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July 21, 2023

Board of Commissioners, Lehigh Acres Fire Control and Rescue District
636 Thomas Sherwin Avenue South
Lehigh Acres, Florida 33974

Overview of Simplified Assessment Approach Lehigh Acres Fire Control and Rescue District [Annual Update]

Dear Commissioners:

This brief letter is an analysis of the emerging 2023-2024 budget proposed for the Lehigh Acres Fire Control and Rescue District ("District" or "LAFCD"). It is being provided as part of your annual updating process.

Among other things, the analysis addresses rates adjusted to the District's previously approved indexing feature. This information, shown in terms of its relationship to an illustrative budget based upon your proposed budget, allows for a determination of an appropriate assessment for any specific tax parcel in the affected area whether developed or undeveloped, and will assist you with incorporating these potential assessment revenues in your upcoming budget decisions.

This information and analysis incorporates and references a detailed report originally prepared by GAI entitled "*Overview of Simplified Assessment Approach Lehigh Acres Fire Control and Rescue District*" submitted in the summer of 2020.

INTRODUCTION AND OVERVIEW

Special assessments comprise a levy made against certain real property to recover all, or part of the cost of a specific service or capital improvement deemed to benefit those real properties.

Although such assessments have been in place here for many years, LAFCD adopted a new apportionment methodology for its special assessment program in 2020. As with the prior method for imposing special assessments, the new simplified apportionment methodology was approved by the District electors.

When this new assessment program was adopted in 2020, it was understood the reasoning and the use of the simplified funding strategy and apportionment methodology (sometimes called "Simplified Fire"™) underlying the program could remain unaltered or *evergreen*. Then each year the Simplified Fire methodology would be applied to other statutorily standardized and publicly maintained data certified to the Florida Department of Revenue. This creates a sturdy, verifiable, current, and self-correcting process year after year.

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For the 2023-2024 budget year, the District requested this document and work be based [1] upon assessment rates that do not exceed those of the 2022-2023 fiscal year by more than 6.7% and a [2] budget substantially comparable to the annual budget proposed for fiscal year 2023-24. It is understood, however, that in the future, assessment rates or practices, and the annual budget and conditions attributed to each tax parcel likely will change from year to year.

In brief, the methodology for calculating the assessment for the LAFCRD stems from a series of considerations associated with the relative value of all improvements in the District, the number of tax parcels in the District subject to the assessment, and an allocation of the anticipated District budget reflecting two defined tiers of costs. This is a repeating annual process which, among other attractive features, ensures proportionality as the defined service area and its budget change or adjust year to year.

- As described in GAI Consultants, Inc. detailed report in 2020, the costs allocated to Tier 1 are those which are largely, but not exclusively, variable and indeterminate.
- The costs allocated to Tier 2 are largely recurring based on an expected staffing level necessary to maintain a certain standard of departmental readiness or preparedness. These latter costs are primarily labor costs and largely, but not altogether, fixed.
- The combination of both tiers in the adopted assessment program has logical and identified relationships to the benefits, burdens and costs associated with availability of service to the affected tax parcels, creating a strong, rational, and proportionate funding vehicle that can be further linked to, or supplemented by, other legally available resources.

This letter comments on relevant legislation or case law associated with assessments generally, summarizes findings associated with a review of the current District budget for FY 2023-2024, and provides parameters for the upcoming assessment, assuring the methodology and procedures developed in the original Simplified Fire analysis and previously implemented by the District are efficiently and in fact updated and maintained.

LEGAL CONTEXT

Special Assessments in General, Florida Law.

Special assessments are a dedicated revenue source available to general purpose local governments and those special purpose local governments, like the District, expressly imbued with the power to impose special assessments to fund capital improvements or essential services.

While discussion of the law governing special assessments included herein should not be construed as a legal opinion, there are legal guidelines to draw upon in laying out an assessment methodology which conforms to accepted principles and practices necessary to achieve legal validity.

As established by Florida case law, two requirements exist for the imposition of a valid special assessment.

- The property assessed must derive a special benefit from the improvement or service provided; and
- The assessment must be fairly and reasonably apportioned among the properties receiving the special benefit.

Under both Florida's case law and certain statutory components, it is well settled that the benefit required for a valid special assessment may be measured or benchmarked against something other than simply an increase in real property market value. The concept of benefit also includes the relief of a burden or demand created by property as well as added use and enjoyment of the real property. The benefits, then, can be conceptual, but they must be capable of being evaluated by some metric and being apportioned in some reasonable manner. It is not necessary that the benefits be direct or immediate, but they must be substantial, certain, and capable of being realized within a reasonable time. The benefits must be distinguishable or different from those of non-assessed properties, but they may coincidentally extend to non-assessed properties.

