

AN ORDINANCE TO BE KNOWN AS THE CITY OF BONIFAY, FLORIDA, REGIONAL WATER AND SEWER SYSTEM IMPACT FEE ORDINANCE; PROVIDING DEFINITIONS, RULES OF CONSTRUCTION; PROVIDING FINDINGS; PROVIDING FOR IMPOSITION OF WATER AND SEWER IMPACT FEES; PROVIDING FOR PAYMENT AND USE OF MONIES; PROVIDING FOR EXEMPTIONS; PROVIDING FOR COLLECTION OF IMPACT FEES UPON CHANGES IN SIZE AND USE; PROVIDING INTEREST TO BE PAID ON CERTAIN REFUNDS; PROVIDING FOR DEVELOPER CONTRIBUTION CREDIT; PROVIDING FOR PAYMENT AND COLLECTION OF WATER AND SEWER SYSTEM IMPACT FEES; PROVIDING FOR REVIEW HEARINGS; REQUIRING ANNUAL REVIEW; PROVIDING FOR REPEAL OF PRIOR PLANT CAPACITY CHARGES; DECLARING EXCLUSION FROM ADMINISTRATIVE PROCEDURES ACT; PROVIDING FOR PUBLIC HEARING; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF BONIFAY, FLORIDA, THAT:

**ARTICLE I
GENERAL**

SECTION 1.01. DEFINITIONS. When used in this Ordinance, the following terms shall have the following meanings, unless the context clearly indicates otherwise:

"Applicant" shall mean the Person who applies for a water and/or sewer connection to the City of Bonifay, Florida's water and/or sewer system.

"Building" shall mean any structure, either temporary or permanent, built for the support, shelter or enclosure of Persons, chattels or property of any kind, or any other improvement, use, or structure which creates or increases the potential demand on the sewer utility system or water utility system operated by the City. This term shall include trailers, mobile homes, or any vehicle serving in any way the function of a Building. This term shall not include temporary construction sheds or trailers erected to assist in construction and maintained during the term of a building permit.

"Capital Construction Costs" shall mean all or any portion of the expenses that are properly attributable to the acquisition, design, construction, installation, and reconstruction (including demolition, environmental mitigation and relocation) of improvements to the Regional Sewer System or Regional Water System under generally accepted accounting principles; and including reimbursement to the City for any funds advanced for Capital Construction Costs and interest on any interfund or intrafund loan for such purposes.

"City" shall mean the City of Bonifay, Florida. Where the context requires, the term "City" shall also be deemed to the City Manager as designated by the City Council.

"City Attorney" shall mean the Person appointed by the City Commission to serve as its counsel or the designee of such Person.

"City Council" shall mean the City Council of the City of Bonifay, Florida.

"City Manager" shall mean the Person, Persons or the corporation appointed by the City Council to supervise the administration, operations and acquisitions of the Regional Sewer System and Regional Water System or the designee of such Person.

"Comprehensive Plan" shall mean the Comprehensive plan of the City adopted and amended pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act as contained in Part II, Chapter 163, Florida Statutes, or its statutory successor in function.

"Encumbered" shall mean moneys committed by contract or purchase order in a manner that obligates the City to expend the encumbered amount upon delivery of goods, the rendering of services or the conveyance of real property interests by a vendor, supplier, contractor or Owner.

"ERC" or "Equivalent Residential Connection" shall mean the equivalent of the average water and wastewater usage requirements of a single-family residential customer.

"Impact Fees" shall mean collectively the Sewer System Impact Fee and Water System Impact Fee. This term shall be synonymous with the term "Impact Fee" and "Reserve Capacity Charge" as used in this or prior policies or tariffs relating to the subject matter addressed by this Ordinance, but does not include the fees or charges imposed by the City as reimbursement for the costs of physical connection to the Regional Sewer System or the Regional Water System.

"Impact Fee Improvements" shall mean those improvements that form the basis for the Impact Fee calculations in the study adopted pursuant to Section 1.04, or such other capital improvements designed to provide needed water and/or sewer system capacity to service new growth within the Service Area.

"Owner" shall mean the Person holding legal title to the real property for which Impact Fees are paid.

"Person" shall mean an individual a corporation, a partnership, an incorporated association, trust or any other entity.

"Regional Sewer System" shall mean the wastewater or sewer utility system directly or indirectly connected to treatment facilities operated by the City.

