



# City of Austin

## Purchasing Office, Financial Services Department

P.O. Box 1088, Austin, TX 78767

March 23, 2016

Gibbs & Bruns, LLP  
Attn: Barrett Reasoner  
1100 Louisiana, Suite 5300  
Houston, Texas 77002

The City has approved the execution of a contract with your company to provide legal services regarding Nacogdoches Power LLC.

Responsible Department:	Law
Department Contact Person:	Teresa Medina
Department Contact Email Address:	teresa.medina@austintexas.gov
Department Contact Telephone:	512-974-2205
Project Name:	Nacogdoches Power LLC
Contractor Name:	Gibbs & Bruns, LLP
Contract Number:	MA 5700 160000038
Contract Period:	3/23/16 – 3/22/18
Dollar Amount	\$325,000
Extension Options:	Evergreen
Requisition Number:	RQM 5700 16041100383
Solicitation Type & Number:	Professional Service (Legal)
Agenda Item Number:	NA
Council Approval Date:	NA

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact the person referenced under Department Contact Person.

Sincerely,

Tracy Franklin  
Senior Buyer Specialist  
City of Austin  
Purchasing Office



City of Austin  
Law Department

301 W. 2<sup>nd</sup> Street, P.O. Box 1088  
Austin, Texas 78767-1088  
(512) 974-2268

(512) 974-2268  
Writer's Direct Line

(512) 974-2912  
Writer's Fax Line

March 23, 2016

Barrett H. Reasoner  
Gibbs & Bruns LLP  
1100 Louisiana St.  
Suite 5300  
Houston, Texas 77002

RE: Legal services regarding the existing agreement between the City and  
Nacogdoches Power LLC for the purchase of biomass-generated electric power,  
as assigned by the City Attorney

Dear Mr. Reasoner:

This Engagement Letter confirms that you will represent the City of Austin to provide legal services concerning the above-referenced matter. The City requires outside counsel to follow certain policies outlined in the attached Terms of Engagement. Please sign and return this Engagement Letter to Teresa Medina in the enclosed envelope, confirming that you agree to the following conditions:

- 1) The firm must provide Disclosure of Interested Parties, per "Section II C" of attached Terms of Engagement.
- 2) The firm must include proof of professional liability insurance with minimum limits of one million dollars (\$1,000,000) per occurrence, per "Section II M" of attached Terms of Engagement.
- 3) The firm must register through the City's Vendor Connection System at [https://www.austintexas.gov/financeonline/vendor\\_connection/index.cfm](https://www.austintexas.gov/financeonline/vendor_connection/index.cfm) before any invoice can be paid.

Assistant City Attorney Jennifer Ferri is the in-house attorney responsible for managing this matter (the "Managing Attorney"). The City will pay for the legal services you provide, in a total amount not to exceed **\$325,000** for all fees and expenses billed under this agreement.

We have agreed that your billing rate for this matter is **\$586.50** per hour. The agreed billing rates for any other named attorney(s) and paralegal(s) authorized to work on this matter, if any, are shown on the attached **Rate Schedule**. **The City will not pay for work by any person not listed on the Rate Schedule unless I preauthorize the change in writing in an amendment to the Rate Schedule.** Unless later agreed to in writing, these hourly rates are set for the duration of this engagement.

Tm# 64616

JAF

Barrett H. Reasoner  
March 23, 2016  
Page 2

If you require consultant or subcontractor services, you must receive prior written approval from me. Pursuant to the City's accounting and auditing policies, you must bill the City on your letterhead for services rendered by other firms, i.e., court reporters, record companies, and consultants. The City cannot pay invoices from other businesses if they were not hired directly by the City.

If you have any questions, please do not hesitate to call me or the Managing Attorney.

Sincerely,



Anne L. Morgan  
City Attorney

**AGREED:**



Barrett H. Reasoner  
Gibbs & Bruns LLP

Attachments:    Terms of Engagement  
                      Rate Schedule

ALM/tmm

**Outside Counsel Hourly Rate Schedule and Authorized Staff**

**The City will only pay for work done by the staff named and at the hourly rates listed below.**

The City expects that this matter will be leanly staffed and economically handled.

Work is to be done by the person with the appropriate qualifications and an appropriate hourly rate for the services performed.