Specifically, Florida's case law, as well as its statutory regime relating to special assessments, supports substantial latitude both in the means by which *benefit to or relief of burden created by* real property is identified and determined and the subsequent manner by which an assessment itself is *calculated or apportioned*. Though Florida law requires that special assessments funding improvements or services must be fairly and reasonably apportioned, the State's Supreme Court has held that the method of apportionment is immaterial and may vary provided the amount of the assessment for each property *does not exceed the proportional benefits it receives compared to other properties*.

Judicial Approval of Simplified Fire For Lehigh Acres Fire and Control District.

Mr. Mark Lawson and Mr. Richard Pringle took the LAFCRD through a judicial validation procedure in 2020 which involved the District's Simplified Fire apportionment approach. The District obtained a favorable ruling regarding its method and means of assessment from the Circuit Court without appeal. In December 2020, the Circuit Court in the Twentieth Judicial Circuit of the State of Florida, in and for Lee County, Florida, validated the use of revenue bonds to be repaid based on the imposition of non-ad valorem assessments using the Simplified Fire approach as detailed in the original GAI analysis and report. This validation entailed a detailed and well-reasoned judicial approval of the

assessments and the Simplified Fire apportionment methodology associated with them. The validation serves the function of, among other things, providing significant repose and finality to the legality of the District's chosen assessment regime. This same Simplified Fire approach is the subject of this letter report.

Non-ad valorem assessments, by law, are imposed by the applicable local or special purpose government, not the Property Appraiser or Tax Collector. Florida case law clearly provides that any collection activity of the property appraiser or tax collector provided for as a result of the District's Procedural Resolution or Annual Assessment Resolution shall be construed solely as ministerial. The Final Judgment expressly provides that: *Assessments are not imposed by the Lee County Property Appraiser or the Lee County Tax Collector. The statutory duties of the property appraiser and the tax collector are unaffected by the District's use of information produced by such offices. Any duties of the property appraiser or the tax collector in regard to the collection of the Assessments under section 197.3632 F.S. are wholly ministerial and the property appraiser and the tax collector are without any discretion with regard to the collection of the Assessments on the tax notice once the District elects to use this method and complies with the requirements of section 197.3632, F.S.*

This report features one in many actions of careful compliance with the District's Procedural Resolution and all general law provisions.

OVERVIEW OF SIMPLIFIED FIRE APPORTIONMENT METHOD, RECENT DEVELOPMENTS

That local and special purpose governments are afforded great latitude under Florida law with respect to legislative determinations concerning special benefit and reasonable apportionment is well settled law. No single apportionment methodology has emerged as preferable in the governing case law for a given service or improvement. So long as the apportionment is reasonable and not arbitrary, the assessment is generally capable of withstanding legal challenge.

The reasoned Simplified Fire assessment methodology described in this report has been judicially validated by Mr. Lawson in Lee County (Lehigh Acres Fire Control and Rescue District) as noted above, but also in Hernando County (Brooksville), Pinellas County (St. Petersburg), Polk County (Haines City), Bay County (Springfield, Panama City Beach, and Panama City (most recently in 2021), and Putnam County (Palatka).

The concept was subsequently subjected to a challenge upheld by the Florida Supreme Court. The Florida Supreme Court, accordingly, has expressly confirmed the use of the two-tiered approach and legal construct (relative improvement value and per tax parcel) upon which Simplified Fire is premised, to wit:.

In *Morris v. City of Cape Coral*, 163 So. 2d 1174 (Fla. 2015), the Supreme Court addressed a line of reasoning from prior cases, reiterating that the determination of whether a special assessment confers a special benefit on property is not based on whether the benefit is “unique” to that property, but instead whether there is a logical relationship between the assessment on a property and the benefit conferred upon that property. Decisions that seemed to indicate the contrary, including *St. Lucie County-Ft. Pierce Fire Prevention & Control District v. Higgs*, 141 So. 2d 744 (Fla. 1962), turned solely on invalid apportionment, not on inadequate benefit to property. This holding is similar to the argument previously made by Springfield and Haines City in their validations and in an *amicus curiae* brief filed in *Morris* by Haines City and Springfield (the “Municipalities”).

