

WORK SESSION AGENDA

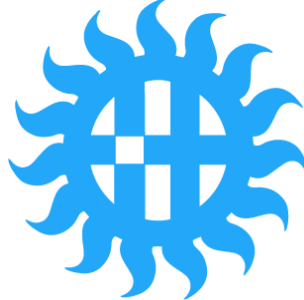
Monday, August 28, 2023 at 1:00 PM

Mayor Ken
Miyagishima

Council Chambers

Mayor Pro Tem
Kassandra Gandara

Councilors
Tessa Abeyta
Becki Graham
Johana Bencomo
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CITY OF LAS CRUCES

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If you need an accommodation for a disability to enable you to fully participate in this event please contact us 72 hours before this event at [541-2115/V](tel:541-2115) or [541-2182/TTY](tel:541-2182).

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| 2. <u>JOBS OF THE WEEK</u> | |
| 3. <u>AGENDA ITEM</u> | |
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| 3.2. 4TH SEMI-ANNUAL POLICE AUDIT REPORT PRESENTED BY THE
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Council Work Session Summary

Meeting: Work Session - Aug 28 2023

TITLE: POLICE DEPARTMENT OIR RECOMMENDATIONS UPDATE.

PURPOSE(S) OF DISCUSSION: ☒ Inform/Update ☐ Direction/Guidance ☐ Legislative Development/Policy

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The Las Cruces Police Department will provide a summary of the previous recommendations the OIR Group has made and how the department has, or is, implementing them. The presentation will include a department training update and an overview of other initiatives that are related to observations made by the OIR Group.

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None



Council Work Session Summary

Meeting: Work Session - Aug 28 2023

TITLE: 4TH SEMI-ANNUAL POLICE AUDIT REPORT PRESENTED BY THE OIR GROUP.

PURPOSE(S) OF DISCUSSION: ☒ Inform/Update ☐ Direction/Guidance ☐ Legislative Development/Policy

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

In accordance with their contract via Resolution 21-128, the OIR group will present their semi-annual case review audit report of completed Las Cruces Poice Department internal affairs complaints.

SUPPORT INFORMATION:

[OIR Group Fourth LCPD Semi Annual Report - August 2023](#)

[R 21-128 Police Auditor OIR Group](#)

[19-20-077A Police Auditor Services Year 3 of 5](#)

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

Las Cruces Police Department

FOURTH SEMI-ANNUAL CASE REVIEW AUDIT REPORT

August 2023



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Introduction

OIR Group¹ has completed two years as the City of Las Cruces' Independent Police Auditor.² In our role as the IPA, OIR Group reviews investigations completed by the Las Cruces Police Department ("LCPD") into allegations of officer misconduct that are initiated by members of the public or the Department itself. Our goal is to determine whether LCPD's handling of each case was complete, objective, and thorough, and that actions taken in response to the investigations were appropriate.

We also review closed litigation against the City of Las Cruces that involved members of the LCPD. This is an additional window into the performance issues that create potential liability, with an eye toward future risk management.

Our scope of work with the City also incorporates an element of transparency: we produce public reports on a semi-annual basis to share information about our work -- and about LCPD's accountability measures -- with City leadership, stakeholders, and the community. This is our fourth such report.

In this fourth Report, we discuss our review of 10 Internal Affairs cases that were completed and closed by LCPD between December 1, 2022, and May

¹ OIR Group has been working in the field of independent oversight of law enforcement for two decades. It is led by Michael Gennaco, a former federal prosecutor and a nationally recognized leader in the oversight field, as well as three expert associates. We specialize in evaluating and seeking to strengthen law enforcement policies, practices, and accountability measures. You can learn more at our website, www.OIRGroup.com. You may contact us at Info@OIRGroup.com

² An Independent Police Auditor, or IPA, is one form of civilian oversight of law enforcement that is increasingly being considered by jurisdictions throughout the country.

31, 2023.³ We share the recommendations derived from those reviews and provide a limited statistical analysis. We did not receive any closed civil litigation cases in this time frame.

In this report, we also summarize the recommendations that we have provided to the Department from the start of our engagement through May 31, 2023, all of which the Department has accepted, and many of which it has already implemented or is in the process of implementing.

We are pleased to acknowledge that the Department continues to be extremely cooperative, timely, and collaborative in providing us with the information we need to perform our role. And, importantly, the agency's leadership has been consistently receptive in considering and responding to our ideas for change.

Our compilation of this most recent Report overlapped with the retirement of Chief Dominguez. From our first meetings with him in 2021, he set a tone that has ensured effective communication, open access, and a constructive working relationship. This is not something we take for granted – having experienced more contentious dynamics in our work with other jurisdictions. With that in mind, we take this opportunity to extend our appreciation and best wishes.

³ Some of the underlying incidents occurred prior to this window of time. Additionally, we received and reviewed one case that City and Department leadership determined should not be released until related litigation has been closed; as of publication of this Report, the litigation is still pending.

Internal Affairs Case Review

Our scope of work requires that we review completed and closed investigation files from formal citizen complaints, internal investigations, and complaints with allegations against LCPD that are reported to the City of Las Cruces Ethics Hotline. Our scope is limited to two types of complaints: Internal Investigations, or “II,” which are complaints generated from within the Department when leadership becomes aware of allegations related to potential misconduct of employees on or off-duty; and Category 1 - External Investigations, or “EIC1,” which are complaints reported by the Las Cruces public with allegations that may rise to the level of formal misconduct.⁴

As we have noted before, we do not currently review complaint investigations that fall below a certain threshold of seriousness, nor do we review use of force cases unless we receive a complaint that involves allegations of excessive force.

The 10 released complaint cases that we reviewed in this six-month period encompassed 20 separate formal allegations against 15 LCPD employees

⁴ External Investigations fall into one of three categories based on the perceived seriousness of the allegations: Category 1, which we review because they may involve formal misconduct, and Categories 2 and 3. Category 2 is an “informal” complaint that involves allegations of a “non-serious” nature where the reporting complainant chooses not to pursue a formal investigation; and Category 3 involves allegations of a “non-serious” nature where the complainant is not able to articulate a complaint, or where there is an apparent lack of General Order violations.

across several rank levels.⁵ Of these, 12 allegations were exonerated, two were unfounded, and six were sustained.⁶

For those sustained allegations, the discipline was a verbal reprimand accompanied by some form of directed training. In two sustained cases, the employees resigned prior to completion of the investigation for, the Department reported, unrelated reasons and no discipline was issued.

Our detailed memos related to each case are attached (see Appendix A). Here, we provide brief summaries of each case, list the allegations and ranks of the involved employees, and provide the Department's findings for the two Internal Investigations and eight external complaints.

Internal Investigations

We reviewed two Internal Investigations. These cases both involved "code of conduct" allegations, which are allegations related to officers' failure(s) to follow the Department's Code of Conduct, General Order 103. This General Order sets out the Department's expectations of its officers, including that they be effective, respectful of the chain of command and the public, and ethical in their behavior. As detailed in the tables below, these two cases included allegations of unsatisfactory performance, untruthfulness, and insubordination.

2023II-002

Department-initiated complaint regarding a police cadet's behavior, which included shoplifting and being untruthful during the administrative interview. In this case, the allegations were sustained, and the employee is no longer with the Department.

⁵ At the time of the respective investigations, two were sergeants, 10 were officers (including one trainee officer), one was a cadet, and two were non-sworn employees.

⁶ "Exonerated" means that the alleged conduct occurred but was found to be within Department policies and procedures, "unfounded" means that the allegation did not occur in the manner in which it was alleged, and "sustained" means that the allegation did occur and was a violation of Department policy and procedure.

Cadet	Code of Conduct - Insubordinate Conduct	Sustained
Cadet	Code of Conduct - General Standards	Sustained
Cadet	Code of Conduct - Truthfulness	Sustained

2023II-004

This complaint was received through the City’s Ethics Hotline. Based on the nature of the allegations, the Department believed it was likely that a current employee may have filed the complaint and classified it as an Internal Investigation. This complaint alleged biased and preferential treatment in the hiring process. In this case, the allegation was unfounded and no further action was taken.

PSA	Code of Conduct – Unsatisfactory Performance	Unfounded
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External Complaints

We reviewed eight Category 1 External Complaints, which are complaints made by members of the Las Cruces public that might rise to the level of formal misconduct.

One of these resulted from a traffic stop, one from community outreach, and one from a police contact initiated by the complainant. The remaining complaints resulted from calls for service. While the receipt of these new complaints indicates that the Department fell short of *complete* public satisfaction, they constitute just a tiny fraction of Department’s overall interactions with the public: in this period, LCPD responded to 73,358 calls for service, and only these eight interactions resulted in a complaint being filed.⁷

The majority of these allegations involved code of conduct concerns. These complaints most often had to do with officers falling short of the public’s

⁷ This data was provided by Mesilla Valley Regional Dispatch Authority (MVRDA) via LCPD.

expectations: officer demeanor or perceptions of discourteous or disrespectful treatment (which we call “Conduct Toward Public”), or failures to perform duties completely (for example, failure to capture complete information in a police report). The majority of these were either exonerated or unfounded by the Department.

Three allegations related to the applications of force that the complainants believed to be unwarranted or excessive. A formal review of LCPD’s use of force reports remains outside of our scope of work; we have access to use of force reviews only as they relate to public complaints that meet our review thresholds and include allegations of excessive force, like these three. The Department found these uses of force to be exonerated, which means that, although it occurred, the force applied was within Department policy and procedures. While we would have preferred more detailed documentation of the supervisors’ analysis in one case, we ultimately agreed with the Department’s findings after reviewing all available evidence in these cases.

2022EIC1-020

Public-initiated complaint alleging that a traffic stop was racially motivated.

Officer	Biased-Based Policing	Exonerated
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2022EIC1-021

Public complaint resulting from a police contact. After the incident, the complainant alleged that an officer violated a parking ordinance and that a second officer and trainee officer used excessive force, issued a trespass warning card without cause, conducted an illegal traffic stop, and performed a pat down search without cause.

Officer 1	Operation of Department Vehicles	Exonerated
Officer 2	Applying Force	Exonerated
Trainee Officer	Frisk or Pat Downs	Exonerated

2022EIC1-024

Public complaint alleging that an officer was discourteous to her son and failed to activate his body-worn camera.

Officer	Code of Conduct - Conduct Toward Public	Sustained
Officer	Recording Devices	Sustained

2022EIC1-027

Public complaint alleging that an officer had posted inappropriate content on a personal social media page while in uniform and on duty.

Sergeant	Social Media and Personal Devices	Sustained
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2022EIC1-029

Public complaint alleging that officers used excessive force to detain a juvenile after she had stopped resisting officer commands.

Officer 1	Applying Force	Exonerated
Officer 2	Applying Force	Exonerated

2022EIC1-030

Public complaint resulting from an on-going dispute between two private parties. The complainant alleged that LCPD did not respond to calls for service and that the Department had released video of her to the other party.

Sergeant	Code of Conduct - Conduct Toward Public	Exonerated
Officer 1	Code of Conduct - Conduct Toward Public	Exonerated
Officer 2	Code of Conduct - Conduct Toward Public	Exonerated

2022EIC1-032

Public complaint alleging that a non-sworn employee had laughed at and insulted a complainant when responding to a call regarding animals on the complainant's property.

Non-sworn Employee	Code of Conduct - Conduct Toward Public	Unfounded
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2023EIC1-004

Public complainant alleged that the officer did not conduct a complete investigation of his traffic collision and that, when he subsequently sought to speak with the officer, the officer did not respond to his communication in a timely fashion and did not provide satisfactory service.

Officer	Code of Conduct - Conduct Toward Public	Exonerated
Officer	Police Reports – Accuracy	Exonerated
Officer	Traffic Investigations	Exonerated

Additional Complaint Demographics

Our scope of work requests that we provide additional demographics related to complaint cases to identify any trends that might indicate racial bias or discriminatory policing based on geographic location. To date, the demographic data does not suggest any patterns of disparate policing, as we detail below.

Race and Racial Bias

Most cases involved at least some interaction with a member of the public. Three of these cases involved interaction with a white civilian, two a Hispanic civilian, one a Black civilian, and one a civilian of an unidentified race. Two complaints were anonymous; one of these was likely called in by a Department employee and the other by a member of the public. The remaining case was initiated internally (e.g., did not involve a member of the public).

We also track the race of Department employees. According to the Department, nine of the subject employees are Hispanic, five are white, and one is Asian. As we have written in our prior three reports, we did not find any notable trends related to officer race or race of the complainant relative to the officer(s).

However, in this period, we reviewed a case that involved an allegation of racial bias (see 2022EIC1-020). In this case, a Black motorist who was pulled over for a traffic violation alleged that he had been profiled; LCPD concluded that the officer (who is Hispanic) had acted properly and exonerated the allegation. While we agreed with that specific finding, we found that the Department's investigation missed an opportunity to engage more fully and constructively around issues of racial bias and profiling. It seemed clear to us that the stop, though legal (for violation of speed limit restrictions), leaned into being perhaps pretextual in nature: by the officer's own account, his reason for initially turning to follow the man was because of the call from his partner, and any deviation from the speed limit that the officer subsequently observed was a minor one.

To the Department's credit, the notification letter that was sent to the man made a gesture at explanation (by referencing "suspicious circumstances in the area" that had preceded the stop) and, importantly, apologized for "any inconvenience this may have caused." These are positive steps that go beyond what is required.

Ideally, though, more would have been done, both externally *and* internally. For example, some additional interaction with the man at the conclusion of the investigation was warranted by the circumstances. This could have included an acknowledgment that he had been correct about the speed limit and an assurance that his perception of profiling had been taken seriously. This type of outreach could potentially strengthen a relationship that is unfortunately marked by genuine, and perhaps hard-earned, mistrust.

Further, this case suggested a more careful review of the officer's actions against state law. Per *State v. Ochoa*, New Mexico is one of only a handful of states nationwide that explicitly outlaws the use of pretextual stops; and though the burden of proof lies with the defendant (or here, the complainant), we encouraged LCPD to explore this issue further. LCPD agreed, stating that part of its regular Search and Seizure training includes discussions of pretext stops. And, though not directly related to this case, the Department reported that it has contracted with a legal advisor who will assist with these matters, including providing updated and regular training in Search and Seizure above and beyond what is required by the state. We commend the Department on this development.

Location

Our scope of work also requires that we report on zip code to identify any trends by area or location; for example, are complaints more likely to come from a certain area, perhaps indicating that officers are policing those areas differently than others? To date, we have not identified any trends by location. We have noted that most cases involved incidents within or the residents of zip code 88001, but this is the zip code in which Department headquarters is located, and case address sometimes is listed as the Department's address (for example, when the Department has initiated an internal complaint).

In this period, three cases involved incidents in or the residents of the zip code 88001, one in 88005, one in 88011, and two in 88012. One was reported by

a complainant who resides in an out-of-area zip code. Two were reported “anonymously;” as such, there was no related zip code.

Review, Findings & Recommendations

In past reports, we have reported our findings for the cases reviewed in that period. In this report, however, we have chosen to report on our cumulative findings and recommendations from two years of work with the Department.

Over the past two years, OIR Group has reviewed 60 of LCPD's complaint cases. For each, we reviewed all evidence provided by LCPD and consulted with LCPD regarding case questions or potential recommendations.⁸ At the conclusion of our review, OIR Group submitted a memo for each case and LCPD provided a Management Response.

This process has resulted in a total of 91 recommendations to the Department regarding:

1. LCPD's internal review mechanisms, as managed by the Internal Affairs unit
2. The substance of the investigations themselves
3. Related operational (e.g., training or policy) issues

Here, we discuss our recommendations and the Department's progress toward their implementation, generally.

⁸ When LCPD closed an Internal Affairs investigation within the scope of our work, it provided OIR Group with all documentary and digital evidence related to the case file. This often included, but was not limited to, the investigative memo, internal case correspondence, disposition/findings memo, limited personnel files, disciplinary recommendations, body-worn camera video, radio / dispatch audio recordings, and recordings of interviews with personnel, complainants, and witnesses.

