

CITY OF GAINESVILLE
Office of the City Attorney

Memorandum
Box No. 46; 334-5011

TO: Mayor and Members of the
City Commission

DATE: November 30, 1998
~~November 23, 1998~~
SECOND READING
FIRST READING

FROM: Marion J. Radson
City Attorney

SUBJECT: Ordinance No. O-99-16 Proposed Lease In Lease Out Transaction
City Commission #980766.

AN ORDINANCE OF THE CITY OF GAINESVILLE, FLORIDA, AUTHORIZING THE INVESTMENT BY THE CITY IN "PAYMENT AGREEMENTS" IN CONNECTION WITH THE CLOSING OF A LEASE IN-LEASE OUT TRANSACTION INVOLVING PORTIONS OF DEERHAVEN UNITS 1 AND 2 AND CERTAIN COMMON FACILITIES; ESTABLISHING CERTAIN REQUIREMENTS FOR SUCH PAYMENT AGREEMENTS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Recommendation: The City Commission adopt the proposed ordinance.

Background:

The General Manager and utilities staff, pursuant to Commission authorization, have negotiated a "Lease In Lease Out" transaction with the BNY Capital Funding LLC (the Bank) and AMBAC Assurance Corporation (AMBAC) in connection with Deerhaven Units 1 and 2 and shared common facilities (the "Plant"). In connection with the LILO financing structure, the City will enter into a lease (the "Head Lease") of the Plant to one or more owner trusts, each formed on behalf of the Bank and AMBAC which will prepay a substantial portion of the rent under the Head Lease to the City in a lump sum at the closing. The trust(s) will then lease the Plant back to the City under one or more subleases (the "Sublease") for a shorter term under a fairly conventional "net" lease which grants to the City an option to purchase back the remaining Head Lease term at the end of the Sublease for a fixed purchase option price.

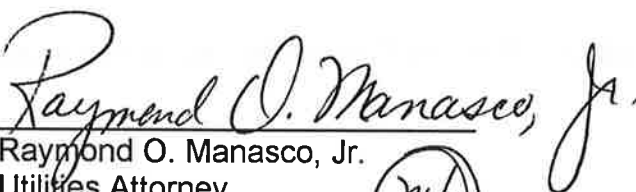
Generally, these lease transactions are structured with a portion of the up-front payment to the lessor under the Head Lease being invested in investment vehicles that are placed in escrows to pay the rent under the Sublease and to pay the purchase option price. These investments may be by way of "purchasing" a payment agreement, that is an agreement whereby a third party agrees to make the rent and purchase option payments on behalf of the City. Attorneys (Bond Counsel, Orrick, Herrington & Sutcliffe LLP) for the City have reviewed potential legal constraints on the establishment of the escrows and the deposit of investments into such escrows necessary to the closing and have concluded that such investments do not fit within the list of permitted investments applicable to the City specified by statute (F. S. 166.261). However, the language of the statute expressly authorizes cities to expand the list of permissible investments by adoption of an appropriate ordinance. Accordingly, in order to close the LILO transaction, the ordinance must be adopted to authorize certain investments in addition to those listed in F. S. 166.261.

Second and final reading of the ordinance will be held at a special meeting on Monday, Nov. 30, 1998, at 1:00 PM. A special meeting is required in order to approve the lease in lease out documents and prepare for closing the week of December 7th or December 14, 1998.


Fiscal Note:

All in/ savings to GRU from the completed transaction are estimated to be between \$15 and \$25 million. The proceeds will be utilized to reduce GRU's costs of generation. The completed transaction will result in an estimated General Fund transfer of between \$2.2 and \$3.7 million.

Prepared by:


Raymond O. Manasco, Jr.
Utilities Attorney

Submitted by:


Marion J. Radson
City Attorney

Passed on first reading as revised by a vote of 5-0.

**AN ORDINANCE OF THE CITY OF GAINESVILLE,
FLORIDA, AUTHORIZING THE INVESTMENT BY
THE CITY IN "PAYMENT AGREEMENTS" IN
CONNECTION WITH THE CLOSING OF A LEASE
IN-LEASE OUT TRANSACTION INVOLVING
PORTIONS OF DEERHAVEN UNITS 1 AND 2 AND
CERTAIN COMMON FACILITIES; ESTABLISHING
CERTAIN REQUIREMENTS FOR SUCH PAYMENT
AGREEMENTS; PROVIDING A SEVERABILITY
CLAUSE; PROVIDING A REPEALING CLAUSE;
AND PROVIDING AN IMMEDIATE EFFECTIVE
DATE.**

WHEREAS, in connection with the consummation of the lease in-lease out ("LILO") transaction previously authorized by the City Commission on September 14, 1998 in agenda item number 980502, it will be necessary for the City to enter into certain "payment agreements" to provide for the investment of a portion of the up-front payments to the City to be derived from the LILO transaction, pursuant to which agreements a third party will agree to make, on behalf of the City, (a) the rent payments owed by the City pursuant to the LILO transaction and (b) to the extent that the City elects to exercise its purchase option pursuant to the LILO transaction, the purchase option payment owed by the City with respect thereto; and

WHEREAS, Fla. Stat. § 166.261 provides that, unless otherwise authorized by law or by ordinance, municipalities shall invest their surplus public funds in the investments enumerated in said section; and

WHEREAS, the "payment agreements" do not fit within the list of investments enumerated in Fla. Stat. § 166.261; and

WHEREAS, the City Commission finds that authorizing investments in “payment agreements” in connection with the LILO transaction is in the best interests of the City; and

WHEREAS, pursuant to law, this ordinance has been read on two separate days; and

WHEREAS, pursuant to law, an advertisement was placed in a newspaper of general circulation at least ten days prior to adoption notifying the public of this proposed ordinance and of the Public Hearing to be held in the City Hall Auditorium, First Floor, City Hall, in the City of Gainesville.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA:

Section 1. The City is hereby authorized in connection with the LILO transaction involving portions of Deerhaven Units 1 & 2 and certain common facilities to make investments of certain surplus public funds in “payment agreements” between the City and one or more insurance companies, banks or other financial institutions, or affiliates or subsidiaries thereof (each, an “agreement provider”), pursuant to which the agreement provider will agree to repay to (or at the direction of) the City, at times and in amounts to be agreed upon by the City and the agreement provider, the amount invested by the City pursuant thereto, together with interest thereon at a rate or rates to be agreed upon by the City and such agreement provider, and without any right of set off.

Section 2. The City shall not invest those certain surplus public funds in any particular payment agreement unless the senior unsecured debt, claims-paying ability or financial strength rating of the agreement provider party thereto shall, at the time of the initial investment be rated by at least one nationally recognized statistical rating organization in at least the "single-A" category, or the obligations of such agreement provider shall be unconditionally guaranteed or insured by an entity that is so rated.

Section 3. If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

Section 4. All ordinances, or parts of ordinances, in conflict herewith are to the extent of such conflict hereby repealed.

Section 5. This ordinance shall become effective immediately upon final adoption.

PASSED AND ADOPTED this _____ day of _____, 1998.

MAYOR – Paula M. DeLaney

ATTEST:

Approved as to form and legality:

Clerk of the Commission

By: _____
Marion J. Radson, City Attorney

This ordinance passed on first reading this _____ day of _____, 1998.

This ordinance passed on second reading this _____ day of _____, 1998.

CODE: Words ~~stricken~~ are deletions; words underlined are additions.

