

ORDINANCE NO. 382

AN ORDINANCE OF THE CITY OF BONIFAY, FLORIDA; AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$2,389,000 WATER AND SEWER SYSTEM JUNIOR LIEN REVENUE BOND ANTICIPATION NOTES, SERIES 2012; PROVIDING FOR THE PAYMENT THEREOF; ENTERING INTO CERTAIN COVENANTS AND AGREEMENTS WITH THE OWNERS THEREOF; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BONIFAY, FLORIDA AS FOLLOWS:

SECTION 1. AUTHORITY FOR THIS ORDINANCE. This Note Ordinance is enacted pursuant to the provisions of the Constitution of Florida; the Charter of the City of Bonifay, Florida, as amended; Chapter 166, Part II, Florida Statutes; Ordinance 374 of the City of Bonifay, Florida duly enacted on January 24, 2011, as amended by Ordinance 380, enacted on February 27, 2012 (collectively, the "Bond Ordinance"), and other applicable provisions of law.

SECTION 2. DEFINITIONS. The capitalized terms contained in this Note Ordinance shall have the meaning attributable to the same capitalized terms in Section 1.03 of the Bond Ordinance defined above.

SECTION 3. FINDINGS. It is hereby ascertained, determined and declared that:

A. On January 24, 2011, the Issuer enacted the Bond Ordinance entitled:

AN ORDINANCE OF THE CITY OF BONIFAY, FLORIDA PROVIDING FOR THE ACQUISITION, CONSTRUCTION AND ERECTION OF EXTENSIONS AND IMPROVEMENTS TO THE SEWER SYSTEM; AUTHORIZING THE ISSUANCE OF NOT EXCEEDING \$2,244,000 WATER AND SEWER SYSTEM JUNIOR LIEN REVENUE BONDS TO FINANCE A PORTION OF THE COST THEREOF; PLEDGING A LIEN ON THE NET REVENUES OF THE WATER AND SEWER SYSTEM TO SECURE THE PAYMENT THEREOF; PROVIDING FOR THE

ISSUANCE OF TEMPORARY BOND ANTICIPATION NOTES; PROVIDING FOR THE RIGHTS OF THE HOLDERS OF SUCH BONDS; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH AND PROVIDING AN EFFECTIVE DATE.

authorizing the issuance of not exceeding \$2,244,000 principal amount of the City of Bonifay, Florida, Water and Sewer System Junior Lien Revenue Bonds (the "Bonds") and Bond Anticipation Notes (the "Notes") of the Issuer, for the purpose of financing the cost of acquisition, construction, and erections and improvements to its sewer system (the "Project").

B. On February 27, 2012, the Issuer enacted Ordinance 380 amending Ordinance 374 to provide for an increase of the not to exceed amount to \$2,389,000.

C. The Bonds and the interest thereon will be payable solely from and secured by a lien on the Pledged Funds, as defined in the Bond Ordinance, derived by the City of Bonifay, Florida (the "Issuer").

D. It is necessary and urgent that funds be made immediately available in order to provide money for the commencement of the Project at this time. The Issuer must, therefore, anticipate the receipt by it of the proceeds to be derived from the sale of the Bonds, and the Issuer has determined it to be in the best interest of the Issuer and its inhabitants that fully registered interest bearing notes of the Issuer in the amount of not to exceed \$2,389,000 be authorized pursuant to this Note Ordinance and the Bond Ordinance in anticipation of the receipt by the Issuer of the proceeds from the sale of the Bonds. The principal and interest of the Notes to be issued pursuant to this Note Ordinance will be payable solely from and secured by a lien upon and a pledge of the proceeds to be derived from the sale of the Bonds or such other bonds as the Issuer has covenanted herein to in good faith endeavor to issue, and, if sufficient proceeds have not been realized when

such payments are due, by a junior and subordinate lien upon and pledge of the Pledged Funds. The Notes are also secured by the moneys in the Construction Account created pursuant to the Bond Ordinance until such moneys shall have been applied or committed as provided herein and in the Bond Ordinance.