Internal Affairs: Process, Investigation, & Findings

We are pleased to report that, two years into our collaborative work, the Department has made notable improvements to the Internal Affairs complaint process, its internal investigations, and its ultimate findings.

The chart below details our recommendations related to the Internal Affairs process by category and count. It is important to note that repeated recommendations do not necessarily mean that the Department has not accepted our suggestions. First, because our evaluation occurs within 30 days of a case being officially completed, and investigations are ongoing, it is possible that the Department has completed additional cases prior to seeing and considering our recommendations. This “lag time” – as opposed to disregard by LCPD management – accounts for several instances in which our suggestions for change recur before implementation.

Second, we grouped our recommendations by category; each category, while related, may include different unique recommendations. For example, our recommendation category “Close out letter” includes recommendations ranging from the letter including accurate and complete information to the timeliness of correspondence with complainants (e.g., periodic updates if an investigation goes longer than 180 days).

Table 1: Recommendations Related to the Internal Affairs Process

Recommendation Category	Number of Recommendations
Close-out letter	6
Evidence supporting other discipline	4
Evidence supported other findings	1
Follow investigative protocol	4
Failure to adequately frame all allegations	5
Evidence supported need for individual debrief	12
Investigative process challenges identified	9
Mediation/ACR related	5
New case protocol	3
Timeliness	5
Witness interviews warranted	4

Many of the systemic internal issues that we identified early in our engagement related to the way cases were classified and investigated (“new case protocol”). Encouragingly, these have been resolved. The Department is more regularly following its own investigative protocol and producing more complete and comprehensive investigations.

At the same time, we continue to identify areas for improvement in the investigative process.

Some of improvement recommendations are now quite nuanced and ask the Department to perform at the highest industry standards; for example, we have made recommendations related to including even more information in close-out letters to complainants, especially if the investigative timeline extends beyond 180 days (see our memo related to 2022EIC1-030, where the complainant alleged that the Department was being unresponsive to her complaint). The Department reported that it will now use a close-out letter template to ensure all closing letters articulate the full extent of the investigation. It has also directed its investigators to send regular communication to complainants.

We have also asked the Department to consider alternative complaint mediation or restorative justice strategies in five cases that may have been good candidates for this process. The goal here is to promote strategies that, where possible, enhance connection and understanding between the agency and the public – in both directions. While not every incident lends itself to such an approach, we have found that being "heard and taken seriously" is often one of the keys to complainant satisfaction, regardless of the bottom-line outcome of an individual allegation.

Our suggestions included viewing the body-worn camera footage with complainants and candid communication about intentions and outcomes. LCPD previously responded that it is in the process of developing a program similar to mediation for supervisors who are involved in the complaint intake process as well as "additional post-investigation outreach possibilities." We look forward to hearing more about these program developments and their effectiveness.

Other process recommendations are reminders to keep up the new structures and practices that LCPD has already adopted, such as consistently interviewing complainants and witnesses. We noted a brief lapse in this practice in this period, especially related to consistently interviewing all witnesses, which the Department has remedied in more recent investigations.

We also continue to remind the Department to frame and investigate all relevant allegations thoroughly and completely. While the Department generally identifies all allegations, including "ancillary issues" that go beyond the complainant's concerns (for example, failures to activate body-worn cameras has in a timely manner or report writing errors)⁹, we have sometimes identified missed allegations, or allegations that were not completely investigated.

For example, in case 2022EIC1-021, we found that the investigator did not frame all allegations as reported by the complainant in his initial complaint intake interview. In addition to the three allegations investigated by the Department, which included excessive force and an illegal search (both of

⁹ LCPD's willingness to identify and address issues that the complainants have not put forth themselves is one of the more creditable aspects of the process.

which were exonerated), the complainant also alleged that the officers had illegally solicited a trespass warning card without cause and asserted that a related traffic stop had been improper. As we detail in our memo related to that case, the investigator did not segregate these as allegations that needed to be individually addressed. Had these allegations been separately considered, our review of the evidence suggests that they may have resulted in corrective action for the involved officers.

Several of our process recommendations involve the case outcome; namely, where we found that the evidence supported a different finding (specifically, a finding of “Not Sustained” where the evidence did not definitively prove or disprove an allegation)¹⁰ or a different disciplinary measure (we discussed the Department’s “philosophy of discipline,” which we perceived to be too lenient or inconsistent at that time, in a prior Semi-Annual Report). Because the case is complete by the time we receive it, those formal outcomes cannot be retroactively changed.

With respect to disciplinary outcomes, LCPD has made a commitment to consistent and accurate outcomes by working to create a “Disciplinary Matrix.” The matrix would remedy many of these concerns by standardizing disciplinary consequences for sustained allegations across specific policy categories, with an eye toward consistency across individual cases and resolutions that appropriately reflect the gravity of the misconduct. The matrix will also serve to put employees on notice as to the Department’s expectations and commitments. We discussed this concept at length in our Second Semi-Annual Report. And we look forward to evaluating the LCPD Disciplinary Matrix, and the Department’s deployment of it, when it is complete.

In some of the cases, we also recommended individual debriefs to employees whose conduct did not rise to the level of formal misconduct, but for whom counseling or “course correction” for future performance was seemingly warranted, nonetheless. These interventions, where applicable, are a potential side benefit of the investigative process – an opportunity to treat the

¹⁰ While the end result is the same as an “unfounded” or “exonerated” finding (namely, no disciplinary consequence for the officer), the distinction remains noteworthy in our view – as well as being a more accurate reflection of the evidence in the cases where we cite it.

complaints as a feedback loop that could lead to worthwhile adjustments as a "valued added" element of review. And, because such "debriefs" are not formal discipline, the Department was both willing and able to conduct this outreach on the 12 occasions when we have recommended it during our tenure. This is to LCPD's credit and has hopefully proven to be useful.

LCPD also responded that they have formalized these types of debriefs in the use of force review context. If a use of force review identifies any "ancillary issues" that require further action, the Department now uses a "Deficiencies Noted" memorandum to document the issue(s) and the action taken (e.g., debrief, policy review, or direction to formal training or Internal Affairs). While it is currently only being used to resolve issues identified during use of force reviews, we encourage the Department to consider expanding the Deficiencies Noted memo to any type of review, including any issues identified internally or by OIR Group in complaint investigations. This ensures that the proverbial "feedback loop" is appropriately documented and closed.

The Department has also been responsive to another concern that we have raised periodically. During the first year and a half of our engagement, we noted a tendency for investigators to omit background information that, while peripheral, could have clarified aspects of the investigation (and, in turn, our review process). The LCPD managers with whom we interact have welcomed our supplemental questions when they arise in the review process, as we attempt to fully understand what transpired and the Department's decision-making. The insight or "backstory" that they have provided is always illuminating in ways that enhance the accuracy of our own process – but that reinforce our sense that the investigative file would ideally stand on its own as a complete recounting of the relevant factors in the case.

Fortunately, the Department's more recent efforts have been responsive to our suggestions for more completeness within the file itself. Regular and thorough documentation has a value that transcends our auditing purposes. It creates a record that is not dependent on the memory or impressions of particular individuals, and thereby contributes to effective supervision, proper accountability, and risk management.

At the opposite end of the spectrum, we have weighed in about the *inclusion* of certain elements that, in our view, did not strengthen the effectiveness of

the investigation. Specifically, we mean information that seemed to lapse into more subjective – and less convincing – editorializing as part of the discounting of a complaint's legitimacy.

For example, in case 2022EIC1-021, the investigator's analysis seemed intent on justifying the officers' questionable actions through characterization of the complainant's perceived culpability, rather than with the factual evidence at hand. Throughout the investigative memo, the investigator included commentary that we found was not inherently relevant to the incident – and thus undermined the perception of objectivity that is central to an administrative investigation's legitimacy.

Again, though, the Department responded with receptivity when we raised the point. Agreeing with our assessment, it said it would direct investigators to focus on evidence-based, objective investigations going forward.

Our future reviews will seek to identify additional areas of improvement to the complaint investigation process as they arise.

Policy, Management and Training

While our emphasis is largely on the internal complaint investigation process, we also often note areas where LCPD might consider additional training and/or policy updates. Over the past two years, we have made recommendations related to equipment¹¹ (specifically, use of GPS technology for tracking Department vehicles and requiring all officers to carry all necessary forms), policy, and training. We summarize these recommendations in the chart below.

¹¹ The Department reported that GPS tracking is installed in all Department vehicles, but, because of system compatibility issues, it does not function with the Department's upgraded CAD system. The Department anticipates that this will be resolved within the next six months. In the interim, all officers' body-worn cameras track an officer's exact location.

Table 2: Recommendations Related to the Policy, Management & Training

Recommendation Category	Number of Recommendations
Body-worn camera related	1
Department training	8
Equipment	2
Policy update (not UOF)	9
Report writing	1
Supervisor training	4
Post-UOF process	3
UOF Policy	4

Our collective decades of work in civilian oversight gives us a unique perspective on policing policies across jurisdictions. Where, considering this experience, we have identified LCPD General Orders (policies) that might be outdated or require clarification, we have made relevant recommendations.

Four of these policy recommendations were related to use of force. While evaluation of force remains outside of our formal scope of work, we continued to make recommendations when we observed areas for improvement in those force issues that emerged during complaint cases. These have included updates to the Department's Conducted Electrical Weapon policy (General Order 256), consideration of uses of the WRAP device, and evaluation of physical force techniques.

Additionally, three recommendations were related to post-use of force processes. In two cases, the subjects of the force continued to challenge officers verbally after being placed in custody, often directing their anger at the officers who used force. Despite this, these same officers transported the subjects; while the officers exhibited control in the face of an angry subject, we advised against this practice and recommended that the Department separate officers from subjects as soon as practicable in these situations to lessen the potential for additional conflict. Further, we recommended that, when significant force is used, the involved officer(s) be removed from the scene as soon as practicable and not remain involved in any subsequent investigation.

We also recommended that the Department consistently follow its own internal force review process. For example, in case 2022EIC1-001, the force report

did not include a complete Show of Force report as is required by the use of force reporting policy; in another, the related force report (often called a “BlueTeam”) did not, in our opinion, contain sufficiently detailed analysis by supervisors to justify the final findings (see 2022EIC1-029 from this period). In each related memo, the Department reported that it is committed to fully following its own force review process.¹²

We hope that the Department has followed through on its commitments in this important arena – where we continue to have a limited window into the effectiveness of LCPD internal review measures. As we mentioned in a prior Report, the development of the Force Review Cadre, a specialized team of subject-matter experts tasked with reviewing force cases, is a commendable development. Under the direction of the Interim Chief, the Cadre has expanded from four specially-training employees to nine. And the Cadre has developed an “apprentice” training program to ensure the effective continuation of the program; as of this Report, the Cadre has two apprentices.

Additionally, the Interim Chief sent a total of 16 employees to a two-week Use of Force Instructor course (some of these employees are on the Cadre) for additional training.

It gives us hope that the Department is moving in the right direction with respect to use of force incidents and any related policies and review procedures. We look forward to opportunities to review future force cases as they arise within our scope of work.

Over the past two years, we have also made nine recommendations related to policies that were not use of force specific. For example, after reviewing several complaint cases related to how officers responded to civil standby calls, we recommended that the Department consider creating more explicit guidelines by clarifying General Order 203.11. We recommended updates to the Department’s Social Media General Order 158 to ensure that all employees are subject to the restrictions of using and posting to social media

¹² Overall, the Department reported and we have observed, that LCPD has significantly increased and improved its force review process since the start of our engagement, including clear guidelines/expectations for supervisor review of incidents, which involves at least two levels of supervisory review (sergeant and lieutenant at minimum), the Force Review Cadre, and the Deficiencies Noted memo.

while on duty and in uniform (see 2022EIC1-027), and updates to General Order related to calls involving the hearing-impaired.

Our training and policy recommendations often go hand-in-hand; where we recommended an update to policy, where applicable, we also recommended training. For example, along with the aforementioned update to General Order 203.11, we recommended that LCPD consider training related to domestic / civil disturbance calls to include de-escalation, proactive problem-solving, communication, and boundary-setting. And, along with our recommendation related to General Order 158, we recommended that the Department provide Department-wide training to remind all personnel about the requirements and restrictions of social media use.

Finally, we identified a training need related to complaint intake. In our review of case 2023EIC1-004, we noted that, when the complainant sought to file a formal complaint, the supervisor with whom he spoke stated that the complainant would have to come in person to file the complaint, and then, that he was not aware of the steps needed to file the complaint. The supervisor told the complainant that he would call the complainant back once he learned how to properly file a complaint.

We learned that the complainant ended up submitting his complaint via the City's Ethics Hotline later that same day, at which point the Department initiated the complaint investigation. While the person's perseverance meant that his concerns were ultimately investigated, we made note of the obstacle that the supervisor had initially – if inadvertently – created. In response, the Department reported that it immediately trained all supervisors on the principles of effective complaint intake and will continue to highlight in their Annual Supervisor training program.

Next Steps

OIR Group looks forward to our continued engagement with LCPD and to future opportunities to help improve Department systems and practices. We will continue to review cases as they are completed by Internal Affairs.

As we noted throughout this report, the Department has displayed a willingness to implement our recommendations either directly or indirectly, through training or other employee development. For example, the Department's 2023 training curriculum includes specific training blocks that seem responsive to our concerns; the Department opted to include several hours of de-escalation training, a "fair and impartial policing" course, and a training block related to engaging with those who are deaf or hard of hearing.¹³ The Department also contracted with a legal advisor to help provide the appropriate responsive actions to our findings.

We thank LCPD personnel who contributed data for this report. We remain grateful to both LCPD and City personnel for their collaboration and guidance as we continue our work in Las Cruces.

¹³ OIR Group has not reviewed these training materials nor confirmed employee attendance at these training as this is not part of our Scope of Work.

Appendix A: OIR Group Case Memos



7142 Trask Avenue
Playa del Rey, CA 90293
323-821-0586
OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: March 8, 2023
RE: Review of Administrative Investigation – #2023II-002

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case was classified as an Internal Investigation (II) and investigated by Internal Affairs.

OIR Group received the above-referenced case file on February 10, 2023.

Case Summary

A loss prevention employee from a superstore contacted LCPD supervisors. He showed the supervisors photographs of a male wearing a uniform with law enforcement insignia. LCPD identified the male as an LCPD cadet. The loss prevention employee provided evidence of the cadet shoplifting items from the store on three separate occasions. The total amount of the items shoplifted was under \$100. The loss prevention employee also provided a company letter prohibiting the cadet from returning to the store (sometimes referred to as a "trespass notice").

When questioned by Internal Affairs, the cadet initially denied having shoplifted. When shown video and photographic evidence, the cadet admitted that he had failed to scan

items on two of the three occasions in question but asserted that this was not intentional shoplifting; the cadet explained that he was having personal issues at that time.

The cadet also contacted another cadet to talk about the investigation.¹

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD's Internal Affairs conducted a preliminary inquiry of the incident and framed three allegations against the cadet as follows:

1. **General Order 103.09 (A) – Code of Conduct.** The Department alleged that the cadet violated this general order when he spoke to another cadet about an ongoing investigation even after being notified that he should not.

LCPD sustained this allegation based on the cadet's own admission and the interview of the second cadet.

2. **General Order 103.17 – Code of Conduct - Truthfulness.** The Department alleged that the cadet was not truthful during his administrative investigation, even when offered an opportunity to correct his statements.

LCPD sustained this allegation based on the evidence provided by the loss prevention employee and the cadet's statements during his administrative interview, which directly contradicted the evidence.

3. **General Order 103.04 – Code of Conduct – General Standards of Conduct.** The Department alleged that the cadet's shoplifting violated the Department's code of conduct and, further, that the cadet had engaged in these actions while in LCPD uniform.

LCPD sustained this complaint based on their own extensive review of the loss prevention employee's evidence of shoplifting and their interview with the cadet.

¹ At the time of these conversations, the second cadet had not yet been notified that he was a witness to an administrative investigation.

Outcome: Discipline or Other Action

The cadet resigned from LCPD prior to completion of this case.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file. We found this investigation to be thorough and complete, and that the evidence provided supported the findings. We especially commend the Department's careful consideration of the loss prevention employee's evidence to ensure that the information was accurate.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group.