"Regional Water System" shall mean the water utility system directly or indirectly connected to treatment facilities operated by the City.

"Service Area" shall mean that area served by the City's Regional Water System and Regional Sewer System within Holmes County, Florida.

"Sewer System Impact Development" shall mean development upon lands within the area served by facilities owned and operated by the City which shall be subjected to the payment of Sewer System Impact Fees under this Ordinance or its predecessor in function upon the first occurrence of any of the following:

- (a) Whenever any existing Building or structure, which has not previously paid Sewer System Impact Fees under this Ordinance or its predecessor in function, connects to the Regional Sewer System; or
- (b) Whenever any existing Building or structure or applicable improvement which is connected to an interim sewer system is connected, either directly or indirectly, to the Regional Sewer System; or
- (c) Whenever a Person alters an existing Building, structure or applicable improvement already connected to the Regional Sewer System, where such alteration increases the potential demand on the Regional Sewer System.

"Sewer System Impact Fee" shall mean the fee imposed by the City pursuant to Section 2.01 of this Ordinance.

"Water System Impact Development" shall mean development upon lands within the area served by facilities owned and operated by the City which shall be subjected to the payment of Water System Impact Fees under this Ordinance or its predecessor in function upon the first occurrence of any of the following:

- (a) Whenever any existing Building or structure, which has not previously paid Water System Impact Fees under this Ordinance or its predecessor in function, connects to the Regional Water System; or
- (b) Whenever any existing Building or structure or applicable improvement which is connected to an interim water system is connected, either directly or indirectly, to the Regional Water System; or

(c) Whenever a Person alters an existing Building, structure or applicable improvement already connected to the Regional Water System, where such alteration increases the potential demand on the Regional Water System.

"Water System Impact Fee" shall mean the fee imposed by the City pursuant to Section 3.01 of this Ordinance.

SECTION 1.02. RULES FOR CONSTRUCTION. For the purposes of administration and enforcement of this Ordinance, unless otherwise stated in this Ordinance, the following rules of construction shall apply:

A. In case of any difference of meaning or implication between the text of this Ordinance and any caption, illustration, appendix, summary table or illustrative table, the text shall control.

B. The word "shall" is always mandatory and not discretionary and the word "may" is permissive.

C. Words used in the present tense shall include the future; and words used in the singular shall include the plural and the plural the singular, unless the context clearly indicates the contrary; use of the masculine gender shall include the feminine gender.

D. The phrase "used for" includes "arranged for," "designed for," "maintained for," or "occupied for."

E. Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction shall be interpreted as follows:

1. "And" indicates that all the connected terms, conditions, provisions or events apply in combination.

2. "Or" indicates that the connected terms, conditions, provisions or events may apply singly or in any combination.

3. "Either . . . or" indicates that the connected items, conditions, provisions, or events shall apply singly but not in combination.

F. The word "includes" shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances of like kind or character.

G. The terms "growth," "growth necessitated improvements," "future growth" and the like shall refer, and be construed as referring to Sewer System Impact Development or

Water System Impact Development either occurring or connecting, either directly or indirectly, to the Regional Sewer System or Regional Water System subsequent to the effective date of this Ordinance.

H. All time periods contained within this Ordinance shall be calculated on a calendar day basis, including Sundays and legal holidays. In the event the due date falls on a Sunday or legal holiday, the due date shall run until the end of the next day that is neither a Sunday nor legal holiday.

SECTION 1.03. FINDINGS. It is hereby ascertained, determined and declared that:

A. Pursuant to Article VIII, section 2(b), Florida Constitution, and sections 166.021 and 166.041, Florida Statutes, the City Council has all powers of local self-government to perform municipal functions, except when prohibited by law, and such power may be exercised by the enactment of legislation in the form of City ordinances.

B. Development necessitated by the growth contemplated within the Service Area will require improvements and additions to the Regional Sewer System and the Regional Water System to accommodate the utility needs of such growth and maintain the standards of service adopted by the City.

C. Future demand represented by Sewer System Impact Development and Water System Impact Development should contribute its fair share to the cost of improvements and additions to the Regional Sewer System and Regional Water System which are required to accommodate the use of the Regional Sewer System and Regional Water System by such demand.

D. Implementation of a Sewer System Impact Fee to require Sewer System Development to contribute its fair share of the cost of improvements and additions to the Regional Sewer System is an integral and vital element of the regulatory plan of growth management incorporated into the Comprehensive Plan.

