

**RESOLUTION NO. 22-174**

**A RESOLUTION OF THE CITY COUNCIL OF PANAMA CITY BEACH, FLORIDA, RELATING TO THE AVAILABILITY AND FUNDING OF STORMWATER MANAGEMENT AND RELATED CAPITAL SERVICES, FACILITIES AND PROGRAMS, INCLUDING CAPITAL INFRASTRUCTURE AND EQUIPMENT, WITHIN THE CITY; PROVIDING FOR THE IMPOSITION OF SPECIAL ASSESSMENTS WITHIN THE CITY TO FUND, IN PART, THE SERVICES, FACILITIES AND PROGRAMS ASSOCIATED WITH THE CONTINUAL READINESS AND MAINTENANCE OF STORMWATER MANAGEMENT SERVICES, FACILITIES AND PROGRAMS; IDENTIFYING BENEFITS, BURDENS AND COSTS TO BE ASSESSED; ESTABLISHING THE METHOD OF APPORTIONING BENEFITS, BURDENS AND COSTS AMONG SPECIALLY BENEFITED PROPERTY; ADOPTING AN ASSESSMENT ROLL; PROVIDING THE METHOD OF COLLECTION; PROVIDING FOR ASSOCIATED POLICY DIRECTION; AND PROVIDING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PANAMA CITY BEACH, FLORIDA, AS FOLLOWS:**

**ARTICLE I**

**INTRODUCTION**

**SECTION 1.01. AUTHORITY.** This Resolution of Panama City Beach, Florida (the "City") is adopted pursuant to Ordinance No. 1564 (the "Assessment Ordinance"), Sections 166.021 and 166.041, Florida Statutes, and other applicable provisions of law.

**SECTION 1.02. DEFINITIONS.** This Resolution constitutes the Annual Assessment Resolution as defined in the Assessment Ordinance. All capitalized words and terms not otherwise defined herein shall have the meaning set forth in the Assessment Ordinance, unless the context hereof otherwise requires.

**SECTION 1.03. INTERPRETATION.** Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms "hereof," "hereby," "herein," "hereto," "hereunder" and similar terms refer to this Resolution; and the term "hereafter" means after, and the term "heretofore" means before, the effective date of this Resolution. Words of any gender include the correlative words of the other gender, unless the sense indicates otherwise.

**SECTION 1.04. FINDINGS.** It is hereby ascertained, determined and declared as follows:

(A) The constant and continued preparedness to provide stormwater management services, facilities and programs possesses a logical relationship to the value, use and enjoyment of real property by: (1) protecting and enhancing the value of property, improvements and structures through the continual readiness and availability of stormwater management services, facilities and programs; (2) protecting the life and safety of intended users or occupants in the use and enjoyment of real property; (3) lowering or stabilizing the cost of casualty, liability and flood insurance by the presence of stormwater management services, facilities and programs within the City; (4) providing

protection for uninsured or underinsured property and property owners; and (5) addressing storm events, providing flood, inundation and environmental controls, benefitting both improved or vacant or undeveloped property.

(B) The sharing of benefits, burdens and costs for stormwater management services, facilities and programs based upon the relative value of improvements for each Tax Parcel in the City as compared to the value of improvements for all Tax Parcels in the City could conceivably serve alone as a fair and reasonable means to apportion entirely the Stormwater Management Assessed Cost. Such approach substantially removes the underlying land values from consideration and reasonably focuses upon the built, improved, or husbanded environment on the land served and protected by stormwater management services, facilities and programs. This is a direct and logically related means to share benefits, burdens and costs of stormwater management services, facilities and programs.

(C) It is also clear that the relative improvement value of improvements to land may be utilized as one factor among others considered in a given formula or calculus since the resulting Assessments are formed from a reasoned or logical base against which the special benefits, burdens and costs may be multiplied or determined.

(D) Apportionment on the basis of relative improvement value (as determined by data derived from the Tax Roll prepared by the Property Appraiser) recognizes and fairly shares the relatively higher benefit accruing to properties which face greater

financial loss in the event of storm events, as well as proportional increases or decreases in use, enjoyment value of improvements thereon, each of which attracts buyers and lessors in the competitive local marketplace.

(E) Besides the advantage of relying upon data prepared by the Property Appraiser in the normal conduct of such person's responsibilities, an approach based in whole or in part upon relative improvement value is also advantageous because it is self-correcting. Relative value of improvements may change from year to year in accordance with market conditions and other factors and such variation will be adjusted automatically each subsequent year in accordance with the updated improvement value determined by the Property Appraiser. If the improvements on a given Tax Parcel were to increase or decrease in value with the passage of time relative to the updated improvement value city-wide, that Tax Parcel's relative percentage to the total amount assessed for that Tax Parcel and all Tax Parcels will also increase or decrease proportionately.

(F) The mere availability of stormwater management services, facilities and programs benefit each Tax Parcel of real property in the City in a substantially uniform fashion by relieving the common burden placed upon City services and facilities collectively created by individual Tax Parcels whether a precipitation or storm event occurs or not. Fundamentally, the presence of each Tax Parcel within the City creates a comparable and similar requirement to stand ready to serve and continually maintain a

preparedness to provide stormwater management and associated services and facilities for all Tax Parcels.

(G) The City's core preparedness costs are generally those necessary to maintain the readiness of personnel, equipment and facilities to respond in the event of scheduled maintenance and random calls or events and to assure an effective network of coverage, a metric used by the federal government and insurance ratings organizations for calculation of basic insurance ratings. Such preparedness requires continual readiness and must also lie in wait for emergencies and random or maximum storm events.

(H) The Council has carefully considered the reports prepared by GAI Consultants, Inc. describing a carefully reasoned more simplified special assessment apportionment methodology designed to fund all or some portion of the City's annual budget expenditures corresponding to fixed (as opposed to more variable) costs incurred in maintaining common or similar necessity to maintain the readiness and adequacy of the stormwater management services, facilities and programs to all parcels.

(I) These core preparedness costs of readiness are largely recurring, almost fixed over the course of a budgetary period, because they are strongly associated with wages, salaries, administration, and overhead which support the constant availability of stormwater management related services and facilities. Such core costs must be absorbed even when stormwater management capabilities remain exclusively in readiness or standby mode.

(J) Fixed costs can generally be described as those costs incurred in providing services, facilities or programs required for readiness to provide stormwater management which does not necessarily vary from parcel to parcel based upon property classification, parcel-specific physical characteristics (improvements) or actual demand in the event of system use or deployment. Variable costs are those dependent upon or which more closely bear a direct relationship to property classification and/or parcel-specific physical characteristics such as value of improvements, and therefore are more likely to vary from parcel to parcel.

(K) The budgeted level of service is a policy decision and in essence represents the predominant requirement for service in the scheme of providing public goods and services. The frequency and nature of precipitation or storm events is variable and difficult to accurately predict. The scale of this potential defines the basic underlying cost of being prepared to provide stormwater management services, facilities and programs to serve properties and to protect property values. From a policy and public purpose standpoint, preparedness is the predominant activity of the City's stormwater management services and facilities. The City, in this state of continual planning, preparedness and readiness, must consider the personnel, necessary equipment and facilities, and the time likely required to address stormwater management services and facilities (planning or preparing for the potential storm or flood event) prior to allocating direct resources when capacity may be inadequate to be performed as quickly as possible (deploying to or intervening in

the incident or event itself). The amount of resources for stormwater management services, facilities and programs made available in such continual preparedness exercise each year is a public administration and policy decision which necessarily focuses in the aggregate on all property within the City.

(L) In developing a recurring revenue source to fund a portion of the core fixed cost component of the City's annual budget associated with a continued readiness to provide stormwater management services, facilities and programs, it is not necessary to solely focus on the size, value or physical characteristics of individual Tax Parcels for stormwater management. Instead, in this context, each individual Tax Parcel contributes similarly to the required state of readiness to address pollution and discharge premised largely on the necessity to maintain and underwrite more comprehensive preparedness than just quick drainage of storm events, and similarly and substantially shares the same benefits from such core fixed cost component; and, therefore it is fair and reasonable to ask the owner of each Tax Parcel to contribute equally toward funding all or a portion of the core fixed costs associated with such continual necessity to maintain stormwater management services and facilities each year.

(M) The findings contained herein are premised upon information, input, analysis and review from City staff, officials and experts, and public comment, as well as careful consideration by the City Council. A combination of the foregoing yields a reasoned apportionment methodology premised upon two distinct tiers or classes of apportionment

allocation: Tier 1 – a sharing of benefits, burdens and costs for stormwater management services and facilities based upon the relative value of improvements for each Tax Parcel in the City as compared to the value of improvements for all Tax Parcels in the City; and, Tier 2 – a sharing of benefits, burdens and costs for stormwater management services and facilities on a per Tax Parcel allocation premised upon maintaining a continual state of preparedness and readiness to serve whether or not or how frequently precipitation or storm events occur. Although either of these two tiers might be used singularly to address a significant portion of the budget for special assessment apportionment purposes, together they provide a simplified and powerful equity tool for the City to fairly and reasonably share assessable benefits, burdens and costs among all assessable Tax Parcels in the City.

(N) Allocating a portion of the fixed costs attributable to the City's continual readiness to maintain the readiness and adequacy of stormwater management services and facilities (not infrequently driven by state and federal regulation) on a Tax Parcel basis reasonably avoids cost inefficiencies and unnecessary administration, and is a fair, efficient and reasonable mechanism to allocate such costs among all Tax Parcels.

(O) The use of data derived from the Tax Roll (both in form and content), which is a statutorily required and uniformly maintained database of all Tax Parcels employed by the Property Appraiser and Tax Collector, represents a reasonably accurate, fair and efficient means to allocate or distribute the Stormwater Management Assessed Cost



associated with a budgeted level of service, standing ready to provide stormwater management and associated services and facilities.

(P) It is fair, reasonable, effective, and efficient for all Tax Parcels, including statutorily defined parcels such as multiple parcel buildings, individual condominium or cooperative units with extraordinary alienability, to share equally in the core fixed costs represented by the special assessments to be imposed hereby, particularly since such costs are not necessarily dependent upon or determined by physical characteristics, use or composition.

(Q) It is also fair and reasonable that some portion of fixed costs and variable costs be shared and distributed equitably among all Tax Parcels, including statutorily defined parcels such as multiple parcel building, individual condominium, or cooperative units with extraordinary alienability, using apportionment methods better capable of sharing the Stormwater Management Assessed Cost premised upon the logical relationship of stormwater management, services, programs, and facilities city-wide to parcels using, in part, established economic theory addressing why property owners and lessors are attracted to the City, and measuring, in part, such attraction for public goods and services by use of publicly maintained transactional data such as a relative improvement value component (not land value) using data from the Tax Roll as shown on the Assessment Roll.

(R) GAI Consultants, Inc. and Ennead, LLC reviewed current and prior year budget information related to the provision of stormwater management services and facilities and shared a reasoned analysis of fixed and variable cost budget components, resulting in the determination that all Tax Parcels benefit in a substantially uniform manner from services, facilities and programs characterized as fixed and otherwise necessary to maintain the continual readiness and adequacy of stormwater management by considering core fixed cost expenditures incurred in maintaining readiness to provide stormwater management and associated services and facilities (Tier 2), and reasonable allocation to both fixed and variable cost expenditures based upon the relative value of improvements associated with each Tax Parcel (Tier 1). The exemplary budget for the upcoming fiscal year necessarily evidences substantial anticipated revenue to otherwise provide for stormwater related capital and essential services through legally available funds other than Stormwater Management Assessment. In any event, the remainder of the exemplary budget for stormwater management can be provided through other legally available funds for all expenditures beyond the Stormwater Management Assessed Cost.