The City expects that work on city matters will be done at hourly rates that are a substantial discount from the firm's general billing rates.

These hourly rates are set for the duration of the engagement.


Only the following people are authorized to work on this matter:

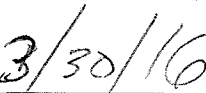
Barrett Reasoner	Partner	\$586.50/hr
Ashley Kleber	Associate	\$331.50/hr
Anthony Kaim	Associate	\$297.50/hr
Melissa Marsh	Counsel	\$212.50/hr
Kim Reeves	Counsel	\$212.50/hr
Wendy McCabe	Paralegal	\$157.25/hr

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Name	Classification (e.g., "partner," "associate," "paralegal")	Hourly Rate
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Agreed:

  
\_\_\_\_\_  
Outside Counsel Initials

  
\_\_\_\_\_  
Date

## **CITY OF AUSTIN OUTSIDE COUNSEL – TERMS OF ENGAGEMENT**

### **I. DEFINITIONS**

“**Agreement**” means this Terms of Engagement, including all exhibits and any written amendments, and the Engagement Letter.

### **II. DUTIES OF FIRM**

#### **A. Scope of Services**

We expect matters to be leanly staffed and economically handled. The Managing Attorney will be contacting you to discuss the specific work assignments, possible sharing of work between our in-house staff and your firm, and how to work together most efficiently to fulfill the engagement and to constrain costs. All decisions will be made jointly by you and the Managing Attorney.

Examples of such decisions include whether to:

- engage in extensive research on an issue and who will do the research;
- file a motion;
- hire an expert;
- take a particular deposition; and
- engage in settlement negotiations and the scope of those negotiations.

The potential outcome of a case in litigation should be evaluated early and if early settlement is appropriate, it should be pursued at every stage of the case. If necessary and appropriate, use of a neutral third party is encouraged. Some cases, of course, must be fully litigated.

Any decision to appeal a case must be made by the City Attorney.

In litigation matters, all briefs and any affidavits of City of Austin employees done by your firm must be forwarded to the Managing Attorney for review, in draft, at least three business days before filing. No brief or affidavit may be filed until it has been approved by the Managing Attorney.

In non-litigation matters, discuss with the Managing Attorney the precise services requested and whether a formal opinion is desired, or informal oral or written assistance.

Copies of all legal research or memoranda which you create, whether intended for internal or external use, must be timely furnished to the Managing Attorney.

#### **B. Representation**

The Firm shall coordinate all aspects of its services with the Managing Attorney assigned to this matter. Contemporaneous copies of all pleadings, legal memoranda, and correspondence shall be submitted to the Managing Attorney. All policy decisions, including but not limited to all settlement actions shall be made by the Managing Attorney. Please note that formal action by the Austin City Council may be required to approve certain actions, including settlement. All contact with City Officials must be coordinated through the Managing Attorney.

**C. Interested Parties Disclosure**

If this Agreement requires Council approval, the Firm must complete a copy of Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission prior to the execution of a contract with the City. The Certificate of Interested Parties must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the Certificate of Interested Parties to the Texas Ethics Commission within 30 days of receipt from the Firm. A link to Texas Ethics Commission Form 1295 processes and procedures is [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm).

**D. Conflict of Interest**

Before commencing work on this assignment, you must verify whether your firm has a conflict of interest with respect to the parties involved. If any conflicts are present, please advise the Managing Attorney immediately in writing.

Your Firm may be asked to represent various clients whose interests are materially and directly adverse to those of the City in a substantially related matter. By signing the Engagement Letter, you affirm that no such conflict exists. Further, during the course of this representation, your firm shall refrain from representing clients whose interests are materially and directly adverse to those of the City in a substantially related matter. Should such a conflict arise, you shall contact the Managing Attorney immediately to discuss the situation.

**E. Assignment**

The Firm may not assign this Agreement in whole or in part, or subcontract any legal services without the prior written consent of the Managing Attorney.

