

**INTER-OFFICE COMMUNICATION**

General Manager's Office Phone (352) 224 2400 Ext. 1000 Fax 224 2277

**KURT LANNON
BOX 18**

DATE: November 9, 1998

TO: Honorable Mayor and Members of the City Commission

FROM: Michael L. Kurtz.
General Manager

SUBJECT: Proposed Lease In Lease Out Transaction – Investments in Escrow

Recommendation:

That the City Attorney be authorized to prepare and the Clerk to advertise an ordinance authorizing the investment by the City in certain investment vehicles necessary to the closing of the lease in-lease out (LILO) of portions of Deerhaven Units 1 and 2 as previously authorized by the City Commission on September 14, 1998, in agenda item number 980502. Such investment vehicles will consist of "payment agreements" between the City and one or more insurance companies 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, without any right of set off.

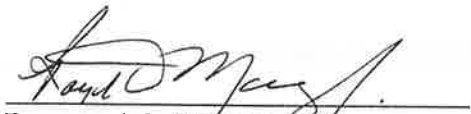
Background:

The General Manager and utilities staff, pursuant to Commission authorization, are negotiating entering into a "Lease In Lease Out" transaction 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 high tax bracket investors which will prepay a substantial portion of the rent 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, your staff and bond counsel are recommending that, in connection with the previously authorized LLO transaction, an ordinance be prepared and adopted that will authorize certain investments in addition to those listed in F. S. 166.261.

Prepared by:


Raymond O. Manasco, Jr.
Utilities Attorney

Submitted by:


Michael L. Kurtz
General Manager