(S) It is fair and reasonable to fund all or a portion of the Stormwater Management Assessed Cost on the basis of the relative value of improvements associated with each Tax Parcel compared to the total value of all improvements in the City in order to recognize the proportional benefit accruing to properties based upon an economic metric measuring the attraction of property owners to public goods and services

associated with stormwater management in the City, including but not limited to properties which face greater financial loss in the event of a stormwater incident.

(T) It is fair and reasonable to multiply the estimated budget for stormwater management services, facilities and programs by an identified proportion of the core fixed costs associated with the continual necessity to maintain readiness and adequacy of stormwater management services and facilities, in order to determine a proportional amount of the estimated budget allocable to such core fixed costs; and, then divide such amount by a reasonable estimate of the total number of Tax Parcels within the City in order to determine the proposed annual rate of assessment per Tax Parcel in an attempt to uniformly and proportionally fund such core fixed costs.

(U) The City is not required to fully fund any given essential service or capital cost through a special assessment. So long as the application of funds is for a public purpose and funds are legally available, the City may alternatively determine to fund all or some discrete portion of an essential service or capital cost, such as stormwater management services, facilities and programs, with general fund or other legally available revenues. The determination as to whether to contribute other legally available revenues, and how much to contribute, lies solely in the discretion of the City Council.

(V) There is no requirement that the City impose an assessment for the maximum amount of the budget that can be funded by special assessments. Stated in the alternative, the City Council may annually determine as a tax equity tool to impose special assessments

at a rate less than necessary to fund all or any specific portion of the costs which might otherwise be funded by special assessments associated with stormwater management services and facilities. Costs incurred in providing stormwater management services, facilities and programs not otherwise funded through Stormwater Management Assessments in any given year may be paid with general fund or other legally available revenues. Such legally available revenues as a matter of policy may be applied exclusively to any tier or class of budget allocation or expense otherwise funded by a special assessment, in part to one tier or class of any budget allocation or expense, or in any combination thereof, and maintain the validity of each apportionment approach used for the remaining portion of the budget attributed to the Stormwater Management Assessed Cost. This flexibility is implemented through a policy and legislative determination employed through careful adherence to case law, statutory law, and the State Constitution, as well as the exercise of annual budget responsibility, discretion and equity vested in the City Council; or, may be subject to a grant or loan covenant with the state or federal government. However, in no event shall any annual rate of special assessment exceed that previously noticed to the affected landowners without further notice and public hearing pursuant to the Assessment Ordinance.

(W) The City Council is cognizant that any system, metric or analytical view of appraising benefits or assessing costs will be open to some criticism or suggestion of alternative methods or approaches, and has labored to educate itself as to the facts,

analysis, law and policy latitudes available to it in determining the Stormwater Management Assessed Cost and the rate of the Stormwater Management Assessment in the process of approving the Stormwater Management Assessment Roll.

(X) The apportionment among Tax Parcels of a portion of the City's annual budget for stormwater management services, facilities and programs represented by the assessment rates and Stormwater Management Assessments hereby adopted (using the concept and method sometimes called the "Simplified Approach"<sup>TM</sup>), are reasonably characterized as necessary to maintain the readiness and adequacy of stormwater management; and, is hereby determined to be a fair and reasonable means to annually allocate and share such benefits, burdens and costs.

(Y) The benefits derived or burdens relieved from the Assessed Costs necessary, in part, to maintain the readiness and adequacy of stormwater management services, facilities and programs as to each Tax Parcel subjected to the Stormwater Management Assessments equal or exceed the amount of the special assessments levied and imposed hereunder. The Assessment for any Tax Parcel within the City in employing such an approach also does not exceed the proportional benefits (or corresponding relief of burdens) that such Tax Parcel will receive (or cause) compared to any other Tax Parcel so assessed within the City.

(Z) The foregoing findings and determinations are predicated on a substantially similar proposed dollar amount budget and information for Assessed Cost

in the upcoming Fiscal Year as last year; and, the Council determines it is reasonable and lawful to confirm and ratify same with adjustment using a cognizable indexing feature as provided by ordinance, and impose the Assessments using the rates, fees and charges as provided for herein.

(AA) The Council hereby finds and determines that the Stormwater Management Assessments to be imposed in accordance with this Resolution provide a proper and equitable method of funding associated stormwater management services and facilities fairly and reasonably allocating a portion of the cost thereof among specially benefited property.

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ARTICLE II  
NOTICE AND PUBLIC HEARING

SECTION 2.01. ESTIMATED STORMWATER ASSESSED COST; RATE OF ASSESSMENT.

(A) The estimated Stormwater Management Assessed Cost to be recovered through Stormwater Management Assessments for the Fiscal Year commencing October 1, 2022, is anticipated to be \$3,081,882<sup>1</sup> consisting of \$2,138,361 for Tier 1 – relative value of improvement for each Tax Parcel for more variable costs and \$943,521 for Tier 2 – per Tax Parcel for fixed, readiness to serve costs.

(B) The Stormwater Management Assessments established in this Annual Assessment Resolution are determined by the assessment rates prepared for consideration by the public and City Council in the preparation of the Stormwater Management Assessment Roll for the Fiscal Year commencing October 1, 2022.

(C) As provided for in the Assessment Ordinance, the rate of Stormwater Management Assessment for the Fiscal Year beginning October 1, 2022, has been considered in the context of the *average annual growth rate in Florida personal income over the previous 5 years* from 2016 to 2021 which has been determined to be 4.62% using

<sup>1</sup> This amount is slightly lower than noticed by publication, and includes carrying forward anticipated equitable exemptions as directed last year by the Council of approximately \$83,000 to be paid from legally available funds other than Assessment proceeds.

information from the Bureau of Economic Analysis, affiliated with the United States Department of Commerce. The notice and intent to employ such approach was previously noticed by mailed and published notice along with and in the context of maximum rates established in the Summer of 2021, and has since been judicially validated by the City for use in financing capital borrowing by the local Circuit Court and in addition has been further noticed by publication again this year in the context of increasing the annual rate of Stormwater Management Assessments by using such a cognizable indexing feature in the manner provided for in the Assessment Ordinance. The rate of Stormwater Management Assessment for the fiscal year commencing October 1, 2022, accordingly, is directed to include such adjustment.

(D) The rate of Stormwater Management Assessment is therefore to be (1) \$0.47 per thousand dollars of improvements, or fraction thereof, for each Tax Parcel as reflected in the Tax Roll (Tier 1), plus (2) \$46.44 per Tax Parcel (Tier 2).

**SECTION 2.02. STORMWATER MANAGEMENT ASSESSMENT ROLL.**

(A) The Assessment Coordinator prepared and noticed by publication and upon the City's website the availability of a preliminary Stormwater Management Assessment Roll that contains the following information:

(1) a summary description of each Tax Parcel (conforming to the description contained on the Tax Roll maintained by the Property Appraiser for the



purpose of levying and collecting ad valorem taxes) which is intended to be subject to the Stormwater Management Assessment;

(2) the name of the owner of record of each Tax Parcel, as shown on the Tax Roll;

(3) the proposed amount of the total Stormwater Management Assessment for each affected Tax Parcel for the fiscal year commencing October 1, 2022, exclusive of anticipated costs of collection and administration; and

(B) In the event the City also imposes or collects an impact fee upon new growth or development for capital improvements related to stormwater management, the special assessments provided for hereunder shall not include costs attributable to capital improvements necessitated by new growth or development which were included in the computation of such impact fee, or which are otherwise funded by such impact fee.

(C) Copies of the Assessment Ordinance, this Resolution and the preliminary Stormwater Management Assessment Roll have been made available in the City Clerk's office at City Hall Bldg., 17007 Panama City Beach Parkway, Panama City Beach, Florida, 32413, or have been open to public inspection in a manner consistent with the Assessment Ordinance. The proposed approach and amount of Assessment for each Tax Parcel has been noticed at or through the City's website and accessible through the internet at [www.pcbfl.gov](http://www.pcbfl.gov) and at the City Clerk's office located at City Hall Bldg., 17007 Panama City Beach Parkway, Panama City Beach, Florida. In the event the Assessment

Coordinator henceforth makes any corrections, exemptions, administrative hardship deferrals or other modifications to the Assessment Roll authorized by the Assessment Ordinance, this Resolution or otherwise, all funding for such changes to the Assessment Roll shall be funded by legally available funds other than direct proceeds of the Assessments. Such changes shall not require any recalculation or change in the rate or rates of assessment otherwise considered or adopted pursuant to the Assessment Ordinance or any Annual Assessment Resolution.

**SECTION 2.03. NOTICE BY PUBLICATION.**

(A) The Assessment Coordinator has directed and caused the publication of notice of a public hearing in the manner and time provided in the Assessment Ordinance. Proof of timely and compliant publication of the notice is attached hereto as Appendix A.

(B) No applicable circumstances in Section 197.3632 (4)(a), Florida Statutes, or the Assessment Ordinance, require further individually mailed notice of the public hearing.

**SECTION 2.04. PUBLIC HEARING.** A public hearing was held on June 23, 2022, commencing at or about 9:00 a.m. in City Hall Council Chambers, 17007 Panama City Beach Parkway, Panama City Beach, Florida, at which time the Council received and considered information and comments on the Stormwater Management Assessments from City officials, staff, experts and advisors, as well as the

public and affected property owners, and considered imposing Stormwater Management Assessments and the method of collection thereof as required by the Assessment Ordinance.

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**ARTICLE III  
ASSESSMENTS**

**SECTION 3.01. IMPOSITION THROUGHOUT CITY.** Upon adoption hereof, Stormwater Management Assessments are to be levied and imposed throughout the entire area within the boundaries of the City and this Resolution shall be deemed to be adopted and confirmed for all purposes.

**SECTION 3.02. IMPOSITION OF ASSESSMENTS.** Stormwater Management Assessments shall be imposed against Tax Parcels located within the City, the annual amount of which shall be computed for each Tax Parcel in accordance with this Resolution and shall include all administration and collection costs, fees and adjustments provided for in Section 2.01(B) of the Ordinance. When imposed, the Stormwater Management Assessment for each Fiscal Year shall constitute a lien upon Assessed Property equal in rank and dignity with the liens of all state, county, district or municipal taxes and other non-ad valorem assessments as provided in the Assessment Ordinance.

**SECTION 3.03. APPORTIONMENT APPROACH.**

(A) As provided for herein, the Stormwater Management Assessed Cost shall be apportioned among all Tax Parcels within the City, not otherwise exempted hereunder, and including any statutorily defined parcels such as multiple parcel buildings, individual condominium, or cooperative units with extraordinary alienability. The estimated

Stormwater Management Assessed Cost and rate of Stormwater Management Assessment shall be that described in Section 2.01 hereof.

