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November 23, 2004

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CITY OF SACRAMENTO  
CITY COUNCIL  
Sacramento, California

Honorable Members in Session:

**SUBJECT: APPROVAL OF AGREEMENT FOR LEGAL SERVICES WITH THE LAW  
OFFICES OF MARTHA H. LENNIHAN**

**LOCATION/COUNCIL DISTRICT:** City-Wide

**RECOMMENDATION:**

It is recommended that the City Council authorize the City Attorney to enter into an agreement with the Law Offices of Martha H. Lennihan, to provide specialized legal services to the City with respect to water supply, water resources and water rights issues and proceedings, for an annual amount not to exceed \$125,000.

**CONTACT PERSON:** Gary Reents, Director of Utilities  
Joe Robinson, Senior Deputy City Attorney

**FOR COUNCIL MEETING OF:** December 14, 2004

**SUMMARY:**

This report seeks authorization to contract for the continued specialized legal services of outside water counsel. Along with the significant legal services provided on water matters by the City Attorney's office, the services of specialized outside water counsel provided as part of the City's "water team" have greatly assisted the City with a number of significant and complex water supply, water resources and water rights matters.

**COMMITTEE/COMMISSION ACTION:** None

**BACKGROUND INFORMATION:**

- The City's water rights and water supply facilities are among the City's most important assets, and the protection and development of these rights and facilities is vital to the City and the City's water service customers.
- Due to the significance of these activities to the City, City staff utilizes a team approach to address and resolve numerous complex water supply issues pertaining to water rights, environmental review, regulatory approvals and other matters. In conjunction with the City Attorney's Office, City staff from the Department of Utilities and other City offices, and outside engineering and biological consultants, the City's outside water counsel functions as an important member of this team.
- Since 1998, the City Attorney's Office has retained Martha H. Lennihan, a Sacramento attorney who specializes in water supply, water resources and water rights matters, to provide specialized legal advice and representation to assist the City Attorney's Office and the City as it proceeded with a number of significant water rights and water supply activities.
- Ms. Lennihan has provided assistance to the City Attorney's Office and the City on a variety of matters, including: (1) Regulatory issues pertaining to the City's ongoing water supply projects, including the City's 2 water intake projects and 2 treatment plant expansion projects on the Sacramento and American Rivers; (2) Regulatory issues pertaining to the City's participation in the Sacramento River Water Reliability Project, a multi-agency planning effort for the future construction of new water supply facilities in the vicinity of Sacramento International Airport; (3) Assistance with water supply issues pertaining to the proposed Natomas Joint Vision area; and (4) Participation in the City-County Office of Metropolitan Water Planning's development of a flow management plan for the U.S. Bureau of Reclamation's operation of Folsom Dam and the Lower American River, which is being undertaken to implement a key element of the Water Forum Agreement approved by the City Council and the Sacramento County Board of Supervisors in November, 1999.
- Ms. Lennihan's specialized legal services provide a valuable supplement to the legal services provided by the City Attorney's office in the area of water rights and water supply. The City Attorney's office has developed, and will continue to develop, significant legal expertise in these areas and plays a very significant role

in the City's water matters. The retention of Ms. Lennihan provides additional specialized expertise that substantially benefits the City due to her familiarity with current developments and contacts with various regulatory agencies, as well as her ongoing involvement in regional and statewide water issues impacting the City and the City's projects.

- The need for specialized legal counsel as part of the City's "water team" will continue as the City proceeds with significant water-related projects and activities. The term of the current Agreement for Legal Services with Ms. Lennihan, for an amount not-to-exceed \$99,000, extends through January 31, 2005. However, because the level of services needed for the above projects and activities was greater than expected when the current agreement was issued, additional funding of approximately \$20,000 would be required to complete the term of the current agreement. Rather than supplementing the current agreement amount, it is recommended that a new agreement be approved.
- The proposed agreement specifies an annual not-to-exceed amount of \$125,000, with authorization for the City Attorney to renew the agreement for up to two successive one-year terms (for a total potential term of 3 years), provided that sufficient funds have been allocated to the Department of Utilities for such purpose in the City Council's annual budget appropriation.
- Ms. Lennihan's 2004 billing rate for City services is \$230 per hour. This is on the lower end of the range for outside water counsel fees being paid by other Sacramento agencies contacted when this report was prepared. The proposed agreement allows billing rates to be changed once each calendar year.

#### **FINANCIAL CONSIDERATIONS:**

Although Ms. Lennihan will be retained by the City Attorney's Office, funding for her legal services will be provided by the City's Department of Utilities from its Water Fund (# 413-330-3311). If Ms. Lennihan continues to provide specialized legal services for development of a Lower American River flow management plan, reimbursement for these services may be provided by the Water Forum Successor Effort.

#### **ENVIRONMENTAL CONSIDERATIONS:**

Approval of the agreement is not subject to the California Environmental Quality Act (CEQA), because it can be seen with certainty that there is no possibility that such approval may have a significant effect on the environment (CEQA Guidelines §15061(b)(3)).

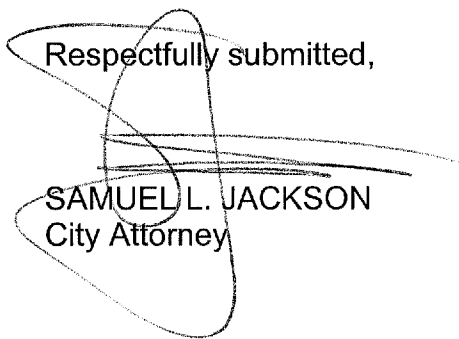
**POLICY CONSIDERATIONS:**

Ms. Lennihan's continued participation as part of the City's "water team" will assist the City as it proceeds with a number of significant water supply and water-related activities, consistent with City Council direction on these matters. Ms. Lennihan is on the City Attorney's list of approved outside counsel.

**ESBD CONSIDERATIONS:**

Ms. Lennihan's firm is certified by the City as a Small Business Enterprise.

Respectfully submitted,



SAMUEL L. JACKSON  
City Attorney



GARY REENTS  
Director of Utilities

**RECOMMENDATION APPROVED:**



ROBERT P. THOMAS  
City Manager