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September 21, 2020

VIA EMAIL ONLY

Debbie Sullivan, Assistant City Manager - Strategic Initiatives
City of Olympia
601 Fourth Avenue E
Olympia, WA 98501

Re: Police Auditor Request for Qualifications ("RFQ")

Dear Ms. Sullivan:

Thank you for the opportunity to submit this response to the above-referenced RFQ, and for the opportunity to serve the City of Olympia. The Employment Misconduct Investigations team at Ogden Murphy Wallace, P.L.L.C. ("OMW") is uniquely qualified to fulfill the obligations of the Police Auditor to the highest standards of professional conduct and integrity.

As set forth in detail in the attached Statement of Qualifications, OMW attorneys have the skills and capacity to perform the contract and provide the services required. We have extensive experience performing neutral, outside investigations of law enforcement agencies, reviews of their internal processes, analyses of departmental compliance with applicable laws and policies, and providing constructive recommendations for further improvement.

In all of our work, we are prompt, efficient, complete, fair, independent, and impartial. We have a strong reputation for integrity and good judgment. We are also highly experienced in conducting investigations where there is alleged misconduct at the governance level, the potential for reputational damage is high, there is a particular need for institutional transparency and an expectation that findings of such investigation will be public, special skill or expertise is needed, and unquestionable neutrality is essential.

Our reputation and character as neutral, detail-oriented, culturally aware, trauma-informed, respectful attorney-investigators means that we will provide the City of Olympia with high-quality, timely, efficient investigation reviews, analyses of internal processes and policy compliance, as well as clear, constructive reporting and recommendations. As a well-established firm that has been part of Washington's legal community for over 100 years, OMW also has the financial resources to perform the contract properly and within the times proposed. As a provider of legal and consulting services to numerous governmental agencies, we also are in compliance with federal, state and local laws and ordinances relating to public contracts.

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If we are selected, I will be your main contact with the firm. We are also proposing Karen Sutherland and Beth Van Moppes to perform this work. The attached Statements of Qualifications contains detailed information about our prior experience, references, and our proposed preliminary approach to fulfilling the duties and responsibilities outlined in the RFQ.

We welcome the opportunity to provide Police Auditor services to the City of Olympia. If you need any additional information regarding our firm, or if you would like to schedule an interview, please do not hesitate to contact me. My direct dial number is (206) 447-2263; my email is tparker@omwlaw.com; and my direct fax line is 206-447-0215. I look forward to hearing from you.

Sincerely,

OGDEN MURPHY WALLACE, P.L.L.C.



Tara L. Parker

TLP:jmw

Attachment

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Statement of Qualifications

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Statement of Qualifications

1. **Prior Experience and Technical Competence**

Ogden Murphy Wallace, P.L.L.C. (“OMW”) is responding to all areas for which services are being solicited. A brief description of our firm experience and technical competence to perform these services is set forth below.

OMW has been a member of the legal community since 1902, with 66 attorneys in offices in Seattle and Wenatchee. We are a leader in employment law and workplace relations in the Pacific Northwest, primarily due to our emphasis on preventive practices such as workplace investigations, training, policy development and implementation, and alternate dispute resolution. We have provided external investigations to the following law enforcement-related agencies: the King County Sheriff’s Office, the City of Seattle Police Department, the City of Redmond Police Department, the City of Mukilteo Police Department, the University of Washington Police Department, and the King County Office of Law Enforcement Oversight. Our other workplace investigation clients have included King County, Pierce County, the Port of Seattle, the City of Seattle, Seattle City Light, the Cities of Redmond, Edmonds, and Mukilteo, the University of Washington, Western Washington University, Eastern Washington University, Bellevue College, along with numerous other state agencies, private sector employers, and nonprofits. Our investigation work includes reviewing prior internal investigations and providing feedback on the agency’s policies, procedures, and practices.

In addition to its work related to investigations, OMW provides legal advice to the police departments of the cities we represent, such as the cities of Redmond, Edgewood, Poulsbo, Gig Harbor, Mukilteo, Woodinville, Normandy Park, Monroe, Duvall, and Issaquah, along with numerous special purpose districts, housing authorities, and many others. In this role, we also audit procedures and draft policies, Civil Service codes, regulations, and ordinances.