(B) It is hereby ascertained, determined, and declared that the method of determining the Stormwater Management Assessments as set forth in this Annual Assessment Resolution is a fair and reasonable method of paying for, recovering and apportioning the Stormwater Management Assessed Cost among Tax Parcels of Assessed Property located within the City.

(C) The Stormwater Management Assessment Roll is hereby approved.

**SECTION 3.04. APPLICATION OF ASSESSMENT PROCEEDS.**

Proceeds derived by the City from the Stormwater Management Assessments, after payment of costs and expenses associated with collection and administration of the Assessments, shall be utilized for the provision of stormwater management related services, facilities, and programs associated with maintaining continual readiness to serve. In the event there is any fund balance remaining at the end of the Fiscal Year, such balance shall be carried forward and used only to fund costs associated with stormwater management related services, facilities, and programs.

**SECTION 3.05. COLLECTION OF ASSESSMENTS; COVENANT TO ADOPT ANNUAL RESOLUTION.**

(A) Unless otherwise determined by the Council, collection of the Stormwater Management Assessments shall take place pursuant to the uniform method of collection

described in Article III of the Assessment Ordinance.

(B) The amount of the Assessment imposed, levied, and billed to each owner of Assessed Property shall additionally include a charge for a pro rata share of the City's costs and expenses associated with development, implementation, notice, collection and administration of the Assessments, but not to exceed five dollars (\$5.00) per Tax Parcel to defray such City costs.

(C) Capital equipment and facilities are fundamental components to the preparedness necessary to continually stand ready to provide stormwater management services, facilities and programs. Following the initial Stormwater Management Assessment for FY 2020-21, counsel for the City as directed successfully instituted proceedings pursuant to Chapter 75, Florida Statutes, which judicially confirmed the validity of the Assessments and use of proceeds of the Assessment to secure such Obligations as provided for in the Assessment Ordinance. Any Obligations issued by the City shall contain a covenant by the City to adopt an Annual Assessment Resolution imposing Assessments for each Fiscal Year until any Obligations which include Assessments as pledged revenues have been paid in full.

**SECTION 3.06. DIRECTION CONCERNING ANY EXEMPTION.**

(A) Tax Parcels which are statutorily exempted from the payment of ad valorem taxes are in most circumstances subject to the Stormwater Management Assessments contemplated hereunder. Tax Parcels classified or described by the Property

Appraiser as institutionally tax exempt have been previously included in other non-ad valorem assessments imposed by the City, and are subject to the Stormwater Management Assessments contemplated hereunder.

(B) Tax parcels comprising Government Property are not subject to the Stormwater Management Assessments contemplated hereunder. Such Tax Parcels include those classified or described by the Property Appraiser as government-owned, including the following: (1) military, (2) forest, parks, recreational, (3) public county schools, (4) public colleges, (5) public hospitals, (6) other county-owned property, (7) other state-owned property, (8) other federal-owned property, and (9) other municipal-owned property. Provided, however, each such Government Property owner may be approached by the Mayor, or such person's designee, and asked to pay as a fee or service availability charge in an amount comparable to the Assessment for each such Government Property. Said amount may be invoiced annually, quarterly or monthly in accord with Section 3.04 of the Assessment Ordinance.

(C) The following Tax Parcel classifications are special designations used by the Property Appraiser for recordkeeping purposes and do not represent actual or assessable Tax Parcels and are not subject to the Stormwater Management Service Assessments contemplated hereunder: (1) common element, (2) header record, and (3) notes parcel.

(D) Certain Tax Parcels associated with the following classifications used by the Property Appraiser typically do not receive a special benefit from the provision of

stormwater management services and facilities or are infeasible or impractical to assess, and therefore are not subject to the Stormwater Management Assessments contemplated hereunder: (1) right-of-way (including beach access), (2) rivers, lakes & submerged land, (3) sewage disposal & waste lands, and (4) (governmentally owned) outdoor recreation or parkland.

(E) Tax Parcels associated with the following classifications used by the Property Appraiser in fact receive a special benefit from the provision of stormwater management services and facilities and shall only be subject to application of Tier 2 as described herein associated with the Stormwater Management Assessments contemplated hereunder: (1) cropland, (2) timberland, (3) grazing land, (4) orchards and groves, (5) apiary, aquaculture, fowl, horse, and other animals, and (6) nursery, floriculture, sod production, and hydroponics. In the event a court of competent jurisdiction determines that such agricultural lands have been inappropriately treated or are not subject to the Stormwater Management Assessments, the imposition of the Stormwater Management Assessments on such properties or portions of properties not subject to the Stormwater Management Assessments shall be severed from this Resolution and an amount equivalent to that which would have been raised by such levy shall be paid from other legally available funds.

(F) The classifications of properties in this Section which are or may be exempted, in whole or in part, are reasonably determined to be inappropriate, infeasible



or impracticable to assess, and either benefit marginally or create a lesser or nominal demand or burden on the City's costs associated with readiness to serve, do not merit the expenditure of public funds to impose or collect the Stormwater Management Assessments, are exempt and/or otherwise generally serve in some respect to promote the public health, safety, morals, general welfare, security, prosperity and contentment of the inhabitants or residents of the City. The Assessment Coordinator, or such person's designee, is authorized and directed to use sound judgment in extending such determinations and guidance as the Stormwater Management Assessment Roll is collected. The foregoing classifications of properties not to be assessed do not include Government Property that is leased for private use.

(G) The transition to the simplified approach described and referenced in this Resolution of more proportional cost sharing does not necessitate mitigation credits. However, as a matter of policy, and discretion vested in the City Council, the Council has determined it is fair, reasonable and equitable to direct the Assessment Coordinator to continue, sometimes colloquially referred to as "grandfathering," exemptions for Stormwater Management Assessments, as follows to certain (i) veterans, (ii) disabled, and (iii) prior mitigation credit recipients. The Assessment Coordinator is directed to use legally available funds, other than Assessment proceeds, to pay Stormwater Management Assessments imposed upon homestead properties classified on the Tax Roll by the Property Appraiser under "exemption codes" VX, VP or VT (veteran's partial to total

disability), 13 (non-service connected total and permanent disability) and 14 (total and permanent service-connected disability). The Assessment Coordinator is directed to use legally available funds, other than Assessment proceeds, to reduce Stormwater Management Assessments imposed upon homestead properties who for FY 2021-22 year would have otherwise been eligible for mitigation credits under the City's former approach in the amount of \$50 for each such Tax Parcel. Such grandfathered mitigation credit is intended to end or expire at such time as any so affected Tax Parcel is transferred to a *bona fide purchaser for value* takes place. The foregoing represents a good faith public policy and public administration compromise to promote the public health, safety, morals, general welfare, security, prosperity and contentment of the inhabitants or residents of the City and expressly does not apply to any other City non-ad valorem assessment programs.<sup>2</sup>

(H) Based upon the foregoing, there are relatively few exempt properties within the City. Using legally available funds other than the proceeds of the Stormwater Management Assessments, the City shall otherwise fund or contribute an amount equal to the Stormwater Management Assessments that would have been otherwise derived, in whole or in part, from such exempt properties.

<sup>2</sup> On August 26, 2021, the City Council developed and directed the foregoing approach to these unique exemptions for Stormwater Management Assessments provided for in this subsection.

(I) Provided, however, the City Council cannot and does not contract away its police power, including the right and ability in the future to impose Stormwater Management Assessments against Tax Parcels determined to be exempt, in whole or in part, hereunder to the extent permitted by law, for any reason including lack of reasonable cooperation or willingness to pay for a share of the Stormwater Management Assessment Cost, or otherwise in the event required or directed to do so by a court of competent jurisdiction.

**SECTION 3.07. EFFECT OF ANNUAL ASSESSMENT RESOLUTION.**

The adoption of this Annual Assessment Resolution shall be the final adjudication of the issues presented herein (including, but not limited to, the legal sufficiency of this Resolution, the method of apportionment and assessment, the approach and notice procedures and maximum rates associated with the future Assessments or use of the indexing features employed by the City, the legality and validity of the Assessment Ordinance in all respects, the rate or rates of assessment, the Assessment Roll, the levy and lien of the Assessments, and the means and method of notice, collection and enforcement), unless proper steps are initiated in a court of competent jurisdiction to secure relief within twenty (20) days from the date of City Council's adoption of this Annual Assessment Resolution.

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**ARTICLE IV  
GENERAL PROVISIONS**

**SECTION 4.01. AUTHORIZATIONS.** The Mayor and any member of the City Council, the City Manager, the City Attorney, the City Engineer, the City Clerk, and such other officials, employees or agents of the City as may be designated by the City Council are authorized and empowered, collectively or individually, to take all action and steps and to execute all instruments, documents, and contracts on behalf of the City that are necessary or desirable in connection with the imposition and collection of the Stormwater Management Assessments contemplated hereunder (including the timely notice and indexing in ensuing years and budget periods), and which are specifically authorized or are not inconsistent with the terms and provisions of this Resolution.

**SECTION 4.02. CONFLICTS.** All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

**SECTION 4.03. SEVERABILITY.** If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are declared to be severable.

**SECTION 3.04. EFFECTIVE DATE.** This Annual Assessment Resolution shall take effect immediately upon its passage and adoption.

**PASSED and ADOPTED** at a meeting of the City Council of the City of Panama City Beach, Florida, this 23<sup>rd</sup> day of June 2022.

**PANAMA CITY BEACH CITY COUNCIL**

(SEAL)

By:   
\_\_\_\_\_  
Mark Sheldon, Mayor

ATTEST:

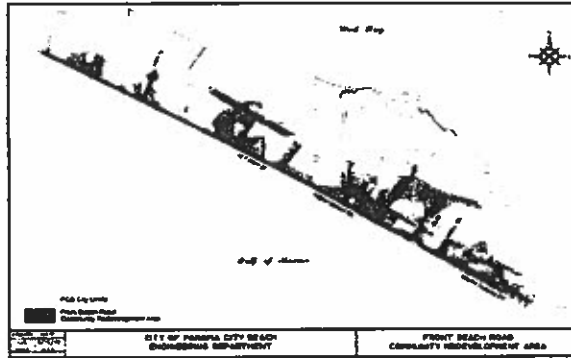
  
\_\_\_\_\_  
Lynne Fasone, City Clerk

**APPENDIX A  
PROOF OF PUBLICATION**



**COMBINED ANNUAL NOTICE OF PUBLIC HEARINGS CONCERNING NON-AD VALOREM ASSESSMENTS IMPOSED WITHIN PANAMA CITY BEACH, FLORIDA, TO FUND IN PART THE COSTS OF BENEFITS RELATED TO:**

- (1) FIRE SERVICE ASSESSMENTS (CITY-WIDE);**
- (2) STORMWATER MANAGEMENT ASSESSMENTS (CITY-WIDE);**
- (3) COMMUNITY REDEVELOPMENT RELATED ASSESSMENTS (ONLY WITHIN THE FRONT BEACH ROAD COMMUNITY REDEVELOPMENT AREA).**



The property subject to the assessments lies within the City of Panama City Beach, Florida.

**PUBLIC HEARING**

Notice is hereby given that the City Council of the City of Panama City Beach, Florida, will hold a public hearing to consider adoption of resolutions related to its Fire Service, Stormwater Management, and Community Redevelopment non-ad valorem assessment programs on June 23, 2022, at 9:00 a.m. in the City Council Chambers at City Hall, 17887 Panama City Beach Parkway, Panama City Beach, Florida.

