



**Outside Counsel  
CITY OF AUSTIN  
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.:** 16  
**AGENDA DATE:** Thu 08/26/2004  
**PAGE:** 1 of 2

**SUBJECT:** Authorize negotiation and execution of an amendment to the contract with MICHAEL SULLIVAN & ASSOCIATES, INC., Austin, TX, for services on behalf of the City of Austin as a consulting and/or expert witness in various dockets before the Texas Commission on Environmental Quality (TCEQ) concerning water rights permitting matters involving the City, the Lower Colorado River Authority (LCRA) and others in the amount of \$30,000, with a total contract amount not to exceed \$425,500.

**AMOUNT & SOURCE OF FUNDING:** Funding in the amount of \$28,250 is available in the Fiscal Year 2003-2004 Amended Operating Budget of Austin Energy. Funding in the amount of \$1,750 is available in the Fiscal Year 2003-2004 Approved Operating Budget of Austin Water Utility.

**FISCAL NOTE:** There is no unanticipated fiscal impact. A fiscal note is not required.

**REQUESTING** Law  
**DEPARTMENT:**

**DIRECTOR'S**  
**AUTHORIZATION:** Marty Terry

**FOR MORE INFORMATION CONTACT:** David Smith, City Attorney / 974-2268; Martha Terry, Assistant City Attorney / 974-2974

**PRIOR COUNCIL ACTION:** The Council has authorized the following: 8/30/01 in the amount of \$42,000, 6/27/02 in the amount of \$80,000, 4/24/03 in the amount of \$65,000 and 1/29/04 in the amount of \$80,000.

**BOARD AND COMMISSION ACTION:** N/A

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This amendment increases the amount of the contract with Michael Sullivan & Associates, Inc., for services on behalf of the City of Austin as a consulting and/or expert witness in various dockets pending before the TCEQ involving LCRA's request for additional diversion points on Lake Travis, its request to receive a permit for all of the inappropriate flood flows in the Colorado River, and its competing application for the City of Austin's return flows to the river, and other water rights permitting matters affecting the city.

This amendment increases the amount of the consultant services contract with Michael Sullivan & Associates, Inc., for services on behalf of the City of Austin as a consulting and/or expert witness in these matters for an increase of \$30,000. Council is requested to authorize the expenditure of an additional \$30,000, to be split between Austin Water Utility and Austin Energy, to pay the fees and expenses of Michael Sullivan & Associates, Inc. This will bring the total contract amount to \$425,500, and is estimated to cover anticipated costs through March, 2005.

Dr. Sullivan's consulting services associated with these dockets include modeling of the impact of LCRA's requests on the operational costs associated with the City's ownership interest in the Fayette Power Project and the South Texas Nuclear Project and the impact of LCRA's request for the City's return flows from these facilities as well as the City's wastewater treatment plants. Initially, LCRA requested that its Garwood diversion point be moved to the Fayette Power Project. That case has been withdrawn by LCRA, however, and LCRA now has filed additional applications seeking new diversion



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points in Lake Travis as well as a request for the City's return flows.

Dr. Sullivan's services have been essential to a continuing analysis of the impact of the new cases filed by LCRA upon the City's operational costs for its power plants. In addition, Dr. Sullivan's work included an analysis of the impact of LCRA's water modeling projections upon LCRA's Drought Management Plan proposal and LCRA's request for the City's future return flows as well as the inappropriate flood flows of the Colorado River. It was the results of Dr. Sullivan's work that supported the City's application for a bed and banks permit before the TCEQ to preserve its return flows for the use of the City at its power projects, among other uses.

The Law Department contracted with Michael Sullivan & Associates, Inc. on August 7, 2000 in the amount of \$20,000. Administrative approval was granted on December 20, 2000 in the amount of \$10,000 and on May 31, 2001 in the amount \$12,000. Council approved a resolution increasing the contract by \$42,000 on August 31, 2001, for a total contract amount of \$84,000. The original contract amount (August 7, 2000) and each of these amendments were funded by the Austin Water Utility.

Austin Energy contracted with Michael Sullivan & Associates, Inc. on August 31, 2001 in the amount of \$35,000. Administrative approval was granted on January 9, 2002 in the amount of \$7,500, for a total contract amount of \$42,500. The original contract amount (August 31, 2001) and the amendment made to this contract were funded by Austin Energy.

Council approved a resolution on June 27, 2002 to combine and increase the contract by \$80,000, for a combined contract amount of \$206,500. Administrative approval was granted on February 27, 2003 in the amount of \$44,000, for a combined contract amount of \$250,500. These increases were funded by the Austin Water and Austin Energy.

Council approved an additional \$65,000, on April 24, 2003, bringing the combined contract amount not to exceed \$395,500. This increase was funded by the Austin Water Utility only.

Council approved an increase in the amount \$80,000 on January 29, 2004. This increase was funded out of Austin Energy's Operating Budget only, to pay the fees and expenses of Michael Sullivan & Associates, Inc. The current request will result in a total dollar contract that is split evenly between Austin Water and Austin Energy.