We are knowledgeable and experienced in investigations related to discrimination, harassment, bias, inappropriate conduct, retaliation, use of excessive force, and conduct prohibited by workplace civility policies. Because we frequently perform investigations for law enforcement agencies, we are knowledgeable about the applicable Constitutional protections, along with civil service rules and rights of employees who are represented by unions. We have also received extensive training on contemporary investigative techniques and best practices. We consistently receive feedback from our clients attesting to the high quality and thoroughness of our work, the respect with which we treat all parties and stakeholders, and our analyses and recommendations related to our clients’ workplaces (including workplace culture), their processes, and their procedures.

As noted in our cover letter, we are consistently prompt, efficient, complete, fair, independent, and impartial. We have a strong reputation for integrity and good judgment. We are also knowledgeable and experienced with federal, state, and local civil rights, equal protection, and employment laws related to employment practices, including labor law as applied to public safety employees. Our experience includes conducting investigations involving allegations of misconduct at the highest governance levels, the potential for reputational damage is exceptionally high, there is a particular need for institutional transparency and an expectation that findings of such investigation will be revealed, special skill or expertise is needed, and unquestionable neutrality is essential.

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Our experience conducting investigations, reviewing investigations conducted by others, auditing our client's policies, procedures and practices, analyzing trends such as use of force and demographics of individuals contacted by police, revising policies, regulations, and Civil Service codes, and conducting training on subjects such as preventing discrimination, harassment, and bias in police departments makes us uniquely suited to perform the work described in the City's RFQ.

The attorneys we are proposing for this work all have extensive experience identifying issues and potential violations of law and policy, conducting investigations, auditing information, drafting reports, and making recommendations. Their areas of expertise include interpreting legal and legislative decisions related to civil and Constitutional rights, police misconduct, discrimination, harassment, equal protection, equal pay, Civil Service, and employment and labor laws. We also have experience interpreting and applying other laws and standards related to employee conduct such as wage and hour laws, workplace safety, LEOFF, ethics, and conflict of interest laws and rules, among other things. We are also well-versed in conducting interviews and performing other work that is partially or wholly remote as a result of the impact of COVID-19.

We have experience with diverse work groups and with employees, applicants, and program participants from a wide variety of protected classes. We are known for being able to communicate with, relate to, and gain the trust of the people we come into contact with through our work. This, and our reputation in the community, enable us to dig deep for information and provide high-quality, insightful reports and recommendations.

Our extensive public sector experience makes us sensitive to the issues that are unique to the public sector, such as the need for transparency, the Public Records Act, working with a wide variety of stakeholders, conflict of interest issues, prohibitions on gifts of public funds and use of public resources for private gain, and *Loudermill, Weingarten, and Garrity* rights.

Additional information about the qualifications of the attorneys proposed for this work are included below.

KAREN M. SUTHERLAND

Karen Sutherland is a Member (equivalent of partner) of OMW and the Chair of its Employment and Labor Law and Workplace Investigation Groups. She is also a member of its Litigation, Municipal, and Business Departments. Ms. Sutherland's experience includes conducting workplace investigations on issues such as discrimination and harassment based on age, race, sex, sexual orientation, national origin, disability, religion, and other protected status; ethics and conflicts of interest; theft and fraud; HIPAA violations; Title IX sexual assault allegations; failure to follow hiring and promotion processes; animal care issues; retaliation; safety issues; whistleblower complaints; misuse of information and technology assets and other employer property; hostile work environment; workplace violence and bullying; retaliation, wage and hour laws; employee theft and damage; construction and maintenance issues; scientific research issues; and environmental law issues. Ms. Sutherland also serves as a neutral arbitrator for the King County Superior Court and as a Hearing Examiner, and she has testified on matters relating to employment law and relating to her workplace investigations.

Karen Sutherland has performed investigations into the practices of the King County Office of Law Enforcement Oversight, the King County Sheriff's Office, the Seattle Police Department, the Redmond

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Police Department, Mukilteo Police Department, and the University of Washington Police Department. Ms. Sutherland has also provided policy compliance training for the Redmond Police Department.