SECTION 3. ORDINANCE TO CONSTITUTE CONTRACT. In consideration of the acceptance of the Notes authorized to be issued hereunder by those who shall hold the same from time to time (the "Holders"), this Note Ordinance shall be deemed to be and shall constitute a contract between the Issuer and such Holders. The covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the legal Holders of any and all of the Notes, all of which shall be of equal rank and without preference, priority or distinction of any of the Notes over any other thereof, except as expressly provided therein and herein.

SECTION 4. AUTHORIZATION OF BOND ANTICIPATION NOTES. Subject and pursuant to the provisions hereof and in anticipation of the sale and delivery of the Bonds, and upon the approval of the United States of America acting through the United States Department of Agriculture, Rural Utilities Service ("Rural Development"), obligations of the Issuer to be known as "Water and Sewer System Junior Lien Revenue Bond Anticipation Notes, Series 2012" herein defined as the "Notes", are authorized to be issued in the aggregate principal amount of not to exceed \$2,389,000.

SECTION 5. DESCRIPTION OF THE NOTES. The Notes shall be issued as one fully



registered Note in the principal amount not to exceed \$2,389,000.

The Notes shall be payable in any coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for the payment of public and private debts. The interest on the Notes, shall be payable by the Clerk acting as the paying agent (the "Paying Agent") upon maturity or redemption to the person appearing on the registration books of the Issuer hereinafter provided for as the registered Holder thereof, by check mailed to such registered Holder at its address as it appears on such registration books. Payment of the principal of the Notes shall be made upon the presentation and surrender of such Notes as the same shall become due and payable. The principal of the Notes shall be payable only to the registered Holder or its legal representative at the office of the Clerk of the Issuer (the "Registrar"). Further description of the Notes shall be provided by a resolution to be adopted subsequent to this Note Ordinance ("Supplemental Resolution").

SECTION 6. EXECUTION OF THE NOTES. The Notes shall be executed in the name of the Issuer by the manual signature of the Mayor of the Issuer and attested by the manual signature of the Clerk. The official seal of the Issuer shall be imprinted on the Notes. In case any one or more of the officers who shall have signed or sealed the Notes shall cease to be such officer of the Issuer before the Notes so signed and sealed shall have been actually sold and delivered, the Notes may nevertheless be sold and delivered, as herein provided, and may be issued as if the person who signed or sealed the Notes had not ceased to hold such office.

SECTION 7. NOTES MUTILATED, DESTROYED, STOLEN OR LOST. In case any Note shall become mutilated, or be destroyed, stolen or lost, the Issuer may in its discretion cause the

issuance and delivery of a new Note of like date and tenor as the Note so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Note or in lieu of and substitution for the Note destroyed, stolen or lost, and upon the Holder's furnishing to the Issuer and the Registrar proof of his ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer or its agent may incur. All Notes so surrendered shall be canceled by the Issuer. If any such Notes shall have matured or be about to mature, instead of issuing a substitute Note, the Issuer may provide for payment of the same at maturity, upon being indemnified as aforesaid, and if such Note be lost, stolen or destroyed, without surrender thereof.

Any such duplicate Notes issued pursuant to this Section shall constitute original, additional contractual obligations on the part of the Issuer whether or not the lost, stolen or destroyed Notes shall be at any time found by anyone, and such duplicate Notes shall be entitled to equal and proportionate benefits and rights as to lien on, and source and security for payment from the proceeds of the bonds and the revenues pledged for the payment of the Notes to the same extent as all other Notes issued hereunder.

SECTION 8. NEGOTIABILITY AND REGISTRATION. The Registrar shall keep books for the registration of and for the registration of transfers of Notes as provided herein and in the Bond Ordinance. The transfer of any Notes may be registered only upon such books and only upon surrender thereof to the Registrar together with an assignment duly executed by the Holder or his attorney or legal representative in such form as shall be satisfactory to the Registrar. Upon any such registration of transfer the Issuer shall execute and the Registrar shall authenticate and deliver in

exchange for such Note a new Note or Notes registered in the name of the transferee, and in an aggregate principal amount equal to the principal amount of such Note or Notes so surrendered.

