

MAYOR AND CITY COUNCIL OF FROSTBURG



*Mayor W. Robert Flanigan
Donald L. Carter, Jr., Commissioner of Finance
Kevin G. Grove, Commissioner of Public Safety
Nina Forsythe, Commissioner of Water, Parks and Recreation
Adam Ritchey, Commissioner of Public Works*

AGENDA **MAYOR AND COUNCIL WORK SESSION** **Thursday, February 11, 2021 at 3:00 PM** **VIRTUAL**

| | Page |
|---|---------|
| 1. CALL TO ORDER | |
| 2. ROLL CALL | |
| 3. COUNCIL MEETING TOPICS | |
| 3.1. West End Park, Pavilion Lease Proposal. Brian Vought, Director of Parks and Recreation | |
| 3.2. Real Estate Tax Set Aside (RETSA) Agreement for Prichard Farms Phase 1a3. Elizabeth Stahlman, City Administrator Prichardfarms 1A3-RETSA Agreement - Execution Version | 2 - 27 |
| 3.3. Municipal Center Project: Update, Projected move-in dates, Change Order #17 for detention cell lavatory upgrade. Elizabeth Stahlman | |
| 3.4. Ordinance 2021-02 - Public Hearing ORDINANCE 2021-01 | 28 - 29 |
| 4. DISCUSSION ITEMS | |
| 4.1. Budget FY 2021-2022. Elaine Jones, CPA, Director of Finance <ul style="list-style-type: none">• Review of budget requests• Budget priorities<ul style="list-style-type: none">○ Capital purchases○ Special project(s)○ Enterprise Fleet○ Salaries/benefits• Utility and tax rates Department budget requests FY22 | 30 - 31 |
| 4.2. Recycling Credit Incentive Evaluation. Elizabeth Stahlman/Elaine Jones Recycling Credit | 32 |
| 4.3. Election 2022. Elizabeth Stahlman | |
| 4.4. City Place Parking Lot - Proposal for Permit Parking. Elizabeth Stahlman Aerial Photo City Place lot | 33 |
| 4.5. General Discussion: Mayor and Council | |
| 5. ADJOURNMENT | |
| REMINDEES | |
| UPCOMING MEETINGS AND EVENTS | |

REAL ESTATE TAX SET-ASIDE DEVELOPMENT AGREEMENT

THIS REAL ESTATE TAX SET-ASIDE DEVELOPMENT AGREEMENT, dated as of this ____ day of February, 2021 (the “Agreement”) is by and between Evergreen Associates, LLC (the “Company”), a Maryland corporation, and City of Frostburg (the “City”), a Maryland municipal corporation.

RECITALS:

WHEREAS, the Company desires to develop the Property (as defined in Section 1 hereinafter) as a 10 unit residential subdivision to be known as “Prichard Farms, Phase 1-A-3” (said 10 units being identified as lots 35, 40, 89A, 89B, 90, and 102-106 on the 3rd Amended Major Subdivision Plat of Prichard Farms which is intended to be recorded among the Plat Records of Allegany County, Maryland which development will include the construction and/or installation of Public Infrastructure and Private Infrastructure, as those terms are defined in Section 1 hereinafter;

WHEREAS, Appendix II – Residential Development Incentive Program of the Charter provides, among other things, that real property within the City’s municipal boundaries may qualify for a real estate tax set-aside, a “RETSA” as defined in Section 1 hereinafter, for the purpose of partially or entirely reimbursing the developer of a subdivision for the costs of the public infrastructure within the subdivision provided the requirements set forth therein, including, but not limited to, the entry into a development agreement, are satisfied;

WHEREAS, this Agreement is such a development agreement, its purpose being to cover all issues pertaining to the RETSA, including, but not limited to: the deferral of the commencement of the setting aside of a portion of real estate taxes collected; the portion of the taxes collected that will be set aside; the length of time during which those taxes will be set aside, the manner in which set aside taxes shall be disbursed to the Company and the conditions for their disbursement; the Company’s reporting obligations to the City; and the Company’s obligations relative to the completion of the Public Infrastructure, the preparation of as-built drawings for the completed Public Infrastructure and the preparation of a deed to effect the conveyance of the Public Infrastructure as well as the posting of a surety bond to secure the performance of its obligations; and

WHEREAS, the parties hereto are entering into this Agreement in furtherance of the hereinbefore set forth purposes.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Company and the City agree as follows:

1. Defined Terms. As used herein, the terms set forth below shall have the following meanings.

“As-Builts” means as-built drawings for the Public Infrastructure prepared in accordance with the specifications set forth in this Agreement.

“Base Assessment” means the unimproved subdivided assessed value of each lot in the Project as of the Effective Date or as soon thereafter as the unimproved value of each subdivided lot is established as set forth in the Exhibit 1 attached hereto and made a part hereof or to be attached hereto as soon as the Base Assessment is determined.

“Charter” means Charter of the City of Frostburg, as amended from time to time.

“Cost of Public Infrastructure” means, with respect to the Project, all actual (not estimated) hard and soft costs of designing, engineering and constructing the Public Infrastructure, including and limited to, the costs of all studies and testing pertaining exclusively to the Public Infrastructure (including and limited to, materials testing, engineering, environmental, and soils studies), plans and specifications, surveys, engineering and legal professional services, site preparation and grading, and construction (including, but not limited to labor, materials, and contractor’s overhead and profit). The Cost of the Public Infrastructure shall not include any of the foregoing costs that are not specifically attributable to the design, engineering and construction of the Public Infrastructure. No costs pertaining to the design, engineering and construction of any stormwater management pond(s) serving the Project shall be included within the Cost of the Public Infrastructure.

“County” means the Board of County Commissioners for Allegany County, Maryland.

“County Agreement” means the agreement entered into by and between the County and the Company relative to a real estate tax set-aside for the Project.

“Director of Public Works” means the City’s Director of Public Works, the City employee(s) assigned to fulfill any or all of the duties normally assigned to the Director of Public Works or the City Engineer and any third-party contractors assigned to perform such functions.

