

CITY OF GAINESVILLE
Office of the City Attorney

Memorandum
Box No. 46; 334-5011

TO: Mayor and Members of the
City Commission

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

FROM: Marion J. Radson
City Attorney

FIRST READING

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.

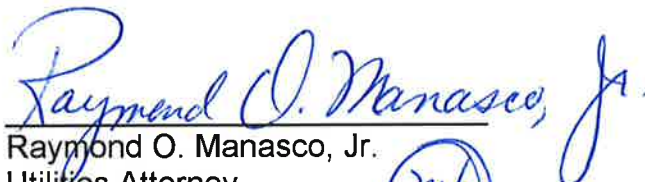
Generally, these lease transactions are structured with a portion of the up-front payment to the lessor under the Head Lease being invested in investment vehicles that are placed in escrows to pay the rent under the Sublease and to pay the purchase option price. These investments may be by way of "purchasing" 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.