7142 Trask Avenue
Playa del Rey, CA 90293
323-821-0586
OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: May 4, 2023
RE: Review of Administrative Investigation – #2023II-004

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case was classified as an Internal Investigation (II) and investigated by Internal Affairs.

OIR Group received the above-referenced case file on April 12, 2023.

Case Summary

An anonymous complainant contacted the Ethics Hotline in two concurrent calls. This complainant alleged that a Las Cruces Police Services Administrator (PSA) had used her influence to help two applicants for Crime Victim Advocate roles be hired into the position. The complainant alleged that the PSA knew that one of the candidates had been arrested for domestic violence, which would disqualify him from the position, and that the other had dated the PSA, which was an unfair advantage for this candidate.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD's Internal Affairs conducted a preliminary inquiry of the incident and framed one allegation against the PSA as follows:

1. **General Order 103.01 – Unsatisfactory Performance.** The complainant alleged that the PSA violated this general order when she influenced the hiring process for two Crime Victim Advocate positions.

LCPD unfounded this allegation.

First, LCPD concluded that the PSA's involvement in the hiring process was not substantive; the vetting and hiring process occurred through the City's Human Resources Department. The hiring panel did not include the PSA. There was no identifiable way for the PSA to have influenced the process.

Second, LCPD reviewed the Interstate Identification Index, the nationwide criminal records history system, for the candidate alleged to have an arrest for domestic violence. The search revealed that the candidate did *not* have any criminal record; as such, LCPD was able to unfound the allegation that he should have been disqualified for having a domestic violence arrest.

Outcome: Discipline or Other Action

There was no discipline in this case as the complaint was unfounded.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents in the case file. We found this investigation to be thorough and complete, and that the analysis provided supported the findings.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group.



7142 Trask Avenue
Playa del Rey, CA 90293
323-821-0586
OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: January 30, 2023
RE: Review of Administrative Investigation – #2022EIC1-020

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case was classified as an External Investigation/Category 1 (EIC1) – a complaint from a member of the public that received a formal review – and was investigated by Internal Affairs.

OIR Group received the above-referenced case file on January 3, 2023.

Case Summary

This case originated as a citizen complaint from a man who was stopped by an LCPD officer as he drove home on his motorcycle in the early morning hours of a weekday in summer. He believed that the officer had improperly pulled him over, since the supposed reason was a speed limit violation about which there was some uncertainty. He thought (correctly, as it turned out) that the officer was wrong about the limit being 25 mph in the area where the stop occurred. Because of this, and because he didn't end up receiving a citation, he asserted that the officer had profiled him and then intentionally misrepresented the standard in order to justify the wrongful detention.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD's Internal Affairs conducted a formal investigation of the incident and framed it as a potential violation of **General Order 165.01(A)(C)(E) Bias-Based Policing**. This policy requires officers to provide the same level of policing to all members of the public. And it insists that people will only be stopped or detained when reasonable suspicion or probable cause exists to believe that they have committed, are committing, or are about to commit a violation of the law.

The Department's investigator conducted a "preliminary inquiry" based on the readily available information – primarily, the officer's body-worn camera video of the encounter.¹ While the inquiry phase was productive, the investigator determined that a formal interview of the subject officer was needed to clarify some factual questions relating to the location of the stop and the applicable speed limit. Accordingly, those interviews – with both the subject officer and a witness officer who provided backup during the traffic stop – occurred.

These interviews provided useful context for what had occurred. It transpired that the witness officer had been the first to observe the complainant, when both were at a gas station. The witness officer thought there was something potentially suspicious about the man's behavior and reactions to his presence.² The officer also noticed that the man's motorcycle had only temporary tags, so he decided to do a computer check on the vehicle. Additionally, he called a partner officer whom he knew to be in the area and encouraged him to keep an eye out for the man. The motorcyclist/complainant left the gas station while the officer was still waiting for information about his data request.

Within moments, the second officer spotted a lone motorcyclist and assumed him to be the individual that he had been alerted about. They were going in opposite directions, and the officer turned around to follow him. After a short distance, the officer believed that the motorcyclist's speed was approximately 35 mph – or ten miles above what he understood to be the limit. This purportedly provided the legal basis for the stop, which lasted for approximately 10 minutes and resulted in a range of inquiries about registration, insurance, and other technical matters. Ultimately, the officer decided not to issue any citations, although

¹ As discussed below, this initial process identified peripheral issues that also received formal attention.

² For example, the man initially appeared to be walking back toward his motorcycle after making purchases but changed direction when he spotted the officer.

he seemingly had a legal basis for doing so in light of different technical infractions (as well as the alleged speeding itself).

The investigator was also able to ascertain that the prevailing speed limit at the location of the stop was in fact 30 mph. However, even while acknowledging his error, the officer maintained that the stop was nonetheless legal because that higher limit had in fact been exceeded as he followed the motorcyclist. He explained his understanding that even one mile per hour over the limit constituted a violation.

Based on the available evidence, including the explanations provided by the officers, the investigator determined that the allegation of biased policing should be resolved as “Exonerated.” This recommendation was accepted by Department management.

Outcome: Discipline or Other Action

Because of the finding that the officer had not in fact violated policy during the stop, there was no disciplinary consequence.

OIR Group Review

LCPD provided OIR Group with body-worn camera video of the traffic stop, as well as recordings of the two officer interviews conducted by the investigator. We also reviewed the memos and other documentation produced during the investigation.

Assessment of Investigation as Completed by LCPD

The body-worn camera recording, in conjunction with the officer interviews, provided a solid basis for determining what had transpired. Moreover, as mentioned above, the investigation identified two collateral issues that apparently led to separate interventions by the Department. These related to deviations from General Order 151.02(E) “Recording Devices – Disposition of Recordings,” specifically with regard to the obligation to properly label recordings that are connected to a particular enforcement action or other matter. The implicated personnel were as follows: the witness officer who backed up the call, and the sergeant who spoke with the motorcyclist the following day when the latter called to express concerns about the stop.

That additional issue-spotting was creditable. Overall, we found the investigation and analysis regarding the complainant's main concerns to be effective – with one reservation. Our slight disappointment stems from a sense Department appears to have taken a “letter of the law” approach to its evaluation that sidestepped key aspects of the complainant's understandable perceptions. Accordingly, it missed an opportunity to engage more fully and constructively about a sensitive issue of long standing: the profiling of Black motorists.

This is not to say that LCPD reached an incorrect conclusion in finding that no improper bias had occurred. The witness officer who had first noticed the motorcyclist was able to articulate specific observations that had contributed to race-neutral suspicions about the person. He was asked about “descriptors” that he might have provided during his phone call with the other officer from the gas station, and only recalled mentioning that it was a male on a motorcycle.³ Similarly, the subject officer denied noticing anything particular about the motorcyclist when first observing him and making the decision to follow.

It seems clear, though, that the stop was much more pretextual – as a basis for following up on the first officer's suspicions – than grounded in a significant vehicle code violation. By the officer's own account, his reason for initially turning to follow the man was because of the call from his partner, and any deviation from the speed limit that the officer subsequently observed was a minor one.

It should be noted that the stop itself was of reasonable duration and entirely professional.⁴ The officer exercised his discretion by not citing the man in spite of different opportunities to do so, and he offered some practical advice regarding nuances of the (new) motorcycle's appropriate registration.

Having said, that, though, the complainant's experience of the event also resonated as completely reasonable. The stop was predicated on a speeding issue, and the motorcyclist expressed his (justified) confusion over the relevant limit and the extent to which he was in violation at all. When the officer insisted (incorrectly if politely) at the end of the stop that the prevailing limit was 25 mph, the man's sense that he was being “lied” to (as he wrote in his complaint) was understandably reinforced. And his identity as a Black male presumably fed

³ Here, more specific questions about the race of the motorcyclist might have been useful; additionally, a more detailed recollection might have emerged had the interview occurred closer in time to the incident. It instead took place approximately four and a half months after the complaint was lodged.

⁴ The complainant also remained polite and cooperative throughout the encounter, including letting the officer know that he was carrying a weapon on his person pursuant to his license to do so.

into his belief that he had been profiled, stopped without justification, and willfully misled. Moreover, his frustrations were compounded when the sergeant with whom he spoke the next day theorized about possible confusion due to construction-related changes to the speed limits in the area.⁵

To the Department's credit, the notification letter that was sent to the man made a gesture at explanation (by referencing "suspicious circumstances in the area" that had preceded the stop) and, importantly, apologized for "any inconvenience this may have caused." These are positive steps that go beyond what is required.

Ideally, though, more would have been done, both externally *and* internally. It is true that a formal interview with the complainant was not necessary (in light of the straightforward nature of his concerns and the details he provided in his written submission). However, some additional interaction with the man at the conclusion of the investigation was warranted by the circumstances. This could have included an acknowledgment that he had been correct about the speed limit and an assurance that his perception of profiling had been taken seriously.⁶ This type of outreach could potentially strengthen a relationship that is unfortunately marked by genuine, and perhaps hard-earned, mistrust.

As for the internal dynamics, at its best the complaint process serves in part as a "feedback loop" that a police agency should utilize in assessing its practices and strengthening the performance of its officers. This case might well have provided an interesting forum for evaluating "pretext stops." This is a longstanding practice that is both legal and considered by law enforcement to be a valuable tool in proactive policing. Unfortunately, it is also closely associated with discrimination and bias, and many jurisdictions are reconsidering – and limiting – its use.⁷

Here, even if the officer had been correct about the speed limit, the officer's decision to initiate a car stop based on the slightest of violations understandably provoked the

⁵ We listened to the sergeant's conversation with the man, which had been recorded on body-worn camera. The sergeant was polite and informative about the complaint process and the different options that were available, and his efforts to speculate about a benign explanation were seemingly well-intentioned. Still, he seemed not to be connecting with the man's clear frustration about being stopped on multiple occasions in the past and his concerns about being "harassed" by law enforcement.

⁶ While a personal contact would be preferable, even a more detailed notification letter would have been a useful forum for acknowledging the relevant issues.

⁷ The concern is that officers exercise their discretion to conduct such stops – which could theoretically occur dozens of times per shift based on the ubiquity of technical driving violations – in ways that single out people of color and often escalate.

suspensions of the Black motorcyclist who was stopped (and who alleged that the officer had ignored another vehicle that was going faster than he had been). We reiterate that the conclusion that no policy had been violated was justified. But a “bigger consideration” of the incident would have been beneficial for the agency as a whole, and we encourage LCPD to explore this issue further.

RECOMMENDATION 1

LCPD should consider different forms of outreach to complainants when an investigation reveals a relevant mistake by the involved officer, even if it did not rise to the level of a policy violation.

RECOMMENDATION 2

LCPD should evaluate the circumstances in which its officers use pretext stops as an investigative tool, and determine whether a refinement of its standards is warranted.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. LCPD will explore additional post-investigation outreach possibilities. Extensive training efforts have been added for all officers as it pertains to Search and Seizure. Part of the training addresses pretextual stops.



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TO: City of Las Cruces
FROM: OIR Group
DATE: March 1, 2023
RE: Review of Administrative Investigation – #2022EIC1-021

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case was classified as an External Investigation/Category 1 (EIC1) – a complaint from a member of the public that received a formal review – and was investigated by Internal Affairs.

OIR Group received the above-referenced case file on February 1, 2023.

Case Summary

This complaint resulted from an interaction in a Wal-Mart parking lot. An LCPD officer, Officer 1, was working an off-duty assignment¹ at the Wal-Mart and was seated in her parked patrol vehicle when a male, the complainant, approached the passenger-side door. The complainant challenged Officer 1, stating that she had parked her vehicle too

¹ At that time of this incident, a private security firm contracted with LCPD to provide security services to Wal-Mart. Uniformed officers could choose to fill these shifts during their time off duty. This contract has since been cancelled by LCPD.

close to a fire exit. Officer 1 exited her vehicle; the complainant requested her name and badge number, which she provided.

Officer 1 asked the complainant for his name and date of birth, which the complainant refused. He continued to challenge Officer 1 using profane language. Officer 1 continued to engage with the complainant. The interaction became argumentative and Officer 1 requested additional units.

Two on-duty officers, Officer 2 and Trainee Officer responded. Upon seeing the other officers, the complainant entered the Wal-Mart.

Officer 1 shared that the complainant was known to police for trying to “instigate” conflict with police officers and that the Department had previously sent a department-wide bulletin (via email) about his behavior. Officer 1 pointed out the complainant’s vehicle.² Officer 2 ran the complainant’s license plate to determine his identity. Officers discussed having Wal-Mart personnel request a trespass citation.

Eventually, the complainant exited the Wal-Mart and engaged with the officers again. The complainant tried to look into Officer 2’s police vehicle. Officer 2 advised Trainee Officer to close the vehicle’s mobile data terminal (MDT) because he believed the complainant was trying to see data on the MDT screen.

Officer 2 then used an open palm and four fingers placed on the back of the complainant’s arm to guide the complainant away from the police vehicle. The complainant stepped away and continued to badger the officers, including stating that Officer 1 could call him “daddy,” and requesting the officers’ names and badge numbers (which they provided). Officer 2 responded that he did not want to engage in further conversation. As the complainant walked away, the complainant gave the officers the middle finger.

Officer 2 and Trainee Officer then spoke with Wal-Mart loss prevention personnel who, according to the officers, agreed to a trespass warning. By the time these officers exited the Wal-Mart, the complainant had left the location. The officers determined that they should track the man to advise him of the trespass warning.

Officer 2 and Trainee Officer located the complainant as the complainant was parking in front of his residence and was exiting his car. They initiated a traffic stop. Officer 2 instructed the complainant to stay in his car. The complainant continued to exit his

² This complainant was known to drive a pick-up truck that had a fishing pole hanging from the rear of the vehicle. A print-out photo of a donut and a sign that read “Cop Bait” hung from the fishing pole.

vehicle and moved to open his front driveway gate. Officer 2 instructed Trainee Officer to “pat him down.” Trainee Officer conducted a pat down search.

Officer 2 then informed the complainant that he was trespassed from Wal-Mart. The complainant began recording the interaction and repeatedly interrupted Officer 2, stating that the trespass was “illegal.” Officer 2 finally stated, “don’t go back to Wal-Mart or you will be arrested.”

When he returned to his police vehicle, Officer 2 stated, “piece of shit” under his breath.

Meanwhile, a supervisor responded to Wal-Mart where Officer 1 was waiting. Upon learning that the other two officers had left in search of the complainant, the supervisor also began to drive to the complainant’s location. While enroute, he called the complainant, who stated that he wanted to file a formal complaint telephonically.

Officer 2 and Trainee Officer returned to Wal-Mart and filed a trespass warning card for the complainant with loss prevention personnel.

LCPD’s Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD’s Internal Affairs conducted a preliminary inquiry of the incident and framed three allegations against Officers 1 and 2 and Trainee Officer as follows:

1. **General Order 119.01 – Operation of Department Vehicles** and **NMSA 66-7-351 – Stopping or parking prohibited in specified places**. The complainant alleged that Officer 1 exhibited gross disregard for public safety when she parked her police vehicle too close to a fire door.

LCPD exonerated this allegation stating that Officer 1 had parked her vehicle in compliance with the state statute and in a location that was requested by Wal-Mart. The investigator also contacted the Fire Department to inquire about the police vehicle’s placement; a Fire Investigator confirmed that the parked vehicle met Fire Department safety standards.

2. **General Order 225.02 – Use of Force Procedures – Applying Force**. The complainant alleged that Officer 2 used excessive force – what he termed “assault” -- when Officer 2 moved him away from the police vehicle.

LCPD exonerated this allegation. First, LCPD opined that the complainant was attempting to view sensitive law enforcement data on the MDT, and that Officer 2

was within his right to move the complainant to secure the data. Second, the officer's use of "gentle physical contact" on the complainant's shoulder did not amount to a formal use of force.

3. **General Order 294.02 – Frisk or Pat Downs** The complainant alleged that the Trainee Officer conducted an illegal search of his person when he conducted a pat down.

LCPD exonerated this complaint, stating that the complainant was non-compliant and attempting to flee the traffic stop.