You are invited to attend or appear at the public hearing, and/or to file written comments or objections with the City Clerk, indicating the particular assessment, if applicable, and addressed to the City Council within 20 days of this Notice. Please send your written comments in care of the City Clerk by email to [FY2022assessments@pcbl.org](mailto:FY2022assessments@pcbl.org). If you decide to appeal any decision made by the City Council with respect to any matter considered at or after the hearing, you will need a record of the proceedings and may need to ensure that a verbatim record is made, including the testimony and evidence upon which the appeal is to be made.

**FIRE SERVICE ASSESSMENT**

The City's annual non-ad valorem Fire Service Assessment defrays a large portion of the annual operating and capital costs associated with the Panama City Beach fire department. If approved by City Council after the hearing, the rate of assessment for each tax parcel is proposed to be the sum of (1) seventy (\$0.70) per \$1,000 of the value of improvements attributed to the tax parcel identified by the Bay County Property Appraiser (Tier 1), plus (2) \$86.70 per tax parcel (Tier 2).

**STORMWATER ASSESSMENT**

The City's annual non-ad valorem Stormwater Assessment defrays a large portion of the annual operating and capital costs associated with the City's public works department's stormwater management responsibilities. If approved by City Council after the hearing, the rate of assessment for each tax parcel is proposed to be the sum of (1) the sum of forty-seven cents (\$0.47) per \$1,000 of the value of improvements attributed to the tax parcel identified by the Bay County Property Appraiser (Tier 1), plus (2) \$46.44 per tax parcel (Tier 2).

**FRONT BEACH ROAD COMMUNITY REDEVELOPMENT AREA ASSESSMENT**

This annual non-ad valorem assessment, unlike the Fire Service Assessment and Stormwater Assessment above, is only imposed within the Front Beach Road community redevelopment area (or "Front Beach Road CRA"). This special assessment benefits all lands within the Front Beach Road CRA by supporting the organized and focused expenditure of tax increment revenue (properly diverted by Florida law from the County property taxes that property owners within the CRA pay each year to the County) to separately fund the vast majority of the multi-year capital improvement program for this CRA (see graphic above). This annual non-ad valorem assessment is expressly directed by the associated community redevelopment plan, and defrays a significant portion of administrative, operational and maintenance expense of overseeing extraordinary community redevelopment activities related to this CRA by covering two (2) categories of charges for this special assessment. If approved by the City Council after the hearing, the rate of assessment for each tax parcel identified by the Bay County Property Appraiser is proposed to be the combination of the following:

Category A: Budgeted costs of a portion of administrative and minimal activities shared within the CRA equally per parcel among all parcels will be the sum of \$37.45 per tax parcel, plus:

- Category B: Budgeted costs of a portion of continued maintenance, upkeep and capital equipment for this CRA weighted and shared based upon a combination of three (3) relative attributes or factors:
- (1) the heated or air-conditioned square footage reported in the public records of the local property appraiser (approximately 56% weight) will be eight-tenths of one cent (\$0.008) per square foot;
  - (2) the improvement value for each parcel, which is the result of the reported just value minus the reported land value in the public records of the local property appraiser (approximately 32% weight) will be three cents (\$0.03) per \$1,000 of improvement value; and,
  - (3) the land value for each parcel reported in the public records of the local property appraiser (approximately 12% weight) will be five cents (\$0.05) per \$1,000 of land value.

**ADDITIONAL INFORMATION**

The City currently DOES NOT impose ad valorem property taxes, and these non ad valorem special assessments are dedicated to funding essential City services. Because these funds are dedicated to the purposes for which they are collected, the City's general fund revenues may be diverted to other essential services and projects for which these funds may not be used.

The individual dollar amount attributed to the proposed rate of assessment for each affected tax parcel in the City and other information concerning all three (3) assessment programs is also being made available online at the City's website or accessible by computer terminal upon inquiry of the office of the City Clerk, at City Hall. Please go to <http://www.pcbl.org> for more information.

As provided by law, this published Notice informs of maximum rates that may be set by the City Council for all three (3) of these non-ad valorem assessments. Maximum rates were established at the time of initial imposition of these assessments, and as also set forth in the 2021 mailed notice from the City. Accordingly, the rates of these non-ad valorem assessments for the Fiscal Year beginning October 1, 2022, will be considered in the context of not exceeding the average annual growth rate in Florida personal income over the previous 5 years from 2016 to 2021, which has been determined to be 4.62%, and forms a cognizable indexing feature judicially approved as fair and reasoned in the manner provided for by law and the City's ordinances. Please note that all of the three (3) assessment program rates noticed above have alternately been increased by only 4.62% over those assessment rates adopted for FY 2021-22, rather than the 6.34% rate authorized by law and City ordinances.

The amount of revenue the City expects to collect using the specific assessment rates described in this Notice, net of costs for statutory discount for early payment necessarily associated with the use of the uniform method of collection (by law up to 4%), and commissions and fees charged by the County or its Constitutional Tax Collector and Property Appraiser Offices (by law actual costs), the City's charge to defray associated program development, advertising, implementation and administrative costs (\$5 per tax parcel for each assessment), for each of the three (3) programs is estimated to be (1) \$4,950,668 for the Fire Service Assessment, (2) \$3,076,656 for the Stormwater Management Assessment, and (3) \$779,889 for the Front Beach Road Community Redevelopment Area Assessment; and, in each instance such revenues must be used exclusively to respectively fund the associated budget for each of these respective programs in our City.

Payment of the assessments will be due and collected as special assessments on the same bill as taxes to be mailed around November 1, 2022. Affected property owners are reminded that: until paid, each of the Fire Service Assessment, the Stormwater Management Assessment, and the Front Beach Road Community Redevelopment Area Assessment will constitute liens against assessed property equal in rank and dignity with the liens of all state, county, district, or municipal taxes and other non-ad valorem assessments. Assessments become delinquent in the same manner as for unpaid taxes, and failure to pay the upcoming assessment will cause a tax certificate to be issued against the property which may result in loss of title.

Please visit <http://www.pcbl.org> for more information, including interactive assessment rolls (searchable by owner name, location and parcel number), to view how any property assessed in the City is expected to be affected by these assessments.

ANY PERSON REQUIRING A SPECIAL ACCOMMODATION TO PARTICIPATE IN THE HEARINGS DUE TO A DISABILITY OR PHYSICAL IMPAIRMENT SHOULD CONTACT THE CITY CLERK AT LEAST 48 HOURS IN ADVANCE OF THE MEETING AT (850) 233-5100. 10/2022-01-10



GAI Project R210183.07

June 16, 2022

Honorable Mayor Sheldon and City Council

City of Panama City Beach  
17007 Panama City Beach Parkway  
Panama City Beach, Florida 32413

**2022-23 Annual Update  
Overview of Simplified Approach™  
for funding, in part, stormwater management services and facilities  
City of Panama City Beach, Florida**

Dear Mayor and Council:

This letter summarizes our analysis<sup>1</sup> of the annual budget<sup>2</sup> proposed by the Panama City Beach and its prospective allocation to various accounts or activities associated with stormwater management, stormwater control, and related activities, improvements, or systems. This analysis provides a basis for a simplified approach that would apportion the costs stemming from constant provision and maintenance of stormwater management services, administration, governance, and associated services to various benefitting properties. This letter incorporates and references the detailed report prepared by GAI and submitted to the City in 2021

It is notable that the city of Panama City Beach (the "City") is a municipality, categorized by the Legislature as a general-purpose local government, formed of five (5) smaller municipalities located on a barrier island by the Legislature in 1970. The consolidation was rather abrupt, and the area has

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<sup>1</sup> The author of this report, Dr. Owen Beitsch, is the Senior Director of Economic and Real Estate Advisory Services for the Community Solutions Group of GAI Consultants and an adjunct professor at the University of Central Florida. He holds a PhD in Public Affairs, is a member of the American Institute of Certified Planners College of Fellows, and is a Counselor of Real Estate.

<sup>2</sup> Regarding the use of special assessments to partially fund anticipated stormwater related expenditure, we are pleased to have assisted the City in transitioning from one apportionment approach (measuring pervious and impervious areas as a proxy) to another using a different, more flexible and robust approach described herein as the Simplified Approach.™

been challenged by *ad hoc* infrastructure planning and significant development pressures since inception.

This document includes a funding scenario based on our familiarity with the City for over two decades. The analysis considers [1] the consequences of substantial outfall funding from the State of Florida as well as a [2] supplemental dedicated and reasoned City funding strategy applicable to any specific parcel of real property, both developed or undeveloped within the entire community, served by your stormwater management system, services programs and facilities. This information and analysis continues to provide a transparent basis for your policies as you make decisions regarding stormwater management challenges in your community.

### **SUMMARY AND PURPOSE**

Last year the City Council and City staff acted to explore and implement a much more efficient and equitable means to address stormwater funding, and that has since been confirmed by both more equitable revenue yield and judicial approval to pledge proceeds from a valid and lawful assessment to confidently obtain capital financing in the future as needed. The City Council adopted a reasoned special assessment methodology alternative to fund a significant portion of the annual operating and capital costs associated with maintaining and administering the City's stormwater management function(s) based upon thoughtful economic theory and, among other things, dispensed with continuing attempts to measure hard surfaces.

Although ensconced in home rule case law determinations by Florida's Supreme Court for about a quarter century, the Legislature has also expressly authorized the City to construct, operate, or maintain stormwater systems by establishing a continuing source of revenue sufficient to plan, construct, operate, and maintain such a system.<sup>3</sup> One such *continuing source* is obviously a special assessment collected and enforced using the uniform method of collection on the same annual bill or notice as for property taxes - also called the uniform method of collection.

Since 2006, the City has employed the use of special assessments premised upon funding a portion of the City's stormwater associated budget annually. Although legally defensible, there was a growing concern about the continued use of measuring pervious surfaces as a proxy for fairly sharing benefits, burdens and costs of stormwater management. The advent of

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<sup>3</sup> Section 403.089 (2), Florida Statutes.

significant appropriations from the State of Florida to deal with local outfalls also changed the paradigm of stormwater services.

Special assessments are levies made against certain real property to recover all or part of the cost of a specific essential service or capital improvement deemed to benefit those real properties. Non-ad valorem special assessments are collected by inclusion on the annual property tax bill, a procedure known as the *uniform collection method*. The former means prior to last year to allocate a portion of the City's stormwater costs, although likely meeting all constructs of legal sufficiency, had become administratively burdensome, unproductive, laborious and outdated.

Instead, the City realized the need to consider a means to more proportionately and broadly share these costs among benefitting property owners using an alternative approach, consistent with Florida law. Florida's Supreme Court has held the method of apportionment of special assessments may vary from community to community as long as the assessment for each affected parcel does not exceed the proportional benefits it receives compared to other parcels. With that axiom in mind, the City changed and judicially validated its approach in a manner that allows for continued use of an attractive and well-reasoned alternative method, successfully implemented last year for this year and ensuing years. We are pleased to update our work that presents a continuing source of revenue of funds authorized by the Legislature and Florida law to, among other things, *plan, construct, operate and maintain your City's stormwater management system*.

