


# REPORT OF THE CHIEF LEGISLATIVE ANALYST

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WAS No. 05-01-0033

To: Honorable Members of the  
Budget and Finance Committee

February 14, 2005

From: Gerry F. Miller   
Acting Chief Legislative Analyst

## **Motion - Proposed Amendment No. 2 Los Angeles Marathon, Inc. Contract**

On December 17, 2004, the City Council referred a Motion (Perry - Parks) C.F. 01-0026, to your Committee for consideration which directs this office to report on proposed changes to the agreement between the City and the Los Angeles Marathon, Inc. (LAMI). This report was prepared in response to the above specified Motion.

### **Motion (Perry - Parks)**

The subject Motion states that the Los Angeles Marathon has been successfully operated by the Los Angeles Marathon, Inc. (LAMI) since 1986, pursuant to an agreement with the City. LAMI proposed an amendment to this agreement to provide for the following:

- The current termination date of June 30, 2010 would be extended by another five year period, effectuating a new termination date of June 30, 2015;
- In addition to the current fee of \$120,000 annually, would pay to the City an additional annual fee payment of \$21,661 beginning in FY 2004-05, which will increase by \$21,661 annually, until this additional fee payment reaches \$130,000 annually, resulting in a combined total annual fee payment of \$250,000; and
- Remove the names of Marie Patrick and William Burke from the provisions of the agreement with the City.

### **Settlement Agreement**

The City challenged LAMI's attempt to obtain a trademark registration of the Los Angeles Marathon logo and formally opposed LAMI's trademark application to the US Patent and Trademark Office. Negotiations between the City and LAMI resulted in a Settlement Agreement, approved by the Council and the Mayor in August 2004 (C.F. 04-1543 S1). Attachment 1 to this report presents a chart outlining the provisions of the existing contract between the City and LAMI, the provisions of the Settlement Agreement and the proposed changes contained in the Motion (Perry - Parks).

The City Attorney advises that if the Council agrees to remove Marie Patrick and William Burke from the provisions of the contract with the City the entire section 3. c. of the Settlement Agreement should be deleted. As a result of deleting this section, the terms and conditions

regarding a sale or transfer of management of the Marathon would revert to section 12 of the 1996 Agreement. Section 12 of the 1996 Agreement would protect the City's position to seek a new operator for the Marathon, in the event that the City is not satisfied with the new management of the Marathon.

Section 3. c. of the Settlement Agreement states as follows:

"Maintenance of Current Managerial Control. The City consents and agrees not to exercise its right to terminate or renegotiate this Agreement following a Transfer provided that either William A. Burke or Marie Patrick ("Executives"), or both of them, personally remain in control of the supervision, promotion, management and operation ("Managerial Control") of the Los Angeles Marathon for a duration of at least three consecutive years following the Transfer..."

Section 12. of the 1996 Agreement, states in part:

"...Should there be any sale or transfer of a substantial part of the supervision, promotion, management operation of the Los Angeles Marathon the City Council may in the event of any such sale or transfer, at its discretion, after the next succeeding marathon and for 90 days thereafter, give notice of termination of this Agreement, or notice of intent to renegotiate the terms of this Agreement..."

#### **Extension of Contract Termination Date**

The current contract expiration date is June 30, 2010. The original contract expiration date was June 30, 2005; however, the Council and the Mayor approved a five year extension in 2001, at the request of LAMI.

It is our understanding that in order to market television coverage of an event such as the Marathon, it is extremely helpful to have a long term agreement in place with the City. To secure television coverage, a signed contract allowing the event to be held for years into the future would increase the value of television coverage rights for the event.

#### **RECOMMENDATION**

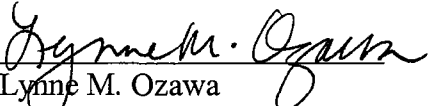
That the City Council:

1. Approve the following changes to the Agreement between the City and the Los Angeles Marathon, Inc. (LAMI):
  - Extend the expiration date to June 30, 2015;
  - Provide that LAMI, in addition to the current fee of \$120,000 annually, would pay to the City an additional annual fee payment of \$21,661 beginning in FY 2004-05, which will increase by \$21,661 each year, until this additional fee payment reaches \$130,000 annually, resulting in a combined total annual fee payment of \$250,000; and
  - Delete Sec. 3. c. of the Settlement Agreement to remove the names of William A. Burke and Marie Patrick, and related terms and conditions regarding sale or change in control of the Los Angeles Marathon, affecting a reversion to the provisions of Section 12 of the 1996 Agreement No. C-93753.

2. Instruct the Chief Legislative Analyst to draft an amendment to the Agreement between the City and the Los Angeles Marathon, Inc. (LAMI), to incorporate the changes specified above, and authorize the Mayor to execute the amendment on behalf of the City, subject to City Attorney approval as to form and legality. The Agreement consists of C-93753, as amended, and the Settlement Agreement between the City and the Los Angeles Marathon, Inc., approved by the City Council on August 17, 2004 (C.F. 04-1543 S.1).
3. Receive and File the Motion (Perry - Parks) C.F. 01-0026, relative to amending the contract between the City and the Los Angeles Marathon, Inc.

