

## Purchasing Contract CITY OF AUSTIN RECOMMENDATION FOR COUNCIL ACTION

AGENDA ITEM NO.: 69 AGENDA DATE: Thu 07/29/2004 PAGE: 1 of 2

<u>SUBJECT:</u> Authorize execution of Amendment No. 3 to the contract with SWEETWATER WIND 2 L.L.C., Palm Beach Gardens, FL, (formerly RES North America L.L.C.) for wind power over a 12-year term, to increase the purchase price in the event Federal production tax credits for wind energy are not enacted into law by July 31, 2004, in an amount not to exceed \$90,000,000, for a revised total contract amount not to exceed \$200,000,000.

<u>AMOUNT & SOURCE OF FUNDING</u>: Funding will be provided through fuel revenue pass through or future Green Choice Power charge revenue.

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

**REQUESTING** Purchasing**DIRECTOR'SDEPARTMENT:** for Austin Energy;**AUTHORIZATION:** <u>Vickie Schubert</u>

FOR MORE INFORMATION CONTACT: Carole Martindale, Purch. Mgr., 512-322-6155

**PRIOR COUNCIL ACTION:** February 1999 - Approved Resolution 990211-36 establishing a goal to obtain 5% of City of Austin's energy from renewable resources; September 25, 2003 - Approved authorization for negotiation with RES for 53 MW of power; May 27, 2004 - Approved Amendment No. 2 of the RES agreement to purchase an additional 40 MW.

## BOARD AND COMMISSION ACTION: N/A

PURCHASING: N/A

<u>MBE / WBE</u>: This contract was awarded in compliance with Chapter 2-9 of the City Code (Minority-Owned and Women-Owned Business Enterprise Procurement Program). No subcontracting opportunities were identified; therefore, no goals were established for this solicitation.

Amendment No. 3 to the Sweetwater agreement [previously "RES agreement"] would allow for an increase in the unit price for renewable energy purchased by Austin Energy ("AE") under the agreement in the event Federal production tax credits ("PTC") for wind generation facilities are not enacted into law by July 31, 2004. Under the existing agreement, Sweetwater is not obligated to install wind generation facilities if PTCS are not enacted by July 31, 2004. Amendment No. 3 would place a firm obligation on Sweetwater to install and bring into service as many wind turbines as possible as soon as possible without regard to actions of Congress on PTC legislation. In return, AE would be obligated to pay a higher price, i.e., the existing price plus an increment equal to the value of the PTC as it last existed prior to expiration, for renewable energy delivered by Sweetwater to AE. Even with this incremental cost, AE believes that the price is favorable compared to potential wind energy market prices with no PTCs. When and if PTCs are enacted and made effective, the price would be reduced to account for the value of the newly enacted PTC accruing to Sweetwater's benefit. In addition, should PTCs be made retroactively effective by Congress, AE would receive reimbursement from Sweetwater equal to the value of the new PTC over the retroactive period. Amendment No. 3 provides an effective means to reach Council's renewable energy goal during the period of uncertainty regarding Congressional action on PTC renewal legislation and avoid likely increases in equipment costs.



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On July 2, 2004, an Assignment of the contract was processed to legally change the vendor name from RES North America LLC to Sweetwater Wind 2 LLC.

Original Contract	Council approved negotiation with RES for up to 53 MW of wind power for up to 20 years. The contract was executed for a 12-year period.	\$02,000,000
	12-year period.	\$92,000,000
Amendment No. 1	Administrative revisions were made to the contract document.	\$0
Amendment No. 2	Increased the contract to purchase additional 40MW.	\$18,000,000
Proposed Amendment No. 3	Increase the unit price in order to assure delivery of wind power whether PTCs	
	are approved or not.	<u>\$90,000,000</u>
		\$200,000,000