As your approved consultant along with Ennead LLC, and your special counsel, Mark G. Lawson, P.A., GAI Consultants ("GAI") have been directed to analyze the special benefits associated with the provision of stormwater management services and facilities to each of the various parcels of property in the City using the streamlined and simplified approach adopted in 2021 and described herein.<sup>4</sup> This work represents a reasoned alternative and equity tool for allocating and sharing all or some portion of benefits, burdens,

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<sup>4</sup> This collective efforts uses the maintained database of tax parcels employed by the local property appraiser and tax collector, is a reasoned and relatively accurate, fair, and efficient means to allocate or distribute costs annually. For apportioning benefits and allocating costs to property as discussed herein, the use of tax parcels is reasonable, fair, effective, and efficient for all tax parcels, including statutorily defined parcels such as multiple-building parcels and individual condominium or cooperative units. The use of this annually updated data base represents an extraordinary opportunity to use on a repetitive or evergreen basis standardized public data for an alternative purpose efficiently.

and the budgeted annual costs associated with the availability of essential services and facilities. The work and effort apply the concept of the Simplified Approach™ to the unique and particular development of the City, the financial circumstances of the City, and its budget data.<sup>5</sup>

This letter, for brevity includes by reference our original evidentiary work from August of 2021, provided for planning and decision-making purposes, which formed the foundation for implementation and judicial approval by your Circuit Court.<sup>6</sup> Your transition was completed successfully and included a reasoned apportionment methodology reflecting two distinct tiers or classes of assessment allocations.

- Tier 1: A sharing of benefits, burdens and costs for stormwater management services and facilities based upon the *relative value of improvements* for each parcel in the City as compared to the similar value of improvements for all parcels in the City.
- Tier 2: A sharing of benefits, burdens, and costs for stormwater management services and facilities on a *per parcel*<sup>7</sup> apportionment.

The tiers and approach used are both premised upon the total *preparedness necessary to provide, assure, and enhance the continual and uninterrupted provision and maintenance of stormwater management, stormwater control, and related activities, improvements, or systems along with allocated*

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<sup>5</sup> The term "Simplified Approach" is a trademarked term used to distinguish the method fully described in this report from other methods of apportioning special assessments on real property. Most communities choose to focus only on impervious/pervious surfaces, rather than other dimensions, or lack thereof, known to attract property owners and lessors to a community. The term "Simplified Approach" is used to describe this alternative assessment method. As described in this report, the methodology is equally applicable to funding costs to manage, plan, construct, operate and maintain stormwater management systems and programs in the alternative to any other stormwater apportionment regime.

<sup>6</sup> Panama City Beach v. State, No. 21001149 CA (Fla. 14th Cir. Ct. 2021); recorded in Official Record 4478, at page 1041 of the Public Records of Bay County, Florida (herein also referred to as the "2021 Final Judgment").

<sup>7</sup> In many communities, the use of the tax parcel which is evidenced on the real property ad valorem tax assessment roll and database and reflected by a distinct property identification number is sufficient. However, in some communities, it may be preferable to identify individual parcels within a tax parcel. We do not believe that latter approach is merited or necessary in Panama City Beach in this instance.

*administration, governance and associated services.*<sup>8</sup> The two discrete tiers identified above are used to digest the estimated operating budget as well as costs associated with capital improvements.

The City, encompassing several square miles of land in western Bay County, Florida, began as a series of small, unrelated municipalities serving visitors drawn to its unspoiled beaches. Less than optimal consideration was extended to fundamental infrastructure that would assure the longer-term protection of those recreational assets, beaches and any nearby development or civic spaces.

Approximately two (2) decades after its consolidation by the Legislature, the City of Panama City Beach as the surviving municipality organized itself to provide better and more comprehensive infrastructure. The City has since worked to address that need while also managing the stresses of service demands stemming from significant growth and development that has continued steadily.<sup>9</sup>

For several years, the City used a stormwater related assessment methodology which relied heavily upon consultant expertise, management of those consultants, and constant updating of pervious and impervious surface area measures. These surface measurement solutions required constant attention, depended extensively on engineering metrics - studies involving equivalent units for ratemaking, mitigation credit analysis, and other factors. These actions or studies were becoming more and more costly, laborious to assemble, analyze, or use independently, and were sometimes hard to reconcile to constituents. While impervious measures may be necessary to calculate the required capacity in actual use, they do not adequately address the ongoing costs of facilities, staff, or related costs when not being used for their intended purpose or while being maintained or improved. Such measures are a calculation of a system or service *in use*, not a system *available for use*. As well, the former 'impervious surface-based' apportionment structure proved to be often less favorable to many single-family homes and businesses when compared to areas with densely

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<sup>8</sup> Although either of these two tiers might be used by itself to address up to the entire budget for special assessment apportionment purposes, the two together provide a simplified equity tool for the City to share assessable benefits, burdens and costs among assessable parcels in the City. The combination of these two tiers offers a public policy and governance avenue that necessarily creates a higher level of equity by diversity of approach.

<sup>9</sup> It is also notable that the City is now one of a few cities left in the entire state that does not charge any ad valorem property taxes.

developed statutory parcels, particularly condominium units. This surface measurement method when viewed granularly, falsely exhibited reductionism, was viewed as insufficient to fund the City's growing needs, and was generally less equitable, functional and economically proportionate to all parcels in the City when compared with the Simplified Approach.

The alternative Simplified Approach instead asks all parcel owners to share in the necessary annual cost(s) of *continual and uninterrupted provision and maintenance* of stormwater management services and facilities along with allocated administration, governance and associated services. However, some cost(s) are allocated uniformly per parcel, a recognition of the equally shared burden and benefit attributed to the functioning system as an entirety. Some cost(s) are now shared by parcels proportionately to the benefits realized by all other assessable properties in the City. Those owners with more or fewer improvements on their parcels share a lesser or greater portion of these remaining cost(s).

- In effect, the Simplified Approach adopted last year acknowledged a maximally efficient and efficacious system could not be economically deployed as a series of separate and independent efforts. Even if technically feasible to do so, such an approach would become grossly limited when land resources were not widely available or physically suitable. In sum, the engineering and management requirements for storm and drainage related infrastructure is such that certain underlying costs and activities can become so tightly integrated and interdependent that they became appropriately shared by all parcels whatever their status or configuration. Consequently, all developed and undeveloped parcels, realize uniform benefits by the existence and availability of the stormwater system and the purposes it serves which is to address periodic storm events. While prospective levels of needs and programs may be calculated, stormwater systems are not in daily use by any single parcel or any single property and are effectively *available* in reserve to support these parcels and property. When not accommodating capacity or storm events, they are available and standing by for their intended retention, detention, conveyance, storage and outfall needs. They require attention and service throughout the City and throughout the year whether actually in use or not to assure their function is fulfilled.
- By extension of this reasoned analysis, we identified the fact that each parcel also experiences benefits that stem from a unified and comprehensive system of planning, coordinating, developing, and operating such infrastructure while also educating the public and users about its applications. These benefits can be thought of as a

community and systemwide benefit, experienced as advantages recognized in the bundle of services or rights enjoyed by property and often evidenced in part by a property's value. These costs can be shared on the basis of relative value compared to value for all other parcels in the City. As a comparative measure, relative value is implicitly and explicitly a proportionate concept.

This report serves to annually update the application of the logical relationship of this simple concept to the City's stormwater related mission and budget.<sup>10</sup>

This year we have reviewed emerging stormwater-related budget information provided by the City, and applied it to the purposefully limiting maximum rate indexing regime in the City's ordinance, as judicially approved by the local Circuit Court in the 2021 Final Judgment.

In terms of this analysis, we offer a cautionary note. Within this State, we also have worked with several cities over the course of many years providing both initial and annual assistance in setting similar rates for essential service assessments. The rates in all of these local governments differ, not because one jurisdiction charges more or less using the same simplified method or approach discussed here, but rather each community has a differing (1) *number and mix of parcels*, (2) *improvements thereon*, (3) *levels of service*, (4) *physical configuration* (5) *budgets, including sources and uses of revenue*, (6) *technical solutions to address service needs*, (7) *general funding availability*, and (8) *other differing circumstances*.

Thus, as each community is unique, so will be its rates and approach for using each of the two tiers applying the Simplified Approach. For underwriting

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<sup>10</sup> Unlike the quantification of possible stormwater run-off as a measuring paradigm, the Simplified Approach just employs known economic theory associated with why owners and lessors select to transact in one community over another based on local expenditures, summarized, to wit: (1) Property values are function of the marketplace and choice of buyers; (2) The value or price of a parcel of real property reflects a choice among alternatives; (3) Such alternatives are shaped or created by a number of variables, including the size, age, function and location of a parcel of real property; and (4) The location is directly affected by the value attributable to the bundle of services provided by each respective community, such that a purchaser, investor or user acknowledges the implied value of those services when that purchaser, investor or user agrees to transact at a certain price in a selected community. The foregoing summarizes the four salient concepts involved with Charles M. Tiebout's *A Pure Theory of Local Expenditures* (*Journal of Political Economy*, Vol. 64, No. 5, October 1956, pp. 416 - 424), and its progeny over the last six decades; and, sometimes referred to as "Tiebout," the "Tiebout model" or the "Tiebout theory."



essential local expenditures like stormwater management services and facilities, where less than an entire municipal stormwater-related budget is funded through special assessments, this will also create yet another difference between the approaches of these general purpose local governments and that of the City of Panama City Beach.

### **SPECIAL ASSESSMENTS IN GENERAL, FLORIDA LAW**

Special assessments are a dedicated revenue source available to general purpose local governments to fund capital improvements or essential services and to address administrative, operational and maintenance costs of these improvements and services. While this overview should not be construed as a legal opinion about the specifics of our analysis, there are legal guidelines to draw upon in laying out an assessment methodology to conform with accepted principles and practices necessary to achieve legal validity. As established by Florida case law, only 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.

Without implying that virtually all options are open to approval, this short – but very particular – set of parameters suggests flexibility in the means available to policy makers to pursue an assessment program rationally crafted to each community’s objectives and circumstances.

1. 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 things in addition to, or other than, simply an increase in real property market value. Consequently, benefit might also be weighed in terms that are abstractions of value, including proxies often correlated with value. Among those proxies might be size of structures, trips, density, intensity, and land use for example because they are frequently associated with greater or lesser real property value or valuations.
2. 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.



3. 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.
4. A logical extension of the principles expressed in paragraphs 1, 2, and 3 is that benefits can in fact be conceptual. Still, they must be capable of being evaluated by some metric or standard and ultimately apportioned in a reasonable manner.
5. The benefits must be distinguishable or different from those of non-assessed properties, but they may coincidentally extend to non-assessed properties.

In sum, 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 which fund improvements or services must be fairly and reasonably apportioned, Florida's Supreme Court has held 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.

### **BENEFIT TO PROPERTY**

Under Florida law, stormwater management services and facilities activities indisputably create special benefits for real property.<sup>11</sup> As a practical matter, however, the direct and logical relationship between [1] the operation and construction of stormwater improvements and any related programs and [2] real property should be immediately self-evident. Our review this year is intentionally truncated in as much as the articulation of several benefits meeting case law standards for a valid stormwater management assessment were determined by competent and substantial evidence addressed in the 2021 Final Judgment.