**F. Budget Cap to Complete the Engagement**

If required by the Managing Attorney for this engagement, the Firm's budget for this matter is **attached**. The budget may include an agreement that work on this matter will be billed on an hourly basis with **total fees to complete work on the matter capped at the budget limit**. The budget shall include a list of specific legal services, including a detailed estimate of all fees, expenses, and costs for each legal service to be performed. If it becomes apparent to the Firm that it may exceed the budget cap because of unforeseeable, exceptional circumstances, the Firm may notify the Managing Attorney in writing describing in detail the reason why the Firm seeks to increase the budget cap. **It is solely within the City's discretion to deny or agree to a budget cap increase.**

**G. Ethics**

In providing legal services to the City, the Firm and each attorney providing services to the City shall fully comply with the Texas Disciplinary Rules of Professional Conduct. The law firm shall promptly notify the City if any disciplinary action or malpractice action is instituted against the law firm or an attorney providing services to the City.

**H. Media Inquiries**

All inquiries from the media must be referred to the Managing Attorney for response. No public comment on litigation matters may be made without prior approval from the City Attorney.

**I. Authorized Expenditure Ceiling**

The total cost of fees and expenses to the City for representation in this matter shall not exceed the authorized expenditure amount specified in the Engagement Letter. If the City requires additional services, a new or amended Agreement is required before fees or expenses exceeding the expenditure ceiling are incurred. **The City will not pay any amount in excess of the authorized expenditure ceiling**

**without a new or amended written agreement.** Unlike the Budget Cap which is fixed for the engagement, the authorized expenditure ceiling may be increased if additional work is authorized.

**J. Expenses**

The Firm shall exercise prudence in incurring expenses. The Firm agrees to timely pay for all reasonable expenses incurred during representation of the City in this matter, including litigation expenses, if applicable. Such payments shall be made as they become due and payable subject to reimbursement as provided in this Agreement. The City agrees to reimburse the Firm for the reasonable, actual cost of expenses incurred in this matter as provided in the Billing Requirements section of this Agreement.

**K. No Increase in Billing Rates**

The City will not increase billing rates for any matter which is in progress without the written approval of the City Attorney in an amended Rate Schedule.

**L. Insurance**

The Firm shall carry professional liability insurance with minimum limits of one million dollars (\$1,000,000.00) per occurrence and shall not permit such insurance to be canceled or lapse during this engagement. The Firm shall provide an insurance certificate or other proof of insurance to the Managing Attorney with the return of the signed Engagement Letter.

**M. Work Products**

It is agreed that all files, reports, exhibits, pleadings, data compilations, memoranda, and other work products produced under this Agreement, collectively, the "Documents," are the property of the City of Austin. Upon termination, the Firm may retain a copy of the Documents, but the Firm shall deliver the original Documents to the City Attorney on request, at no expense to the City.

**III. BILLING INSTRUCTIONS**

**Failure to follow these policies may result in no payment for part or all of the fees associated with work that does not comport with these policies.**

**The City will not pay for work outside the scope of work and assignments approved by the Managing Attorney.**

All invoices must be submitted with a remittance page. Your firm's name and remittance address must exactly match your registration on the Vendor Self Service System (VSS).

If your firm has a change of address, you must notify the Managing Attorney immediately and update your registration on VSS. If you move to a different firm, you must indicate in writing your final date with the firm, submit a final invoice from the firm, and indicate your start date with your new firm. The continuation of this engagement and any staffing changes at your new firm must be approved in writing by the City Attorney.

**A. Billing Requirements**

1. Itemized bills must be submitted on Firm letterhead on a monthly basis.
2. Itemized bills must include a remittance page.
3. The Firm shall bill time in 1/10<sup>th</sup> of an hour increments.
4. The negotiated hourly rates on the attached Rate Schedule include all overhead and internal charges associated with your firm's practice. The City expects that work for the City will be done at a substantial discount from the firm's general billing rates. The City will not separately pay for overhead or

law firm costs associated with services of secretaries, word processors, librarians, investigators, or other support staff.

5. The City will not pay for time spent preparing, discussing, or correcting a billing statement.

6. The City will not pay for opening routine correspondence which does not require a response or impact the merits of the case.

7. The City expects inefficiently spent time to be shown on the bill and written off in the sound exercise of billing judgment.

8. Any attorney work product for which the City is billed shall be provided to the City, either electronically or as a paper copy at the time it is completed.

9. If the Firm requests attorney fees in a contested motion and fees are awarded, the draft should be made payable to the City of Austin, or the amount of the award must be specifically credited on the next billing statement.