“Effective Date” means, as to each subdivided lot, July 1 of the tax year immediately following the date of the issuance of an occupancy permit for that lot pursuant to and subject to the terms of Section AII-103.A.2.b of the Charter.

“Escrow” means the manner in which the Increased Assessments are accounted for and held by the City pending their payment to the Company, i.e. as a liability of the City’s Corporate Fund. “Escrowing” refers to the creation or increase in the amount of the liabilities. Holding RETSA funds “in Escrow” means holding the set aside funds in the City’s Corporate Fund account at a depository financial institution so that they are available for disbursement to the Company under the terms of this Agreement.

“Increased Assessment” means the increase in the Base Assessment following the Effective Date.

“Infrastructure” means the hereinafter-defined Public Infrastructure and Private Infrastructure.

“Private Infrastructure” means all open space areas, playgrounds, stormwater management facilities (including, but not limited to, ponds, spillways, water quality BMP’s, and drywells) and all other infrastructure which is not specifically included within the definition of Public Infrastructure.

“Project” means the development identified as Prichard Farms, Phase 1-A-3, of the existing Prichard Farms Subdivision, consisting of 10 lots as more fully described in Exhibit 1 attached hereto, the said lots being Nos. 35, 40, 89A, 89B, 102-106 on the 3rd Amended Major Subdivision Plat of Prichard Farms identified in the recitals at the beginning of this Agreement.

“Property” means the real property owned by the Company situate in Frostburg, Maryland, containing approximately 110 acres, more or less, which is identified as Tax Account 12-006055, is depicted in the recorded plats for Prichard Farms Subdivision and is a part of the property described in a deed recorded in Book 2316, page 459 in the Land Records of Allegany County, Maryland.

“Public Infrastructure” means and is limited to the roadways, water system, sanitary sewer system, and stormwater conveyance system and appurtenances to the foregoing, including but not limited to, manholes, catch basins, and pipes, which serve the Project and are located on the Property. Private Infrastructure shall not be considered to be a part of the Public Infrastructure.

“RETSA” means the real estate tax aside described in Section AII-103 of the Charter as made applicable to the Project under the terms of this Agreement. The setting aside of real property taxes collected on the Increased Assessments pursuant to the terms of this Agreement shall be referred to as the “RETSA.”

“Prichard Farms Phase1-A-3” means the subdivision with that name, plats of which are recorded among the Plat Records of Allegany County, Maryland as Plat No. 2267.

“Surety Bond” means the bond required under Section AII-104.F of the Charter.

“Termination Date” means the date the real estate taxes cease being set aside as provided for and subject to the terms of Section AII-103.A.2.b of the Charter.

“Warranty Period” means the one-year warranty period for the Public Infrastructure described in Section 9 hereinafter.

2. Start & Termination Dates for Set-Aside.

2.1. Effective and Termination Dates. The deferral of the RETSA shall commence on the Effective Date and end on the Termination Date.

2.2. Set-Aside Duration. Upon July 1 of the tax year immediately following the issuance of an occupancy permit for a subdivided lot, the tax set-aside period shall begin for such lot and continue for a period of ten (10) years but in no event any later than June 30, 2046. As to each lot, the City shall not set aside any taxes collected after the said ten (10) year period. As to the Project as a whole, (i) the City shall not set aside any taxes for the tax year which commences on July 1, 2046 or any tax years thereafter and (ii) it shall not set aside any taxes collected on or after July 1, 2046.

2.3. Return of Set-Aside Funds to City. Notwithstanding any provisions herein to the contrary, the City's obligations to the Company under the terms of this Agreement shall terminate effective June 30, 2046. Any funds remaining in Escrow as of July 1, 2046 shall revert to and revest in the City free of any obligations to the Company under the terms of this Agreement, and the City shall have the unrestricted right to utilize those funds for any purposes it chooses.

3. Cost of Public Infrastructure. The estimated Cost of Public Infrastructure is set forth on the Exhibit 2 which is attached hereto and made a part hereof. No items in addition to those listed in Exhibit 2 shall be treated as a part of the Cost of Public Infrastructure except upon the consent of the City's Director of Public Works, which consent may be withheld for any reason or simply because it was not listed in Exhibit 2.

4. Setting Aside & Accounting for RETSA Funds. As a result of the Project and the development of the individual lots therein, the parties expect that the total real estate tax assessments attributable to the Property will increase above the Base Assessments. The setting aside of the taxes collected on account of the Increased Assessments and the manner in which collections are accounted for are set forth in the following subsections. Only the principal amount of the taxes shall be set aside. Interest on late payments, other fees and charges for late payments, and fees and charges incurred by the City in order to collect delinquent taxes which are reimbursed or paid to the City shall not be included within the RETSAs provided for herein.

4.1. Recording RETSA Collections. The City shall not establish new accounts at financial institutions in order to hold the RETSA moneys in Escrow. Rather, the RETSA moneys collected shall be accounted for and recorded as liabilities of the City's Corporate Fund. The City shall retain absolute control over the funds held in Escrow.

4.2. Taxes to be Set Aside Commencing July 1 after the date the first occupancy permit is issued for a lot and continuing through the Termination Date (see Section 2.2 hereinbefore), the City shall set aside in Escrow an amount equal to seventy-five percent (75%) of the Increased Assessment for the purpose of defraying the costs of the Public Infrastructure. The City shall make entries in its books for the purpose of Escrowing the amounts it collected on account of the Increased Assessments during each fiscal year. provided,

however, that, under no circumstances, shall funds be transferred to Escrow after the Termination Date. The City, may in its sole and absolute discretion, make more frequent entries in its books to transfer RETSA funds to Escrow. Concurrently with the making of the accounting entries referenced herein, the City shall provide the Company with documentation showing how the RETSA amounts were calculated.