Mr. Lawson filed an independent amicus brief on behalf of the Municipalities because the Cape Coral methodology in *Morris* had been taken, almost verbatim in some instances, from the methodology in reports and work previously delivered to Haines City and Springfield and had been represented by Cape Coral and its own consultants and attorneys in the Circuit Court as almost identical work and approach provided to other cities by Mr. Lawson, GAI, and Ennead LLC.

In fact, the Cape Coral expert retained for the work in question testified at the trial level hearing that the methodology used in the four cities where Mr. Lawson, GAI, and Ennead LLC had previously developed and obtained judicial approval in each of those programs (including Brooksville and St. Petersburg alongside Springfield and Haines City), and validated the Simplified Fire™ methodology was “almost exactly the same” as the Cape Coral methodology. The Supreme Court opinion in *Morris* noted significant calculation errors made by Cape Coral or its consultants (affecting some 8% of a total 100,000 parcels) but determined that it could validate Cape Coral’s bonds and the fire assessment methodology despite such errors. In doing so the Supreme Court also adopted the logic and analysis in the *amicus* brief filed by Mark G. Lawson, P.A., for the Municipalities.

The wider impact of *Morris* is that the legal and conceptual use of a two-tiered Simplified Fire methodology described in this and GAI’s 2020 Report, and the ‘almost exactly the same’ method used in Cape Coral, has been determined legally sufficient, valid and approved by the Supreme Court on appeal as compliant with case law and thus not arbitrary nor invalid.

Morris certainly should not be construed to mean that local governments considering the use of special assessments should adopt a particular apportionment methodology solely on the basis of its use elsewhere. The failure to perform a factual and reasoned analysis specific to a set of circumstances in each community can expose another community to legal and political challenges based upon factual differences and/or well-intentioned, but unnecessary and unknowingly troublesome use of raw public data. Florida’s local governments vary in their needs, composition, and policies. The well settled implication is local governments are free to select an apportionment methodology which provides competent and substantial means to share the benefits, burdens, and costs of the

fire protection budget and represents the best fit in terms of cost, ease of implementation, and political acceptance not only with respect to affected landowners, but also in consideration of the staff required and resources involved with maintenance of the assessment program from year to year.

The parcel identification and classification system required by law to be maintained by the local property appraiser and tax collector will always be sustained and updated over the years as properties within the District develop and change. The use of such classification and statutorily required end product of each community's mass appraisal system and description of tax parcels is publicly prepared, stable, readily accessible, reasonably consistent and accurate, maintained without cost to the LAFCRD and capable of being smartly used from year to year without extraordinary consumption of resources better expended to address other fire protection related issues. Accordingly, the assessment approach again contemplated by the LAFCRD relies upon such system as a stable, reasoned and standardized resource. Attempts by other methods to focus on demand characteristics, call data, or timing of 'in progress' working data used by the Property Appraiser create complexities that Simplified Fire easily avoids¹. It is also prudent to note and remind that Mr. Lawson, along with Dr. Beitsch and Ennead LLC, in defining the Simplified Fire™ approach work to address legal validity in advance.

Importantly, the LAFCRD use of its Simplified Fire strategy and method should not create friction with the local Property Appraiser because it only uses data for tax parcel identification and valuation purposes in a context that is not foreign to that for which it was prepared. Smart and effective use of technology and processes already available industry-wide have made this process quite effective since the inception of the uniform method of collection authorized by general law in the late 1980's.

Finally, the 2020 validation by the Circuit Court also considered the relationship of emergency medical services to property. The resulting Final Judgment in that matter now presents *subtle but substantial confirmation* that emergency medical services as posited in using the Simplified Fire approach, unlike call or demand-based rationale, logically support benefits to property.

¹ An example of how not to address a non-ad valorem assessment is the City of Ocala. Murty, Jennifer Hunt. "Ocala's fire fee strategies were flawed from inception to \$80 million judgment: Eight years of closed-door deliberations between Ocala City Council members and their attorneys on this controversial episode are revealed." Ocala Gazette, Dec. 10, 2022, <https://www.ocalagazette.com/ocalas-fire-fee-strategies-were-flawed-from-inception-to-80-million-judgment/> Accessed July 19, 2023.

EMS AS A LEGISLATIVELY IMPLEMENTED BENEFIT TO PROPERTY

In literally every case, it is well settled Florida law that fire service is a benefit to property. Chapter 191, Florida Statutes, directed to independent fire districts such as LAFCRD, similarly and explicitly recognizes EMS also benefits property, effectively allowing assessments to be levied for the purpose of supporting the infrastructure and cost of such services, including governance and administration of such services. Chapter 191 signals in very clear and certain language the Legislature's determination linking and identifying EMS as a special advantage conferred upon real property and not just to, or even primarily to, people.