E. Implementation of a Water System Impact Fee to require Water System Development to contribute its fair share of the cost of improvements and additions to the Regional Water System is an integral and vital element of the regulatory plan of growth management incorporated into the Comprehensive Plan.

F. Capital planning is an evolving process and the level of service identified in the Comprehensive Plan for the Regional Sewer System and Regional Water System constitutes a projection of anticipated need for sewer treatment and transmission facilities and water facilities, based upon present knowledge and judgment. Therefore, in recognition of changing growth patterns, and the dynamic nature of population growth, it is

the intent of the City Council that the level of service for the Regional Sewer System and Regional Water System and the associated Impact Fees imposed be reviewed and adjusted periodically, pursuant to Section 4.06, to insure that the Impact Fees are imposed equitably and lawfully, based upon actual and anticipated growth at the time of their imposition.

G. The imposition of the Sewer System Impact Fee is to provide a source of revenue to reimburse the consumption of existing facility capacity or to fund the construction and improvement of the Regional Sewer System either necessitated by the growth or as delineated in the Comprehensive Plan.

H. The imposition of the Water System Impact Fee is to provide a source of revenue to reimburse the consumption of existing facility capacity or to fund the construction and improvement of the Regional Water System either necessitated by the growth or as delineated in the Comprehensive Plan.

I. The Regional Sewer System is intended to ultimately provide services for all properties within the Service Area of the City. The presence of the Regional Sewer System enhances and benefits the health, safety and general welfare of all properties within the City's Service Area.

J. The Regional Water System is intended to ultimately provide services for all properties within the Service Area of the City. The presence of the Regional Water System enhances and benefits the health, safety and general welfare of all properties within the City's Service Area.

K. All improvements and additions to the Regional Sewer System needed to eliminate any deficiency between the existing Regional Sewer System and the standard of service as adopted in the Comprehensive Plan, shall be funded by revenues other than Impact Fees. Any revenue derived from the Sewer System Impact Fee shall be utilized only to reimburse the consumption of existing capacity and facilities or for the acquisition of improvements and additions to the Regional Sewer System which are necessitated by Sewer System Impact Development either occurring or connecting to the Regional Sewer System subsequent to the effective date of this Ordinance.

L. All improvements and additions to the Regional Water System needed to eliminate any deficiency between the existing Regional Water System and the standard of service as adopted in the Comprehensive Plan, shall be funded by revenues other than Impact Fees. Any revenue derived from the Water System Impact Fee shall be utilized only to offset the consumption of existing capacity and facilities or for the acquisition of improvements and additions to the Regional Water System which are necessitated by Water System Impact Development either occurring or connecting to the Regional Water System subsequent to the effective date of this Ordinance.

M. Neither the Sewer System Impact Fees nor the Water System Impact Fees are designed to include the physical costs of connection to either the Regional Sewer System or Regional Water System and all physical connection costs, or tap-in fees, shall be paid separately.

N. The purpose of this Ordinance is to regulate the development of land within the Service Area by requiring the payment of Impact Fees and to provide for the cost of capital improvements to the Regional Sewer System and Regional Water System which are required to accommodate growth. This Ordinance shall not be construed to permit the collection of Impact Fees in excess of the amount reasonably anticipated to offset the demand on the Regional Sewer System or the Regional Water System generated by such growth.

SECTION 1.04. ADOPTION OF IMPACT FEE RATE STUDY. The City Council hereby adopts and incorporates by reference the study entitled "Impact Fee Study for the City of Bonifay" dated as of September 2006, by the Florida Rural Water Association particularly the assumptions, conclusions and findings in such study. The "Impact Fee Study for the City of Bonifay" study is attached as Appendix A.

**ARTICLE II
SEWER SYSTEM IMPACT FEES**

SECTION 2.01. IMPOSITION.

A. All Sewer System Impact Development occurring within the City's Service Area shall pay a Sewer System Impact Fee of \$3,600.00 per ERC in accordance with the following schedule:

Meter Size in inches	Sewer System Impact Fee
5/8" x 3/4" (one ERC) (Pos. Disp.)	\$3,600.00
1" (Positive Displacement)	\$5,400.00
1-1.5" (Positive Displacement)	\$7,200.00
2" (Positive Displacement)	\$10,800.00
3" (Compound)	\$57,600.00
3" (Turbine)	\$126,000.00
4" (Compound)	\$90,000.00
4" (Turbine)	\$335,000.00
6" (Compound)	\$180,000.00
6" (Turbine)	\$720,000.00
> 6"	Negotiable on an individual basis

B. The Sewer System Impact Fee shall be paid in addition to all other fees, charges and assessments due for the connection to the Regional Sewer System and is intended to provide funds only for the consumption of existing facility capacity or for growth necessitated improvements and additions to the Regional Sewer System.

