____
Stephen LeGendre, Administrator

Read for a second time at a public hearing on _____, 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 _____, 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-4225, FY 2008, Ellicott Center Drive Connection to
7 Rogers Avenue, authorizes the funding for the design and construction of an extension of Ellicott
8 Center Drive to Rogers Avenue, and a map showing the connection is attached as Exhibit A; and

9 **WHEREAS**, 3330 Rogers Avenue, LLC (the “Developer”), a Maryland limited liability
10 company, has contracted with the County to purchase the real property described in two deeds,
11 one dated August 20, 2002 and recorded among the land records of Howard County, Maryland
12 (the “Land Records”) at liber 6485, folio 0277 and the other dated April 14, 2000 and recorded
13 among the Land Records at liber 5071, folio 128 (collectively, the “Property”); and

14 **WHEREAS**, Council Bill Number 40-2008, which authorized the County’s sale of the
15 Property, acknowledged that it is in the best interests of the County to construct Ellicott Center
16 Drive pursuant to Capital Project J-4225; and

17 **WHEREAS**, as part of the Developer’s construction of a proposed residential and
18 commercial development on the Property, the Developer has agreed to construct Ellicott Center
19 Drive as originally proposed and approved on the County’s plans titled “Site Development Plan
20 for Mass Grading, Road Construction & Stormwater Management Howard County Office
21 Campus, Parcel A” (SDP-03-026) (the “Road Plans”); and

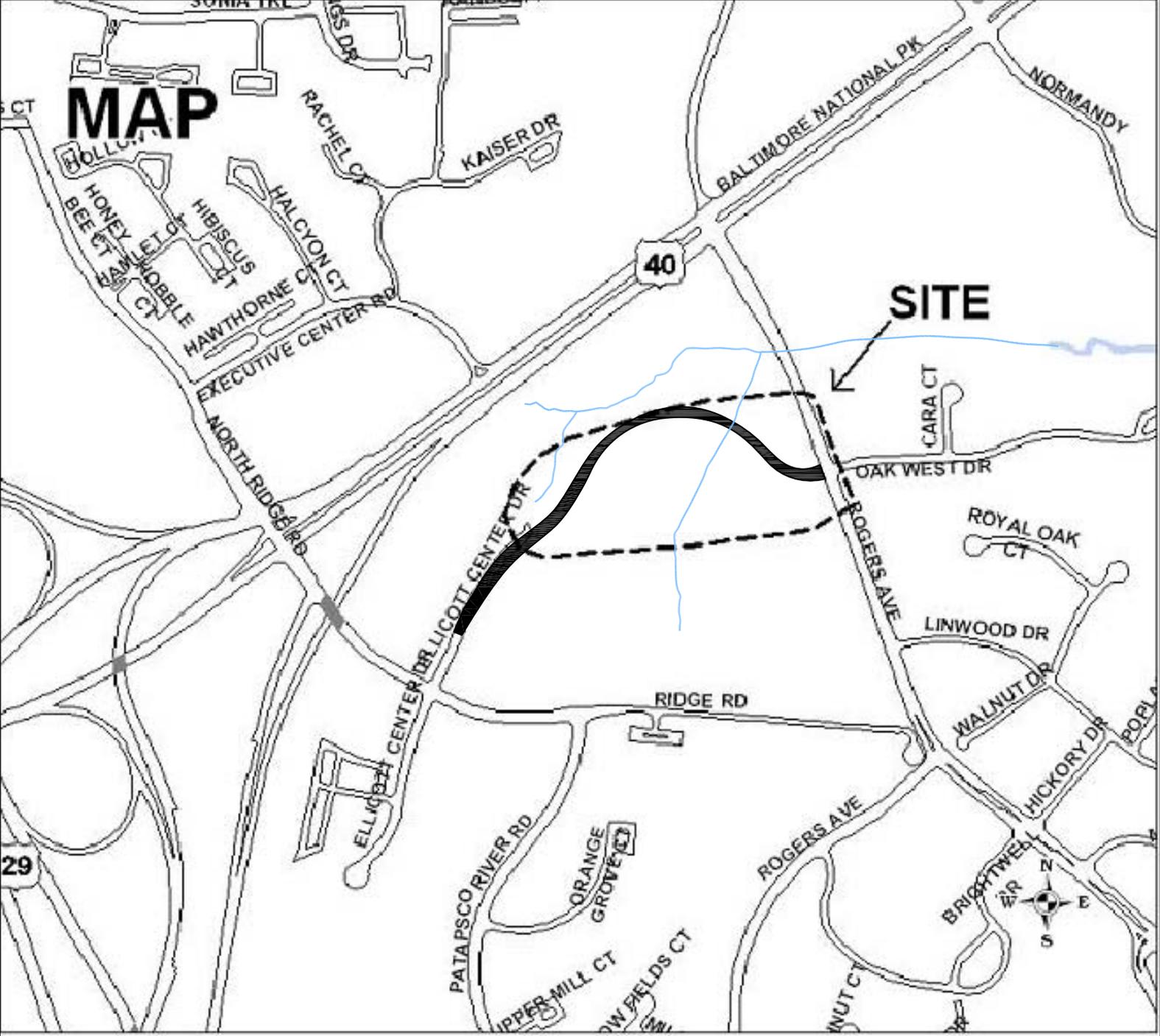
22 **WHEREAS**, the Ellicott Center Drive Agreement (the “Agreement”), the form of which
23 is attached hereto as Exhibit B and to be entered into by and between Developer and the County,
24 outlines each party’s obligations under the Agreement related to the funding and construction of
25 the Ellicott Center Drive Connection to Rogers Avenue as a minor collector road in accordance
26 with the Road Plans; and