Outcome: Discipline or Other Action

There was no formal discipline or review of the officers' personnel files in this case because the allegations were exonerated. The Trainee Officer subsequently separated from LCPD for unrelated reasons.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file. With respect to the first and second allegations, we found the investigation to be thorough and complete, and that the evidence provided supported the findings. The IA investigator's outreach to Fire Department personnel to inquire about parking regulations was especially diligent and commendable. And, after reviewing body-worn camera footage, we concur with LCPD's assessment of how Officer 2 moved the complainant.

However, from that point forward, the investigation seemed to lapse into more subjective – and less convincing – analysis. The memo seemed intent on justifying the officers' questionable actions through characterization of the complainant's perceived culpability, rather than with the factual evidence at hand. Accordingly, and as discussed in detail below, key concerns that we identified – and that had been raised by the complainant – were not given adequate attention.

Even in the face of a troublesome complainant whose self-proclaimed purpose is to "bait" police officers, the Department's standards for objectivity, thoroughness, and rigor

in handling misconduct allegations should still apply. Instead, the investigator's evident frustration with this complainant undermined the effectiveness of the review in multiple ways, as we discuss below.

Assessment of Investigation as Completed by LCPD

We identified several issues with this investigation.

The investigator did not frame all allegations. In addition to the three complaints noted above, the complainant also alleged that the officers had illegally solicited the trespass citation from Wal-Mart without cause and asserted that the traffic stop had been improper. The supervisor noted both of these concerns on the Citizen Complaint Form.

However, the investigator did not segregate these as allegations that needed to be individually addressed. As a result, LCPD missed a critical opportunity to evaluate the officers' use of the trespass citation and their decision to "track down" the complainant (and conduct a traffic stop) in order to advise the complainant that he was not allowed to return to the Wal-Mart because of a trespass citation.

Had these allegations been separately considered, our review of the evidence suggests that they may have resulted in corrective action for the involved officers.

Regarding the trespass citation itself, we acknowledge that generally, officers have discretion to cite individuals for trespassing if the private business is desirous, which occurred here; the complainant's allegation that it was "illegal" for officers to seek a trespass warning was not technically accurate.

However, we found that the officers' rationale to obtain the trespass (as well as the store's reason for authorizing it) was unclear: the store was open for regular business, the complainant was not engaged in vandalism, loitering, blocking entryways, or other behavior that might prompt a private business to request a trespass citation, and the complainant was a paying Wal-Mart customer.³ Here, LCPD might have counseled the

³ No rationale was provided in the officers' Incident Reports, except that the complainant was a "suspicious person." Later, while on the phone, the sergeant informed the complainant that the rationale for the trespass was "causing a disturbance." When the complainant asked, "what disturbance," the sergeant responded that he did not know.

officers on documenting sufficient rationale for the citation and/or seeking alternative action(s) when dealing with a difficult member of the public.⁴

The officers observed the complainant leave the property. They then chose to track down the complainant to his residence to “advise him that he was trespassed.” But the main purpose of issuing a trespass citation is typically to remove a person from private property and/or prevent their return; here, the complainant left the parking lot on his own. It is an unusual exercise of discretion to follow an individual for some distance to effectuate a low-level citation that is designed to accomplish what the complainant essentially accomplished himself. Accordingly, it is one that LCPD should have evaluated to determine if these actions were effective and necessary uses of Department resources, and consistent with leadership's preferences.

With regard to the traffic stop: the complainant alleged that there was no reason to stop him. According to the officers, the rationale for the stop was to “advise [the complainant] that he was trespassed.” On its face, this appears to be insufficient cause to initiate a traffic stop, and certainly an allegation that LCPD should have carefully considered.

RECOMMENDATION 1

LCPD should frame, investigate, and appropriately dispose all allegations made by complainants to ensure a thorough investigation.⁵

The evidence does not support the finding of “exonerated” for Allegation 3 (the pat down).⁶ When the officers initiated the traffic stop, the complainant exited his car and began to open his driveway gate. Officer 2 reported that this was “unusual” behavior and that the complainant was attempting to “flee” the traffic stop. Because of this, he directed the Trainee Officer to detain the complainant and conduct a pat down search, which the Trainee Officer did.

⁴ This might have included not engaging the complainant at all. Had Officer 1 simply refused to engage with the complainant's provocations, this incident perhaps would not have occurred. But Officer 1 admitted that the complainant “got” her, and the incident spiraled from there.

⁵ We recommended this in five previous memos and in our August 2022 Semi-Annual Report.

⁶ “Exonerated” here means that the pat down did occur but was found to be within Department policy or law.

LCPD's policy regarding pat downs is explicit: "the subject to be frisked or patted down must have *been stopped based on reasonable suspicion of criminal activity*, and the officer must be able to articulate *a reasonable belief that the person to be frisked is presently armed and dangerous*" (**General Order 294.02**, emphasis added).

Neither criterion was met here – at least to any extent documented in the officers' statements or the complaint memo. As we noted, the officers did not articulate reasonable suspicion for the traffic stop itself. And there was no evidence provided to suggest that the complainant was "presently armed" or "dangerous." He was, at worst, non-compliant, which we find to be insufficient cause to conduct a pat down per policy.

Perhaps realizing this, the investigator provided extraneous rationales to support the officers' traffic stop and pat down – justifications that were not cited by the officers. For example, the investigator wrote, "though not articulated in the [police] report, [the complainant] did commit a violation by parking his vehicle against the flow of traffic." While this is presumably a pretext that gave the officers' more solid footing, it would have been preferable for this to emerge from them directly (in their reports or in an administrative interview), rather than as a matter of the investigator's post-hoc speculation.

We recommend that investigators make findings based on the factual evidence collected during the course of the investigation, and should refrain from speculation about what might have been influencing the incident in one direction or another.

RECOMMENDATION 2

LCPD investigators should remain focused on the evidence discovered during the investigation, and refrain from providing extraneous information as evidence.⁷

Editorializing. Throughout the investigative memo, the investigator provided his own characterization of the complainant, such as calling him "sexist and/or a misogynist," and "woefully misinformed and misguided," that we found were not inherently relevant to the incident. Ideally, the objectivity of both an investigation and the memorandum that summarizes it should prevail over the subjective frustrations that a particular complainant may provoke (however understandably).

⁷ We recommended this or similar in two previous memos.

RECOMMENDATION 3

LCPD investigators should refrain from written characterizations that gratuitously reflect personal opinions or impressions about complainants.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group.

RECOMMENDATION 1

LCPD should frame, investigate, and appropriately dispose all allegations made by complainants to ensure a thorough investigation.

The citizen's complaint was identified four specific complaints (parking 30 ft from door, assault for an officer putting his hands on him, claims trespass was solicited, and illegal search for the pat down). The investigation framed the following policies (Operation of Department vehicles, Use of force procedures -Applying force and frisk or Pat Downs. This investigation addressed each of the citizens' complaints and provided information for each finding.

RECOMMENDATION 2

LCPD investigators should remain focused on the evidence discovered during the investigation, and refrain from providing extraneous information as evidence.

LCPD IA and administration is in agreement with the recommendation, investigators have since received training to keep from providing extraneous information as evidence.

RECOMMENDATION 3

LCPD investigators should refrain from written characterizations that gratuitously reflect personal opinions or impressions about complainants.

LCPD IA investigators have received training to keep from reflecting personal opinions and or impressions about complainants.



7142 Trask Avenue
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323-821-0586
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TO: City of Las Cruces
FROM: OIR Group
DATE: April 3, 2023
RE: Review of Administrative Investigation – #2022EIC1-024

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case was classified as an Internal Investigation (II) and investigated by Internal Affairs.

OIR Group received the above-referenced case file on March 13, 2023.

Case Summary

The mother of a high school student complained about an on-campus incident that had involved her eighteen-year-old son and an LCPD officer. She had been on the phone with her son during the student's encounter with school security and then the officer, whose presence had been requested after the security staff reached an impasse with the young man regarding his desire to leave the campus property in his car in the midst of a school day.

The complainant had overheard the exchange between her son and the LCPD officer, and found the latter to have been discourteous – specifically in the form of calling her son a "baby" after learning that the complainant was on the line. Soon thereafter, she had a secondary concern about the same officer when she called the school

immediately after that incident; she ended up on speaker phone with the officer and a school official and took exception to aspects of the officer's different responses to her. She lastly raised a question as to the apparent lack of body-worn camera evidence of the original encounter between the officer and her son.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD's Internal Affairs framed two allegations against the subject officer based on the complaint:

General Order 103.05 (A) – Code of Conduct – Conduct toward the public.

This provision requires employees to be respectful to the public during the performance of their duties and responsibilities. It holds that employees *shall* be tactful and control their tempers, and admonishes them to exercise the utmost patience and discretion, and not "engage in argumentative discussions even in the face of extreme provocation." [Emphasis added.]

General Order 151.01 (E) Recording Devices – Procedures

This provision reads as follows: "Employees shall activate their BWC whenever responding to a call for service or at the initiation of any law enforcement encounter with a member of the public. To ensure proper recording, employees shall activate their BWC upon dispatch to a call for service."

Outcome: Discipline or Other Action

The Department's investigation included an interview with the complainant, a review of available materials from the incident (including BWC from the discussion in the Assistant Principal's office), and a subject interview with the officer. During the interview, he acknowledged engaging in the specific behaviors that were featured in the original complaint.¹ He also took responsibility for having failed to activate his camera during the initial encounter with the student and school security; he said he had

¹ While his abrupt departure from the conversation with the complainant was partially attributable to his need to respond to a situation at a different nearby school, he also made gratuitous reference to the woman repeating herself. He did not, however, slam the door or "stomp" out of the room as was alleged.

(mistakenly) expected it to be a routine event, and that he had subsequently adjusted his standard practice to avoid a recurrence of the issue.

The officer received minor discipline in conjunction with direction to attend relevant training on de-escalation. The Department included his prior disciplinary history in the case file; there were no sustained cases for related misconduct.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file. We found the investigation to be appropriately thorough, and that the evidence provided supported the findings. Though there were participants in the disputed encounters who were not interviewed (including the Assistant Principal, the student himself, and the witness security guards), the nature of the incident and the sufficiency of the other evidence meant that these omissions were reasonable.

We did wonder about the lengthy delay between the incident/complaint and the initiation of the investigative process. The subject officer was not interviewed for more than nine months, which obviously made the Department's intervention less timely and effective than it might otherwise have been.² We have addressed this concept with LCPD on five prior occasions, most recently in our 3rd Semi-Annual Audit Report. Though the allegations were not of grave significance, and while there were apparently some gaps in the officer's availability to be interviewed, the timeline here still strikes us as both avoidable and sub-optimal.

Having said that, we note that the consequence (which included not only formal discipline but a tailored training requirement) seemed commensurate with the misconduct at issue. We were impressed with the officer's willingness to accept responsibility and apologize in the moment during his telephonic interaction with the complainant. He similarly recognized his own shortcomings during his administrative interview. These qualities show that the corrective purposes of the discipline process were well on their way to being accomplished due to the officer's own mindset.

² When the investigator contacted the complainant to get an updated mailing address, she shared that she had assumed that the Department had "blown off" the complaint when so many months had passed without any updates. This is direct evidence of how delays in the investigative process can lead to lost trust.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The delay in completing the investigation was partially a result of officer and investigator availability. Steps have been taken to reduce investigation completion time moving forward.



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OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: December 12, 2022
RE: Review of Administrative Investigation – #2022EIC1-027

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case was classified as an External Investigation/Category 1 (EIC1) – a complaint from a member of the public that received a formal review – and was investigated by Internal Affairs.

OIR Group received the above-referenced case file on December 1, 2022.

Case Summary

This case was initiated by an email submitted by a community member. The community member, who wished to remain anonymous despite sending the email from an identifiable address, stated that an LCPD sergeant told him that another sergeant had posted videos on her personal social media pages (TikTok and Instagram) of herself in uniform pretending to be “a gangster” and disparaging Fire Department personnel. The complainant provided these two video clips. The complainant believed that the Department should address these social media posts.

LCPD identified the sergeant and immediately reviewed her publicly available, personal social media accounts. LCPD discovered several posts related to law enforcement,

including the posts referenced by the complainant and posts that included other LCPD employees on duty, in LCPD facilities or vehicles, and in uniform.

In her administrative interview, the sergeant stated that, upon personal reflection, she chose to delete the videos on her social media accounts before she became aware of the investigation or complaint; the sergeant stated that she did not delete the videos in response to the investigation. The sergeant acknowledged that the videos could have been taken in a negative or disparaging way, though that was not her intention. She stated that all other LCPD personnel in the videos were aware that they were being filmed and posted on her social media accounts.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD's Internal Affairs conducted a formal investigation of the incident and framed one allegation related to **General Order 158.02 Social Networks and Other Websites** as follows:

1. The complainant alleged that a sergeant posted videos of herself in LCPD uniform in LCPD facilities/vehicles that reflected negatively on law enforcement professionals and disparaged other first responders. LCPD identified the sergeant through the two video clips sent by the complainant.

LCPD sustained this allegation, stating that the sergeant violated LCPD policy when she posted videos to her social media accounts of herself and other LCPD personnel in uniform and in LCPD vehicles without the express approval of the Chief of Police.

Outcome: Discipline or Other Action

This was the second complaint involving this sergeant's social media content decisions. The first, which we also reviewed, came from the City's Ethics Hotline; an anonymous complainant reported that LCPD's submission for a nationwide law enforcement "lip sync" challenge on social media included this sergeant dressed in attire and lip syncing to a song that suggested she was a gang member in a way that disparaged Hispanics.¹

¹ As we discuss at length in our memo related to that case, "Hotline Complaint 64," dated November 14, 2021, the complaint was not formally entered, tracked, or disposed in the Department's complaint system. As a result, that complaint does not appear in this sergeant's disciplinary history, though she received what amounted to low-level discipline for her

As a result of that complaint, LCPD counseled all the involved employees, including this sergeant. It also required that all social media content/posts to the Department's *official* social media pages be expressly approved by the Chief of Police before posting, a process that the Department currently utilizes.

The Chief determined that because the sergeant had chosen to delete the posts on her own and had acknowledged that the posts could be viewed in a negative way, she showed sound judgement. The Chief issued a low-level discipline. The Chief also directed the sergeant to complete online training regarding the use of social media.

The sergeant made all her personal social media accounts "private" so that they can only be accessed/viewed by personal connections and not members of the public at large. The sergeant is also no longer involved in the Department's social media team or online recruiting.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file. We found the investigation to be complete and that the evidence supported the findings.

Assessment of Investigation as Completed by LCPD

Upon review of the case materials, we immediately questioned the sergeant's choice to delete her personal social media posts: had she deleted evidence she knew to be related to a personnel complaint? LCPD assured us that she had not; the sergeant had not yet been notified of the complaint when she deleted them, and the complaint was not known outside the Chief's office. Her deletion of the posts was, they maintain, a coincidence, and a decision that showed her sound judgement.

To its credit, LCPD recorded the videos immediately upon receiving the complaint to preserve evidence.

The outcome of this case presents an interesting balance between employees' First Amendment rights and their duties as a Department employee. Now that the sergeant's social media accounts are private, the Department must trust that the sergeant will adhere to the General Order without being able to access her account. The Department

involvement in the incident. The Department has since changed its procedure and tracks all complaints in their internal system, IAPro.

assured us that they do trust this employee, and all employees, to follow General Order 158 as part of their job requirement.

To ensure this, however, we recommend that the Department offer a Department-wide refresher training on the requirements and restrictions of social media use. We noted that some of the videos in question here included other LCPD personnel, presumably while on duty, and also in uniform and in LCPD facilities.² The investigation did not address these officers' involvement in the videos, though many are clearly identifiable and the accused sergeant reported that they knew that they were being filmed and posted.

A refresher training, and reminder that violations may result in discipline, is advisable.

RECOMMENDATION 1

LCPD should hold Department-wide training on General Order 158 to remind all personnel about the requirements and restrictions of social media use.

Additional Policy, Training, or Other Findings

We did not identify any additional findings in this case.