**FISCAL IMPACT STATEMENT**

Approval of the proposed amendment to the contract between the City and the Los Angeles Marathon, Inc. (LAMI) will provide an additional annual fee payment of \$21,661 beginning in FY 2004-05, which will increase by \$21,661 each year, until the additional fee payment reaches \$130,000 annually. This additional fee payment is in addition to the existing annual fee payment of \$120,000.

  
Lynne M. Ozawa  
Analyst

GFM:SMT:LMO

Attachments: Chart  
Motion ( Perry - Parks) C.F. 01-0026

<b>Pertinent Contract Provisions</b>	<b>1996 Original Agreement*</b>	<b>2001 Amendment No. 1*</b>	<b>2004 Settlement Agreement*</b>	<b>Motion (Perry - Parks) - Proposed Amendment No. 2</b>
<b>Annual Payment For Police Services</b>	\$10,117, adjusted annually by CPI. Additional services requested by LAMI will be paid for by LAMI.	Continues 1996 payment schedule.	Continues 1996 payment schedule.	Continues 1996 payment schedule.
<b>Annual Fee to the City</b>	\$85,000 or \$5/entrant in Marathon, not to exceed \$100,000; plus \$2.50/bicycle tour entrant, not to exceed \$15,000. However, combined fees for Marathon and bicycle tour entrants shall not exceed \$100,000.	\$120,000	Continues 2001 Amendment payment schedule.	\$120,000, plus \$21,661 a year, until a cap of \$250,000 annually is reached.
<b>Assignment &amp; Delegation</b>	LAMI & City may not assign rights or delegate/transfer any of its duties, unless reasonably anticipated. Any permitted assignment or delegation shall not relieve LAMI or City of primary responsibility for performance. If LAMI transfers operation of the Marathon to a third party, the City may either terminate or renegotiate the contract after the first Marathon event following the transfer.	Continues 1996 provisions.	City agrees to not exercise its termination/ renegotiation rights following a transfer by LAMI, if either of LAMI's two principal executives, William Burke or Marie Patrick personally remain in control of the operation of the Marathon for at least three years following the transfer.	Proposes to remove William Burke and Marie Patrick from the provisions of the Agreement.

<b>City Ownership of Intellectual Property Rights</b>	Not Applicable	Not Applicable	LAMI agrees that the City is the exclusive owner of all City of LA Marathon trademarks, including the official logo design. LAMI will assign its pending US Trademark application to the City. LAMI agrees to assign all copyrights in the Marathon logo to the City. City agrees to grant LAMI an exclusive worldwide license to use the City of LA Marathon trademarks for the duration of its current Marathon contract. LAMI agrees to pay the City an annual royalty rate of 7.5% based on the difference between the Annual Gross Income associated with all Marathon related activities and the 2004 annual Gross Income, in addition to any other payments.	Continues terms and conditions of the 2004 Settlement Agreement.
<b>Termination Date</b>	June 30, 2005	June 30, 2010	Continues 2001 Amendment termination date	June 30, 2015
<b>Standard Contract Provisions</b>	Yes	Continues 1996 provisions	Continues 1996 provisions	Continues 1996 provisions

\* According to the City Attorney, the current Agreement consists of the following: 1996 Agreement; 2001 Amendment; and 2004 Settlement Agreement.

**BUDGET & FINANCE**

**MOTION**

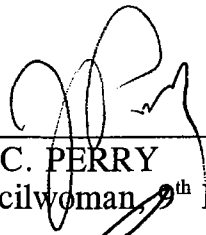
The Los Angeles Marathon has been successfully operated in our City since 1986 by Los Angeles Marathon, Inc. (LAMI) pursuant to an agreement with the City.

LAMI is now proposing an amendment to its agreement with the City whereby the term would be extended by another 5 years for a new termination date of 2015. In addition, LAMI is proposing an annual increase of \$21,661 to the fees it pays to the City until a cap of \$250,000 is reached for the annual payment, and it is proposing to remove the names of Marie Patrick and Bill Burke from the provisions of the agreement.

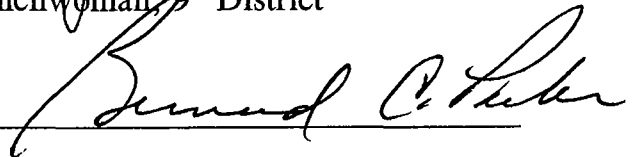
The City should review these proposals and enter into negotiations with LAMI.

I THEREFORE MOVE that the Chief Legislative Analyst be directed to review and report back to Council within 30 days relative to the proposals from the Los Angeles Marathon, Inc. (LAMI) to extend the term of its agreement with the City by another five years for a new termination date of 2015; to increase the fees it pays to the City by \$21,661 per year until a cap of \$250,000 is reached for the annual payment, and to remove the names of Marie Patrick and Bill Burke from the provisions of the agreement.

PRESENTED BY: \_\_\_\_\_

  
JAN C. PERRY  
Councilwoman, 9<sup>th</sup> District

SECONDED BY: \_\_\_\_\_



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**DEC 17 2004**