All of Ms. Sutherland's investigations of police departments have included an analysis of department policies and procedures and compliance with them. In addition, she has analyzed Civil Service rules and drafted proposed changes to them to make them compliant with current statutory and case law. She also was part of a 3-person team that rewrote the Washington Administrative Code and procedures relating to discipline for sexual assault, sexual harassment and stalking for a large university.

Ms. Sutherland performed a trend analysis on use of force involving K-9 units for a police department that resulted in changes in training. She also did a trend analysis for a police department involving use of force to see if there were trends involving interactions with individuals who had disabilities. In addition, Ms. Sutherland did a trend analysis involving interactions initiated by police with individuals who were smoking in non-smoking areas to assess whether there were any trends involving interactions with people of color.

Ms. Sutherland represents governmental entities, businesses, nonprofits, and individuals regarding employment and labor issues in arbitrations, mediations, and other proceedings. She also drafts Memorandums of Understanding ("MOUs"), employee handbooks, management guides, and sexual and racial harassment policies; conducts workplace training on such topics as harassment, documentation of employee discipline, wage and hour issues, ethics, conflicts of interest, and HIPAA; and she advises on *Weingarten*, *Garrity*, and *Loudermill* rights.

Ms. Sutherland has conducted training on identifying, investigating, and addressing discrimination and harassment issues; conducting investigations; the First Amendment in the workplace; reopening the workplace post-COVID; wage and hour issues; ethics and conflicts of interest; Title IX procedures; and other workplace topics to entities such as the Washington State Bar Association; King County Bar Association; University of Washington; the Cities of Redmond, Edmonds, Poulsbo, and Medina; King County Fire District No. 20; PATH; Restaurants Unlimited; Hopelink; and others.

Ms. Sutherland was awarded the 2004 Helen M. Guisness Memorial Award for exemplary and distinguished service on behalf of the King County Bar Association ("KCBA"). She has chaired the KCBA *Bar Bulletin* committee, co-chaired the KCBA Awards Committee, and for many years chaired the Washington State Bar Association's annual Ethics in Civil Litigation program.

Ms. Sutherland has an AV Preeminent rating from Martindale-Hubbell, which is its highest rating. She is a frequent lecturer, author, and business advisor on discrimination, wrongful termination, non-compete agreements, employment law, and workplace issues, and she writes a monthly column for the King County *Bar Bulletin* in addition to articles on substantive areas of the law. Ms. Sutherland is also an accomplished glassblower, encaustic artist, and cartoonist whose work is shown in several local galleries and shops. She has been recognized as a Superlawyer by *Washington Law & Politics* magazine and was featured in the March 2006 *Washington CEO* magazine's cover story, "League of Justice: A Look at Washington's Most Amazing Attorneys." She has been selected for inclusion in the Washington State Bar Association's annual "best of" CLE program several times. In her spare time, Ms. Sutherland serves as a community partner and mentor and has provided internships for students in the Highline School District.

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Ms. Sutherland earned her B.A. degree in political science from the University of Washington in 1980 and her J.D. degree from the University of Washington School of Law in 1984. She was elected to *Phi Beta Kappa* in 1981. She was admitted to the Washington State Bar in 1984 and has also been admitted to the United States District Court, Western District of Washington; United States District Court, Eastern District of Washington; and the Ninth Circuit Court of Appeals bars. Ms. Sutherland is licensed by the State of Washington as a Private Investigative Agency Principal (private investigator). Additionally, she is a member of the King County Bar Association and its Labor & Employment Law and Government Lawyers sections, the Association of Workplace Investigators, and the Society for Human Resource Management.

ELIZABETH ("BETH") VAN MOPPES

Beth Van Moppes is a Member of OMW and is part of its Workplace Investigation and Employment and Labor Law Groups. The majority of Ms. Van Moppes' practice is devoted to providing services as an independent workplace investigator. Her investigations include issues such as harassment, including sexual harassment, and discrimination, retaliation, whistleblowing, employee misconduct/just cause, workplace bullying, embezzlement, and ethics. Ms. Van Moppes' is an Association of Workplace Investigators ("AWI") Certificate Holder, an American National Standards Institute ("ANSI") accredited certificate, and the Seattle Circle Convener for AWI, an organization for which she is responsible for leadership, organization, and continuity in meetings for local AWI investigators-members. AWI is a professional membership association for individuals who conduct, manage, or have a professional interest in impartial workplace investigations. Its mission is to promote and enhance the quality of impartial workplace investigations.