² These employees' actions were potentially counter to current policy, specifically Sections C and D of General Order 158, which read as follows:

C. Employees shall not authorize any party to use photographs or other depictions for the purpose of endorsing or promoting a product or service without written permission from the Chief of Police or his designee. Such items include but are not limited to:

- 1. LCPD uniforms*
- 2. Badges*
- 3. Patches*
- 4. Marked patrol cars*
- 5. Any other item or material which is identifiable to the LCPD*

D. Employees are prohibited from using City or LCPD property (on-or off-duty) to engage in personal use of social media. Employees while on-duty are further prohibited in using privately owned property to engage in personal use of social media unless it is directly related to his/her official duties.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. A department wide training bulletin was sent out to all personnel as a reminder about the requirements and restrictions of social media use.



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TO: City of Las Cruces
FROM: OIR Group
DATE: January 30, 2023
RE: Review of Administrative Investigation – #2022EIC1-029

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case was classified as an External Investigation/Category 1 (EIC1) – a complaint from a member of the public that received a formal review – and was investigated by Internal Affairs.

OIR Group received the above-referenced case file on January 5, 2023.

Case Summary

This complaint resulted from a call for service for a disorderly subject. The complainant, a female juvenile, and her mother, who was not physically present for the incident, alleged that during the police response to that call, LCPD officers used excessive force to detain the juvenile long after she stopped resisting police.

Officer 1 responded to a call for a disorderly subject in an apartment complex courtyard. Officer 1 arrived and contacted three female juveniles at the door to an apartment. One of the females was on the phone with her mother. That same female told Officer 1 that the apartment resident, an 18-year old female, was trying to have a sexual relationship with her ex-boyfriend, who she said was 16. Officer 1 explained that the relationship, if

consensual, was not illegal.¹ This upset the female, who yelled profanities at Officer 1. Around this time, Officer 2 arrived.

Officer 1 turned away from the females to contact the apartment resident in question. When he did so, the upset female threw down her keys, yelled “fuck this!” and ran to Officer 1 waving her arms.

Officer 2 reached out to stop her but fell, causing the female to also fall into a seated position in front of Officer 1. Officers 1 and 2 used control holds to move the female forward onto her stomach, where Officer 2 placed his knee on her upper shoulder area and held her right arm/hand in a control hold. Officer 1 applied handcuffs. The female continued to yell and cry, “are you fucking joking? I didn’t even do anything!” And, to her mother, who was still on the phone, “they slammed my head onto the concrete!”

As soon as the handcuffs were double locked, the officers lifted up the female and escorted her to a police vehicle, where they placed her in the back seat.

Officer 1 opened the police vehicle door to speak with the female. She continued to cry and refused to give her name. The officers briefly spoke with the two other females.

Meanwhile, Officer 2 called the detained female’s parents and reported that the female was detained but not injured. The father asked to come to the scene. Officer 2 interviewed witnesses in the apartment complex, then returned to the police vehicle. Officer 2 turned on the vehicle’s air conditioner upon request. The female stated that she “didn’t mean to,” was sorry and did not want to get into trouble. The female said that her knee, hip, and rib cage hurt and that the handcuffs were too tight; Officer 2 adjusted her handcuffs.

Fire personnel examined the female’s visible injuries, which included scrapes on her knee. A supervisor responded to the scene and an officer took photographs of the injuries. The female was issued juvenile citations for disorderly conduct and assault on a peace officer. The female was released to her father.

Later that evening, the female and her mother requested to file a formal complaint. A LCPD lieutenant responded to the hospital, where the female and her mother were sitting in the hallway. The lieutenant took a recorded statement to file a formal complaint. A female officer took additional photos of all injuries under clothing and in sensitive areas.

¹ According to LCPD, per NM Stat § 30-9-11, a sexual relationship between a 16- and 18-year-old is legal if consensual.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD's Internal Affairs conducted a preliminary inquiry of the incident and framed one allegation related to **General Order 225.02 – Use of Force Procedures – Applying Force** against Officers 1 and 2 as follows:

1. The complainants alleged that Officers 1 and 2 used excessive force when they continued to restrain the female subject after she had stopped resisting. The complainants also alleged that the officers' applications of force could have caused injuries including possible rib fractures and a potential concussion.

LCPD exonerated the officers after watching the body-worn camera footage and reading the police reports; the investigator determined that the tactics used by officers were within policy based on the female's actions and that the officers lifted the female from the ground as soon as handcuffs were applied. The related internal force review, though limited, had also found the force to be reasonable.

Outcome: Discipline or Other Action

There was no formal discipline or review of the officers' personnel files in this case because the allegations were exonerated.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file, including the related use of force review. We found that the evidence provided supported the findings.

Assessment of Investigation as Completed by LCPD

We found the preliminary investigation to be timely and thorough, and found that the IA investigator's own careful analysis of the force supported exonerating the officers.

Initially, we found the file to be incomplete -- the investigative file did not include or reference the Department's internal Use of Force Review report, where we would expect to find a robust evaluation of the reasonableness and necessity of the force used. This is in part because IA cases involving force allegations typically reference the

Use of Force report in making recommended findings. We requested, and LCPD immediately provided, the related Use of Force “BlueTeam” report.²

Formal review of LCPD’s use of force reports remains outside of our scope of work; we have access to use of force reviews only as they relate to public complaints that meet our review thresholds *and* include allegations of excessive force, like this one. As such, we see a very limited number of force reports. Their quality has been mixed: while some contain detailed supervisor summaries or supplemental memos with command staff’s evaluation, others provide little or no analysis to support the final finding. This case’s force review fell into this latter category.

While the IA investigator was able to reach an independent conclusion based on review of the body-worn camera recordings and other available information, a thorough supervisory review of the force would certainly have been beneficial – both in the context of responding to this complaint case and for its own sake as a vehicle for accountability and internal self-improvement. Accordingly, we found the absence of such an assessment to be noteworthy.

How rigorously an agency reviews an individual use of force depends on a variety of factors, including its standard protocols and the severity of the incident itself. Lower-level force – like the control holds and the accidental takedown that officers used here – may not always require deeply detailed analysis. But we have worked with jurisdictions that analyze even low-level force incidents with an eye toward improvement. Even when policy violations are not at issue, a holistic evaluation can produce useful observations and interventions that enhance future officer performance.

The Department has repeatedly assured us that its force review process is becoming more robust, with the addition of the Force Review Cadre and more supervisor training. We look forward to opportunities to review future force cases as they arise within our scope of work.

Further, as we have recommended twice in the past, LCPD should include all relevant information in the case file and reference it in the investigative memo to ensure its completeness, especially when the evidence (here, the use of force report) is directly relevant to the findings.

² BlueTeam is the software program used by many law enforcement agencies to review and track uses of force.

Additional Policy, Training, or Other Findings

We take this opportunity to revisit our previous recommendation that the Department develop an alternative complaint resolution process. In two previous memos (2021EIC1-019 and -022) and our June 2022 Semi-Annual Report, we recommended that the Department consider the addition of a restorative justice or mediation process for some complaints.

The complainants in this case may have been good candidates for this process, which might include viewing the body-worn camera footage and candid communication about intentions and outcomes. LCPD previously responded that it is in the process of developing a program similar to mediation for supervisors who are involved in the complaint intake process. We look forward to hearing more about this program and its effectiveness.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. LCPD will explore additional post-investigation outreach possibilities. The complaint intake process is part of our supervisory training.



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TO: City of Las Cruces
FROM: OIR Group
DATE: April 13, 2023
RE: Review of Administrative Investigation – #2022EIC1-030

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case was classified as an External Investigation/Category 1 (EIC1) – a complaint from a member of the public that received a formal review – and was investigated by Internal Affairs.

OIR Group received the above-referenced case file on March 16, 2023.

Case Summary

In late 2022, the complainant submitted a complaint form on which she alleged that LCPD officers failed to respond to her reports of harassment and intimidation, did not respond to her contacts in a timely manner, and released body-worn video footage of her to the man who was harassing her. The complainant named three specific employees – a supervisor and two officers -- and the Department at large.

This case involved an on-going dispute between the complainant and a man that began in 2019. In short, the complainant and the man each alleged that one was harassing and intimidating the other through social media and by using law enforcement and court orders to harass the other. Over the course of several years, the parties filed

restraining orders, as well as other claims in the court system, against each other. The complainant filed complaints with other agencies.

During this time period, LCPD responded to several calls for service at the complainant's residence or other locations. The complainant corresponded with various LCPD personnel, including two named officers and one named supervisor, telephonically or via email.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD's Internal Affairs conducted a preliminary inquiry of the incident and framed allegations as follow:

1. General Order 103.1 (A). Code of Conduct

The complainant alleged that two LCPD officers and one supervisor failed to respond to her reported crimes and failed to enforce a protection order. LCPD exonerated these allegations because the evidence showed that named officers (as well as others) *did* respond to her calls for service. When the officers and supervisor attempted to resolve her issues, the complainant did not follow-up with requested documents or paperwork.

Further, LCPD found that the complainant did not have a valid protection order, making it impossible to enforce.

2. General Order 103.03 (A). Code of Conduct

The complainant alleged that LCPD personnel released video of her to the man who was harassing her. LCPD exonerated itself of this allegation, stating that any release of information was consistent with the New Mexico Inspection of Public Records Act (IPRA).

Outcome: Discipline or Other Action

There was no formal discipline or review of the officer's personnel file in this case because the allegations were exonerated.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file. We found the investigation to be complete and that the evidence supported the findings.

Assessment of Investigation as Completed by LCPD

In discussion with LCPD about this complex case, LCPD reported that it attempted to investigate this matter as thoroughly as possible. However, the complainant continued to expand the scope of the allegations and involved parties (and, thus, the investigation) over time without follow through. She used aliases in subsequent communications, which increased the confusion. Eventually, LCPD determined that continued engagement with this complainant was using extensive Department resources without clear identification of new misconduct and that the investigation should be closed out.

To his credit, the investigator did commendable work trying to discern if any misconduct had occurred. He pulled all contacts with the complainant from the CAD system and police reports to determine that each call for service was appropriately handled. In each documented call for service, LCPD found that either the officer met the needs of the call or was awaiting further information from the complainant to proceed (for example, in one call the complainant alleged that the man had violated an active restraining order but did not have a copy of the order; in another, the officer provided a link for the complainant to upload evidence, which, according to LCPD records, the complainant did not do). The investigator also pulled court records and public records requests over two years to determine if the complainant's reported crimes had validity.

In the investigative memo, the investigator acknowledged that it was possible that he had missed calls for service or correspondence as the complainant used aliases. LCPD recommended that all officers be reminded of the importance of tracking cases and filing reports, documents, and any evidence received from the public in the appropriate way, though they did not find evidence that any errors occurred here. The file also contained an email from a supervisor directing all personnel to record all conversations with the complainant and the man, and to file any identified charges promptly.

Despite this thorough review, we again noted that the close-out letter to the complainant was incomplete (we have made recommendations related to close-out letters on six prior occasions, most recently in 2023EIC1-004 submitted earlier this month); the letter

only referenced one of the three named employees and was unclear regarding the allegations. A detailed close-out letter was warranted in this case especially because the complainant's ongoing complaint was that LCPD was non-responsive to her contacts. We again remind the Department of the need to continue to prepare closing letters that articulate the full extent of the investigation.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. LCPD IA section will utilize a letter template to ensure all closing letters articulate the full extent of the investigation.



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TO: City of Las Cruces
FROM: OIR Group
DATE: December 15, 2022
RE: Review of Administrative Investigation – #2022EIC1-032

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case was classified as an External Investigation/Category 1 (EIC1) – a complaint from a member of the public that received a formal review – and was investigated by Internal Affairs.

OIR Group received the above-referenced case file on December 15, 2022.

Case Summary

This case was initiated by a call to the City's Ethics Hotline. The complainant, who was not involved in the incident, stated that a non-sworn employee from LCPD discriminated against her neighbor and was unprofessional when the non-sworn employee laughed at the neighbor and accused her of using drugs.

This incident stemmed from a complaint called into LCPD that a resident of an apartment complex was housing several hens and a rooster on her property in violation of City of Las Cruces Ordinance Section 7-31, "Special Animal Permits: Chicken and Ducks." A non-sworn employee responded to the residence in question and observed several hens and a rooster in cages with feces and without food or water.

After a long delay, a female answered the door of the residence and stated that she was only keeping the chickens for a day until they could be transported elsewhere. The non-sworn employee demanded that the resident feed and water the animals and clean their cages for the animals' welfare. The resident became agitated, stating that she could not clean the cages because she needed to get to an appointment for a "monkey shot." The non-sworn employee responded that he "had no idea what [she] was talking about." The female entered her apartment.

A male came out of the apartment and took one of the cages, saying that he would take the chickens to another location.

The female again came out again while on her phone. She again asked the non-sworn employee if he knew what the "monkey pox vaccine" was and expressed her disbelief that he did not. The non-sworn employee calmly responded that he did not care what that was and again requested that the female move the chickens.

The male returned and took another cage while cursing that the chickens were pecking at him.

The non-sworn employee then requested that the female clean the feces on the patio. The female argued over the length of time that it would take to build up that level of feces. The non-sworn employee stated that he would return in one week to check on the state of the patio.

As the non-sworn employee walked away, the female began yelling at another person, who may have been the person who had called in the violation. The non-sworn employee then contacted this person, a female who stated that the chickens had been at the residence for over two months. This female then reported that the chicken owner sold drugs and harassed people and showed the non-sworn employee photos of the chicken owner's neglected dogs. The non-sworn employee responded that he would check back on the dogs.

The contact ended.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD's Internal Affairs conducted a preliminary inquiry of the incident and framed one allegation related to **General Order 103.05 Conduct Toward the Public** as follows:

1. The complainant alleged that a non-sworn employee was rude and discriminated against the female when he laughed at her and accused her of using drugs.

LCPD unfounded this allegation after watching the body-worn camera footage. In the video footage, the non-sworn employee was patient, did not laugh at the female, and did not make any disparaging comments regarding the female or use of drugs.

Outcome: Discipline or Other Action

There was no formal discipline or review of the officer's personnel file in this case because the allegation was unfounded.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file. We found the investigation to be complete and that the evidence supported the findings.

Assessment of Investigation as Completed by LCPD

We found the preliminary investigation to be timely, thorough, and complete. As documented in the investigative file, LCPD attempted to contact the complainant for an interview three times but received no response. We were encouraged to see this documentation in the file.

Additional Policy, Training, or Other Findings

We did not identify any additional findings in this case.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group.



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TO: City of Las Cruces
FROM: OIR Group
DATE: April 7, 2023
RE: Review of Administrative Investigation – #2023EIC1-004

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case was classified as an External Investigation/Category 1 (EIC1) – a complaint from a member of the public that received a formal review – and was investigated by Internal Affairs.

OIR Group received the above-referenced case file on March 16, 2023.

Case Summary

This case was initiated by a call to the City's Ethics Hotline. The complainant alleged that an LCPD officer conducted an incomplete investigation of the complainant's vehicular accident. The complainant further alleged that when he attempted to seek an amendment to the police report, the officer did not respond to his communication in a timely manner. According to the complainant, when he finally spoke with the officer with his attorney on the line, the officer agreed to amend the report but, when the attorney left the call, the officer's behavior "changed."

This incident stemmed from a traffic collision. While on scene, the complainant told the officer various (and conflicting) accounts of what had occurred. The complainant was

taken to the hospital. According to LCPD, the officer responded to the hospital and issued the complainant a traffic citation, at which point the complainant amended his statement again.

The officer wrote an incident report that included each of the complainant's various accounts as well as information obtained from a witness.

Several months later, the complainant spoke telephonically with the officer and subsequently at least two LCPD supervisors. In each call, he asked the supervisor or officer to amend the account in the original traffic report by using a supplemental report.

The officer and supervisors informed the complainant that his alleged "new" accounts were already included in the original report and that, as such, a supplemental report was not required.

In one of these calls, the complainant insisted that the officer speak to his attorney. The officer tried to explain his point of view, but the complainant was not satisfied and continued to interrupt the officer. The complainant stated that his attorney would contact the officer. The officer said, "Have your attorney call me" and ended the call.