5. RETSA Disbursements.

5.1. Procedure for Disbursements. The City shall release RETSA funds to the Company in the following manner. The Company may submit draw requests to the City no more frequently than once per quarter of the City's fiscal year. Each such request shall be accompanied by (i) documentation evidencing payment by the Company or by an agent of the Company acting on its behalf of eligible Costs of the Public Infrastructure and (ii) documentation showing that a draw request was submitted to the County contemporaneously with the request to the City. The City shall have fifteen (15) business days from the date of its receipt of a draw request to review it; whereupon it shall cause to be released from Escrow all amounts it approves for disbursement. Payment shall be made directly to the Company. The City shall notify the Company within such fifteen (15) business day period of any disputed amount, i.e., the amount of the draw request it did not approve. Any amount that is not timely disputed shall be deemed to be approved by the City and shall be promptly disbursed. The Company shall be afforded a reasonable opportunity to provide additional support for any disputed amount, whereupon the City shall have an additional five (5) business days to review such additional support. Notwithstanding the foregoing, the City's response time shall be extended reasonably to allow it the opportunity to confer with the County regarding the City and County's proportionate responsibility for the remittance of the requested disbursements. If an extension of time is required for this reason, the City shall notify the Company by email of the need for an extension before the expiration of the aforesaid fifteen (15) business day period and the time shall be extended accordingly. Disbursements for the work performed in a fiscal year need not be paid exclusively from RETSA funds that were Escrowed from that fiscal year's collections. Any disputes between the parties relative to the amount of any disbursement shall be resolved by a court of competent jurisdiction in Allegany County, Maryland or by such other process as may be agreed on by the parties.

5.2. City/County Proportionate Responsibility for Disbursements. In that the City is obligated for RETSAs under the terms of this Agreement and the County is or is expected to be similarly obligated under the terms of the County Agreement, they bear a proportionate responsibility to apply amounts collected on the Increased Assessment to the Cost of the Public Infrastructure.

5.3. Limitations on Payments/Company Refund Obligation.

5.3.1. The City shall have no obligation to remit any payments to the Company beyond its proportionate share, as provided for in Section 5.2 of this Agreement. The Company shall refund any amounts paid by the City beyond that proportionate share.

5.3.2. The City shall have no obligation to and shall not be required to remit any disbursements to the Company beyond the amount it holds in Escrow.

6. **Annual Reports to the City.** On or before July 15 of each year following the one (1) year anniversary of the Effective Date, the Company shall provide the City with an annual report on a form approved by the City which contains the following information: (i) a list of all lots/parcels and the status thereof (i.e., sold or unsold, developed or undeveloped), (ii) a statement setting forth the Costs of the Public Infrastructure incurred during the preceding fiscal year and in the aggregate, (iii) a itemization of the amount of the RETSA funds and County real estate tax set-aside funds the Company received during the preceding fiscal year and in the aggregate, (iv) a statement describing the completed work on the Public Infrastructure and the work yet to be completed, and (v) a statement describing the completed work on the Private Infrastructure which is expected to tie into or affect or actually ties into or affects the Public Infrastructure. In addition to any legal or equitable remedies available to the City, in the event the Company fails to submit any required annual report or the final report, the City may withhold RETSA disbursements until such time as the report is submitted; provided, however, that if a report containing the required details is not submitted within sixty (60) days of its due date, the City's obligations to the Company under the terms of this Agreement shall terminate, any funds remaining in Escrow as of that date shall revert to and revest in the City free of any obligations to the Company under the terms of this Agreement, and the City shall have the unrestricted right to utilize those funds for any purpose it chooses.

7. **Final Report to City.** Upon completion of the Public Infrastructure, the Company shall cause a certified public accountant registered to practice in the State of Maryland to prepare a final accounting of the total Cost of the Public Infrastructure, including all amounts paid or reimbursed from RETSA and County real estate tax set-aside funds. If the accounting shows that the total Cost of the Public Infrastructure exceeds the total amount of the RETSA and County real estate tax set-aside funds, the City's obligation to pay out additional RETSA funds shall continue through the Termination Date. If the final accounting shows that the total Cost of Public Infrastructure is less than the total amount of the RETSA and County real estate tax set-aside funds paid, then any City funds remaining in Escrow shall be retained by the City without any further obligation to hold them in Escrow and the City shall have no further obligation to set aside any taxes. The Company shall refund any overpayment to the City no more than sixty (60) days from the date of the submission of the final report. A final annual report shall be submitted contemporaneously with the final report.

8. **Construction/Completion of Public Infrastructure.** The Company, at its own cost and expense, shall construct and/or install the Public Infrastructure described in Exhibit 2 attached hereto in accordance with the plans and specifications prepared by the Company and approved by the City and the County. The construction of the Public Infrastructure shall be completed no later than five (5) years after the Effective Date.

9. **Inspections, Compaction Testing & Material Testing for Construction.** The City shall provide for third party inspections, compaction testing and materials testing of the Public Infrastructure during and upon completion of the construction and, to the extent it deems necessary during and after the Warranty Period. The City will pay for the inspections and testing and bill the Company for reimbursement. The Company shall reimburse the City for those cost

no later than thirty (30) days from the date of billing. The inspection and testing reports and findings shall be reviewed by the City's Director of Public Works and the Company's design engineer and contractor on a daily basis.