C. In the event a Customer connects only to the Regional Sewer System such that a meter size is not available for use in the schedule of Sewer Impact Fees above, the City shall determine the appropriate Sewer Impact Fee based upon the unit price per ERC provided in paragraph A. above and the estimated wastewater production gallons per day for the type of property use as determined by the Florida Department of Health.

SECTION 2.02. PAYMENT.

A. Except as otherwise provided in this Ordinance, prior to any connection to the Regional Sewer System, all Applicants or Owners, as the case may be, shall pay the Sewer System Impact Fee as set forth in Section 2.01 directly to the City.

B. The obligation for payment of the Sewer System Impact Fee and the benefits derived therefrom shall run with the land.

SECTION 2.03. USE OF MONIES.

A. The City Commission hereby confirms the establishment of a separate account for the Sewer System Impact Fees, which shall be maintained separate and apart from all other accounts of the City. All such Sewer System Impact Fees shall be deposited into such account immediately upon receipt.

B. The monies deposited into the Sewer System Impact Fee account shall be used solely for the purposes of reimbursement for the consumption of existing facility capacity by growth or providing growth necessitated capital improvements and additions to the Regional Sewer System, including, but not limited to:

1. Design or construction plan preparation;
2. Construction management and inspection;
3. Capital Construction Costs;
4. Reimbursement of excess Developer Contribution credit pursuant to Section 4.05; and
5. Payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the City to provide funds to construct or acquire growth impacted capital improvements to the Regional Sewer System.

C. Funds on deposit in the Sewer System Impact Fee account shall not be used for any expenditure that would be classified as a maintenance or repair expense.

D. The monies deposited into the Sewer System Impact Fee account shall be used solely for reimbursement for the consumption of existing facility capacity by Sewer System Impact Development or to provide improvements and additions to the Regional Sewer System required by growth, generated by Sewer System Impact Development.

E. Any funds on deposit which are not immediately necessary for expenditure may be invested by the City. All income derived from such investments shall be deposited in the Sewer System Impact Fee account and used as provided herein.

ARTICLE III

WATER SYSTEM CAPACITY IMPACT FEES

SECTION 3.01. IMPOSITION.

A. All Water System Impact Development occurring within the City's Service Area shall pay a Water System Impact Fee of \$1,125.00 per ERC in accordance with the following schedule:

Meter Size in inches	Water System Impact Fee
5/8" x 3/4" (one ERC) (Pos. Disp.)	\$1,125.00
1" (Positive Displacement)	\$1,688.00
1 – 1.5" (Positive Displacement)	\$2,250.00
2" (Positive Displacement)	\$3,375.00
3" (Compound)	\$18,000.00
3" (Turbine)	\$39,375.00
4" (Compound)	\$28,125.00
4" (Turbine)	\$112,500.00
6" (Compound)	\$56,250.00
6" (Turbine)	\$225,000.00
> 6"	Negotiable on an individual basis

B. The Water System Impact Fee shall be paid in addition to all other fees, charges and assessments due for the connection to the Regional Sewer System and is intended to provide funds only for the consumption of existing facility capacity or for growth necessitated improvements and additions to the Regional Water System.

SECTION 3.02. PAYMENT.

A. Except as otherwise provided in this Ordinance, prior to any connection to the Regional Water System, all Applicants or Owners, as the case may be, shall pay the Water System Impact Fee as set forth in Section 3.01 directly to the City.

B. The obligation for payment of the Water System Impact Fee and the benefits derived therefrom shall run with the land.

SECTION 3.03. USE OF MONIES.

A. The City Commission hereby confirms the establishment of a separate account for the Water System Impact Fees, which shall be maintained separate and apart from all other accounts of the City. All such Water System Impact Fees shall be deposited into such account immediately upon receipt.