1 **WHEREAS**, Developer will provide the County with competitively bid costs for the
2 construction of the Ellicott Center Drive connection to Rogers Avenue in accordance with the
3 Agreement and will, upon the County’s approval, share in such costs, as provided in the
4 Agreement; and

5 **WHEREAS**, the Department of Public Works submits that it is in the best interests of
6 the County to contract with Developer for the construction of the Ellicott Center Drive
7 connection to Rogers Avenue.

8
9 **NOW, THEREFORE, BE IT RESOLVED** by the County Council of Howard County,
10 Maryland, this _____ day of _____, 2011, pursuant to Section 4.106(d)(2) of the
11 Howard County Code, that it declares that the best interests of the County will be served by
12 hereby authorizing the County Purchasing Agent to waive the competitive bidding requirements
13 of 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 Developer for the construction of the
15 Ellicott Center Drive connection to Rogers Avenue in accordance with the specifications set
16 forth in the Ellicott Center Drive Agreement.

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



MAP

SITE

40

29



ELLICOTT CENTER DRIVE AGREEMENT

THIS ELLICOTT CENTER DRIVE AGREEMENT (the "Agreement") is made this _____ day of _____, 2011, by and between 3330 Rogers Avenue, LLC, a Maryland limited liability company (the "Developer") and **HOWARD COUNTY, MARYLAND**, a body corporate and politic (the "County").

WHEREAS, the Developer is the contract purchaser and the County is the seller of certain real property described in two deeds, one dated August 20, 2002 and recorded among the land records of Howard County, Maryland (the "Land Records") at liber 6485, folio 0277 and the other dated April 14, 2000 and recorded among the Land Records at liber 5071, folio 128 (the "Property"). The Developer proposes to construct a residential and commercial development on the Property under the POR-MXD-6 zoning classification ("Developer's Project").

WHEREAS, the County established Capital Project J-4225, FY 2008 Ellicott Center Drive Connection to Rogers Ave authorizing the funds to design and construct Ellicott Center Drive through the Property and the County has an approved design for Ellicott Center Drive, "Site Development Plan for Mass Grading, Road Construction & Stormwater Management Howard County Office Campus" dated July 20, 2008 (the "Road Plans"), a copy of which is incorporated herein by this reference.

WHEREAS, Council Bill Number 40-2008 which authorized the County's sale of the Property, acknowledged that it is in the best interests of the County to construct Ellicott Center Drive pursuant to Capital Project J-4225.

WHEREAS, Ellicott Center Drive is integral to Developer's project and the County and Developer desire to coordinate the construction of Ellicott Center Drive which will result in a cost savings to both parties and expedite the completion of Ellicott Center Drive.

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 Developer for the construction of Ellicott Center Drive.