Over the years since passage of the 1985 Growth Management Act (ELMS), there has been increasing awareness regarding the significant health, safety and welfare benefits associated with improved stormwater management

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<sup>11</sup> For example, *Sarasota County v. Sarasota Church of Christ Inc.*, 667 So. 2d 180 (Fla. 1995); section 403.0893, Florida Statutes; see also the 2021 Final Judgment, at note 6 *supra*.

systems and the control and treatment of runoff. Virtually all of them tie directly to the use, deployment, and enjoyment of real property, applying in some measure to both improved and unimproved properties. Indeed, it would be difficult, if not altogether impossible, to have any real property development approved in the absence of a carefully prepared plan which addresses the need for detention, retention, water quality protections and improvement of stormwater drainage systems or run-off mechanisms, and overall capacity to address stormwater within a jurisdiction.

With the value and importance of stormwater systems, programs or controls to real property established in law, it is a similarly easy and reasonable premise to extend the logic of operating and maintaining these facilities as also a benefit to property. Just as in the larger context, the direct relationship and benefit to real property is also immediately self-evident.

For the purposes of the City's approach to this non-ad valorem assessment, the reference to benefits specifically includes the City's annually occurring obligation to underwrite and share the relief of a burden stemming from the preparedness necessary to provide, assure, and enhance the continual and uninterrupted provision and maintenance of stormwater management, stormwater control, and related activities, improvements, or systems along with allocated administration, governance and associated services created in the aggregate by the very existence of the various parcels within the City. In the aggregate and overall, the benefits described in our original report equal or exceed the costs of such essential services and associated capital costs in most cases and can be fairly and rationally apportioned using either or both of the Simplified Approach methodology tiers.

These multiple, identifiable, and distinguishable benefits or advantages can be illustrated or calculated by various means which fairly justify underwriting associated administration, operational, maintenance, and capital expenses connected to the City's stormwater program and infrastructure, and then sustaining it in part, by levying assessments within the City. Further, the economic character of these benefits is they will be substantively in excess of the shared costs allocated by any special assessment crafted as described and imposed using the Simplified Approach.

### **A REASONED MEANS TO EVALUATE BENEFIT TO PROPERTY**

Last year the City Council substantiated an array of benefits inuring to real property, and then then, as a public body, legislatively considered, evaluated and parsed the cost of those special benefits among all tax parcels in the City, not based upon a property ad valorem tax by just using milage, but rather upon a reasoned analysis of allocating benefits capable of being repeated and updated as parcels change and or developed, altered or modified year

after year based, in part, upon the value of public services confer upon private property as well as an equally shared amount among all tax parcels.

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. His article explores 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 selects<sup>12</sup> a parcel and attributes a certain value to that parcel based on the bundle of services supplied by that jurisdiction under its tax structure. In Florida, this value compared to similarly located and improved parcels can be efficiently identified and measured with a high degree of certainty by a review of public information *required for other purposes, and updated annually based upon state-wide standardized requirements*. In the basic Tiebout framework, there is greater or lesser capitalized value in the property stemming from the availability (or lack thereof) of a certain type and level of service. Across jurisdictions, those with the fullest and most complete level of services would have correspondingly higher capitalized value, reasonably construed in most jurisdictions as commensurate with market or just value.

Logically included within that bundle are all those services typically implemented through local government such as schools, EMS, fire protection, road extensions, stormwater management, 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.<sup>13</sup> 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

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<sup>12</sup> Our state carefully causes values of *bona fide* sales to be reported and recorded, and the 67 county property appraisers carefully monitor, update and refine the statutory components of value for each taxing authority. As a result, such mass appraisal data is likely the most relevant, comprehensive and standardized public data base in each county from year to year.

<sup>13</sup> For example, the availability of charter schools likely enhances the value of residential property, and thus the Legislature allows for the creation or funding of charter schools through educational benefit districts with special assessment powers.

expectation of receiving a certain service simply as a result of that property's location within a specific community or jurisdiction.

Illustratively, these concepts are reflected in the Community Rating System (CRS) the NFIP applies to areas based on their various strategies or actions to address flood and storm vulnerabilities. A score of 1.0 is considered perfect and a score of 10.0 assumes no CRS activities have been reported, and therefore no insurance offsets are provided. As these considerations are understood, it becomes reasonable to conclude that a community with the lowest rating will enjoy distinct insurance advantages or ad hoc protections not available to a community with a higher rating. Consequently, it is also clear that flood and stormwater systems and controls comprise a quantifiable benefit to property with pronounced impacts, returns, and attributes, that value, in terms of the Tiebout construct, would be superior to properties in communities not so advantaged, other conditions being equal.

Here, the bundle or list of services and benefits associated with a portion of the City's stormwater budget is compelling and long. The City Council's own informed determination that the provision of stormwater management services and facilities constitutes a benefit to real property the same as any other assessable improvement or betterment performed by the City is an entirely rational and justifiable determination consistent with economic theory and several observed applications of the same.

### **READINESS IS REAL AND PALPABLE**

The City, like virtually every municipality, is required to provide stormwater management systems, services, programs and facilities benefits through its available capacity. The capacity or degree of such readiness will be variable from community to community, but dependent upon differing facts and circumstances. That is, the City -- its staff, equipment and infrastructure -- must constantly be available to deal with stormwater management services and facilities before, during and after storm events. The City must continually plan, prepare, and stand available to provide or apply this capacity. A constant review, adjustment and preparedness to deliver stormwater management services and facilities defines both the capacity and the effectiveness of these services and facilities when tested.

The scale of this potential defines the basic underlying cost of the City's stormwater management services and facilities. Even prior to, but certainly during and after an incident -- without regard to the nature of the storm or flood event -- the City's facilities, personnel and equipment must remain in readiness or preparedness to serve all parcels in the community in the face of a threat or actual event while also planning for the needs and conditions of accommodating new development. Stormwater systems and programs stand

ready and are effectively available in reserve to support the use and enjoyment of these parcels and property. Any failure to prepare, through ongoing upgrades and maintenance of the stormwater infrastructure and operational capability, create adverse risk to properties within the community.

From a policy and public purpose standpoint, capacity and preparedness comprise the central focus of stormwater management services and facilities. Indeed, substantial commitments are made to both flood prevention and education as a way of forestalling pollution from parcels, damages to property, damages to health, safety and welfare, or an inhibition of access to property. When not accommodating capacity or storm events, the various resources will be available and standing by for their intended storage needs and protection purposes but only if they are properly planned, designed, maintained and upgraded for readiness.

The amount of resources made available each year, including committable capital facilities, personnel and necessary equipment, is a public administration and policy decision. To supply stormwater management services and facilities and to support and preserve property values and use and enjoyment of real property, the City, in this state of continual planning, preparedness and readiness, holistically works to consider the personnel, necessary equipment, and the time likely required to address stormwater management services and facilities (planning or preparing for the potential storm or flood event) prior to allocating the direct resources when capacity is inadequate to be performed as quickly as possible (intervening in the incident or event itself). Federal and state regulatory requirements continue to add to the compliance requirements for local government. These compliance requirements include ongoing requirements for inspection, maintenance, permitting and water quality monitoring, along with reporting on the compliance capabilities articulated by the standards of state and

federal authorities.<sup>14</sup> In many cases, the expected maintenance activities are required to be reported where federal/state permits exist.<sup>15</sup>

Consequently, an apportionment stemming from capacity and continual readiness to address pollution and discharge is premised largely on the fact that the City must maintain and underwrite more comprehensive preparedness than just quick drainage for periodic storm events. The City's preparedness costs are generally those *necessary to maintain the readiness and adequacy of stormwater management services and facilities* with the level of service being a policy or budget decision from year to year, not infrequently driven by state and federal regulation.

The level of service then is the rational means by which the benefits described in our original report and the 2021 Final Judgment can be better shared, reasonably and fairly received, and realized by each improved and unimproved parcel in a community from year to year as the development and redevelopment in the community occurs.

It is of consequential import to mention that the stormwater management services and facilities apportioned using the Simplified Approach can also proportionally fund and not exceed the cost of a government service or facility for which property owners' activity of use of the land creates the need for such service of facilities. Such circumstance shares a common trait attributable to both a fee and special assessment. That inescapable trait being that both fees for the cost of a governmental service or facility and a special assessment for the same property charged distinguishes both of them from ad valorem property taxes. Such a trait is a fairly reasoned or a logical connection which forms a rational nexus between the governmental service or facility and the fee payer or assessed property owner sharing the cost, benefits or burdens emanating from the presence, demand or use of real property in the context of stormwater management attention or facilities.

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<sup>14</sup> For example, the Federal National Pollution Discharge Elimination System (NPDES) requirements are applied to runoff generated from precipitation events on impervious surfaces, such as streets, buildings and parking lots, and applies to the control of pollutants like trash, chemicals, oils and sediment. Issues like the maintenance and monitoring of outfalls, especially those constructed with grants, must be locally funded in accordance with grant or conveyance conditions. NPDES permits are specific to a pipe or other specific conveyance point. A community may be required to obtain multiple NPDES permits for compliance.

<sup>15</sup> The NPDES program may be regulated through mechanisms such as the municipal separate storm sewer system (MS4) permits, construction permits, and industrial runoff activities. Operators of these permits may be required to obtain and NPDES permits.

## **OVERVIEW OF SIMPLIFIED APPROACH METHOD OF APPORTIONMENT**

That local governments are afforded great latitude under Florida law with respect to legislative determinations concerning special benefit, and reasonable local apportionment is well settled law.

There is no single method prescribed in Florida's statutes for a specific set of circumstances, and no single apportionment methodology has emerged as preferable in the governing case law for a given service or improvement. An assessment can reflect any number of methods or variables including value although other measures or considerations are also a useful means to parse and allocate the benefits and burdens. As long as the apportionment is reasonable and not arbitrary, the assessment should be capable of withstanding legal challenge.

These observations should not be construed to mean local governments which consider the use of special assessments should adopt, without reasoned analysis, a particular apportionment methodology exclusively on the basis of its use elsewhere. Florida's local governments vary in their needs, composition, and policies.

The lesson of prior legal action or rulings is that local governments are free to select an apportionment methodology which provides a rational means to share the benefits, burdens, and costs of the services within a budget while accomplishing administrative efficiency, coordination, management, and general implementation objectives occurring now and from year to year. In this case, there are more than a dozen discretely identifiable and measurable benefits or advantages that validate the use assessments to defray the costs of preparedness necessary to provide, assure, and enhance the continual and uninterrupted provision and maintenance of stormwater management, stormwater control, and related activities, improvements, or systems along with allocated administration governance and associated services in the City.

We are mindful that other methods might further similar flood and stormwater control, planning, and development objectives of the City's legislative body. One common approach, for example, considers the relationship between pervious and impervious surfaces.

Based on our analysis and the City's needs, the City Council and staff embraced the fact that the Simplified Approach does not apply such measurement activities, and recognized there are other and less complex means to reflect the full -- many undivided -- benefits and costs aligned with stormwater or flood events and their management that consider more than



surface conditions. To emphasize, surface conditions reliant on surface measures correspond readily to a system or service *in use*. The distinction here is that this City is instead more holistically focused on a *system* standing by and *available* for use. The latter requires substantial planning, staffing and commitments that extend beyond periodic events involving *actual usage*.