In another call, the complainant asked for a fax number to submit a complaint; the officer responded that he did not know if they had a fax number for complaint intake. The officer responded that his supervisor would contact the complainant to take the complaint.

A supervisor contacted the complainant. This supervisor offered to provide the complainant a complaint form in person or via email. The supervisor said that the complainant had to file the completed form in person. The complainant said that he had already completed a complaint form and had emailed it to the Chief. He did not want to come in person. The supervisor said that he did not know what steps were needed to file the formal complaint and that he would find out and call the complainant back.

Later that same day, the complainant submitted his complaint via the City's Ethics Hotline.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD's Internal Affairs conducted a preliminary inquiry of the incident and framed three allegations as follow:

1. General Order 103.05 (A). Code of Conduct

The complainant alleged that the officer did not amend his police report and hung up on him. LCPD exonerated this allegation, stating that the officer communicated several times with the complainant, was cooperative, and ended an “unfruitful” conversation with the complainant.

2. General Order 141.02(A). Police Reports

The complainant alleged that the officer’s police report was incorrect and the officer would not amend the report using a supplemental report. LCPD exonerated this complaint, stating that the report was factual and included each of the complainant’s versions of the traffic crash.

3. General Order 274.02 (A). Traffic Crash Investigations

The complainant alleged that the officer had not completed a full and accurate traffic crash investigation. LCPD exonerated this complaint, stating that the officer completed an accurate traffic crash investigation: he included all versions of the crash, sought witness accounts, and took photographs.

[Outcome: Discipline or Other Action](#)

There was no formal discipline or review of the officer’s personnel file in this case because the allegations were exonerated.

[OIR Group Review](#)

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file. We found the investigation to be complete and that the evidence supported the findings.

[Assessment of Investigation as Completed by LCPD](#)

We found the preliminary investigation to be timely and complete.

We noted that the close-out letter to the complainant only referenced one of the three allegations, which might leave this complainant wondering if all his allegations were investigated. LCPD’s closeout letters are typically very complete and informative; we have commended the Department for them in the past. Here, we remind the

Department of the need to continue to prepare closing letters that articulate the full extent of the investigation.

Additional Policy, Training, or Other Findings

We noted that the complainant sought to file a formal complaint with at least one supervisor. When a supervisor contacted the complainant, the supervisor stated that the complainant would have to come in person to file the complaint, and then, that he was not aware of the steps needed to file the complaint.

In a conversation with LCPD, we learned that the complainant submitted his complaint via the City's Ethics Hotline moments later that same day, at which point the Department initiated the complaint investigation.

We recommend that LCPD review the complaint intake process with all supervisors to ensure that all supervisors know the procedure for accurate and timely complaint intake.

RECOMMENDATION 1

LCPD should review the complaint intake process with all supervisors to ensure that all supervisors know the procedure for accurate and timely complaint intake.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. LCPD IA section will utilize a letter template to ensure all closing letters articulate the full extent of the investigation. All supervisors attend a yearly IA training which includes the complaint intake process. New supervisors will be required to take this training as part of their supervisor training.

RESOLUTION 21-128

A RESOLUTION APPROVING A CONTRACT FOR THE PURCHASE OF POLICE AUDITOR SERVICES TO OIR GROUP, LLC OF PLAYA DEL REY, CALIFORNIA FOR AN INITIAL TERM OF ONE (1) YEAR, WITH THE OPTION TO RENEW FOR UP TO FOUR (4) ADDITIONAL ONE (1) YEAR TERMS, IN AN AMOUNT NOT TO EXCEED \$75,000.00 ANNUALLY PLUS APPLICABLE GROSS RECEIPT TAX, SUBJECT TO APPROVED BUDGET APPROPRIATIONS AND ANNUAL RENEWALS (PROCUREMENT NO. 19-20-077A).

The City Council is informed that:

WHEREAS, the City of Las Cruces (City) needs an auditing firm with extensive knowledge of police operations, procedures, and performance standards, experience conducting statistical analysis and auditing of internal investigations, along with capability to present results and findings in a clear and concise manner to a non-police audience such as members of City Council and the public; and

WHEREAS, on November 6, 2020, the City's Purchasing Program advertised Request for Proposal No. 19-20-077A for Police Auditor Services resulting in the receipt of three (3) proposals. The proposals were reviewed and evaluated by a Selection Advisory Committee on December 17, 2020 and the committee recommended to award the contract to OIR Group, LLC of Playa del Rey, California; and

WHEREAS, award to OIR Group, LLC shall enhance police accountability by making periodic public reports based on monitoring/auditing activities. This contributes to greater openness with respect to police complaint procedures. Written evaluation reports may include recommendations for change in either the complaint process or other aspects of police operations. OIG shall be available to provide Semi-annual presentations to City Council outlining findings and other relevant information.

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

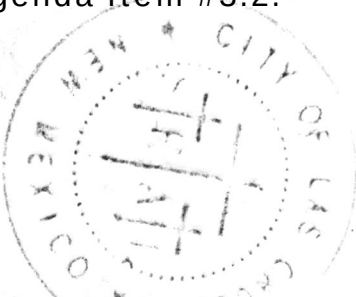
THAT a contract is hereby awarded to OIR Group, LLC of Playa del Rey, California for Police Auditor Services for an initial term of one (1) year period with the option to renew for four (4) additional one (1) year terms, in an amount not to exceed \$75,000.00 plus gross receipts tax as applicable, as shown in Exhibit "A" attached hereto and made part of this resolution.

(II)

THAT City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

DONE AND APPROVED this 16 day of February 2021

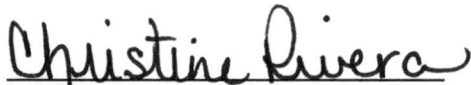
Agenda Item #3.2.



APPROVED


Mayor

ATTEST:


Christine Rivera
City Clerk

Moved by: Tessa Abeyta-Stuve

Seconded by: Gill Sorg

AYES Kasandra Gandara, Gabe Vasquez, Gill Sorg, Ken Miyagishima, Yvonne Flores, Tessa Abeyta-Stuve, Johana Bencomo

NAYS



21-128

City Council Action and Executive Summary

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6		
1st Reading:	Adopted: February 16, 2021		
Drafter:	Jose Cardona	Department:	Financial Services
Program:	Purchasing Program	Line of Business:	Procure To Pay
Title:	A RESOLUTION APPROVING A CONTRACT FOR THE PURCHASE OF POLICE AUDITOR SERVICES TO OIR GROUP, LLC OF PLAYA DEL REY, CALIFORNIA FOR AN INITIAL TERM OF ONE (1) YEAR, WITH THE OPTION TO RENEW FOR UP TO FOUR (4) ADDITIONAL ONE (1) YEAR TERMS, IN AN AMOUNT NOT TO EXCEED \$75,000.00 ANNUALLY PLUS APPLICABLE GROSS RECEIPT TAX, SUBJECT TO APPROVED BUDGET APPROPRIATIONS AND ANNUAL RENEWALS (PROCUREMENT NO. 19-20-077A).		

TYPE OF ACTION: ☒ Administrative ☐ Legislative ☐ Quasi-Judicial

PURPOSE(S) OF ACTION:

To award a contract.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces (City) needs an auditing firm with extensive knowledge of police operations, procedures, and performance standards, experience conducting statistical analysis and auditing of internal investigations, along with the capability to present results and findings in a clear and concise manner to a non-police audience such as members of City Council and the public.

On November 6, 2020, the City's Purchasing Program advertised Request for Proposal No. 19-20-077A for Police Auditor Services resulting in the receipt of three (3) proposals. The proposals were reviewed and evaluated by a Selection Advisory Committee on December 17, 2020 and the committee recommended awarding the contract to OIR Group (OIR), LLC of Playa del Rey, California.

Award to OIR is expected to enhance police accountability by making periodic public reports based on monitoring and auditing activities. This contributes to increased transparency with respect to police complaint procedures. Written evaluation reports may include recommendations for change in either the complaint process or other aspects of police operations. OIR shall be available to provide Semi-annual presentations to City Council outlining findings and other relevant information.

SUPPORT INFORMATION:

19-20-077A Police Auditor Services - PSA - Exhibit A

ANNUAL BUDGET APPROVAL:

- ☒ Yes
- ☐ No
- ☐ N/A

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT:	AVAILABLE AMOUNT:	EXPENDITURE AMOUNT:
\$75,000.00	\$48,246.32	\$75,000.00

Additional Budgetary Information:	Funding Source(s):
N/A	General Fund Org: 10331003; Obj: 721080

Overall Budget Impact:
First year services will be for only 6-5 months. Full \$75,000 budget will be for FY2022.

Does this action amend the Capital Improvement Plan (CIP)?

- ☐ Yes
- ☐ No
- ☒ N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution and authorize a contract for an initial one (1) year period with the option to renew for four (4) additional one (1) year terms for the purchase of Police Auditor Services to OIR Group, LLC of Playa del Rey, California.
2. Vote "No"; this action will not authorize the Resolution and City Council will need to provide staff with alternative direction.
3. Vote to "Amend"; this could modify the Resolution based on direction by City Council to Staff.
4. Vote to "Table"; this will impact the City's operational needs and City Council will need to provide direction to Staff.



PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this 4th day of March, 2021 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and OIR Group, LLC, of 7142 Trask Avenue, Playa del Rey, CA 90293, hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION

Police Auditor Services

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES, as proposed in response to the CITY'S RFP No.19-20-077A, as set forth in Exhibit A, attached hereto and made a part of this Agreement.

3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

4. COMPENSATION

The CITY shall compensate CONTRACTOR for the performance of SERVICES under this Agreement an amount not to exceed \$75,000.00, plus applicable taxes. CONTRACTOR shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed. CONTRACTOR shall submit invoices monthly. CITY shall pay invoices Net 30 days upon receipt of undisputed invoice.

CONTRACTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. CONTRACTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

5. DEVOTION OF ADEQUATE TIME

CONTRACTOR will devote the necessary hours each week to the performance of project that is required by the CITY and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE

This Agreement shall become effective on date of award for a term of one (1) year and, pending mutual written agreement, may be extended annually thereafter for up to four (4) additional one (1) year terms.

CONTRACTOR shall perform the SERVICES in accordance with the time set forth as agreed upon by the CITY and CONTRACTOR in Exhibit B.

7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

8. CHANGES AND EXTRA SERVICES BY THE CITY

The CITY may make changes within the general scope of the SERVICES plus may also request CONTRACTOR to perform other extra services not incorporated within the Services set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the City, CONTRACTOR shall so notify the CITY of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within five (5) business work days from the date of receipt of CONTRACTOR'S written notification.

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of CONTRACTOR'S notification.

10. DELAYS

In the event that performance of SERVICES is delayed by causes beyond reasonable control of CONTRACTOR, and without the fault or negligence of CONTRACTOR, the time and total compensation for the performance of the SERVICES may be equitably adjusted by written agreement to reflect the extent of such delay. CONTRACTOR shall provide the CITY with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by CONTRACTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY for its convenience or because the PROJECT has been permanently abandoned, but only upon fifteen (15) calendar days written notice to CONTRACTOR.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

12. RECORDS AND AUDITS

CONTRACTOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S right to recover excessive or illegal payments. CONTRACTOR will retain records for five (5) years after the completion of the project.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY will be kept confidential and CONTRACTOR will not disclose to any other party, directly or indirectly, without the CITY'S prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the CONTRACTOR shall be the sole property of the CITY and shall be delivered to the CITY when requested and at the end of the Agreement.

14. INDEPENDENT CONTRACTOR

CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY. CONTRACTOR, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall CONTRACTOR's employees be covered under any policy of the CITY.

CONTRACTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither CONTRACTOR nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

16. ASSIGNMENT

CONTRACTOR shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

17. INSURANCE

CONTRACTOR shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

1. General Liability Insurance
 - a. \$1,000,000 per occurrence / \$2,000,000 aggregate

- b. Coverage must include premises and operations, products and completed operations, and personal and advertising injury.
 - c. The City of Las Cruces must be named as an Additional Insured for all coverages listed above on endorsements acceptable to the City.
 - d. Coverage must be primary and non-contributory.
 - e. Coverage must be per project or per location.
 - f. Coverage must be on an occurrence form.
 - g. Subrogation must be waived.
2. Commercial Auto Liability
- a. \$1,000,000 per occurrence
 - b. Coverage must be for "owned, leased, hired, and non-owned autos" or "any autos."
3. Workers Compensation and Employers Liability
- a. Statutory Limits
 - b. Employer liability – \$1,000,000 each accident, \$1,000,000 each employee by disease, \$1,000,000 policy limit
 - c. Subrogation must be waived.
4. Professional Liability: \$1,000,000 per claim

Endorsements for additional insured coverage and waivers of subrogation must be provided as a condition of this Agreement and shall be noted on the certificate.

CONTRACTOR shall furnish the CITY with a certificate(s) of insurance showing CONTRACTOR and Subcontractors, if any, have complied with this Article. The CONTRACTOR shall provide insurance certificates before work is to start on the project and shall provide the CITY thirty (30) days written notification of cancellation of such policies.

18. INDEMNITY AND LIMITATION

CONTRACTOR shall indemnify, defend, and hold harmless the CITY from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused solely by, resulting solely from, or arising solely out of the negligent acts, errors, or omissions of CONTRACTOR, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

19. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

CONTRACTOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the CONTRACTOR'S services or any work done pursuant to this Agreement, including anti-discrimination.

20. BREACH

In the event CONTRACTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY shall give CONTRACTOR written notice of such breach. In the event CONTRACTOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy CONTRACTOR'S breach and recover any and all costs and expenses in so doing from CONTRACTOR.

21. DISPUTE RESOLUTION

In the event that a dispute arises between CITY and CONTRACTOR under this Agreement or as a result of breach of this Agreement, the parties agree to act in good faith to attempt to resolve the dispute.

22. NOTIFICATION

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if served by Registered Mail addressed as follows:

TO CITY: City of Las Cruces
 PO Box 20000
 Las Cruces, NM 88004
 ATTENTION: Viola Perea

With Copies to: City Attorney
 Purchasing Manager

TO CONTRACTOR: OIR Group, LLC
 7142 Trask Avenue
 Playa Del Rey, CA 90293
 ATTENTION: Michael Gennaco

23. SCOPE OF AGREEMENT

This Agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and that all such covenants, agreements, and understandings have been merged into this written agreement. No prior agreement or understanding verbal or otherwise of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

24. SEVERABILITY

The parties agree that each provision of this Agreement is severable and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

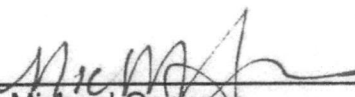
25. CONFLICT OF INTEREST

CONTRACTOR represents and warrants that CONTRACTOR has no business, professional, personal, or other interest, including, but not limited to, the representation of other clients, that would conflict in any manner or degree with the performance of its obligations under this Agreement. If any such actual or potential conflict of interest arises under this Agreement, CONTRACTOR shall immediately inform the CITY in writing of such conflict. If, in the reasonable judgement of the CITY, such conflict poses a conflict to and with the performance of CONTRACTOR'S obligations under this Agreement, or is otherwise a violation of the CITY'S current policy or ordinances, then the CITY may terminate the Agreement immediately upon written notice to CONTRACTOR; such termination of the Agreement shall be effective upon the receipt of such notice by CONTRACTOR.

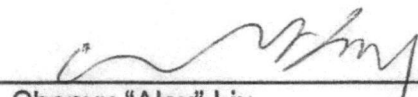
OIR GROUP, LLC

CITY OF LAS CRUCES

BY:


Michael Gennaco
Principal

BY:


Chenyu "Alex" Liu
Purchasing Manager

February 23 2021
Date

3/4/2021
Date

APPROVED AS TO FORM

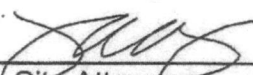
 for JVB 01/20/2021
City Attorney

EXHIBIT A

SERVICES

Police Auditor duties to be performed by CONTRACTOR include:

1. **Audits of the Complaint Investigation Process:** The audit process shall include a review and report on all formal citizen and internally initiated complaints and investigations, and investigations of law enforcement complaints received on the City's anonymous hotline, by the Internal Affairs (IA) Program to ensure investigations were complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. CONTRACTOR may be required to review and report on additional allegations of a non-serious nature categorized as EI-C3 complaints, as requested by the Las Cruces Police Department (LCPD), City Manager, City Attorney, and/or City Council.