10. Surety Bond. Before the City issues any permits that will permit the Company to commence construction of the Public Infrastructure and Private Infrastructure, the Company shall post a Surety Bond in the form attached hereto as Exhibit 3 in an amount equal to Three Hundred Ten Thousand Eight Hundred Ninety-Five Dollars and Seventy-Five Cents (\$310,895.75) as security for its performance in completing the Public Infrastructure, preparing As-Builts, conveying the Public Infrastructure to the City and otherwise satisfying the terms of this Agreement. The Surety Bond shall name the City as beneficiary and shall be in a form reasonably acceptable to the City. Release of the Surety Bond shall follow acceptance by the City of the completed Public Infrastructure (i.e., the date the Mayor and City Council of the City pass a formal resolution agreeing to accept delivery of the deed for the Public Infrastructure as provided for in Section 12 hereinafter) and the expiration of the Warranty Period for the Public Infrastructure. The City's approval of the form of the Surety Bond attached hereto as Exhibit 3 does not constitute the City's approval of the duration of the effectiveness of the Surety Bond or any other provisions which are contrary to the terms of this Agreement. It is the express intention of the parties hereto that the term of the Surety Bond be extended only in the event that defects are discovered during the Warranty Period and the Warranty Period is extended. The Warranty Period shall start running the date the Mayor and City Council of the City pass a formal resolution agreeing to accept delivery of the deed for the Public Infrastructure as provided for in Section 12 and it shall run for one (1) year thereafter unless extended. The Company must repair all defects in the Public Infrastructure which are discovered during the Warranty Period to the reasonable satisfaction of the City. As to the portion of the Public Infrastructure affected by the defect, the Warranty Period shall continue to run for one (1) year from the last to occur of the following: (i) the date the City provides written notice of its reasonable satisfaction as to the repair, the said notice to be provided in an expeditious manner; (ii) if necessary on account of the repair of the defects, the date satisfactory amendments to the As-Builts are supplied to the City, or (iii) if necessary on account of the repair of the defects, the date the Company provides the City with a satisfactory revised deed for the conveyance of the Public Infrastructure.

11. Specifications for As-Builts. The As-Builts shall be prepared in a manner which is reasonably satisfactory to the City. They shall be prepared subject, but not limited to, the following terms, conditions and specifications:

11.1. Review and Final Versions of As-Builts. The City's Director of Public Works shall be responsible for reviewing the As-Builts and determining whether they are satisfactory to the City. For review purposes, the As-Builts shall be submitted to the City as three (3) sets of "red-lined" marked up prints of the plans and specifications for the Public Infrastructure and any amendments thereto. Electronic versions of the "red-lined" marked up versions shall be provided as well. Once the City's Director of Public Works determines that the As-Builts are satisfactory, the Company shall be notified accordingly and shall submit mylar versions of the As-Builts to the City. The As-Built information shall preferably be shown on the original plans and specification and any amendments thereto (i.e., the original mylars with the permit approval stamp and the original professional engineer seal). Presenting the As-Builts on a scanned image or other reproduction of the original plans and specification and any amendments

thereto is acceptable so long as the quality, integrity and legibility of the original drawings are substantially preserved without undue compromise. The As-Builts will be scanned by the City for archiving, so both the as-built and the original information contained therein must be readily discernible. No paper prints or mylar sepias will be accepted as the approved version of the As-Builts.

11.2. The As-Builts shall clearly show any changes or variations from the plans and specifications and any amendments thereto. A benchmark elevation and benchmark description and location shall also be provided on each plan sheet.

11.3. As-Builts for Storm Water Management Facilities. The As-Builts for the storm water management facilities shall include the following information:

- i. Length, width, slope information and depth or contours (1 foot intervals) of the pond area along with a verification of the original design volume;
- ii. A benchmark on the riser, inlet headwall, or other approved location with spot elevations on top of embankment shown at 50 foot intervals along the breast of the dam;
- iii. Revised design computations verifying the functionality of the pond; and
- iv. The grading/storage volumes must be approved by the City's Director of Public Works prior to landscaping and/or planting. As-Built data which shows that the constructed facility varies from the original design storage elevations by greater than or equal to 2% will have to be corrected (i.e., regraded) prior to submission for review unless storage is verified. Any required regrading shall be considered to be a part of the work required to complete the Public Infrastructure; the completion date for the said regrading shall be as reasonably required by the City. All constructed features not approved on the plans and specifications and amendments thereto may have to be modified at the City's discretion.

11.4. As-Builts for Roads. The construction location with all items associated with the construction of roads must be shown. The items include, but are not limited to the following:

- i. Horizontal and Vertical Alignments – Show and label measurement points, and an interpreted line between measurements. Write the construction vertical elevations adjacent to the design elevations. Distinguish between the elevations by striking a single line through the design elevation, As-Built measurements shall be at fifty (50) foot linear intervals. Measurements at smaller intervals may be required to

accurately represent the existing conditions. Redesign calculations may be requested for alteration from the design alignment.

- ii. Edge of Pavement – Display the constructed edges of pavement and width measurement at intervals as given above, Show and label constructed edge of pavement radii for all intersections and cul-de-sacs.
- iii. Culverts & Drainage Structures – Display the installed type of drainage structure, culvert size, material and treatment(s), applied inlet and outlet protection, and invert elevations.
- iv. Ditch Lines – Display the constructed locations of all ditch lines, including typical section, direction of flow and linings. Draining must be within right-of-way or drainage easements.
- v. Guardrail – Display the constructed location of guardrails, if any, including the guardrail type, length and applied end treatments.
- vi. Pavement Designs – Display any pavement design alterations made during the construction on the applicable typical section.

11.5. As-Builts Certificate. A certificate for the As-Builts in the form attached hereto and made a part hereof as **Exhibit 4** shall be signed and sealed by a Maryland professional engineer or a Maryland professional land surveyor and shall appear on the cover sheet of the As-Builts. All sheets submitted in the plans and specifications and any amendments thereto, red-lined where required, shall be submitted as the As-Builts.

11.6. Storm Water Management Control Facility Certification. The As-Builts shall include a certification by a Maryland licensed professional engineer that the storm water management control facility, as constructed, is in compliance with the geotechnical requirements of the facility as described in the plans and specifications and any amendments thereto.

11.7. As-Builts Due Date. The Company shall prepare As-Builts and obtain the City's approval therefor no later than ninety (90) days after the completion of the Public Infrastructure.

12. Metes & Bounds Descriptions/Conveyances.

12.1. Standards. The Company shall provide the City with a professionally surveyed metes and bounds description for the Public Infrastructure. The metes and bounds description shall be set forth in the form of a deed of conveyance from the Company to the City, which deed of conveyance shall include easements over, across, through and under the property owned by the Company for the purpose of inspecting, repairing, maintaining, operating, etc. the

public infrastructure being conveyed to the City. The deed of conveyance shall contain covenants of special warranty and further assurances and shall be in recordable form.