As explained in detail in GAI's 2020 report, the prevailing theory regarding the value public services confer upon private property and its associated bundle of rights reflects the principles outlined in the seminal article published in the *Journal of Political Economy* (1956) by Charles M. Tiebout, which analyzes the value of government services and the means by which they are capitalized into the value of the homestead and other property. Stated simply, the more extensive these government services, the more valuable the benefiting property. Tiebout's theory suggests each property owner selects² a parcel and attributes a certain value to that parcel based on the bundle of services supplied by that jurisdiction.

Logically included within that bundle are all those services typically implemented through local government such as schools, EMS, fire, and others. As to these services, it would not matter whether they were provided directly by the local government or instead implemented privately through government-monitored or controlled sources.³ Similarly, it would not matter whether these services occurred on demand or stood available and ready to deploy. What *would* matter, is that the owners and users of a property had the expectation of receiving a certain service simply as a result of that property's location within a specific community or jurisdiction.

The Legislature's determination that the provision of fire protection services, fire suppression services, fire prevention services, emergency rescue services, first response medical aid, emergency medical services, and emergency transport services each constitutes a benefit to *real property* the same as any other improvement or betterment performed by the District is an entirely rational and justifiable determination consistent with economic theory and several observed applications of the same.

² In the Lehigh Acres community, the term "selects" obviously includes the conscious decision to keep and not sell a building lot that may have been purchased years ago by a prior owner and is now held by a descendant or heir.

³ For example, the availability of charter schools likely enhances the value of residential property, and thus the Legislature allows for the creation of educational benefit districts with special assessment powers.

BUDGET REVIEW

Staff has provided the preliminary fiscal year 2023-2024 LAFCRD budget developed for analysis and planning purposes. It follows the structure of prior budgets and is the best available information. A comparison of the preliminary budget shows no material or substantive differences with budgets of prior years with respect to their tier assignments or proportionality.

Specific to the possible impacts, if any, of advanced life support (ALS) and emergency medical services (EMS) as they appear in the District's budget, we affirm the following:

- The District provides first response aid often defined as basic life support (BLS). The District also provides emergency medical services, including ALS, either as part of its first response efforts delivered in conjunction with its firefighting activities or to stabilize the injured in advance of transport by District personnel to area hospitals.
- Generally, the Florida Supreme Court has determined that, in some circumstances, ALS services which can form a component of emergency medical services primarily benefit persons instead of real property and therefore such services, *other than first response medical aid routinely delivered by firefighters* are not always recoverable through special assessments without statutory support or special findings regarding benefit to property. However, in circumstances like the District's, there is *express statutory authority* post-dating the Florida Supreme Court's decision to limit the imposition of special assessments for emergency medical services, so, by general law, they need not be parsed. With that express authorization, and with specific, reasoned findings such as the ones described in GAI's 2020 report, there is an inescapable logical conclusion that emergency medical services such as those provided by the District do, in fact, benefit real property, consistent with express determinations and intent of the Legislature.
- Here, these EMS and ALS costs can be appropriately included in the budget and the Legislature has expressly deemed them assessable. Among other things, the District's funding is almost exclusively derived from non-ad valorem assessments, and the electors have approved the use of non-ad valorem assessments in lieu of ad valorem taxation, further empowering and allowing the District to impose assessments for

emergency medical services which include benefits to real property of advanced life support by definition.⁴

As of July, 2023, the District's currently proposed 2023-2024 budget indicates a total financial commitment of approximately \$38,150,000 associated with various staffing, operational and capital requirements including debt service that would be assessable. Approximately \$31,750,000 would be raised through assessments assigned to Tier 1 and Tier 2

As indicated, the legislative body agreed, that going forward, the rates applicable to each of the tiers would be adjusted based on data from the U.S. Department of Commerce. As long as these adjustments are uniformly applied, they would not disturb proportionality. That adjustment allows an increase of 6.7%

GUIDELINES FOR CURRENT ASSESSMENTS

It is well-settled in Florida case law that local governments, should they impose an assessment, are not required to fully fund that service or improvement through the special assessment itself. The local government may determine, entirely in its own discretion, to fund some portion of the overall cost with general fund or other legally available revenues.