10. A copy of all invoices, bills, and receipts for expenses shall be attached to the monthly bill.

11. Expenses over and above the limits set forth herein shall be borne solely by the Firm and shall not be reimbursed under this Agreement.

**B. Billing Statement Requirements**

All billing statements must contain the following information:

1. IRS taxpayer identification number of the firm or attorney.

2. The vendor's name and address which must exactly match the name and address on the VSS (e.g., if the name includes L.L.P., it must match on the bill and on VSS).

3. Style of case or Matter description.

4. A remittance page with the monthly statement.

5. Dates of service and a detailed description of service. Vague descriptions, such as "review," "update," "attention to file," "research," and "trial preparation" without more specifics are not acceptable.

6. Name, classification (e.g., "partner," "associate," "legal assistant"), billing rate for the person doing the task, and specific time for service to a tenth of an hour.

7. Detailed listing of all expenses with supporting documentation for all third party and travel expenses.

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Sales and Use Tax. The Firm's invoices to the City must not contain assessments of any of these taxes.

**\* Please note that billing statements are subject to release under the Public Information Act.**

**C. Consultations**

1. The City will not pay for inefficient conferences among outside attorneys or support staff. The City expects the matter to be leanly staffed.

2. The City will not pay for time involved educating an outside attorney on a particular matter when it has previously been handled by another attorney in the Firm.

**D. Court Proceedings Attendance**

1. Attendance of more than one attorney at depositions or court proceedings, including trials, is not reimbursable without prior approval by the Managing Attorney. Generally, one attorney is expected to handle matters.

2. Time involved for clerks, junior associates, or paralegals to accompany counsel to depositions, hearings, or trials for training purposes is not reimbursable.

**E. Inefficient or Duplicate Work**

The City **will not** pay for inefficient work, including the following:

1. More than one attorney performing any one task on a matter.



2. An attorney to re-do the work of a paralegal or another attorney.
3. Multiple entries for reviewing correspondence, documentation, trial, and/or deposition transcripts, indicative of inefficient work.
4. Repeat and inefficient research on an issue.
5. Legal research over 3 hours or any paralegal project over 5 hours, without prior Managing Attorney approval.
6. Research for matters which should be within the knowledge of an experienced practitioner.
7. Time spent training junior or other lawyers.

**F. Expenses**

The City **will not** pay for the following expenses:

1. General operating expenses other than long-distance phone bills, postage, and copying (not to exceed 10 cents per page).
2. Unnecessary use of express mail, facsimile transmissions, or couriers.
3. Any computerized legal research over \$200.00 without prior Managing Attorney approval.

The Firm must evaluate the need to engage experts, investigators, visual aid companies, etc. on a case by case basis, and must obtain approval of the Managing Attorney before retaining any such services.

**G. Travel**

The City **will not** pay:

1. For time spent traveling unless productive work is done during that time or a specific arrangement is agreed to in writing with the City Attorney in an amendment to this agreement.
2. For air travel expenses in excess of standard coach or economy fares. Counsel is expected to take advantage of special fares or discounts whenever possible and will check with the Managing Attorney for information on City vendor discounts.
3. For lodging and meals that exceed the per diem rates established by the U. S. General Services Administration.
4. For alcoholic beverages.
5. For charges from in room hotel "honor" bars.

The City **will pay** for automobile mileage not to exceed the amount permitted as a business expense under the Internal Revenue Code.

**IV. DUTIES OF CITY**

**A. Payment Terms**

1. The City shall pay the Firm on the basis of monthly invoices submitted by the Firm and approved by the City Attorney or his designee.
2. The City shall make payments to the Firm within 30 days of receipt of an invoice meeting contract and billing requirements.

**B. Disputed Payments**

1. If the City disputes any item in an invoice the Firm submits for any reason, the Managing Attorney shall advise the Firm of the issue and request that the Firm submit a new invoice of current date that does not include the disputed amount. The City will not pay for time spent discussing or correcting an invoice.
2. If the dispute is later resolved in the Firm's favor, the Firm may include the disputed amount on a separate invoice or on a subsequent monthly invoice.

**C. Written Amendment**

Unless otherwise specified, this Agreement may be amended only by written instrument executed by the City Attorney.

**V. GENERAL PROVISIONS**

**A. Compliance with Laws**

This Agreement and all disputes concerning this Agreement shall be governed by the laws of the State of Texas. Venue of any civil action between the parties regarding this Agreement shall lie exclusively in Travis County, Texas. All obligations of the parties shall be deemed performable in Travis County, Texas.