12.2. Time Frames. A draft of the deed of conveyance shall be delivered to the City no later than ninety (90) days after completion of the Public Infrastructure. The contents of the deed of conveyance shall be subject to the approval of the City, said approval not to be unreasonably withheld. A final version of the approved deed of conveyance, properly executed by the Company's authorized representative, shall be presented to the City no later than thirty (30) days after final approval by the City. The City shall cause the deed of conveyance to be recorded among the Land Records of Allegany County, Maryland, but it shall not be required to pass a resolution formally accepting delivery of the deed until such time as the As-Built are received and approved.

13. Ownership and Maintenance. Notwithstanding anything to the contrary herein, the Private Infrastructure shall be owned and maintained by the Company and/or the homeowners association for the Project in perpetuity. The Public Infrastructure shall be owned and maintained by the City once it passes a formal resolution agreeing to accept delivery of the deed therefor.

14. City Services and Acceptance. The City shall commence trash removal, snow plowing, meter reading and other associated public services with respect to the streets and alleys which have been paved upon the completion of the Public Infrastructure, the City's approval of the As-Built, and its passage of a formal resolution accepting delivery of the deed for the Public Infrastructure.

15. Contingencies. The City's obligations relative to the RETSA set forth herein are contingent upon and subject to the Company's compliance with, at all times during the term of this Agreement, the terms and provisions set forth in Section AII-103.D of the Charter.

16. Notices. All notices and other communications provided for hereunder shall be in writing and, except as otherwise provided for herein, shall be deemed to have been given (a) when sent (and confirmation of delivery is received by the sender) by telecopy, facsimile or other electronic transmission (which transmission shall also be followed by overnight or regular mail delivery of a confirmation copy), (b) when delivered, if sent by hand delivery or nationally recognized overnight courier, addressed to the party at the addresses described below (unless such party shall otherwise designate another addressee to receive certain types of notices), or (c) three (3) days from the date of postmarking if mailed by U.S. mail.

If to the City: City of Frostburg
 P.O. Box 440
 Frostburg, MD 21532
 Attention: City Administrator
 (currently Elizabeth Stahlman)
 Tel. No.: (301) 689-6000 ext. 25
 Fax No.: (301) 689-2840
 estahlman@frostburgcity.org

With a copy to: Michael Scott Cohen, Esq.
213 Washington Street
Cumberland, MD 21502
Tel. No.: (301) 724-5200
Fax No.: (301) 724-5205
michaelcohen@atlanticbbn.net

If to the Company: Evergreen Associates, LLC.
26 Maple Street
Frostburg, MD 21532
Attention: Brandon Reece, President
Tel. No.: 301-687-1767
Fax No.: (301) 687-1769
breece@wmdcs.com

With a copy to: Jason Buckel, Esq.
206 Washington Street
Cumberland, MD 21502
Tel. No.: (301) 759-3700
Fax No.: (301) 722-0334
buckellandlevasseur@twrcommunications.net

17. Counterparts. This Agreement may be executed in multiple counterparts, and all such executed counterparts shall constitute the same agreement. It shall be necessary to account for only one (1) such counterpart executed by each party hereto in proving the existence, validity or content of this Agreement. The signature and notary pages of the original counterparts may be appended to one (1) of the counterparts and the counterpart with the appended pages shall be considered to be the original of this Agreement.

18. Severability; Reformation. If any provision of this Agreement is determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect. It is also the intention of the parties to this Agreement that in lieu of each clause or provision that is illegal, invalid, or unenforceable there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable. Further, a court of competent jurisdiction shall be authorized to reform this Agreement under the circumstances and in the manner aforesaid.

19. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Maryland. The parties hereto agree to be subject to the jurisdiction of and waive any objection to the venue of any action filed by one against the other, in any court located in Allegany County, Maryland, and waive any claim that such courts constitute inconvenient fora. Unless otherwise agreed, all litigation arising out of or as an incident to the terms or execution of this Agreement shall be instituted and prosecuted in the District Court of Maryland for Allegany County or the Circuit Court for Allegany County, Maryland.

20. **Captions: Section Headings.** The marginal captions and section headings of this Agreement are for convenience only, shall not be considered in interpreting and construing this Agreement, and in no way define or limit the intents, rights or obligations of the parties hereunder.

21. **Waivers.** Neither any failure nor any delay on the part of either party in exercising any right, power or remedy hereunder or under applicable law shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No waiver of any breach or default hereunder shall be deemed a waiver of any subsequent breach or default.

22. **Entire Agreement; Binding Effect.** This Agreement and the Exhibits attached hereto contain the final and entire agreement between the parties, and neither they nor their agents shall be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein contained. The parties to this Agreement mutually agree that it is binding upon them and their respective successors and assigns.

23. **Modification Or Waiver By Parties.** No modification or waiver by the parties of any of the terms of this Agreement shall be valid unless in writing and executed with the same formality as this Agreement.

24. **Gender/Tense/Conjugation.** The use of any gender, tense, or conjugation herein shall be applicable to all genders, tenses, and conjugations. The use of the singular shall include the plural and the plural shall include the singular.

25. **Joint Drafting.** The parties hereto agree that this document reflects the joint drafting efforts of each party, and any ambiguities shall not be construed against either party.

26. **Waiver of Trial by Jury.** THE PARTIES HERETO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH THE CITY OR THE COMPANY MAY BE PARTIES ARISING OUT OF, AS AN INCIDENT TO OR IN ANY WAY PERTAINING TO THIS AGREEMENT OR ANY PROVISION THEREOF. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY THE PARTIES HERETO, AND THE PARTIES HERETO HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT.

27. **Recordation.** The parties intend for this Agreement to be recorded among the Land Records of Allegany County, Maryland. Although it is expected that no recordation fees, transfer taxes and/or recordation taxes will need to be paid in order to record this Agreement or

as an incident to its recordation, any such taxes and fees which are due shall be paid by the Company.