An example of other revenues would be impact fees charged to some new developments that may require the fire department to expend additional resources. The financial information prepared for our review does reflect impact fees but any likely expenditures were excluded from the calculations prepared for the illustrative budgets and the expected allocations of costs to Tier 1 and Tier 2. To be clear, a local government may not impose an assessment for the same portion of capital items purchased with impact fees. For this reason, any *final* budget used by the District must be updated and modified to not reflect impact fee revenue usages for capital costs otherwise paid for by assessment revenues.

⁴ The voters on August 18, 2020, authorized this simplified assessment regime "[a]s an alternative to ad valorem taxes;" and, the Legislature has expressly authorized the imposition, by fire control districts like the District, of non-ad valorem assessments to fund emergency medical services and emergency transport services if the District ceases collecting ad valorem taxes. It is also noteworthy that assessment for emergency medical services is also authorized by the Legislature in Chapter 170, Florida Statutes. The authority to assess for emergency medical services is supported by the distinction that the Simplified Fire approach does not rely upon emergency calls to sort or assign costs, but rather uses a different reasoned logic related to the attractiveness of the constant availability of such capital and services in the context of public goods and services benefitting owners, users and lessors of property throughout a community.

The 2023-2024 budget is similar in terms of its composition to the 2022-2023 budget with major differences being capital items. The allocations to Tier 1 and Tier 2 are also similar to those calculated last year.

The tables on the next page summarize the percentage allocation between the two tiers that will generally be sustained by the LAFCRD concerning the actual sum of the assessment adopted for the coming year.

Table 1.0 Tier allocations for budgeted expenditures

	Tier 1	Tier 2	Total
Dollar \$\$	\$8,936,767	\$22,812,827	\$31,749,594

Table 2.0: Assessments and other receipts relative to budgeted expenditures

	Assessments	Fees, Grants, Inspections, Other Available Funds	Total
% Distribution	83%	17%	100%
Dollar Distribution	\$31,749,594	\$ 6,406,611.00	\$38,156,205

It is recognized that in the ongoing budget process the indicated sums may be modified and that internal versions could be modestly different due to rounding, account classification, or other matters. Insubstantial modifications to the budget used will not materially affect this analysis. A substantial increase in the preliminary budget used for planning will also not have a material effect on this analysis as all increases must be funded with other legally available funds. However, a large and substantial decrease in the budget provided by the LAFCRD for our use may impact our analysis.

EXCLUSION OF CERTAIN PARCELS

We have reviewed data prepared by Ennead LLC which reveals there are approximately 127,330 tax parcels within the boundaries of the District that are potentially affected by the analysis and approach outlined. Among these are approximately 399 tax parcels owned by governmental entities which will be excluded since governmentally-owned property used by governments for public purposes cannot be subject to special assessment.^{5,6}

Additional parcels may not benefit from fire protection or emergency rescue and medical services or are otherwise inappropriate or infeasible to assess based on physical configuration such as submerged or undevelopable lands. In addition, the District has declared a desire to, in its discretion, exempt from the assessment based upon public policy determinations parcels associated with community-oriented purposes, as directed in the past and as directed administratively by the Fire Chief under the District's procedural resolution.⁷ Amounts associated with any exemption on developed or developable parcels from the assessment must be funded through other legally available funds of the District.

SUMMARY CONCLUSION

Determinations of relief of burdens caused by various tax parcels within the District, the benefit to property, the amount to be imposed for costs associated with the Non-Ad Valorem Assessments, and the fair and reasonable apportionment of the assessments for the upcoming fiscal year are fairly documented and supported by, among other things, prior evidence and the Final Judgment.

⁵ The estimate of 399 parcels, which to the best of our knowledge, does not include property owned by governmental entities which is leased to third parties for private uses; such leasehold parcels may be subjected to taxation and special assessment.

⁶ However, whether or not the District may be able to charge governmental properties a user fee or service availability charge similar to impositions for water, sewer, or solid waste, for fire protection and emergency medical service in a comparable amount per parcel is beyond the scope of this report.

⁷ See Lehigh Acres Fire Control and Rescue Dist. Reso. 20-08-01.

CONNECTION WITH PRIOR WORK

This Report incorporates by reference GAI's prior report and work from 2020 placed in the record before the District at its public hearings on this matter over time. Consistent with that record, the content of this Report provides a reasoned updated review and analysis of information, facts and circumstances associated only with the LAFCRD and is exclusively for its use.⁸

Sincerely,

GAI Consultants, Inc.



Owen M Beitsch, PhD, FAICP, CRE
Senior Director

CC: Robert DiLallo, Fire Chief; Richard Pringle, District Attorney; Mark G. Lawson P.A., Special Counsel; Ennead LLC, Approved Consultant

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