



February 15, 2021

Amy Oppenheimer
Oppenheimer Investigations Group LLP
1442A Walnut Street # 234
Berkeley, CA 94709

Re: Engagement Letter for Workplace Investigation Legal Services – Revised Scope

Dear Ms. Oppenheimer:

The purpose of this engagement letter (“**Agreement**”) is to serve as a record of the terms and conditions applicable to this engagement between the City of Antioch (“**City**”) and Oppenheimer Investigations Group LLP (“**Firm**”) for workplace investigation legal services (“**Services**”) including the applicable rate structure.

California *Business and Professions Code* Section 6148 requires a written fee agreement between the City and Firm. The written fee agreement sets forth the scope of workplace investigation legal services that Firm is prepared to perform and the fees that Firm charges for those services. This letter is intended to fulfill the requirements of Section 6148. Additionally, it provides the City with assurance that Firm carries professional liability insurance applicable to the services to be rendered.

I. Scope of Services

1. Firm agrees to conduct an impartial administrative investigation regarding an incident that took place on December 29, 2020, involving the Antioch Police Department and the children of an Antioch City Councilmember.
2. Firm will perform these duties as an attorney at law for the purpose of facilitating the rendering of legal advice to the City by its counsel.
3. Firm’s communications, work product, and the final report will be protected from disclosure pursuant to the attorney-client privilege, unless waived by the City.
4. Firm will provide the City with findings of fact for each of the allegations identified as being within the scope of this investigation. Firm will provide a confidential fact-finding review and a confidential report that will be used for employment-related purposes.
5. Firm will apply its skills, knowledge, and experience to the investigation to make factual findings and to provide legal advice.
6. Firm will keep the City informed of significant developments and promptly respond to all of the City’s inquiries.



7. The City agrees to cooperate with Firm and keep Firm informed of developments.
8. Any final written report and attached exhibits will be sent to those representatives identified by the City.
9. Firm will provide the City with the option to receive Firm's paper and/or electronic files related to the investigation, including but not limited to interview outlines, interview notes, audio recordings of interviews, and documents provided to Firm.
10. If the City chooses not to receive Firm's investigation files, Firm will maintain the files for seven (7) years, after which they will be purged unless Firm is requested to send the file to the City at that time. Firm will provide written notification to the City prior to purging the files.
11. This engagement letter creates an attorney-client relationship between Firm and the City applying to matters covered by this engagement letter.

II. Standard of Performance

1. Firm will provide all workplace investigation legal services reasonably required to represent the City's best interests in all matters forwarded to us for handling in this workplace investigation.
2. While performing the Services, Firm will exercise the reasonable professional care and skill customarily exercised by reputable members of the California State Bar practicing in the Metropolitan Northern California Area, and will use reasonable diligence and best judgment while exercising its professional skill and expertise.

III. Status of Firm

1. Firm represents that it has the necessary experience and history in providing workplace investigation legal services and advice related to the services required by the City.
2. As an independent contractor, Firm has the right to determine the means, manner, and findings related to the investigation. Firm will exercise its independent judgement to make findings it deems merited based on the evidence developed in the investigation. Firm will perform the Services in Firm's own way as an independent contractor and in pursuit of Firm's independent calling, and not as an employee of the City. The persons used by Firm to provide services under this Agreement will not be considered employees of the City for any purposes.
3. The payment made to Firm pursuant to the Agreement will be the full and complete compensation to which Firm is entitled. The City will not make any federal or state tax withholdings on behalf of Firm or its agents, employees or subcontractors. The City will not be required to pay any workers' compensation insurance or unemployment contributions on behalf of Firm or its employees or subcontractors. Firm agrees to indemnify the City within thirty (30) days for any tax, retirement contribution, social security, overtime payment, unemployment payment or workers' compensation payment, including, but not limited to, those based on any provision of the Federal Affordable Care Act which the City may be required to make on behalf of Firm or any agent, employee, or subcontractor of Firm for work done under this Agreement. At the City's election, the City may deduct the indemnification amount from any balance owing to Firm.