In the Simplified Approach, the City's assessments employ the constantly changing relative value of the improvements<sup>16</sup> and the true number of parcels served or benefitted by stormwater management services and facilities and the costs associated with maintaining these activities each year. Together, these set a foundation for a proportionate sharing of costs and benefits. The Simplified Approach is dynamic in that it explicitly recognizes the entirety of a functioning system created and maintained to an expected capacity for all affected parcels even when that capacity remains unused or in a state of readiness or preparedness for a storm or flood event. That fully integrated and functioning system requires infrastructure, staff, related programs and administrative services.

By adopting the Simplified Approach last year, the City proceeded to recognize that the benefits and costs of sustaining stormwater management can be rationally and practically allocated to each affected tax parcel in the City based on a calculus which recognizes certain equally shared costs as well as certain varied costs stemming from a property's size, character, usage, and location. This allocation framework presents a fair and reasoned approach to recognize any near or future term initiatives within the City necessary to sustain ongoing and periodic events, self-adjusts each year, and is simultaneously rational, quantitatively precise, and objectively calculated.

A compelling feature of the variables described in the Simplified Approach as a means of aligning costs or benefits is that they are reported within the Bay County property appraisal system or can be calculated from the uniformly chronicled information. These Bay County records are independently collected, verified, routinely updated and maintained for various reporting, mass appraisal and allocation purposes. Such tax records also comprise the data source which underlies virtually all budgetary policy and decisions occurring within this and other Florida counties.

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<sup>16</sup> Such values are fundamental to appraisal systems used by the local property appraiser and are updated, or self-correcting, annually, even in unusual circumstances such as a hurricane or the COVID-19 pandemic.



With *minimal or no cost* to Panama City Beach, the local appraisal systems will be repeatedly updated and available to re-examine all parcels within the City each year in relation to each other. The information or data recorded are adjusted automatically to each property compared to all properties as properties within the affected area develop and change in each annual period. Accordingly, the Simplified Approach adopted by the City for its purposes relies upon such system as a stable, reasonable and standardized resource available annually.

The schema used here draws extensively on the existing tax rolls which, aside from fulfilling an important legal function, are an obviously systematic source of data readily allocating relative and proportionate benefit [cost] across property types in terms of their locational and situational circumstance.

Besides the advantage of relying upon data prepared independently by the local constitutional property appraiser *for another purpose*, in the normal course of such person's responsibilities, an approach based in whole or in part upon value and other factors is advantageous and defensible because it is uniform in its estimation of just value as the basis for purpose of estimating the value of improvements or enhancements, treats properties with proportionate fairness, has an internal system of controls or appeals, and is self-correcting.

Applied to this and similar assessments, the tax records generally can be expected to change from year to year in accordance with market conditions and other factors, some very discrete to individual parcels. Where conditions or needs dictate, such variation will be adjusted automatically each subsequent year in accordance with the latest relative value determined from the property appraiser's data. If the improvements or enhancements on a given tax parcel were to increase or decrease in value with the passage of time relative to the improvement value within the City that tax parcel's percentage of the total amount assessed would also increase or decrease proportionately to the whole. Using the measures or data employed by the local property appraiser is a fair and reasoned method and proxy for distributing and equitably sharing the multitude of benefits and burdens involved in the City's special assessment, and was additionally confirmed by the local Circuit Court last year.

In this Simplified Approach we have intentionally disaggregated overall costs into two discrete groups or tiers for administrative and planning purposes. Our determinations and comments regarding items or costs assignable to Tier 1 and Tier 2 *are not* intended to reconcile to accounting concept(s). Rather, such determinations represent, or are associated with, functional concept(s) for purposes of classification. Their characterization as *fixed* or

*largely fixed or variable or largely variable* serves only to distinguish basic and nominally changing costs correlated to the stormwater system and its personnel engaged in routine activities, primarily without regard to experiencing a peak event.

This logistically appealing and simplified approach focuses upon an understandable and reasoned allocation method involving the relative value of improvements served and the annually budgeted core costs of sustaining a system of storm and flood control measures that remain ready to absorb capacity even when that capacity is not utilized.

In effect, the emphasis in this Simplified Approach construct with regard to a more holistic stormwater system and management, is operational and functional capacity more reflective of constant readiness of public goods and services attractive to owners and lessors as reflected by the ever-changing body of property transactions in the City. These stormwater services and facilities, their coordination, programs, and costs differ from many other services normally offered by local government in their timing and demand. For instance, the demand for garbage collection, potable water and wastewater also requires services and infrastructure, but are associated with very discrete system users, identifiable in every case by the use of a monitored commodity at a specific address, typically provided on a regular cycle monthly, and are not used in a sporadic manner. In any case, the immediate provision of such services is not typically required to forestall loss of property or life.

Stated somewhat differently, fixed or mostly fixed costs associated with stormwater system readiness logically apply to every tax parcel of real property in the City and will be incurred, in part, without regard to that tax parcel's physical character, use, or composition. These costs comprise a shared portion of a larger and by function a more holistic system.

On the other hand, more variable costs can be logically associated with the relative value of improvements assigned to the various tax parcels in the City. The costs of unusual repairs and equipment damage incurred in response to storm or emergency incidents or service calls requiring immediacy, by contrast, are obvious examples of variable costs. Additionally, some costs may have both fixed and variable characteristics such as periodic capital expenditures which, to sustain a state of readiness, may be expended in a single year or financed over many years.

To the degree that any measurement reflecting value in part might be facially claimed as an unlawful tax, that argument is entirely without merit because the use of value to calculate a non-ad valorem assessment has been routinely upheld by the courts, so long as there is a rational relationship between the

metric used (value) and the estimation of benefits received or burdens relieved. In any case, *taxable* values, which are used to levy taxes for a specific property or parcel, are not used as the basis of our calculations. Relative value is simply a means to establish a weighted and proportionate measurement of one parcel or property compared to another property or parcel throughout the entirety of the affected area.

### **APPORTIONMENT METHOD: RELATIVE VALUE OF IMPROVEMENTS (TIER 1)**

The manner of apportioning a given assessment is immaterial and may vary from jurisdiction to jurisdiction, as long as the assessment for each parcel is not in excess of the preparational benefits *as compared to the assessments on other parcels*. Conceivably, the entire cost<sup>17</sup> of stormwater management services and facilities *could* be apportioned among benefited property *exclusively* on the basis of the value of improvements on each parcel relative to the total value of improvements throughout the jurisdiction, and those measures could themselves be substantially varied or weighed.

This Simplified Approach to assessing for stormwater management services and facilities considers and removes the severable underlying land value from the calculus and considers only the built or improved environment targeted each year to be served by stormwater management services and facilities. Focusing on relative improvement value is a direct and logically related means to share costs, benefits and burdens of stormwater management services and facilities since it reflects certain economic and locational specific dimensions of the ongoing and preventive measures already in service or planned. A very explicit apportionment on the basis of relative improvement value (as determined by the latest available community assessment roll for real property) recognizes the relatively higher and proportionate benefit accruing to properties with higher values, consistent with Tiebout's theory of

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<sup>17</sup> Benefit to property is not identical to the cost required to provide that benefit, though such cost is frequently used as a reasonable measure of the benefit received. The sum of the benefits received, however, is in most cases *in excess* of the costs of providing that benefit or sharing the burdens attributed to real property in a discrete area or community. And, using sound budgeting principles, it is typically prudent to expect some contingent costs or overages and to account for those in the budget, either on a line-by-line basis or by including a contingency, reserve, or sinking fund line item separately. If the City can, through prudent expenditure or negotiation, spend less than the budgeted amount for any line item, that money carried forward to a future year can be spent as directed by ordinances or resolution—the properties assessed received a benefit in excess of the amount they were assessed. This is particularly so with local governments closest to the community served, where the use of any such funds is constrained to be expended within the local jurisdiction for the mission-specific purposes it was collected.

local expenditures. If the improvements or enhancements on a given parcel were to increase or decrease in value with the passage of time relative to the improvement value citywide, that parcel's percentage of the total amount assessed would also increase or decrease proportionately to the whole, again consistent with Tiebout's economic theory.

There are important considerations in this analysis of any affected improvements subject to Tier 1.

- Improvement value in the context of the Tier 1 assessment is defined as the county property appraiser's officially recorded just market value *minus* any officially recorded land value. The resulting value is a proxy for a parcel's legal attributes or classification, physical characteristics, location, structural conditions and other special attributes or features of the structure or other enhancements, but unlike the City's fire assessment program will not include crops or orchards, or substantially similar parcels, for example.
- In the case of multiple-parcel buildings, condominiums or similar statutory regimes - where a land value can become a common element by law, is no longer easily severable from improvements and may be only nominally recognized by the property appraiser, may receive a minimal value, and/or simply not be recorded by the county property appraiser for valuation purposes at all - just value represents the measure for improvement value. This is reasonable because the common legal structure of multiple-parcel buildings, condominium or cooperative ownership materially restricts the severability of a specific or individual unit from any associated parcel of land. Effectively this limitation conveys benefit that might otherwise exist from land and any other shared common features back to the unit itself in the form of improvement value. This valuation treatment differs from the example of a typical house and lot in which the house might be severed or removed physically by the owner in an unfettered fashion from any associated land to be subsequently replaced with a materially larger and more valuable improvement that can be appraised separately should it be necessary. This approach further addresses the inequitable differences of limitations where impervious surface area measurement serves as the proxy for allocation of costs for stormwater management services and facilities within the City; rather the Simplified Approach more fairly asks all parcels to participate as those parcels benefit from market recognition under Tiebout of local expenditures within the community area served.

- Tier 1 is confined to a *maximum* improvement value of \$10,000,000 per parcel. Like other community resources, those of the City are plausibly limited based on planning and expectations. Based on our experience, it would be reasonable to identify a cap which acknowledges the benefits (or burden relieved) have diminishing returns for very large or high-valued parcels.

In Panama City Beach, there are just over 20,922 tax parcels in the City that have the potential to be affected by the assessment and only 17 have an improvement value greater than \$10,000,000. These high value tax parcels represent much less than 0.1% of the tax parcel count overall. These include seven properties designated as MFR > 9 units, three hotels, two schools, one non-profit home for seniors, one government building, and three regional shopping centers.

If the City Council determines such a cap, we would recommend that any excess be determined and a like amount of the overall budget for such stormwater, management, services and facilities be paid for with other legally accessible funds. Based upon the foregoing, we believe it rational, fair and reasonable to set this amount as the ceiling for calculating each respective parcel's potential assessment following the methods described for the Tier 1 assessment.

### **Identifying/Apportioning Costs Assessed Based Upon Relative Value of Improvements (Tier 1)**

To emphasize, items or costs assignable to Tier 1 and Tier 2 are functional concept(s), *not* accounting concept(s).

For Tier 1, these are costs of the City's stormwater system and related activities, that are largely, but not exclusively, variable and often indeterminate because of budgetary, economic, or political considerations. They can be "lumpy" [periodic], might be paid periodically in cash, or subject to some kind of variable rate financing.