B. The monies deposited into the Water System Impact Fee account shall be used solely for the purposes of reimbursement for the consumption of existing facility capacity by growth or providing growth necessitated capital improvements and additions to the Regional Water System, including, but not limited to:

1. Design or construction plan preparation;
2. Construction management and inspection;
3. Capital Construction Costs;
4. Reimbursement of excess Developer Contribution credit pursuant to Section 4.05; and
5. Payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the City to provide funds to construct or acquire growth impacted capital improvements to the Regional Water System.

C. Funds on deposit in the Water System Impact Fee account shall not be used for any expenditure that would be classified as a maintenance or repair expense.

D. The monies deposited into the Water System Impact Fee account shall be used solely for reimbursement for the consumption of existing facility capacity by Water System Impact Development or to provide improvements and additions to the Regional Water System required by growth, generated by Water System Impact Development.

E. Any funds on deposit which are not immediately necessary for expenditure may be invested by the City. All income derived from such investments shall be deposited in the Water System Impact Fee account and used as provided herein.

ARTICLE IV

MISCELLANEOUS PROVISIONS

SECTION 4.01. REFUND OF CAPACITY IMPACT FEES.

A. The Sewer System Impact Fees or Water System Impact Fees collected pursuant to this Ordinance shall be returned to the then current Owner of the property on behalf of which the applicable fee was paid if such fees have not been expended or encumbered prior to the end of the fiscal year immediately following the seventh (7th) anniversary of the date upon which such fees were paid and a timely petition for the refund is made. Refunds shall be made only in accordance with the following procedure:

1. The then current Owner shall petition the City Commission for the refund prior to the end of the fiscal year immediately following the end of the fiscal year in which the date of the seventh (7th) anniversary of the date of the payment of the Sewer System Impact Fee or Water System Impact Fee occurs.

2. The petition for refund shall be submitted to the City Manager, on a form approved by the City Manager, and shall contain:

(a) A sworn statement that the petitioner is the then current legal Owner of the property on behalf of which the applicable Impact Fee was paid;

(b) A copy of the dated receipt issued for payment of the applicable fee, or such other record as would indicate payment of the fee;

(c) A certified copy of the latest recorded deed or other instruments evidencing title; a representation that the most recent recorded deed or other instruments evidencing title reflect the exact names of all current legal owners; a representation that the petitioner will notify the City of any changes in the status of legal ownership which occurs prior to any refund from the City;

(d) A copy of the most recent ad valorem tax bill.

3. Within ninety (90) days from the date of receipt of a petition for refund, the City Manager will advise the Owner and the City Council of the status of the applicable Impact Fee requested for refund, and if such Impact Fee has not been expended or Encumbered within the applicable time period, then it shall be returned to the petitioner. For the purposes of this Section, charges collected shall be deemed to be spent or Encumbered on the basis of the first fee in shall be the fee out.

B. The fact that an Owner receives a refund does not excuse the property from later being subjected to payment of Impact Fees under this Ordinance upon otherwise being characterized as Sewer System Impact Development or Water System Impact Development.

C. Any Owner entitled to a refund who fails to timely petition for a refund upon becoming eligible to do so shall be deemed to have waived any claim for a refund, and the City shall be entitled to retain and apply the Impact Fees as reimbursement for

consumption of existing facility capacity by growth or for growth necessitated capital improvements and additions to the Regional Sewer System or Regional Water System, as applicable.

D. Monies refunded in accordance with this Section shall be returned with interest paid at the rate of the average net interest earned by the City in the Sewer System Impact Fee trust account or Water System Impact Fee trust account, as applicable.

SECTION 4.02. EXEMPTIONS. The following shall be exempted from payment of Impact Fees:

A. Alterations or expansion of an existing Building, structure or improvement where no additional demand on either the Regional Sewer System or the Regional Water System is or will be created.

B. The construction of accessory Buildings, structures or improvements which will not create an additional demand on either the Regional Sewer System or the Regional Water System.

C. The replacement of an existing Building, structure or improvement which has been previously been subjected to a Impact Fee payable to the City where no additional demand is or will be created on either the Regional Sewer System or the Regional Water System.

SECTION 4.03. CHANGES OF SIZE AND USE.

A. Impact Fees shall be imposed and calculated for the alteration, expansion or replacement of Sewer System Impact Development or Water System Impact Development which will result in a land use determined to create an additional demand on either the Regional Sewer System or the Regional Water System. Whenever any Person applies to connect to either the Regional Sewer System or Regional Water System, the Impact Fee imposed shall be calculated on the entirety of the Buildings. Where the alteration, expansion or replacement occurs on lands for which a Sewer System Impact Fee or Water System Impact Fee has already been paid, the Impact Fee imposed shall be only upon the additional demand created by the alteration, expansion or replacement.