IV. Indemnification

1. Firm will indemnify and hold harmless the City and its officers, agents, employees and volunteers from and against all claims, damages, losses and expenses including attorney fees arising out of the performance of the Services to the extent they are caused by the willful misconduct or negligent act or omission of the Firm, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.
2. The Parties expressly agree that any reasonable payment, attorney's fee, cost or expense the City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense or cost for the purposes of this section to the extent such injury is caused by willful misconduct or negligent act or omission of Firm, and that this section will survive the expiration or early termination of the Agreement.
3. The City agrees to defend, indemnify and hold harmless the Firm, its employees and agents, from and against all claims, suits or causes of action arising out of any complaint brought against the City as a result of this engagement described above, or as the Firm may undertake on behalf of the City pursuant to this Agreement. The City will also provide legal representation for the Firm and any of its employees and agents at the City's expense through its legal counsel, or at the City's option, will provide reimbursement for legal counsel chosen by the City, if during any litigation relating to this engagement, the Firm or any of its employees or agents providing services under this contract are sued, deposed, or otherwise required to provide information or testimony concerning services under this contract. The City will indemnify and hold harmless the Firm, its employees and agents, with respect to any judgment entered against it and/or with respect to any settlement of any third-party claims related to the services rendered under this Agreement. This right of indemnifications shall not extend to any loss, liability, damage or expense resulting from the Firm's negligence or other actual misconduct; in any such case, the Firm shall indemnify and hold City harmless with respect to any resultant third-party claims. In accordance with California Rule of Professional Conduct 3-400, this provision is not intended to apply to any potential professional malpractice action brought by the City against the Firm.

V. Insurance

1. Firm will obtain and maintain for the duration of the Agreement and any and all amendments, insurance against claims for injuries to persons or damage to property which may arise out of or in connection with performance of the Services by Firm or Firm's agents, representatives, employees or subcontractors. The insurance will be obtained from an insurance carrier admitted and authorized to do business in the State of California. The insurance carrier is required to have a current Best's Key Rating of not less than "A:VII."
2. Firm will maintain the types of coverages and minimum limits indicated below, unless the City Attorney approves a lower amount. These minimum amounts of coverage will not constitute any limitations or cap on Firm indemnification obligations under this Agreement. The City, its officers, agents, volunteers and employees make no representation that the limits of the insurance specified to be carried by Firm pursuant to this Agreement are adequate to protect Firm. If Firm believes that any required insurance coverage is inadequate, Firm will obtain such additional insurance coverage, as Firm deems adequate, at Firm sole expense.

- a. Commercial General Liability Insurance: \$2,000,000 combined single-limit per occurrence for bodily injury, personal injury and property damage. If the submitted policies contain aggregate limits, general aggregate limits will apply separately to the work under this Agreement or the general aggregate will be twice the required per occurrence limit.
- b. Automobile Liability: \$1,000,000 combined single-limit per accident for bodily injury and property damage.
- c. Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the California Labor Code and Employer's Liability limits of \$1,000,000 per accident for bodily injury. Workers' Compensation and Employer's Liability insurance will not be required if Firm has no employees and provides, to the City's satisfaction, a declaration stating this.
- d. Professional Liability: Errors and omissions liability appropriate to Firm's profession with limits of not less than \$1,000,000 per claim.

VI. Maintenance of Records

Firm will maintain complete and accurate records with respect to costs incurred under this Agreement. All such records will be clearly identifiable. Firm will allow a representative of the City during normal business hours to examine, audit, and make transcripts or copies of such records and any other such documents created pursuant to this Agreement. Firm will allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

VII. Ownership of Documents

All work product produced by Firm or its agents, employees, and subcontractors pursuant to this Agreement is the property of the City. Firm will provide the City with the final version of all briefs, filings, legal memos and work product produced by Firm within a reasonable time, not to exceed ten (10) days, after the work product is made final. In the event this Agreement is terminated, all work product produced by Firm or its agents, employees and subcontractors pursuant to this Agreement will be delivered to the City pursuant to the termination clause of this Agreement. Firm will have the right to make copies of the work product for Firm's records.

VIII. Fees

Firm agrees to provide the City with substantially discounted rates. The rate for the lead investigator is \$420/hour, supervision/substantive edit rate is \$420/hour, writer/editor time is \$180/hour, and intern time is \$120/hour.

In addition to fees, Firm's statements shall include Firm's actual costs for disbursements, mileage reimbursements, and/or charges for third parties – including, but not limited to, rough transcriptions of witness interviews (collectively "Charges"). To the extent Firm pays any third-party charges, Firm will include these charges in Firm's statements to the City. The rates set forth above will remain in effect through the conclusion of the investigation.

IX. Costs and Expenses

1. Firm will absorb incidental charges such as minor in-house copy jobs, facsimile and minor postage charges. Other incidentals, such as filing fees, messenger and other delivery fees, parking, mileage at the IRS rate, travel expenses (including airfare at the least expensive rates, lodging, meals, and ground transportation), charges for outside assisted legal research, investigation expenses, and consultants' fees, are billed to the client on a monthly basis at cost. Firm does not mark-up any of these incidental expenses. Firm would, of course, itemize all costs incurred and provide back-up documentation upon request.
2. Firm shall provide written notice to the City and secure written approval from the City for all costs to hire any consultant, expert, or other service reasonably necessary in Firm's judgment to accomplish the tasks for which Firm has been retained. Firm reserves the right to advance payment on these costs or, in the alternative, to request the service provider/vendor to bill the City directly. The City agrees to reimburse Firm for costs advanced on its behalf and pay service providers/vendors within 30 days when Firm has asked them to bill the City directly.