Ms. Van Moppes has performed two contracts for the Port of Seattle Police Department that involved review of their investigation process, one internal and one external. Both related to underlying allegations of violations of an officer's civil rights. In the former, her analysis included consideration of whether the Department had followed its own investigative and disciplinary procedures.

Additionally, Ms. Van Moppes worked for two years as an Assistant Attorney General for the State of Washington representing the Department of Corrections before the Personnel Appeals Board. The majority of that work involved review of the Department's internal investigations and subsequent disciplinary actions against officers. A number of those cases involved allegations of excessive use of force against inmates. In so doing, her analysis included consideration of the Department's policies, procedures and training regarding use of force. Thereafter, she was tasked with defending the Department's disciplinary actions before the Personnel Appeals Board, including demonstrating to the PAB why or why not the amount of force used was excessive under the circumstances and in light of the Department's policies and procedures and training of those officers.

Prior to joining OMW, Ms. Van Moppes was Of Counsel to Beresford Booth PLLC. She has conducted investigations for the Washington State House of Representatives, Port of Seattle, the City of Issaquah, the City of Lakewood, Grant County Public Utility District, Wenatchee Valley College, Seattle Housing Authority, public and private entities, for-profit and non-profit agencies, and large and small private sector businesses.

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Ms. Van Moppes is a frequent speaker and trainer for clients and various national and local human resources, employee relations, and special interest groups on topics related to workplace management including the critical skills managers need for performance management, professionalism, and diversity and inclusion awareness. Additionally, she guides clients in everyday workplace issues, focusing on preventative measures employers can take to maintain both business culture and employee engagement.

Ms. Van Moppes earned her B.A. degree in International Relations from Scripps College in 1989 and her J.D. degree from Seattle University School of Law in 1996.

TARA L. PARKER

Tara Parker is an associate attorney in the firm's Workplace Investigation and Employment and Labor Law Groups. Her practice is largely devoted to conducting workplace investigations for both public and private sector employers. Ms. Parker holds a Private Investigator license and an Association of Workplace Investigators ("AWI") Certificate, an American National Standards Institute ("ANSI") accredited certificate. She has conducted over 50 workplace investigations on a wide variety of subjects including protected class discrimination, sexual harassment, unprofessional and hostile conduct, retaliation and ethics violations.

In the past year, Ms. Parker has conducted investigations for the King County Sheriff's Office and the Pierce County Sheriff's Office. Each of those investigations involved allegations of misconduct by high-ranking Sheriff's Department employees. In each matter, Ms. Parker worked with Internal Investigations Units, analyzed department policies and procedures, and assessed the departments' compliance with applicable laws and regulations.

Many of Ms. Parker's investigations have involved public officials, providing her with a heightened awareness of the unique challenges that can arise in such matters. During the 2019 Washington State Legislative session, Ms. Parker served as the Human Resources Officer for the Washington State Senate and as the Independent Investigator for the Washington House of Representatives. In her investigative roles for the legislature, Ms. Parker has investigated claims of sexual harassment, discrimination, hostile environment, retaliation, and ethical violations involving multiple stakeholders throughout the legislative community. Ms. Parker has also performed investigations for several Washington State departments and agencies, as well as King County, the City of Bellevue, and the Port of Kennewick.

Before joining OMW, Ms. Parker practiced law at two other Seattle law firms, clerked for four judges at the Washington State Court of Appeals, Division One, and worked as a trial consultant on dozens of complex high-stakes litigation matters.

Ms. Parker received her B.A. degrees, cum laude, in Psychology and Sociology from Western Washington University in 1992. She received her J.D. in 1998 from the University of Pittsburgh. She is a member of the Washington State Bar Association, the King County Bar Association, and the Association of Workplace Investigators.

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2. References

King County Prosecuting Attorney's Office. Susan Slonecker, Senior Deputy Prosecuting Attorney
(206) 447-9488; Susan.Slonecker@kingcounty.gov

Pierce County Human Resources Department. Bo Welch, EEO/ADA Specialist
(253) 798-2909; Bo.Welch@piercecountywa.gov

Port of Seattle. Tony Ramos, Senior Manager, Workplace Responsibility
(206) 787-3000; Ramos.T@portseattle.org

3. Preliminary Approach to Performing the Police Auditor Contract

If we are selected for this contract, we would take the following approach to fulfilling the duties and responsibilities outlined in the RFQ.