B. No refund or credit shall be afforded an Owner or Applicant in the event of a diminution of use occurs after the Sewer System Impact Fee or Water System Impact Fee already paid has been expended or Encumbered. For the purposes of this Section, fees collected shall be deemed to be spent or Encumbered on the basis of the first fee in shall be the first fee out.

SECTION 4.04. ALTERNATIVE COLLECTION METHOD. In the event the Sewer System Impact Fee or the Water System Impact Fee, as applicable, is not paid prior to physical connection to either the Regional Sewer System or the Regional Water System, the City shall proceed to collect the Sewer System Impact Fee or Water System Impact Fee, as applicable, as follows:

A. The City shall serve, by certified mail, return receipt requested, a Notice of Impact Fee Statement upon the Owner at the address appearing on the most recent records maintained by the Property Appraiser of the County in which the property is located. Service shall be deemed effective on the date of the return receipt indicates the notice was received by either the Applicant or the Owner. The Notice of Impact Fee Statement shall contain a reasonable legal description of the property and shall advise the Applicant and Owner that:

1. The amount due and the general purpose for which the Sewer System Impact Fee was imposed or, as applicable, the amount due and the general purpose for which the Water System Impact Fee was imposed;

2. A hearing pursuant to Section 4.06 may be requested within thirty (30) calendar days from the effective date of service of the Notice of Impact Fee Statement, by making application to the Office of the City Manager.

B. The Sewer System Impact Fee or Water System Impact Fee, as applicable, shall be delinquent if, within thirty (30) calendar days from the effective date of service of the Notice of Impact Fee Statement, neither the Impact Fee has been paid and received by the City nor has a review hearing been requested pursuant to Section 4.06. In the event a hearing is requested pursuant to Section 4.06, the unpaid Impact Fees shall become delinquent if not paid within thirty (30) days from the date the City Council determines the amount of Impact Fees due upon the conclusion of such a hearing. Upon becoming delinquent, the Sewer System Impact Fee or the Water System Impact Fee, as applicable, shall be subject to interest on the unpaid amount at the statutory rate for final judgments on a calendar day basis until paid.

C. In the event the Sewer System Impact Fee or Water System Impact Fee becomes delinquent, the total amount of unpaid Impact Fees plus any applicable interest shall be added to the Owner's monthly bill for water or sewer service, as applicable, and shall be paid as a condition of service.

D. At the City's discretion, any delinquent Impact Fees may be collected by any other method which is authorized by law, including, but not limited to, lien foreclosure proceedings.

SECTION 4.05. DEVELOPER CONTRIBUTION CREDIT.

A. The City may enter into a contribution agreement with a developer which grants a credit for Sewer System Impact Fees imposed in Section 2.01 or Water System Impact Fees imposed in Section 3.01 in exchange for certain donations of Impact Fee Improvements, or for the construction or installation of certain Impact Fee Improvements.

B. The amount of developer contribution credit to be applied shall be determined according to the following standards of valuation:

1. The value of donated Impact Fee Improvements shall be based upon a written appraisal of fair market value by a qualified and professional appraiser acceptable to the City based upon generally accepted methods of valuation.

2. The cost of eligible anticipated construction of Impact Fee Improvements for the Regional Sewer System or Regional Water System shall be based upon professional opinions of total project probable cost certified by a professional architect or engineer.

3. In the case of contributions of construction or installation of Impact Fee Improvements, the value of the developer's proposed contribution shall be adjusted upon completion of the construction to reflect the actual costs of construction or installation of improvements contributed by the developer.

4. No credit whatsoever for lands, easements, construction or infrastructure otherwise required to be built or transferred to the City by law, ordinance or any other rule or regulation shall be considered or included in the value of any developer's contribution.

C. All construction cost estimates shall be based upon, and all construction plans, specifications and conveyances shall be in conformity with the utility construction standards and procedures of the City. All plans and specifications shall be approved by the City Manager prior to commencement of construction.