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

1. Developer shall construct Ellicott Center Drive and associated improvements within the right-of-way and public easement areas as shown on the Road Plans from Station 0+45 to Station 16+63 ("Ellicott Center Drive") in accordance with the provisions of this Agreement. The County is providing the Road Plans at no cost to the Developer. At the closing of the Developer's acquisition of the land for Developer's Project, Developer shall convey an easement in the Ellicott City Drive right-of-way to the County.

2. The Developer and the County agree the Developer shall construct Ellicott Center Drive in accordance with the Road Plans and the General Conditions contained in the Howard County Design Manual Volume IV, each of which are, by this reference, hereby incorporated into this Agreement.

3. Developer shall select the subcontractor(s) for the construction of Ellicott Center Drive through a solicitation of bids process, acquiring at least three (3) independent bids from duly qualified contractors acceptable to the County. The County shall have the right to review and approve the bids received by Developer. Developer shall not accept a bid for the construction of Ellicott Center Drive that has not been approved by the County. Each construction subcontract shall be bid as a cost to complete contract, automatically assignable by and enforceable by the County if the Developer shall default.

4. The Developer shall apply to the Maryland Department of the Environment for a Maryland Non-Tidal Wetland and Waterway Permit and to any other government agencies for the necessary approvals and permits to construct Ellicott Center Drive on or before June 1, 2011. Developer shall commence construction promptly upon the issuance of such permits and approvals and complete the construction of Ellicott Center Drive twelve (12) months after the date construction commences.

5. As required for all road construction, the County shall perform periodic inspections of the construction of Ellicott Center Drive.

6. Developer and County shall each fund one-half of the costs for the construction of Ellicott Center Drive. The estimated cost of construction is Two Million Five Hundred Dollars (\$2,500,000.00)

7. Developer shall submit monthly progress reports with its invoice for work related to the construction of Ellicott Center Drive completed each month. The County shall have the right to inspect and verify the satisfactory completion of the work reported on each report. The County shall reimburse Developer for the County's share of the cost of the satisfactory work completed on each properly documented invoice, thirty (30) days after the invoiced work is determined to be satisfactory by the County.

8. Upon the County's final acceptance of the construction of Ellicott Center Drive and associated public improvements, Developer shall convey fee simple title to the right-of-way and easements for the associated public improvements to the County, at no cost to the County. Upon final acceptance of the public road and recordation of the deed conveying the right-of-way for Ellicott Center Drive to the County and the deed or lease referenced in Section 9 hereof, this Agreement shall terminate.

9. Upon the Developer's acquisition of the land for the Developer's Project, the Developer, at no cost to the County, shall execute either (i) a deed to or (ii) a ground lease for the County's exclusive and perpetual use of, a one acre area as depicted on Exhibit A attached hereto.

10. 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

11. This Agreement may not be assigned.

12. 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: Donald R. Reuwer, Jr., Suite 102, 5300 Dorsey Hall Drive, Ellicott City, Maryland 21042. The name and telephone number of Developer's contact person for this Agreement and his or her telephone number is Donald R. Reuwer, Jr. _____. 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.

13. Each writing or plat referred to in this Agreement as an exhibit is hereby made a part of this Agreement.

14. This Agreement was made and entered into in Maryland and is to be construed under the Laws of Maryland. As to Developer, this Agreement is intended to be a contract under seal and a specialty.

IN WITNESS WHEREOF, the Developer and the County have caused this Ellicott Center Drive Agreement to be executed and delivered by their respective duly authorized representatives, under seal, on the date first above written.

WITNESS/ATTEST:

3330 Rogers Avenue, LLC
a Maryland limited liability company

By: _____ (SEAL)
Donald R. Reuwer, Jr.
Managing Member

ATTEST:

HOWARD COUNTY, MARYLAND

Lonnie R. Robbins
Chief Administrative Officer

By: _____ (SEAL)
Ken Ulman
County Executive

APPROVED:

James M. Irvin, Director
Department of Public Works

[Signatures continued on following page.]

APPROVED FOR SUFFICIENCY OF FUNDS:

Sharon F. Greisz, Director
Department of Finance

APPROVED FOR FORM AND LEGAL SUFFICIENCY
this _____ day of _____, 2011.

Margaret Ann Nolan
County Solicitor