Many are a direct function of annually necessitated contracts for service, operations or maintenance or may be the result of changing demand or needs. Even when they can be anticipated in the course of budgetary planning, they may show up as a sudden rise in the budget, certainly when compared with other years. In this category would be the purchase of capital items beyond certain thresholds that have been typically allocated to such items. They could, however, also include other expenditures or needs experienced periodically or on demand.

Although we do not recommend it, conceivably, the entire cost<sup>18</sup> of stormwater management services and facilities *could* be apportioned among benefited property *exclusively* on the basis of the value of improvements on each parcel relative to the total value of improvements throughout the jurisdiction, and those measures could themselves be substantially varied or weighed.

### **APPORTIONMENT METHOD: READINESS AND PREPAREDNESS (TIER 2)**

Apportionment based upon preparedness necessary to provide, assure, and enhance the continual and uninterrupted provision and maintenance of stormwater management, stormwater control, and related activities, improvements, or systems along with allocated administration, governance and associated services continually ready to serve is based primarily upon this premise: a significant portion of the benefit derived or burden relieved from the fact that services and systems must be maintained and in readiness whether or not an actual or peak storm or flood event is experienced. The City's plans and budgets reflect a minimum level of cost necessary to sustain those facilities and services whether or not a peak event is addressed in any annual budget period.

As for the costs to include -- although there could be minor variation from year to year -- these are the central costs of facilities, maintenance, and programs that are largely recurring, almost fixed over the course of a budgetary period, because they are strongly associated with wages, salaries, administration, and basic costs of sustaining a basic complement of infrastructure which is operational or being designed. Should these facilities never be deployed in a single wet or dry season, their many costs must be absorbed nonetheless.

Routine staffing, management, and the provision of basic infrastructure and the repairs of same in anticipation of a service need comprise *the predominant* requirements of a stormwater system. These operational or readiness functions constitute ongoing costs throughout a budget year. They are not simply associated with a single event or a series of events. Rather, they are required to assure and sustain continued preparedness.

### **Identifying/ Apportioning Costs To Be Assessed for Readiness to Serve (Tier 2)**

Staff and contract labor costs are a large share of total costs on an annualized basis in most departments with a strong service and management focus.

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<sup>18</sup> *Id.*



Such costs are those associated with wages, salaries, general administration, payroll taxes and mandated contributions to retirement if any. The labor costs are relatively determinant based on an expected staffing level and are largely, but not altogether fixed. These are the core staffing costs of being continually ready to serve and will be incurred whether a major storm or flood event occurs or not.

Here, we also have capital costs of a minimum recurring sum, amounting to approximately \$1,000,000 per year. In out years, based on multi-year planning, these figures well exceed the currently envisioned \$1,000,000, and would be considered variable costs. In the event, these higher future costs are handled with level debt service, they might be reclassified.

The functional fixed nature of these costs logically can be attributed to the existence of the number of tax parcels and not just the various community, vertical, or horizontal improvements benefitting, requiring or protected by stormwater infrastructure. Thus, sharing these core fixed or relatively fixed costs is equitably and reasonably shared by all of the tax parcels which benefit in a substantially similar degree from the predominant regulatory compliance conundrum, real capacity requirements, and community demand to sustain system readiness and preparedness. This allocation is further strengthened from an equitable standpoint in that other costs are apportioned by the relative value of improvements approach in Tier 1.

### **THE USE OF TIER 1 AND TIER 2 TOGETHER**

Last year's proposed stormwater management services and facilities budget was carefully considered during preparation of our original report, looking both backward and forward to see how numbers and plans have or might have changed and to ascertain certain budget assignments for each of the two tiers.

By using Tier 2, together along with Tier 1, the City achieves a "blended" approach that achieves better equity and allows policy makers -- with enhanced insight and understanding of their community's funding needs -- more flexibility in achieving both a reasoned and fair strategy. The combination of both tiers has logical and identified relationships to the benefits, burdens, and costs associated with the affected parcels, creating a strong, rational, and proportionate vehicle that can be further linked to, or supplemented by, other legally available funding resources.

It is also 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 other legally available revenues. Two examples of other revenues would be unrestricted carried-forward funds from prior fiscal years, impact fees were they to be levied, or state and federal grants should they be awarded.

Likewise, either of the two assessment tiers can be funded at a rate independent of the other. For example, a local government could impose an assessment for 25% of the costs attributable to Tier 1 but collect a lesser or greater percentage of the costs attributable to Tier 2. Similarly, as a matter of policy or financial flexibility, the City Council as the local legislative body may find it useful to levy an assessment for the identified core fixed costs in an amount *less* than the total assessable amount, supporting or offsetting the balance of the same costs through other legally available means.

The two-tiered methodology described is also responsive to the need for political flexibility and readily accommodates policy determinations regarding the relevant variables for each tier within the paradigm of legal sufficiency. This flexibility also allows for accommodation for the provision of stormwater management services and facilities to parcels which are legally non-assessable (such as government parcels) or for which the City, for public policy reasons, determines to fully or partially exempt from the assessment. Both of these should not be paid directly from other, non-exempt properties, and are properly paid for with other legally available funds in any given year.

Understanding the similarity and distinction between a fee and a non-ad-valorem assessment in the context of stormwater management services and fees can also allow the City to implement this transitional program<sup>19</sup> using a non-ad valorem assessment, while still meeting the requirements of a valid fee.

### **ADDRESSING THIS YEAR'S EMERGING BUDGET FOR STORMWATER**

Table 1, prepared for decision-making purposes, summarizes the allocation of an emerging budget reflecting significant proposed costs that could be absorbed in coming year for the management, administration, and provision of stormwater related systems and programs. This budget information considers proposed costs and expenditures of about \$8,728,360 for FY 2022-23.

In analyzing this budget information, we have the advantage of looking at past costs as well as proposed and future costs, allowing us to understand

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<sup>19</sup> See footnote 3 *supra*, and the last paragraph of **READINESS IS REAL AND PALPABLE** at page 12.



how various line items can be thoughtfully assigned to either Tier 1 and Tier 2 as they have been described. As well, because of the advent of annual indexing in the City’s ordinance, we can work within the political reality of only assessing for the minimum necessary as previously noticed as directed by the City Council, and supplementing the rest of the stormwater budget with other legally available funds.

Table 1: Approximate Stormwater Related Budget Funding Sources

	Assessment	Other Legally Available Funds	Total Budgeted costs
<b>Distribution</b>	<b>41%</b>	<b>59%</b>	<b>100%</b>
<b>Dollar</b>	<b>\$3,081,882</b>	<b>\$5,646,478</b>	<b>\$8,728,360 <sup>(1)</sup></b>

<sup>(1)</sup> Subject to City budget adoption.

Table 2: Approximate Tier Allocation

	Tier 1	Tier 2	Total
<b>Dollar</b>	<b>\$2,138,361</b>	<b>\$945,542</b>	<b>\$3,081,882</b>

Following the logic and reasonableness of the Simplified Approach noticed and adopted by the City Council along with the limiting maximum rate regime, both as approved by the local Circuit Court last year, the figures shown conform with the concepts of indexing and maximum rates in the City’s ordinances, and statutory provisions associated with the uniform method of collection that could be implemented under these basic principles associated with the respective tiers as shown on Table 2.

The actual adopted budget will likely vary, and the future sums expended will also likely vary as year to year capital requirements ebb and flow and become finalized. Consequently, the actual dollar amount, and the rates or sums applicable to each tier, will be a policy decision with the total amount funded

with any assessments determined by the City. For purposes of this year's Stormwater Management Assessment rates, it is assumed that the City will assess no more than a total of about \$3,081,882 for Tier 1 and Tier 2 expenditures - which is a fraction of the emerging planned budget for stormwater management in FY 2022-23 - and dictated or limited by the indexing feature and published notice of maximum rates on June 3, 2022, done pursuant to the City's ordinance.

### **EXCLUSION OF CERTAIN PARCELS**

We have reviewed data prepared by Ennead LLC which reveals there are approximately 20,922 tax parcels within the boundaries of the City that are potentially affected by the analysis and approach outlined. Among these are approximately 108 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.<sup>20,21</sup> Additionally some parcels may not benefit from stormwater management services and facilities or are otherwise inappropriate or infeasible to assess based on physical configuration such as submerged or undevelopable lands. This is left to administrative discretion in the City's ordinance using sound judgment of the Assessment Coordinator.

Last year the City Council directed specific exemptions only related to the transition of Stormwater Management Assessments to the Simplified Approach which due to its more proportional cost sharing does not necessitate mitigation credits. As a matter of policy, and discretion vested in the City Council, the Council determined it reasonable and equitable to direct the City administration to continue, sometimes colloquially referred to as "grandfathering," exemptions for Stormwater Management Assessments, as follows to certain (i) veterans, (ii) disabled property owners, and (iii) prior mitigation credit recipients. City staff and consultants were directed to use legally available funds, other than non-ad valorem assessment proceeds, to pay Stormwater Management Assessments imposed upon homestead properties classified on the tax roll by the Property Appraiser under "exemption codes" VX, VP or VT (veteran's partial to total disability), 13 (non-

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<sup>20</sup> The estimate of 108 parcels does not include property owned by governmental entities which is leased to third parties for private uses; such leasehold parcels may be subjected to special assessment.

<sup>21</sup> However, whether or not the City may be able to charge governmental properties a user fee or service availability charge similar to impositions for water, sewer, or solid waste, for stormwater management services and facilities in a comparable amount per parcel is beyond the scope of this report.

service connected total and permanent disability) and 14 (total and permanent service-connected disability). As well, City management was directed to use legally available funds, other than non-ad valorem assessment proceeds, to reduce Stormwater Management Assessments imposed upon homestead properties who for FY 2021-22 year would have otherwise been eligible for mitigation credits under the City's former approach in the amount of \$50 for each such tax parcel. Such grandfathered mitigation credit is intended to end or expire at such time as any so affected tax parcel is transferred to a *bona fide purchaser for value* (sometimes called an arms-length sale). The foregoing presented a consensus worked out by the City Council at the public hearing to achieve a good faith public policy and public administration compromise, unique to the transition involving this particular assessment program.

Amounts associated with any exemption on developed or developable parcels from the assessment according will be funded through other legally available funds of the City.

The end result is consistent with the interactive digital version or quick search tool reflecting the preliminary assessment roll now available on the City's website.<sup>22</sup>

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<sup>22</sup> Go to <http://www.pcbfl.gov> where all parcels on the preliminary assessment roll can be viewed by tax parcel number, owner name, or parcel location address.

## CONNECTION WITH PRIOR WORK

This annual analysis and information incorporate by reference, among other things, GAI's prior report and analysis placed in the record before the City Council at its previous public hearings on this matter, as well as the 2021 Final Judgment. Consistent with that record, the content of this summary provides a reasoned review and analysis of information, facts and circumstances associated only with the City of Panama City Beach and is exclusively for the use by the City Council of Panama City Beach.<sup>23</sup>

Sincerely,

GAI Consultants, Inc.



Owen M. Beitsch, PhD, FAICP, CRE

Senior Director

CC: Drew R. Whitman, City Manager; Holly White, Asst. City Manager;  
Kelly Jenkins, City Engineer, Amy Myers, City Attorney; Mark G.  
Lawson, MGLPA; Erin Pomeroy, Ennead LLC

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