D. Prior to the commencement of construction the Applicant shall submit to the City Manager a proposed plan and estimate of costs for contributions to the Regional Sewer System or Regional Water System, as applicable. The proposed plan and estimates shall include:

1. A designation and description of the Sewer System Impact Development or Water System Impact Development, as applicable, for which the proposed plan is being submitted;

2. A description of any Impact Fee Improvements proposed to be donated and a written appraisal prepared in conformity with Subsection B.1. of this Section;

3. Initial professional opinions of probable construction costs for the proposed construction provided by a professional architect or engineer;

4. A proposed schedule for completion of the proposed plan prepared by a professional architect or engineer; and

5. A processing, review and audit fee as determined by the City.

E. Upon favorable review of the proposed plan, the City Manager shall schedule a presentation before the City Council at a regularly scheduled meeting or a special meeting called for the purpose of reviewing the proposed plan and shall provide the Applicant or Owner written notice of the time and place of the presentation.

F. The City Commission shall authorize the City Attorney to prepare a contribution agreement with the Owner only if:

1. Such proposed plan is in conformity with the contemplated improvements and additions to the Regional Sewer System or Regional Water System; and

2. Such proposed plan, viewed in conjunction with other existing or proposed plans, will not adversely impact the cash flow or liquidity of the Sewer System Impact Fee account or Water System Impact Fee account, as applicable, in such a way as to frustrate or interfere with other planned or ongoing growth necessitated capital improvements and additions to the Regional Sewer System or Regional Water System; and

3. Such proposed plan, viewed in conjunction with other existing or proposed plans, will not create a detrimental imbalance between the treatment and transmission capabilities of the Regional Sewer System or Regional Water System; and

4. The proposed plan is consistent with the public interest; and

5. The proposed time schedule for completion of the plan is consistent with the most recently adopted five-year Capital Improvement Plan for the Regional Sewer System or Regional Water System, as applicable.

G. The processing, review and audit fee shall be returned to the Applicant if either the City Manager or the City Council determines the proposed plan is not acceptable. The processing, review and audit fee shall become non-refundable once the City Commission authorizes the City Attorney to prepare a contribution agreement.

H. In the event the amount of developer contribution pursuant to an approved plan of construction or donation of Impact Fee Improvements exceeds the total amount of Impact Fee credits used on the benefiting Sewer System Impact Development or Water System Impact Development, as applicable, identified in a contribution agreement, the contribution agreement may provide for the reimbursement of the excess or remaining balance of such contribution credit, provided funds are available and collected from future receipts by the City from Sewer System Impact Fees or Water System Impact Fees, as applicable, collected during the fiscal year immediately following the fifth anniversary of the date of substantial completion of the plan of construction or the date of donation, or the fifth anniversary, exclusive of any moratoria, from the date of recording the contribution agreement in the Official Records of the Clerk for the Circuit Court of Holmes County, whichever shall first occur. Should the source of funds for reimbursement as described in this paragraph not be available within the time frames described herein, the remaining balance of any Impact Fee credits shall be forfeited.

I. Any Applicant or Owner who submits a proposed plan pursuant to this Section and desires an immediate connection to either the Regional Sewer System or Regional Water System shall pay prior to or at the time the proposed plan is submitted the applicable Sewer System Impact Fee pursuant to Section 2.01 or Water System Impact Fee pursuant to Section 3.01, as applicable. Said payment shall be deemed paid under "Protest" and shall not be construed as a waiver of any review rights. Any difference between the amount paid and the amount due, as determined by the City Council, shall be refunded to the Applicant or Owner.

SECTION 4.06. REVIEW HEARINGS.

A. An Applicant or Owner who is required to pay a Sewer System Impact Fee pursuant to Section 2.01 or a Water System Impact Fee pursuant to Section 3.01, shall have the right to request a review hearing.

B. Such hearing shall be limited to the review of the following:

1. The application of the Sewer System Impact Fee pursuant to Section 2.01.
2. The application of the Water System Impact Fee pursuant to Section 3.01.
3. Denial of a developer contribution credit pursuant to Section 4.05.
4. Denial of an exemption pursuant to Section 4.02.

C. Except as otherwise provided in this Ordinance, such hearings shall be requested by the Applicant or Owner within thirty (30) days, including Sundays and legal holidays, of the date of first receipt of the following, whichever is applicable:

1. Receipt of notice from the City that an Impact Fee is due.
2. The denial of developer contribution credit.
3. The denial of an Impact Fee exemption.

Failure to request a hearing within the time provided shall be deemed a waiver of such right.