X. Billings

Firm will bill the City for workplace investigation legal services and costs on a monthly basis. Firm will not bill the City for travel time to and from the City. The City agrees to pay the full amount set forth in Firm's statements within thirty days of receipt of Firm's invoices. The City will notify Firm in writing if it disputes any entry for legal services or charges on any statement.

XI. Waiver Concerning Internal Firm Attorney-Client Privilege

1. Firm may need to consult, at its own expense, with its own counsel (for example, its General Counsel, other Firm lawyers who do not perform work for the Client on the Services, or its own outside counsel) regarding its engagement with City. To the extent that Firm is addressing its own rights and responsibilities, a conflict of interest could be considered to exist between Firm and City as to any such consultation or resulting communications, particularly if a dispute were to arise between Firm and City regarding the Services.
2. By signing this Agreement, and as a condition of this engagement, City consents to such consultation occurring and waives any claim of conflict of interest based on such consultation or resulting communications that could otherwise disqualify Firm from continuing to represent City or from acting on its own behalf, even if such consultation or communications might be deemed adverse to the interests of City. By signing this Agreement, City so consents and waives any such claims of conflict. By signing this Agreement, City further acknowledges and agrees that any such consulting and communications are protected from disclosure to City, by Firm's own attorney-client privilege.

XII. Arbitration

1. Any dispute between us concerning Firm's fees or charges shall, if the City so elects, be submitted to arbitration under rules of the California State Bar and shall be binding if

- (i) each of us so agrees after any such dispute arises, or (ii) such arbitration becomes binding under such rules.
2. Any dispute between us concerning Firm's fees or charges not so submitted to binding arbitration under the rules of the California State Bar or that remains unresolved after non-binding arbitration under such rules and any other dispute between or among the City and Firm or any of Firm's attorneys and agents, including but not limited to claims of malpractice, errors or omissions, or any other claim of any kind regardless of the facts or the legal theories, shall be finally settled by mandatory binding arbitration in Contra Costa County, California, conducted in accordance with California Code of Civil Procedure §§ 1282 *et seq.*, including, but not limited to, § 1283.05, with each party to bear its own costs and attorneys' fees and disbursements. Such arbitration shall be conducted before a single arbitrator, except in matters involving a dispute greater than five hundred thousand dollars, which shall be conducted before a three arbitrator panel with each side selecting one arbitrator and the two arbitrators selected by the parties choosing the third arbitrator. Judgment on a binding arbitration award may be entered in any court of competent jurisdiction.
 3. Arbitration has the potential to provide a timelier, more economic, and more confidential resolution of any dispute between us. There will likely be less discovery and a determination by an agreed-upon arbitrator or arbitrators rather than a judge or jury. *We mutually acknowledge that, by this agreement to arbitrate, each of us irrevocably waives our rights to court or jury trial.*
 4. *The City has the right to consult separate legal counsel at any time as to any matter, including whether to enter into this engagement letter and consent to the foregoing agreement to arbitrate.* The City agrees that this agreement will be governed by the laws of California without regard to its conflict rules. Subject in all cases to the arbitration provisions herein provided, the Firm agrees that the court's exclusive jurisdiction and exclusive venue for any dispute between us shall lie solely with the Contra Costa County California Superior Court.
 5. Subject to the arbitration provisions, the Firm consents to service of process pursuant to the applicable California state statutes and federal rules.

XIII. Term and Termination

1. This engagement letter shall be effective as of the date set forth above and shall remain in effect until the conclusion of this workplace investigation.
2. The City may discharge Firm without cause at any time. After receiving such notice, Firm will cease providing the Services. Firm will cooperate with the City in the orderly transfer of all related files and records to the City's new counsel.
3. In the exercise of Firm's sole discretion and consistent with the rules of ethics, Firm reserves the right to terminate this Agreement for good cause on thirty days prior written notice. Conduct which may constitute good cause for Firm to withdraw includes but is not limited to: (a) any failure to timely pay Firm's statements or costs incurred by Firm on the City's behalf; (b) any refusal to cooperate with Firm in a material matter; or (c) any fact or circumstance that would render Firm's continuing representation unlawful or unethical. In the event of such discharge, termination or withdrawal the City agrees to pay all outstanding invoices and such legal fees and costs incurred as of the last day of the Firm's representation of the City.

If the foregoing terms and conditions are satisfactory, please execute this letter in the space provided below and return a signed copy to me.

OPPENHEIMER INVESTIGATIONS GROUP LLP

CITY OF ANTIOCH



Amy Oppenheimer, Managing Partner



Tammany Brooks, Chief of Police



Ron Bernal, City Manager

Approved as to Form

Thomas Lloyd Smith, City Attorney