In all cases in which Notes shall be exchanged, the Issuer shall execute and the Registrar shall authenticate and deliver, at the earliest practicable time, a new Note or Notes in accordance with the provisions of this Note Ordinance. All Notes surrendered in any such exchange or registration of transfer shall forthwith be canceled by the Registrar. The Issuer or the Registrar may make a charge for every such exchange or registration of transfer of Notes sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or registration of transfer, but no other charge shall be made to any Holder for the privilege of exchanging or registering the transfer of Notes under the provisions of this Note Ordinance and the Bond Ordinance. Neither the Issuer nor the Registrar shall be required to make any such exchange or registration of transfer of Notes during the fifteen (15) days immediately preceding any interest payment date.

The Notes shall be and shall have all of the qualities and incidents of negotiable instruments under the laws of the State of Florida, and each successive owner, in accepting any of such Notes, shall be conclusively deemed to have agreed that such Notes shall be and have all the qualities and incidents of negotiable instruments under the laws of the State of Florida.

Notwithstanding the foregoing or any provision of this Note Ordinance to the contrary, the Notes shall not be transferred unless the new purchaser has executed an "investment letter" in substantially the same form and substance as the "investment letter" executed by the original purchaser of the Notes (the "Original Purchaser").



SECTION 9. AUTHENTICATION OF NOTES. Only such of the Notes as shall have endorsed thereon a certificate of authentication substantially in the form herein below set forth, duly executed by the Registrar as authenticating agent, shall be entitled to any benefit or security under this Note Ordinance. No Note shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly adopted by the Registrar and such certificate of the Registrar upon any such Note shall be conclusive evidence that such Note has been duly authenticated and delivered under this Note Ordinance. The Registrar's certificate of authentication on any Note shall be deemed to have been duly executed if signed by the Registrar or authorized designee, but it shall not be necessary that the same officer sign the certificate of authentication of all of the Notes that may be issued hereunder at any one time.

SECTION 10. EXCHANGE OF NOTES. Any Note, upon surrender thereof at the principal office of the Registrar, together with an assignment duly executed by the Holder or his attorney or legal representative in such form as shall be satisfactory to the Registrar, may, at the option of the Holder, be exchanged for an aggregate principal amount of Notes equal to the principal amount of the Notes so surrendered.

The Registrar shall make provision for the exchange of Notes at the principal office of the Registrar. Notwithstanding the foregoing, the Notes shall always be one fully registered Note in the denomination set forth in Section 5 hereof.

SECTION 11. OWNERSHIP OF NOTES. The person in whose name any Note shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of or on account of the principal of any such Note, and the interest on any such Note, shall

be made only to or upon the order of the registered owner thereof or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Note and interest thereon to the extent of the sum or sums so paid.

SECTION 12. PROVISIONS FOR REDEMPTION. The provisions for redemption shall be provided by the Supplemental Resolution.

SECTION 13. FORM OF NOTES. The form of the Notes shall be provided by the Supplemental Resolution.

SECTION 14. SPECIAL OBLIGATIONS OF ISSUER. The Notes shall not be or constitute general obligations or indebtedness of the Issuer as "bonds" within the meaning of the Constitution of the State of Florida, but the payment of the principal of and interest thereon shall be payable solely from and secured by a lien upon and pledge of the proceeds of the Bonds or such other bonds as the Issuer has covenanted herein to in good faith endeavor to issue and if sufficient proceeds have not been realized when such payments are due, by a junior and subordinate lien on and pledge of the Pledged Funds, subject only to lien on the Pledged Funds in favor of the Parity Bonds. The payment of the principal of and interest on the Notes is also secured by the moneys in the Construction Account as provided in Section 15 hereof. No holder or holders of any Notes issued hereunder shall ever have the right to compel the exercise of the ad valorem taxing power of the Issuer or taxation in any form of any real or personal property thereon. The Pledged Funds shall immediately be subject to the lien of this pledge without any physical delivery thereof or further act, and the lien of this pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Issuer.