Signature Page Follows

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date and year first above written.

WITNESS:

EVERGREEN ASSOCIATES, LLC

By: _____
Brandon Reece, President

WITNESS:

CITY OF FROSTBURG

By: _____
W. Robert Flanigan, Mayor

**STATE OF MARYLAND,
ALLEGANY COUNTY, TO WIT:**

I HEREBY CERTIFY, that on this ____ day of _____, 2021, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared **Brandon Reece**, known to me or satisfactorily identified to be the person whose name is subscribed to the within instrument, the President of Evergreen Associates, LLC, a limited liability company of the State of Maryland, and acknowledged the foregoing to be the act and deed of said corporation; and at the same time made oath that he is duly authorized by it to make this acknowledgment.

WITNESS my hand and Notarial Seal.

NOTARY PUBLIC

My Commission Expires: _____

**STATE OF MARYLAND,
ALLEGANY COUNTY, TO WIT:**

I HEREBY CERTIFY, that on this ____ day of _____, 2021, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared **W. Robert Flanigan**, known to me or satisfactorily identified to be the person whose name is subscribed to the within instrument, Mayor of the City of Frostburg, a municipal corporation of the State of Maryland, and acknowledged the foregoing to be the act and deed of said City of Frostburg; and at the same time made oath that he is duly authorized by it to make this acknowledgment.

WITNESS my hand and Notarial Seal.

NOTARY PUBLIC

My Commission Expires: _____

EXHIBIT 1

Base Assessments

EXHIBIT 2

Estimated Cost of Public Infrastructure

EXHIBIT 3

Surety Bond Form

EXHIBIT 4

As-Built Certificate

As-Built Certificate

I, or an employee under my direct supervision, have made periodic site visits to the site during the construction process and verified that the improvements being installed or constructed were installed according to the approved set of construction documents. Design revisions to these plans during construction are noted on the final as-built drawings provided herewith.

I, or an employee under my supervision, have verified that the improvements have been constructed according to the applicable standards and specifications required under local, state and federal law.

In my professional judgment, the relative elevations and drainage patterns as built are in substantial conformance with the approved drainage and final grading plan for the property shown on the attached drawings. The drainage structures and grading have been constructed so as to facilitate the design intent of the plans and specifications prepared by _____ dated _____ and approved by the City of Frostburg on _____. All permanent erosion and storm draining features shown on the approved construction documents for this site are installed.

Signature

License #

Printed Name

Date

Title

EXHIBIT 1

Base Assessments

Prichard Farms
Phase 1 A 3
Exhibit 1

EXHIBIT 1

| Lot | Sq/ft Lot Area | Base Assessment | Tax Id # | |
|----------------------|-----------------------|------------------------|------------------|---------------------|
| MOONLIGHT DR LOT 90 | 10517 | 9600 | 12-014945 | |
| MOONLIGHT DR LOT 89a | 7368 | 7200 | 12-014902 | Recently subdivided |
| MOONLIGHT DR LOT 89b | 7168 | 7200 | 12-014902 | and record on 3rd |
| MOONLIGHT DR LOT 102 | 7693 | 7600 | 12-014988 | |
| MOONLIGHT DR LOT 103 | 7200 | 7200 | 12-015038 | |
| MOONLIGHT DR LOT 104 | 7200 | 7200 | 12-015070 | |
| MOONLIGHT DR LOT 105 | 7200 | 7200 | 12-015119 | |
| MOONLIGHT DR LOT 106 | 7694 | 7600 | 12-015151 | |
| HEARTWOOD DR LOT 35 | 6610 | 7200 | | Recently subdivided |
| CANDLEWICK CT LOT 40 | 8997 | 8100 | | and record on 3rd |

EXHIBIT 2

Estimated Cost of Public Infrastructure

EXHIBIT 2

| ITEM NO. | DESCRIPTION | UNITS | APPROXIMATE QUANTITY | UNIT PRICE | ESTIMATED AMOUNT |
|----------|--|-------|----------------------|------------|------------------|
| 1 | Mobilization | L.S. | L.S. | L.S. | \$10,000.00 |
| 2 | Temporary Traffic Signs | S.F. | L.S. | L.S. | \$500.00 |
| 3 | Project Sign | L.S. | L.S. | L.S. | \$1,500.00 |
| 4 | Construction Stakeout | L.S. | L.S. | L.S. | \$7,800.00 |
| 5 | Traffic Maintenance | L.S. | L.S. | L.S. | \$5,000.00 |
| 6 | Precast Concrete Type 'Single WR' Inlets | Each | 3 | \$3,475.00 | \$10,425.00 |
| 7 | Precast Concrete Type 'S' Inlets | Each | 0 | \$3,744.00 | \$0.00 |
| 8 | Precast Concrete Storm Manhole (48" Dia) | Each | 0 | \$4,305.00 | \$0.00 |
| 9 | Precast Concrete Sanitary Manhole (48" Dia) | Each | 3 | \$4,327.00 | \$12,981.00 |
| 10 | Tie-In to Existing Storm/Sanitary/Water Piping | Each | 2 | \$1,000.00 | \$2,000.00 |
| 11 | Polyethylene (PE) Pipe (12" ADS N-12) | L.F. | 170 | \$46.00 | \$7,820.00 |
| 12 | Polyethylene (PE) Pipe (15" ADS N-12) | L.F. | 310 | \$54.00 | \$16,740.00 |
| 13 | 1.5" Dia Water Service Type 'K' Copper | L.F. | 230 | \$88.85 | \$20,435.50 |
| 14 | 1.5" Water Service Tap | Each | 10 | \$550.00 | \$5,500.00 |
| 15 | Utility Duct Bank (4 Schedule 40 PVC Tubes/Spacer w/ Sweeps) | L.F. | 250 | \$49.68 | \$12,420.00 |
| 16 | Sanitary Sewer Service Lateral (4" Dia SDR 35 PVC) | L.F. | 230 | \$47.50 | \$10,925.00 |
| 17 | Sanitary Sewer Main (8" Dia SDR 35 PVC) | L.F. | 300 | \$52.65 | \$15,795.00 |
| 18 | 4" Sanitary Gravity Sewer Service Tap | Each | 10 | \$475.00 | \$4,750.00 |
| 19 | Test Pit Excavation | C.Y. | 50 | \$50.00 | \$2,500.00 |
| 20 | Gas Main (Trench & Backfill only) | L.F. | 165 | \$21.00 | \$3,465.00 |
| 21 | Subbase Course (8" Thickness) | S.Y. | 300 | \$16.30 | \$4,890.00 |
| 22 | CR-6 Maintenance of Traffic | Ton | 25 | \$34.25 | \$856.25 |
| 23 | Class 1 Excavation Final Grade | C.Y. | 2,570 | \$9.50 | \$24,415.00 |
| 24 | Cast in Place Concrete Curb | L.F. | 350 | \$24.15 | \$8,452.50 |
| 25 | Hot Mix Asphalt Paving 1.5 Inches (Surface Course) | S.Y. | 300 | \$9.10 | \$2,730.00 |
| 26 | Hot Mix Asphalt Paving 2.5 Inches (Base Course) | S.Y. | 300 | \$15.25 | \$4,575.00 |
| 27 | Testing Services | L.S. | L.S. | \$7,500.00 | \$7,500.00 |
| 28 | Road Signage | Each | 1 | \$125.00 | \$125.00 |