D. The request for hearing shall be filed with the Office of the City Manager and shall contain the following:

1. The name and address of the Applicant and Owner;
2. The legal description of the property in question;
3. A brief description of the improvements on the property or the connection being undertaken;
4. If paid, the date the Sewer System Impact Fee or Water System Impact Fee, as applicable, was paid; and,
5. A statement of the reasons why the Applicant or Owner is requesting the hearing.

E. Upon receipt of such request, the City Manager shall schedule a hearing before the City Council at a regularly scheduled meeting or a special meeting called for the purpose of conducting the hearing and shall provide the Applicant or Owner with written notice of the time and place of the hearing. The hearing shall be held within sixty (60) days of the date of the request for hearing was filed.

F. Such hearing shall be before the City Council and shall be conducted in a manner designed to obtain all information and evidence relevant to the request for the hearing. Formal rules of civil procedure and evidence shall not be applicable; however, the hearing shall be conducted in a fair and impartial manner with each party having an opportunity to be heard and to present information and evidence.

G. Any Applicant or Owner who requests a hearing pursuant to this Section and desires an immediate connection to either the Regional Sewer System or the Regional Water System shall pay prior to or at the time the request for hearing is filed the Sewer System Impact Fee pursuant to Section 2.01 or Water System Impact Fee pursuant to Section 3.01, as applicable. Said payment shall be deemed paid under "Protest" and shall not be construed as a waiver of any review rights.

SECTION 4.07. REVIEW REQUIREMENTS. This Ordinance and the accompanying rate study shall be reviewed by the City Council at least every five (5) years. Each review shall consider new estimates of population, cost related to the acquisition of land, buildings, capital plant and equipment necessitated by growth and adjustments to the assumptions, conclusions and findings set forth in the study adopted by Section 1.04. The purpose of this review is to ensure that the Sewer System Impact Fees and Water System Impact Fees do not exceed the reasonably anticipated costs associated with the improvements necessary to offset the demand generated by new construction or use of the Regional Sewer System or Regional Water System. In the event the review of the Ordinance required by this Section alters or changes the assumptions, conclusions and findings of the rate study adopted by reference in Section 1.04, revises or changes the Regional Sewer System or Regional Water System or alters or changes the amount of the Impact Fees, the rate study adopted by reference in Section 1.04 shall be amended and updated to reflect new and demonstrable assumptions, conclusions and findings and Section 1.04 shall be amended to adopt by reference such updated study.

SECTION 4.08. DECLARATION OF EXCLUSION FROM ADMINISTRATIVE PROCEDURES ACT. Nothing contained in this Ordinance shall be construed or interpreted to include the City in any definition of Agency contained in Section 120.52, Florida Statutes, or to otherwise subject the City to the application of the Administrative Procedure Act, Chapter 120, Florida Statutes. This declaration of intent and exclusion shall apply to all proceedings taken as a result of or pursuant to this Ordinance including specifically, but not limited to, consideration of an Alternative Sewer System Impact Fee or Alternative Water System Impact Fee calculation under Section 4.02, a determination of entitlement to a Impact Fee exemption pursuant to Section 4.03, the proposed plan for a

developer contribution credit pursuant to Section 4.06, or a review hearing under Section 4.07.

SECTION 4.09. SEVERABILITY. If any clause, section or provision of this Ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of said Ordinance shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein. In the event it is held or construed by any court of competent jurisdiction that the City does not possess the power or authority to impose the Sewer System Impact Fees or Water System Impact Fees within any service area, or such imposition of the Impact Fees is declared invalid or unconstitutional for any purpose, such declaration of unconstitutionality or invalidity shall not affect the validity or constitutionality of the imposition of the Sewer System Impact Fees or Water System Impact Fees in all other service areas.

SECTION 4.10. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its passage and adoption in the manner and form prescribed by law..

PRESENTED, read by title, and tabled pending publication and public hearing as required by law on the 23rd day of October, 2006.

PRESENTED, read by title, after publication and public hearing, duly enacted by the City Council of the City of Bonifay, Florida on this 13th day of November, 2006.

CITY OF BONIFAY, FLORIDA

By: _____
Frederic L. Howell, Mayor

ATTEST:

By: _____
Jeri Gibson, City Clerk

APPROVED FOR FORM AND CORRECTNESS:

By: _____
Brandon J. Young, Esq., City Attorney

Attached:

APPENDIX A
IMPACT FEE STUDY