The Issuer does hereby irrevocably pledge the proceeds derived from the sale of the Bonds, or such other bonds as the Issuer has covenanted herein to in good faith endeavor to issue, and the Pledged Funds, as described herein, to the payment of the principal of and interest on the Notes when those payments are due.

SECTION 15. APPLICATION OF NOTE PROCEEDS. The proceeds derived from the sale of the Notes shall be received by the Issuer. To the extent not reimbursed therefor from the proceeds of the Notes, the Issuer shall pay all costs associated with the issuance of the Notes. The remainder of the proceeds of the sale of the Notes shall be deposited into the Construction Account created pursuant to the Bond Ordinance and applied as provided therein and herein. The Construction Account shall be established with the Original Purchaser.

The principal proceeds received upon the sale of the Note shall be deposited into the Construction Account and shall be held and disbursed for the costs, fees and expenses incurred by the Issuer in connection with the authorization, issuance, sale, and delivery of the Note and for the payment of all fees, expenses, and costs of the Project, including all interest payable on the Notes.

Monies in the Construction Account shall be disbursed by the Original Purchaser upon receipt by the Original Purchaser of a written payment request form signed by the Clerk or authorized designee and provided by the Issuer to the Original Purchaser as provided by the Supplemental Resolution.

The Issuer agrees to request payments from the Construction Account only for those purposes authorized for the Project, as approved by Rural Development.

Any income received from investment of monies in the Construction Account can be used for purposes of the Project.

The owners of the Notes shall have a lien upon all the proceeds thereof until the same have been applied or committed as provided herein and in the Bond Ordinance.

SECTION 16. COVENANTS OF THE ISSUER. For so long as the Notes shall be outstanding and unpaid or until there shall have been irrevocably set apart a sum sufficient to pay, when due, the entire principal of the Notes, together with interest accrued and to accrue thereon, the Issuer covenants with the owners of the Notes as follows:

A. PROCEEDS FROM BONDS. Upon the receipt of the proceeds of the Bonds, or such other bonds as the Issuer has covenanted herein to in good faith endeavor to issue, the Issuer shall apply such proceeds, together with other legally available funds of the Issuer, as follows:

(1) There shall be transmitted to the Paying Agent to pay forthwith the principal of the Notes and the interest accrued thereon to such date of payment.

(2) For deposit and application of the balance of such proceeds pursuant to the provisions of the Bond Ordinance.

B. APPLICATION OF PRIOR COVENANTS. The covenants and pledges contained in the Bond Ordinance, including specifically Section 3.04, shall be deemed to be for the benefit, protection and security for the payment of the Notes and for the owners thereof in like manner as applicable to the Bonds, provided, however the reserve requirements applicable to the Bonds shall not apply to the Notes, for the benefit of the owners thereof. Such covenants and pledges shall be applicable to

the Notes herein authorized and are incorporated by reference herein to the same extent as if set forth in full herein.

C. SALE OF BONDS. From time to time the Issuer shall in good faith endeavor to sell a sufficient principal amount of Bonds and/or other bonds of the Issuer in order to have funds available to pay the Notes and the interest thereon as the same become due.

D. OTHER CONDITIONS. The Issuer agrees to comply with the loan requirements of the Government, including obtaining the approval of the Government of all uses of Note proceeds.

E. NO ADDITIONAL OBLIGATIONS. The Issuer covenants and agrees that while Notes shall remain outstanding hereunder, the Issuer will not issue any additional obligations or incur any additional indebtedness payable from the Pledged Funds, except the Bonds or such other bonds as the Issuer has covenanted in this Note Ordinance to in good faith endeavor to issue to pay the principal of and interest on the Notes when due.