| | | | | | |
|-------------------------------------|--|------|------|------------|---------------------|
| 29 | Incidental Concrete (Mix No. 2) (Cont.) | C.Y. | 10 | \$288.70 | \$2,887.00 |
| 30 | Silt Fence | L.F. | 200 | \$3.50 | \$700.00 |
| 31 | Super Silt Fence | L.F. | 50 | \$13.02 | \$651.00 |
| 32 | Check Dams | L.F. | 5 | \$200.00 | \$1,000.00 |
| 33 | Earth Dike | L.F. | 575 | \$4.50 | \$2,587.50 |
| 34 | Clearing and Grubbing / Strip Topsoil | Acre | 1.0 | \$3,500.00 | \$3,500.00 |
| 35 | Temporary Seeding and Mulching | Acre | 1 | \$2,500.00 | \$2,500.00 |
| 36 | Permanent Seeding and Mulching | Acre | 1 | \$3,500.00 | \$3,500.00 |
| 37 | Inlet Protection Devices | Each | 3 | \$250.00 | \$750.00 |
| 38 | Stabilized Construction Entrance | Each | 1 | \$2,000.00 | \$2,000.00 |
| 39 | Cast in Place Concrete Sidewalk | L.F. | 600 | \$7.50 | \$4,500.00 |
| 39 | Light Poles | Each | 4 | \$1,800.00 | \$7,200.00 |
| | ADD ALTERNATE ITEMS | | | | |
| | | | | | |
| 40 | 8" Dia Underdrain | L.F. | 250 | \$18.00 | \$4,500.00 |
| 41 | Ground Stabilization Fabric (Contingent) | S.Y. | 250 | \$4.00 | \$1,000.00 |
| | | | | | |
| TOTAL SUM OF ITEMS 1 THRU 41 | | | | | \$241,375.75 |
| | | | | | |
| | CONSTRUCTION SOFT COST ITEMS | | | | |
| | | | | | |
| 42 | Surveying and Engineering | L.S. | L.S. | L.S. | \$21,500.00 |
| 43 | Performance Surety | L.S. | L.S. | L.S. | \$7,020.00 |
| 44 | Environmental Studies | L.S. | L.S. | L.S. | \$5,000.00 |
| 45 | Soils Studies (Geotechnical) | L.S. | L.S. | L.S. | \$8,500.00 |
| 46 | Third Party Construction Inspection | L.S. | L.S. | L.S. | \$12,500.00 |
| 47 | Legal Services | L.S. | L.S. | L.S. | \$15,000.00 |
| | | | | | |
| TOTAL SUM OF ITEMS 1 THRU 47 | | | | | \$310,895.75 |

EXHIBIT 3

Surety Bond Form

EXHIBIT 4

As-Built Certificate

As-Built Certificate

I, or an employee under my direct supervision, have made periodic site visits to the site during the construction process and verified that the improvements being installed or constructed were installed according to the approved set of construction documents. Design revisions to these plans during construction are noted on the final as-built drawings provided herewith.

I, or an employee under my supervision, have verified that the improvements have been constructed according to the applicable standards and specifications required under local, state and federal law.

In my professional judgment, the relative elevations and drainage patterns as built are in substantial conformance with the approved drainage and final grading plan for the property shown on the attached drawings. The drainage structures and grading have been constructed so as to facilitate the design intent of the plans and specifications prepared by _____ dated _____ and approved by the City of Frostburg on _____. All permanent erosion and storm draining features shown on the approved construction documents for this site are installed.

Signature

License #

Printed Name

Date

Title

ORDINANCE 2021 -01

“AN ORDINANCE TO AMEND SECTION 3-1 OF ARTICLE 3 OF THE FROSTBURG CODE (2018 EDITION) PERTAINING TO PERMIT ISSUANCE RESTRICTIONS FOR THE PURPOSE OF EXCEPTING RENTAL HOUSING REGISTRATIONS FROM ITS TERMS.”

WHEREAS, the Mayor and City Council adopted Ordinance 2020-05 on December 17, 2020;

WHEREAS, Ordinance 2020-05 established Section 3-1 of Article 3 of the Frostburg Code; and

WHEREAS, the application of the aforesaid Section 3-1 will cause undue hardship for owners of residentially leased properties who are already facing economic challenges due to the COVID-19 pandemic and State and Federal measures taken as a result thereof; and

WHEREAS, the purpose of this Ordinance is to except the residentially leased properties from the terms of the aforesaid Section 3-1 commencing with the rental housing registrations due on January 31, 2021

SECTION 1: BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF FROSTBURG, MARYLAND, Section 3-1 of Article 3 of the Frostburg Code (2018 Edition) is amended as follows:

Article 3 – PERMIT ISSUANCE RESTRICTIONS

Sec. 3-1 – Restrictions on issuance of permits.