The LCPD IA Program reported a 5-year average (2014 to 2018) of 32 formal and 39 non-serious C-3 complaints. Formal complaints may include, but are not limited to:

- a. Code of Conduct / Code of Ethics
 - b. Recording Devices
 - c. Physical Arrests
 - d. Search & Seizure
 - e. Use of Force
 - f. Bias-based Policing
 - g. Vehicle Pursuits
2. **Audits of Police Operations:** CONTRACTOR shall review and report on policies, procedures, and training issues growing from a complaint investigation and make recommendations for improvement to increase police accountability and transparency in the complaint process.
 3. **Evaluation of Tort Claim Notices and/or Noticed Civil Actions:** CONTRACTOR shall review and report on all tort claim notices and/or noticed civil actions. The information contained in the report shall include information related to matters that have been litigated or disposed and are no longer pending and shall include, but not be limited to, offender and victim demographics, location of incidents, criminal charges associated with the

incidents, disposition of the case, policy violations and dispositions, and police officer's demographics.

4. **Follow-Up Audits:** CONTRACTOR shall conduct follow-up audits, as requested, for specific instances or complaints to evaluate implementation of recommendations or existence of procedural, practical, or other barriers that serve to suppress or discourage reporting of complaints.
5. **Statistical and Trend Analysis:** CONTRACTOR shall on a semi-annual basis, compile statistics and report on trends based on new and historical data resulting from complaint investigations. The statistical and trend analysis shall include, but not be limited to, offender and victim demographics, location of incidents, criminal charges associated with the incidents, disposition of cases, policy violations and dispositions, police officers' demographics, and other statistics related to the complaint investigations.
6. **Comparative Analysis:** CONTRACTOR shall compare data for Items 1 through 5 to the overall statistics and number of incidents the Police Department responds to where no complaints were received.
7. **On-Site Presentations:** CONTRACTOR shall on a semi-annual basis, present findings, recommendations, and statistical/trend/comparative analysis to City Council, City Management, and general public.

At least one week prior to each semi-annual on-site presentation, CONTRACTOR shall schedule a meeting with the Chief of Police, City Manager, City Attorney, and other City Staff, as applicable, to discuss outcomes and recommendations.

Reporting Requirements:

1. CONTRACTOR shall submit written audit and evaluation reports electronically within 30 days of receiving the complaint or notice, which shall be distributed to the Chief of Police, IA Program Manager (i.e., currently the IA Lieutenant), City Attorney, and City Auditor.

Each report shall include an outline of positive actions, dispositions, and/or findings with recommendations for strategies to promote accountability, to correct deficiencies, and improve complaint and investigative procedures based on best practices, industry standards, and case reviews.

2. CONTRACTOR'S written semi-annual reports must be submitted electronically within 30 days of the close of the reporting period and shall be distributed to the City Council, City Manager, Chief of Police, IA Program Manager, City Attorney, and City Auditor. Reporting shall comply with the City of Las Cruces

Accountability in Government ordinance when possible and shall be coordinated through the City's Internal Audit Division.

3. CONTRACTOR'S on-site presentations must be conducted within 60 days of the close of the reporting period.

Written semi-annual reports and presentations must include:

- Number of audit/investigation requests received during each semi-annual period,
- Number of audits/investigations completed during each semi-annual period,
- Summary of all dispositions, non-complaint actions, positive actions, findings, and recommendations reported during each semi-annual period, in addition to statistical, trend, and comparative analysis of new and historical data,
- The demographics of the audits/investigations as they relate to offender and victim demographics, location of incidents, criminal charges associated with the incidents, disposition of cases, policy violations and dispositions, police officer's demographics.

CONTRACTOR shall be responsible for protecting the confidentiality of LCPD files and records to which it has been provided access. The Police Auditor shall not identify the subject of an investigation in any public report and shall maintain confidentiality required by law.

All work completed by CONTRACTOR is subject to the New Mexico Inspection of Public Records Act (IPRA).

CONTRACTOR shall use electronic submission for investigation documentation. The exchange of all data between CONTRACTOR and the LCPD is to be encrypted at a level equivalent to, or greater than, AES 256 at all times during transit utilizing SCP, Secure FTP, or equivalent, or using encrypted disposable media, with any encryption key(s) being sent separately. Data sent via encrypted disposable media will only occur upon the written request of the City, or upon the cancellation of the service contract.

EXHIBIT B

SCHEDULE

INITIAL PHASE – FIRST 60 DAYS: ASSESSMENT & RELATIONSHIP BUILDING		
Meetings	Review	Establish
• City leadership • Police Chief and command staff • Community leaders and other stakeholders • Goal is to gain perspective on state of the police department and identifying any specific concerns • Gather input from Department and stakeholders to identify future areas of audits	• Las Cruces PD policies and procedures • Training protocols	• Systems for complaint intake and handling • Schedule for on-site "office hours" • Work with Department to develop protocols to ensure: • Prompt notice of critical incidents • Prompt notice of new complaints • Expectations for inclusion at key meetings • Efficient referral of complaints to the IA Program

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/7/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Conrey Ins Brokers & Risk Managers 2522 N. Santiago Blvd. Lic#0543173 Orange CA 92867		CONTACT NAME: Linda Worthington PHONE (A/C, No, Ext): (877) 450-1872 E-MAIL ADDRESS: lindaw@conreyins.com FAX (A/C, No): (714) 838-8166	
INSURED Michael Gennaco and Associates DBA OIR Group 1767 12th St # 149 Hood River OR 97031		INSURER(S) AFFORDING COVERAGE INSURER A: Sentinel Insurance Company Ltd INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	
		NAIC # 11000	

COVERAGES **CERTIFICATE NUMBER:** CL2092110880 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE \$ 1,000,000
	☐ CLAIMS-MADE ☒ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000
		X	Y	72SBMTV3153	9/20/2020	9/20/2021	MED EXP (Any one person) \$ 10,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG \$ 2,000,000
	☒ POLICY ☐ PRO-JECT ☐ LOC						XCYBR \$
	OTHER:						
A	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	☐ ANY AUTO						BODILY INJURY (Per person) \$
	☐ ALL OWNED AUTOS			72SBMTV3153	9/20/2020	9/20/2021	BODILY INJURY (Per accident) \$
	☒ HIRED AUTOS						PROPERTY DAMAGE (Per accident) \$
	☐ SCHEDULED AUTOS NON-OWNED AUTOS						\$
	UMBRELLA LIAB						EACH OCCURRENCE \$
	EXCESS LIAB						AGGREGATE \$
	DED RETENTION \$						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N		N/A			E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

GENERAL LIABILITY FORM, SS 00 08 04 05 CONTAINS THE FOLLOWING BLANKET PROVISIONS: CERTIFICATE HOLDER IS NAMED AS AN ADDITIONAL INSURED ON A PRIMARY AND NON-CONTRIBUTORY BASIS WHEN AGREED IN WRITING OR BY CONTRACT. WAIVER OF RIGHTS OF RECOVERY (WAIVER OF SUBROGATION) APPLIES. POLICY CONTAINS 30 DAY CANCELLATION CLAUSE. 10 DAYS NOTICE IN THE EVENT OF CANCELLATION FOR NON-PAYMENT. ADDITIONAL INSURED INCLUDES City of Las Cruces.

CERTIFICATE HOLDER

vperea@las-cruces.org

 City of Las Cruces
 Attn: Viola M. Perea, CIA, CFE
 City Auditor/Legal Dept./Internal Audit
 700 N Main St
 Las Cruces, NM 88001

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Linda Worthington/LKW

Linda Worthington

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/8/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER COMPLETE EQUITY MARKETS INC 1190 Flex Court Lake Zurich, IL 60047		CONTACT NAME: PHONE (A/C, No, Ext): (847)541-0900 FAX (A/C, No): (847)541-0444 E-MAIL ADDRESS:	
		INSURER(S) AFFORDING COVERAGE INSURER A : Underwriters at Lloyd's, London INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :	
INSURED Attorneys of the Office of Independent Review dba OIR Group 1767 12th Street #149 Hood River, OR 97031			

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

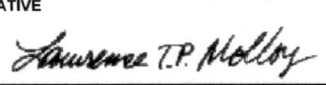
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INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☐	N/A				PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Professional Liability			94847	12/14/2020	12/14/2021	Each Claim \$1,000,000 Aggregate \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Subject to all policy terms, conditions, exclusions and endorsements of the policy. Certificate Holder is not afforded coverage under the policy.

This insurance was procured and developed under the Oregon Surplus Lines laws. It is NOT covered by the provisions of ORS 734.510 to 734.710 relating to the Oregon Insurance Guaranty Association. If the insurer issuing this insurance becomes insolvent, the Oregon Insurance Guaranty Association has no obligation to pay claims under this insurance. (SL Lic.# 130205)

CERTIFICATE HOLDER City of Las Cruces Attn: Viola M. Perea, CIA, CFE City Auditor/Legal Department/Internal Audit Office	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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SPECTRUM POLICY DECLARATIONS (Continued)

POLICY NUMBER: 72 SBM TV3153

Form Numbers of Forms and Endorsements that apply:

SS 00 01 03 14	SS 00 05 10 08	SS 00 08 04 05	SS 00 45 12 06
SS 00 60 09 15	SS 00 64 09 16	SS 01 21 02 20	SS 42 06 03 17
SS 04 38 09 09	SS 41 63 06 11	SS 05 47 09 15	SS 50 38 10 03
SS 50 19 01 15	IH 99 40 04 09	IH 99 41 04 09	SS 83 76 01 15
SS 89 93 07 16			
IH 12 00 11 85 ADDITIONAL INSURED - PERSON-ORGANIZATION			

BUSINESS LIABILITY COVERAGE FORM

**QUICK REFERENCE
BUSINESS LIABILITY COVERAGE FORM
READ YOUR POLICY CAREFULLY**

BUSINESS LIABILITY COVERAGE FORM	Beginning on Page
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BUSINESS LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the stock insurance company member of The Hartford providing this insurance.

The word "insured" means any person or organization qualifying as such under Section C. - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section G. - Liability And Medical Expenses Definitions.

A. COVERAGES

1. BUSINESS LIABILITY COVERAGE (BODILY INJURY, PROPERTY DAMAGE, PERSONAL AND ADVERTISING INJURY)

Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply.

We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section D. - Liability And Medical Expenses Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension - Supplementary Payments.

- b. This insurance applies:

- (1) To "bodily injury" and "property damage" only if:

- (a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

- (b) The "bodily injury" or "property damage" occurs during the policy period; and

- (c) Prior to the policy period, no insured listed under Paragraph 1. of Section C. - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- (2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

- c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section C. - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

e. Incidental Medical Malpractice

- (1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:
 - (a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and
 - (b) You are not engaged in the business or occupation of providing such services.
- (2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

2. MEDICAL EXPENSES

Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
 - (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations;
 provided that:
 - (1) The accident takes place in the "coverage territory" and during the policy period;
 - (2) The expenses are incurred and reported to us within three years of the date of the accident; and
 - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

3. COVERAGE EXTENSION - SUPPLEMENTARY PAYMENTS

- a. We will pay, with respect to any claim or "suit" we investigate or settle, or any "suit" against an insured we defend:

- (1) All expenses we incur.
- (2) Up to \$1,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.
- (3) The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.
- (5) All costs taxed against the insured in the "suit".
- (6) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- (7) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

Any amounts paid under (1) through (7) above will not reduce the limits of insurance.

b. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- (1) The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- (2) This insurance applies to such liability assumed by the insured;
- (3) The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- (4) The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;
- (5) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- (6) The indemnitee:
 - (a) Agrees in writing to:
 - (i) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (ii) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (iii) Notify any other insurer whose coverage is available to the indemnitee; and
 - (iv) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (b) Provides us with written authorization to:
 - (i) Obtain records and other information related to the "suit"; and
 - (ii) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Notwithstanding the provisions of Paragraph **1.b.(b)** of Section **B.** – Exclusions, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the Limits of Insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- (1) We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- (2) The conditions set forth above, or the terms of the agreement described in Paragraph (6) above, are no longer met.

B. EXCLUSIONS

1. Applicable To Business Liability Coverage

This insurance does not apply to:

a. Expected Or Intended Injury

- (1) "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property; or
- (2) "Personal and advertising injury" arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

b. Contractual Liability

- (1) "Bodily injury" or "property damage"; or
- (2) "Personal and advertising injury"

for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages because of:

- (a) "Bodily injury", "property damage" or "personal and advertising injury" that the insured would have in the absence of the contract or agreement; or

(b) "Bodily injury" or "property damage" assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purpose of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage" provided:

- (i) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract", and
- (ii) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business, or

- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured. However, this subparagraph does not apply to:

- (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
- (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible;
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or

released as part of the operations being performed by such insured, contractor or subcontractor;

- (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
 - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 51 feet long; and
 - (b) Not being used to carry persons for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment"; or
- (6) An aircraft that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

- (2) The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.

i. War

"Bodily injury", "property damage" or "personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Professional Services

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications;
- (3) Supervisory, inspection, architectural or engineering activities;
- (4) Medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
- (5) Any health or therapeutic service treatment, advice or instruction;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
- (7) Optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

- (8) Optometry or optometric services including but not limited to examination of the eyes and the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products;
- (9) Any:
 - (a) Body piercing (not including ear piercing);
 - (b) Tattooing, including but not limited to the insertion of pigments into or under the skin; and
 - (c) Similar services;
- (10) Services in the practice of pharmacy; and
- (11) Computer consulting, design or programming services, including web site design.

Paragraphs (4) and (5) of this exclusion do not apply to the Incidental Medical Malpractice coverage afforded under Paragraph 1.e. in Section A. - Coverages.

k. Damage To Property

"Property damage" to:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate Limit of Insurance applies to Damage To Premises Rented To You as described in Section D. - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3) and (4) of this exclusion do not apply to the use of elevators.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at a job site.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

l. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

m. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

n. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

o. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

p. Personal And Advertising Injury

"Personal and advertising injury":

- (1) Arising out of oral, written or electronic publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of a criminal act committed by or at the direction of the insured;
- (4) Arising out of any breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement";
- (5) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (6) Arising out of the wrong description of the price of goods, products or services;
- (7) Arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity.

However, this exclusion does not apply to infringement, in your "advertisement", of

- (a) Copyright;
- (b) Slogan, unless the slogan is also a trademark, trade name, service mark or other designation of origin or authenticity; or

(c) Title of any literary or artistic work;

(8) Arising out of an offense committed by an insured whose business is:

- (a) Advertising, broadcasting, publishing or telecasting;
- (b) Designing or determining content of web sites for others; or
- (c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs a., b. and c. under the definition of "personal and advertising injury" in Section G. – Liability And Medical Expenses Definitions.

For the purposes of this exclusion, placing an "advertisement" for or linking to others on your web site, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting;

(9) Arising out of an electronic chat room or bulletin board the insured hosts, owns, or over which the insured exercises control;

(10) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers;

(11) Arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act;

(12) Arising out of:

- (a) An "advertisement" for others on your web site;
- (b) Placing a link to a web site of others on your web site;
- (c) Content from a web site of others displayed within a frame or border on your web site. Content includes information, code, sounds, text, graphics or images; or
- (d) Computer code, software or programming used to enable:
 - (i) Your web site; or
 - (ii) The presentation or functionality of an "advertisement" or other content on your web site;

- (13) Arising out of a violation of any anti-trust law;
- (14) Arising out of the fluctuation in price or value of any stocks, bonds or other securities; or
- (15) Arising out of discrimination or humiliation committed by or at the direction of any "executive officer", director, stockholder, partner or member of the insured.

q. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

r. Employment-Related Practices

"Bodily injury" or "personal and advertising injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to the person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

s. Asbestos

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:

- (a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";
- (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
- (c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

t. Violation Of Statutes That Govern E-Mails, Fax, Phone Calls Or Other Methods Of Sending Material Or Information

"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Damage To Premises Rented To You – Exception For Damage By Fire, Lightning or Explosion

Exclusions c. through h. and k. through o. do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with permission of the owner. A separate Limit of Insurance applies to this coverage as described in Section D. - Liability And Medical Expenses Limits Of Insurance.