First, Ms. Parker as the primary contact will meet and consult with the appropriate City Council members and staff to set forth a specific contract performance plan with clear priorities, deliverables, and deadlines. Having established such a plan, we will determine the most efficient and cost-effective way to fulfill the contract in a manner that does not result in any duplication of work on the part of OMW's team members. We will also immediately establish appropriate points of contact, document sharing and retention plans, and a schedule for consultation and reporting as needed.

Within two weeks of signing the contract, we will be available to begin our review of police professional standards investigations relating to complaints about the Police Department or its employees, including those alleging the use of excessive force or unnecessary force, civil rights violations or bias, to determine if the investigations met the standard of being complete, thorough, objective, and fair. Factors we propose to use to make this determination will include, but are not limited to the following:

- Were the investigation policies and procedures established by the Department followed?
- Were all witnesses with firsthand knowledge interviewed? If not, was there a legitimate reason for not interviewing them?
- Were all relevant documents and other records obtained and preserved? If not, was there a legitimate reason for not doing so?
- Was a site visit appropriate for the investigation to be complete? If so, was one conducted? If not, was there a legitimate reason for not doing so?
- Was the questioning of the parties and the witnesses conducted in a manner that would elicit truthful, accurate, and complete answers, to the best of the interviewee's ability?
- Were credibility determinations made consistent with the credibility criteria applied by courts?
- Were reasonable accommodations made for interviewees with disabilities or who were not proficient in English?
- Did the report weigh all relevant evidence and articulate a reasonable basis for the findings, applying the appropriate standard of proof and burden of proof?

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Within two weeks of signing the contract, we will begin conducting an impartial review of the Police Department's internal investigative process and verification of the Department's compliance with established policy and procedures. Factors we propose to use to conduct this review and determination will include, but are not limited to the following:

- Does the process set forth in the Police Department's General Order 52.1 Professional Conduct Review System result in complete, thorough, objective, and fair investigations?
- Does the process set forth in General Order 52.1 present any barriers to the filing of complaints or participation in the investigation process that could have a disparate impact on people who are members of a protected class?
- Is the process set forth in General Order 52.1 followed by the Department?
- Do the complaints that are sustained reflect any trends or patterns that should be addressed, such as through additional training or changes to Department policies, procedures, or practices?
- Is discipline or other corrective action imposed consistently in response to sustained complaints?
- Have the Professional Standards Lieutenant or the Department identified any policies or procedures that need improvement that have not been implemented? If so, what barriers are there to implementing such changes or improvements?
- Has the Department complied with established policy and procedures, such as Use of Force in General Order 1.4 and its Code of Ethics and Professional Conduct and Responsibility, General Order 1.1.5?

In accordance with the schedule established by the City Council, we will prepare and file a mid-year annual report which lists the complaint type, whether additional investigation was requested, the response, findings regarding whether each audited complaint met established standards, an analysis of key trends and patterns, and recommendations for revisions to improve investigation practices.

The hourly rates we propose for this work are: Tara Parker, \$320/hr.; Karen Sutherland \$385/hr.; and Beth Van Mopps \$385/hr.

EXHIBIT A

EQUAL BENEFITS COMPLIANCE DECLARATION

Contractors on City contracts estimated to cost \$50,000 or more shall comply with the City of Olympia Municipal Code, Chapter 3.18. This provision requires that if contractors provide benefits, they do so without discrimination based on age, sex, race, creed, color, sexual orientation, national origin, or the presence of any physical, mental or sensory disability, or because of any other status protected from discrimination by law. Contractors must have policies in place prohibiting such discrimination, prior to contracting with the City.

I hereby declare that the Contractor listed below complies with the City of Olympia Equal Benefits Ordinance, that the information provided on this form is true and correct, and that I am legally authorized to bind the Contractor.

Ogden Murphy Wallace, P.L.L.C.

Contractor Name



Signature

Tara L. Parker

Name (please print)

21 September 2020

Date

Attorney at Law, Private Investigator

Title