No building permit, occupancy permit or grading permit shall be issued as to any property with unpaid taxes, utility fees or fines which have been issued for property-specific Code violations. The restrictions set forth in this section shall not apply to rental housing registrations.

[NOTE: The language amending Section 3-1 is underlined.]

SECTION 2: BE IT FURTHER ORDAINED, that this Ordinance shall take effect on the date it is passed.

Introduced: _____
Public Hearing: _____
Adopted: _____
Effective: _____

W. Robert Flanigan, Mayor of The City of
Frostburg

ATTEST:

Elizabeth Stahlman, City Administrator of The
City of Frostburg

**City of Frostburg
Departmental Budget Request Highlights
For the Year Ending June 30, 2022**

At the March 2021 Work Session, a draft budget will be prepared with consideration of the preliminary departmental requests and the remaining operating expenses. Revenue projections will also be included in the draft budget.

Budget considerations affecting multiple departments

- Potential employee salary increase and related benefit expenses
- Cell phone expense – The City will discontinue employee cell phone stipends and instead will switch to work cell phones provided through FirstNet.
- Radios – The City desires to switch from TWR service and radios to FCC compliant service through the County. The City will need to purchase the new radios (approximately \$68,000 for Street and \$4,200 for Water).
- Personal Safety increase – AED's and/or first aid kit maintenance (Water \$1,600; Street \$2,200; Rec \$400; Police \$900)
- City Place retaining wall/lot repairs – TBD ~\$15,000
- Enterprise Fleet Lease – awaiting FY22 quote

Highlights of the departmental budget requests are as follows:

Administration

- Digital Engagement – new City website - \$15,000
- Election – expense depends on election format - \$8,000
- Communications/IT License fees – annual expense ~ \$5,000

Finance

- Audit – per three year contract with Huber, Michaels & Company - \$47,000
- Actuarial Study – associated with annual audit requirements - \$4,000

Community Development

- Planning - \$35,000 consulting fee for the Comprehensive Plan Update
- Community Legacy Projects – Pending applications for Façade/Building Improvement Grants \$95,000 and 59 East Main Building Improvements/FSU \$100,000 (all grant reimbursed)

Code Enforcement

- Addition of two staff cell phones

Public Works Administration

- No initial special requests; pending retirement will impact staffing expenses for FY22

Public Safety

- Pension – request an increase to City's contribution to the ICMA 457 plan for certified officers of 1% (from 4% to 5%) - \$7,000

- Police body cameras - ??
- Reductions in Office Supplies, Miscellaneous Expense, Auto Expense, and Jail and Office Maintenance totaling \$8,000

Public Works – Street

- Capital Outlay – purchase a loader instead of a seasonal rental - \$55,000

Recreation

- Day Camp Salaries – increase due to change in minimum wage and a \$0.25 per hour increase for returning staff - \$3,300

Water - Supply

Hydro Facility – increase of \$4,000

- Contract with a specialist from Canyon Hydro to address repair and maintenance issues (once every five years)
- Repair leaking weld, needle valve, O-rings, hydraulic motors, capacitor

Water Treatment Plan – projects total ~\$41,000

- Algae control at Savage pump station - \$2,000
- Replace 2 chemical pumps - \$8,000
- Replace Simplex fire alarm system - \$15,000
- Exterior concrete repairs - sidewalk/walls - \$5,000
- Finished water building roof and fascia replacement - \$4,000
- Interior wall and ceiling paint - \$2,000
- Finished water reservoir concrete, swale and caulking - \$5,000

Water - Distribution

- Meters – increase of \$3,000 to continue meter replacement program
- Equipment – approximately \$7,000 for the purchase of an air drill, pipe freezer, and cut-off saw

Sewer

- CSO Project Expenses – completion of Phase IX-, begin Phase IX-C, design of Phase X-A \$3.8M
- Talcott Pump Station - \$260,000 (two grant applications were submitted totaling \$71,777 towards this project)
- Equipment - Pipe laser - \$5,000

Piney Dam

- Cone valve replacement - \$25,000
- Compressed air system for operation of valves - \$15,000
- Sand and repair generator housing and electric housing - \$6,000
- Replace lakeside 36 inch door - \$1,200
- Garage roll-up door weather stripping - \$2,500

Garbage

- Landfill Charges – increase of \$5,000

Recycling Credit Evaluation

FY 2020 Expenses

| | |
|-------------------|----------------------|
| Garbage Admin | \$ 71,394.05 |
| Garbage Operating | \$ 299,110.22 |
| | \$ 370,504.27 |

| | |
|---|--|
| 2020 Landfill Costs (incl. bulk pickup) | \$ 117,715.26 |
| Cost per ton to landfill | \$ 58.04 *includes environmental charge of 10% |
| Garbage customers | 2,466 |
| Recycling customers | 201 |
| Garbage rate | \$ 38.00 quarter |
| Recycling credit | \$ 9.00 quarter |

| | |
|--|----------|
| Est. tonnage for FY 2020 | 2,231.15 |
| Avg. HH size | 2.29 |
| Average pounds per day per person | 2.16 |
| <i>EPA average pounds per day per person</i> | 4.9 |
| <i>EPA recycling rate</i> | 32% |
| Average waste per household per year (TONS) | 0.9048 |
| Average Landfill costs per customer per year | \$ 52.51 |

| | |
|--|----------------------------|
| Garbage charges per customer per year | \$ 140.00 (\$152 in FY 21) |
| Recycling Credit per customer per year | \$ 36.00 |
| Reduction in total garbage fees | 26% |
| Reduction in landfill fees | 69% |

Landfill fees portion of total Garbage Budget 32%

Cost to City for existing recycling credit (2020) \$ 7,236.00