SECTION 17. SUPPLEMENTAL INSTRUMENTS. The Issuer shall, as necessary, from time to time and at any time, adopt such resolutions and/or ordinances as shall not be inconsistent with the terms and conditions of this Note Ordinance:

- A. To cure any ambiguity, defect, or omission herein;
- B. To secure, extend or renew to the owners of the Notes the pledges made herein for the payment of the Notes and the interest to accrue thereon; or
- C. To add any provisions as required by the Original Purchasers in connection with its purchase of the Notes.



SECTION 18. MODIFICATION AND AMENDMENT. No material modification or amendment of this Note Ordinance or the Supplemental Resolution or of any ordinance or resolution amendatory hereof or thereof or supplemental hereto or thereto may be made without the consent in writing of the holders of the Notes.

SECTION 19. TAX COVENANTS. No use will be made of the proceeds of the Notes which, if such use were reasonably expected on the date of issuance of the Notes, would cause the same be to "arbitrage bonds" within the meaning of the Internal Revenue Code of 1986. The Issuer at all times while the Notes and the interest thereon are outstanding will comply with the requirements of the Internal Revenue Code of 1986, including any amendments thereto and any valid and applicable rules and regulations promulgated thereunder necessary to maintain the exclusion of the interest on the Notes from federal gross income including the creation of any rebate funds or other funds and/or accounts required in that regard.

SECTION 20. BANK QUALIFIED. The Issuer designates the Notes as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). The Issuer and any subordinate entities of the Issuer and any issuer of "tax-exempt" debt that issues "on behalf of" the Issuer do not reasonably expect during calendar year 2012 to issue more than \$10,000,000 of "tax-exempt" obligations, exclusive of any private activity bonds (other than 501(c)(3) bonds), as defined in Section 141(a) of the Code.

SECTION 21. WAIVER OF JURY TRIAL. To the extent permitted by law, the Issuer knowingly, voluntarily, and intentionally waives any right it may have to a trial by jury, with respect to any litigation or legal proceedings based on or arising out of this Note Ordinance, the

Supplemental Resolution or the Notes, including any course of conduct, course of dealings, verbal or written statement or actions or omissions of any party which in any way relates to the Notes, or this Note Ordinance or the Supplemental Resolution.

SECTION 22. SEVERABILITY. If any one or more of the covenants, agreements or provisions of this Note Ordinance should be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reasons whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions, and in no way affect the validity of all the other provisions of this Note Ordinance or of the Notes.

SECTION 23. EFFECTIVE DATE. This Ordinance shall take effect immediately upon enactment.

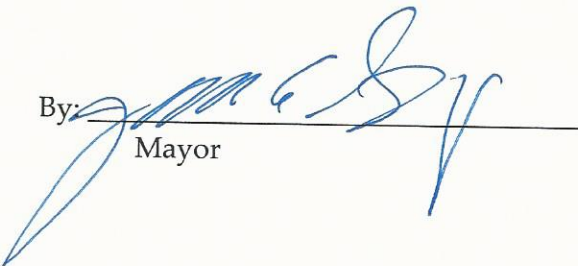
PASSED ON FIRST READING ON February 27, 2012.

PASSED ON SECOND READING ON March 12, 2012.

ENACTED by the City Council of the City of Bonifay, Florida on this 12<sup>th</sup> day of March, 2012.

CITY COUNCIL OF THE  
CITY OF BONIFAY, FLORIDA

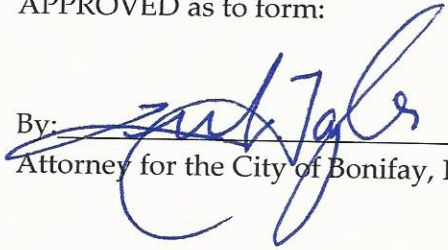
By: \_\_\_\_\_  
Mayor



ATTEST:

By:   
City Clerk

APPROVED as to form:

By:   
Attorney for the City of Bonifay, Florida