**B. Right to Audit**

The City has the right to inspect and audit all books, records, and documents of the Firm pertaining to this engagement at any reasonable time, to the extent necessary to verify the accuracy of any statement, charge, or computation.

**C. Audit Expenses**

If the Firm is asked to provide information to the City, including, but not limited to City auditors (either City employees or professionals hired by the City to audit the City's records) or the City finance department, the Firm shall provide such information at no additional cost to the City.

**D. Entireties**

This Agreement, together with the engagement letter, shall constitute the entire Agreement and understanding of the parties concerning the engagement of the law firm. There shall be no amendment or modification to this Agreement, except in writing signed by all parties.

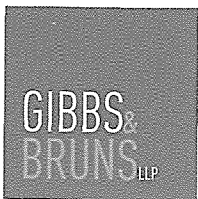
**E. Severability**

If any provision of this Agreement is declared invalid, illegal, or unenforceable by a court or an agency of competent jurisdiction, such declaration shall not affect the remainder of this Agreement and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**VI. EFFECTIVE DATE; TERMINATION OF AGREEMENT**

This Agreement is effective as of the date the City receives a copy of the Agreement signed by the Firm and a completed Certificate of Interested Parties.

The City may terminate this Agreement with or without cause at any time. Upon receipt of a written request by the City, the Firm shall immediately discontinue work under the Agreement and transmit all files or written materials to the City. Thereafter, only those legal services necessary to effectuate termination of representation or transfer to another attorney may be performed. All such services must be expressly authorized in advance and in writing by the Managing Attorney.



Christy Keeling  
Legal Secretary  
ckeeling@gibbsbruns.com  
713.751.5272

March 30, 2016

RECEIVED

APR 06 2016

LAW DEPARTMENT

Via Email & US Mail

Teresa Medina  
City of Austin, Law Department  
301 W. 2<sup>nd</sup> Street  
Austin, Texas 78701

RE: City of Austin Engagement Letter and Certificate of Interested Parties

Dear Ms. Medina,

Enclosed please find Mr. Reasoner's signed Engagement Letter and Certificate of Interested Parties. Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Christy Keeling".

Christy Keeling  
Legal Secretary to Barrett Reasoner  
Gibbs & Bruns

Enclosures

cc: Barrett Reasoner

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 2

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:  
2016-32857

Date Filed:  
03/30/2016

Date Acknowledged:

**1** Name of business entity filing form, and the city, state and country of the business entity's place of business.

Gibbs & Bruns LLP  
Houston, TX United States

**2** Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Austin

**3** Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the goods or services to be provided under the contract.

TBD  
Legal services

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Cruse, Samuel	Houston, TX United States	X	
	Absmeier, Michael	Houston, TX United States	X	
	Ross, Brian	Houston, TX United States	X	
	Reasoner, Barrett	Houston, TX United States	X	
	Patrick, Kathy	Houston, TX United States	X	
	Najam, Ayesha	Houston, TX United States	X	
	Madden, Robert	Houston, TX United States	X	
	Kubin, Jeffrey	Houston, TX United States	X	
	Kleber, Ashley	Houston, TX United States	X	
	Kissel, Laura	Houston, TX United States	X	
	Humphries, Scott	Houston, TX United States	X	
	Harvey, Grant	Houston, TX United States	X	
	Gulley, Aundrea	Houston, TX United States	X	
	Greer, Jennifer	Houston, TX United States	X	
	Giugliano, Mark	Houston, TX United States	X	
	Gibbs, Robin	Houston, TX United States	X	

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

2 of 2

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City of Austin

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TBD  
Legal services

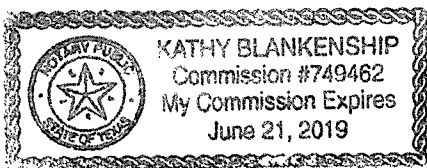
4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.

☐

### 6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



Ashley M. Kleber  
Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Ashley Kleber, this the 30th day of March, 2016, to certify which, witness my hand and seal of office.

Kathy Blankenship  
Signature of officer administering oath

Kathy Blankenship  
Printed name of officer administering oath

NOTARY  
Title of officer administering oath