2. Applicable To Medical Expenses Coverage

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.

f. Products-Completed Operations Hazard

Included with the "products-completed operations hazard".

g. Business Liability Exclusions

Excluded under Business Liability Coverage.

C. WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

a. Employees And Volunteer Workers

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph (1)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services, Paragraph (d) does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

- (2) "Property damage" to property:
 - (a) Owned, occupied or used by,

- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians Of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

d. Legal Representative If You Die

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

e. Unnamed Subsidiary

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

3. Newly Acquired Or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

- b. Coverage under this provision does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

4. Operator Of Mobile Equipment

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Operator of Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written

contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section F. – Optional Additional Insured Coverages.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or

- (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors Of Equipment

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

c. Lessors Of Land Or Premises

- (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
 - (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers Or Surveyors

- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
 - (a) In connection with your premises; or
 - (b) In the performance of your ongoing operations performed by you or on your behalf.
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:
 This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:
 - (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Supervisory, inspection, architectural or engineering activities.

e. Permits Issued By State Or Political Subdivisions

- (1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
 - (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

- (1) Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
 - (a) In the performance of your ongoing operations;
 - (b) In connection with your premises owned by or rented to you; or
 - (c) In connection with "your work" and included within the "products-completed operations hazard", but only if
 - (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
 - (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The Most We Will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

2. Aggregate Limits

The most we will pay for:

- a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

3. Each Occurrence Limit

Subject to 2.a. or 2.b. above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

4. Personal And Advertising Injury Limit

Subject to 2.b. above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

5. Damage To Premises Rented To You Limit

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

6. How Limits Apply To Additional Insureds

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. Notice Of Occurrence Or Offense

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. Notice Of Claim

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insured's Own Cost

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. Additional Insured's Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs a. and b. apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

This Paragraph f. applies separately to you and any additional insured.

3. Financial Responsibility Laws

- a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.
- b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

4. Legal Action Against Us

No person or organization has a right under this Coverage Form:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

5. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom a claim is made or "suit" is brought.

6. Representations

a. When You Accept This Policy

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and

- (3) We have issued this policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

7. Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when b. below applies. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section A. – Coverages.

(5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion k. of Section A. – Coverages.

(6) When You Are Added As An Additional Insured To Other Insurance

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (a) and (b) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

8. Transfer Of Rights Of Recovery Against Others To Us

a. Transfer Of Rights Of Recovery

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

F. OPTIONAL ADDITIONAL INSURED COVERAGES

If listed or shown as applicable in the Declarations, one or more of the following Optional Additional Insured Coverages also apply. When any of these Optional Additional Insured Coverages apply, Paragraph 6. (Additional Insureds When Required by Written Contract, Written Agreement or Permit) of Section C., Who Is An Insured, does not apply to the person or organization shown in the Declarations. These coverages are subject to the terms and conditions applicable to Business Liability Coverage in this policy, except as provided below:

1. Additional Insured - Designated Person Or Organization

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations; or
- b. In connection with your premises owned by or rented to you.

2. Additional Insured - Managers Or Lessors Of Premises

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Designated Person Or Organization; but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Declarations.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

3. Additional Insured - Grantor Of Franchise

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Grantor Of Franchise, but only with respect to their liability as grantor of franchise to you.

4. Additional Insured - Lessor Of Leased Equipment

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Lessor of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

- b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

5. Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Declarations.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" that takes place after you cease to lease that land; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

6. Additional Insured - State Or Political Subdivision - Permits

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the state or political subdivision shown in the Declarations as an Additional

Insured – State Or Political Subdivision - Permits, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2) "Bodily injury" or "property damage" included in the "product-completed operations" hazard.

7. Additional Insured – Vendors

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) (referred to below as vendor) shown in the Declarations as an Additional Insured - Vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- b. The insurance afforded to the vendor is subject to the following additional exclusions:

- (1) This insurance does not apply to:
 - (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - (b) Any express warranty unauthorized by you;
 - (c) Any physical or chemical change in the product made intentionally by the vendor;
 - (d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or

- (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

8. Additional Insured – Controlling Interest

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Controlling Interest, but only with respect to their liability arising out of:

- a. Their financial control of you; or
- b. Premises they own, maintain or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

9. Additional Insured – Owners, Lessees Or Contractors – Scheduled Person Or Organization

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owner, Lessees Or Contractors, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In the performance of your ongoing operations for the additional insured(s); or
- (2) In connection with "your work" performed for that additional insured and included within the "products-completed operations hazard", but only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to "bodily injury", "property damage" or "personal an advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

10. Additional Insured – Co-Owner Of Insured Premises

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or Organization(s) shown in the Declarations as an Additional Insured – Co-Owner Of Insured Premises, but only with respect to their liability as co-owner of the premises shown in the Declarations.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

- a. (1) Radio;
- (2) Television;
- (3) Billboard;
- (4) Magazine;
- (5) Newspaper;

b. The Internet, but only that part of a web site that is about goods, products or services for the purposes of inducing the sale of goods, products or services; or

c. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

- a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or
- b. An interactive conversation between or among persons through a computer network.

2. "Advertising idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

5. "Bodily injury" means physical:

- a. Injury;
- b. Sickness; or
- c. Disease

sustained by a person and, if arising out of the above, mental anguish or death at any time.

6. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
 - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above;
 - c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in a. above;
 - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication
- provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory, or in a settlement we agree to.
- 7. "Electronic data" means information, facts or programs:
 - a. Stored as or on;
 - b. Created or used on; or
 - c. Transmitted to or from
 computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
 - 8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
 - 9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
 - 10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
 - 11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

- b. You have failed to fulfill the terms of a contract or agreement;
- if such property can be restored to use by:
- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
 - b. Your fulfilling the terms of the contract or agreement.

12. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section D. – Liability and Medical Expenses Limits of Insurance.
- b. A sidetrack agreement;
- c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement; or
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.

However, Paragraph f. does not include that part of any contract or agreement:

(1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

(a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

(b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or

(2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.

13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

14. "Loading or unloading" means the handling of property:

a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";

b. While it is in or on an aircraft, watercraft or "auto"; or

c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;

b. Vehicles maintained for use solely on or next to premises you own or rent;

c. Vehicles that travel on crawler treads;

d. Vehicles, whether self-propelled or not, on which are permanently mounted:

(1) Power cranes, shovels, loaders, diggers or drills; or

(2) Road construction or resurfacing equipment such as graders, scrapers or rollers;

e. Vehicles not described in a., b., c., or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

(1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or

(2) Cherry pickers and similar devices used to raise or lower workers;

f. Vehicles not described in a., b., c., or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

(1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:

(a) Snow removal;

(b) Road maintenance, but not construction or resurfacing; or

(c) Street cleaning;

(2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

(3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

a. False arrest, detention or imprisonment;

b. Malicious prosecution;

- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that the person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral, written or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral, written or electronic publication of material that violates a person's right of privacy;
 - f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement";
 - g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement"; or
 - h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.
18. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
19. "Products-completed operations hazard";
- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed to be completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.

- b. Does not include "bodily injury" or "property damage" arising out of:
 - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials.

20. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of "occurrence" that caused it.

As used in this definition, "electronic data" is not tangible property.

21. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

22. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

23. "Volunteer worker" means a person who:

- a. Is not your "employee";

- b. Donates his or her work;
- c. Acts at the direction of and within the scope of duties determined by you; and
- d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

24. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

- (2) The providing of or failure to provide warnings or instructions.

- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

25. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- (2) The providing of or failure to provide warnings or instructions.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

HIRED AUTO AND NON-OWNED AUTO

This endorsement modifies insurance provided under the following:

BUSINESS LIABILITY COVERAGE FORM

This coverage is subject to all provisions in the **BUSINESS LIABILITY COVERAGE FORM** not expressly modified herein:

A. Amended Coverage:

Coverage is extended to "bodily injury" and "property damage" arising out of the use of a "hired auto" and "non-owned auto".

B. Paragraph B. EXCLUSIONS is amended as follows:

1. Exclusion **g. Aircraft, Auto or Watercraft** does not apply to a "hired auto" or a "non-owned auto".

2. Exclusion **e. Employers Liability** does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits or to liability assumed by the "insured" under an "insured contract".

3. Exclusion **f. Pollution** is replaced by the following:

"Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

a. That are, or that are contained in any property that is:

- (1) Being transported or towed by, handled, or handled for movement into, onto or from, the covered "auto";
- (2) Otherwise in the course of transit by or on behalf of the "insured"; or
- (3) Being stored, disposed of, treated or processed in or upon the covered "auto".

b. Before the "pollutants" or any property in which the "pollutants" are contained are

moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or

c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph **a.** above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if:

(1) The "pollutants" escape, seep, migrate, or are discharged or released directly from an "auto" part designed by its manufacturer to hold, store, receive, or dispose of such "pollutants"; and

(2) The "bodily injury" and "property damage" does not arise out of the operation of any equipment listed in paragraphs **15.b.** and **15.c.** of the definition of "mobile equipment".

Paragraphs **b.** and **c.** above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

(1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and

- (2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage as a result of the maintenance or use of a covered "auto".
- 4. With respect to this coverage, the following additional exclusions apply:
 - a. **Fellow employee**
Coverage does not apply to "bodily injury" to any fellow "employee" of the "insured" arising out of the operation of an "auto" owned by the "insured" in the course of the fellow "employee's" employment.
 - b. **Care, custody or control**
Coverage does not apply to "property damage" involving property owned or transported by the "insured" or in the "insured's" care, custody or control.
- C. With respect to "hired auto" and "non-owned auto" coverage, Paragraph **C. WHO IS AN INSURED** is deleted and replaced by the following:
The following are "insureds":
 - a. You.
 - b. Your "employee" while using with your permission:
 - (1) An "auto" you hire or borrow; or
 - (2) An "auto" you don't own, hire or borrow in your business or personal affairs; or
 - (3) An "auto" hired or rented by your "employee" on your behalf and at your direction.
 - c. Anyone else while using a "hired auto" or "non-owned auto" with your permission except:
 - (1) The owner or anyone else from whom you hire or borrow an "auto".
 - (2) Someone using an auto while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.
 - (3) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company), or a lessee or borrower or any of their "employees", while moving property to or from an "auto".
 - (4) A partner (if you are a partnership), or a member (if you are a limited liability

company) for an "auto" owned by him or her or a member of his or her household.

- d. Anyone liable for the conduct of an "insured" described above but only to the extent of that liability.

- D. With respect to the operation of a "hired auto" and "non-owned auto", the following additional conditions apply:

1. OTHER INSURANCE

- a. Except for any liability assumed under an "insured contract" the insurance provided by this Coverage Form is excess over any other collectible insurance.

However, if your business is the selling, servicing, repairing, parking or storage of "autos", the insurance provided by this endorsement is primary when covered "bodily injury" or "property damage" arises out of the operation of a customer's "auto" by you or your "employee".

- b. When this Coverage Form and any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

2. TWO OR MORE COVERAGE FORMS OR POLICIES ISSUED BY US

If the Coverage Form and any other Coverage Form or policy issued to you by us or any company affiliated with us apply to the same "accident", the aggregate maximum Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable Limit of Insurance under any one Coverage Form or policy. This condition does not apply to any Coverage Form or policy issued by us or an affiliated company specifically to apply as excess insurance over this Coverage Form.

- E. The following definitions are added:

G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS:

- 1. "Hired auto" means any "auto" you lease, hire, rent or borrow. This does not include any auto you lease, hire, rent or borrow from any of your "employees", your partners (if you are a partnership), members (if you are a limited liability company),

Agenda Item #3.2.

or your "executive officers" or members of their households.

This does not include a long-term leased "auto" that you insure as an owned "auto" under any other auto liability insurance policy or a temporary substitute for an "auto" you own that is out of service because of its breakdown, repair, servicing or destruction.

2. "Non-owned auto " means any "auto" you do not own, lease, hire, rent or borrow which is used in connection with your business. This includes:
 - a. "Autos" owned by your "employees" your partners (if you are a partnership), members (if you are a limited liability company), or your "executive officers", or members of their households, but only while used in your business or your personal affairs.
 - b. Customer's "auto" that is in your care, custody or control for service.

**SERVICE AGREEMENT
ANNUAL EXTENSION – YEAR 3 OF 5
RFP No. 19-20-077A Police Auditor Services**

Pursuant to Section 7, EXTENSION, CHANGES AND AMENDMENTS of the Police Auditor Services Service Agreement (Agreement) dated March 4, 2021 between the City of Las Cruces (City) and OIR Group, LLC (Contractor), the City and Contractor agree to renew the Agreement for a period of one (1) year, to begin March 4, 2023 and terminate March 2, 2024. All other terms and conditions, including any amendments, of the Agreement remain the same.

AGREED:

OIR GROUP, LLC


Signature

3.2.23
Date

MICHAEL GONNACO, PRINCIPAL
Printed Name/Title

CITY OF LAS CRUCES


Alicia Hernandez
Purchasing Manager

3/15/2023
Date

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/19/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Brakke-Schafnitz Ins. Brokers License #0K07568 3 Polaris Way, 4th Floor Aliso Viejo, CA 92656 Craig Lewis		949-365-5156		CONTACT NAME: Loida Jalandra PHONE (A/C, No, Ext): 949-365-5156 FAX (A/C, No): 949-313-3287 E-MAIL ADDRESS: loida.jalandra@sig.us	
INSURED OIR Group c/o Michael Gennaco 7142 Trask Avenue Playa del Rey, CA 90293		INSURER(S) AFFORDING COVERAGE INSURER A: Sentinel Insurance Company INSURER B: Lloyds of London INSURER C: INSURER D: INSURER E: INSURER F:		NAIC # 11000	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

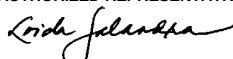
INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
P	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:	Y	Y	72SBMTV3153	09/20/2022	09/20/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	☐ AUTOMOBILE LIABILITY ☐ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			72SBMTV3153	09/20/2022	09/20/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	☐ UMBRELLA LIAB ☐ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ Y / N If yes, describe under DESCRIPTION OF OPERATIONS below		N / A				☐ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
B	Professional Liab (Claims Made)			95023	12/14/2022	09/20/2023	Per Claim \$ 1,000,000 Aggregate \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

City of Las Cruces is named as additional insured as respects general liability. Waiver of subrogation and primary and non-contributory wording applies per form SS 00 08 04 05.

CERTIFICATE HOLDER

CANCELLATION

City of Las Cruces Attn: City Auditor 700 N. Main St. Las Cruces, NM 88001	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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**QUICK REFERENCE
BUSINESS LIABILITY COVERAGE FORM
READ YOUR POLICY CAREFULLY**

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BUSINESS LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the stock insurance company member of The Hartford providing this insurance.

The word "insured" means any person or organization qualifying as such under Section **C.** - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **G.** - Liability And Medical Expenses Definitions.

A. COVERAGES

1. BUSINESS LIABILITY COVERAGE (BODILY INJURY, PROPERTY DAMAGE, PERSONAL AND ADVERTISING INJURY)

Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply.

We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section **D.** - Liability And Medical Expenses Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension - Supplementary Payments.

- b. This insurance applies:

- (1) To "bodily injury" and "property damage" only if:

- (a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

- (b) The "bodily injury" or "property damage" occurs during the policy period; and

- (c) Prior to the policy period, no insured listed under Paragraph 1. of Section **C.** - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- (2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

- c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section **C.** - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

e. Incidental Medical Malpractice

- (1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:
 - (a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and
 - (b) You are not engaged in the business or occupation of providing such services.
- (2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

2. MEDICAL EXPENSES

Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
 - (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations;
 provided that:
 - (1) The accident takes place in the "coverage territory" and during the policy period;
 - (2) The expenses are incurred and reported to us within three years of the date of the accident; and
 - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

**3. COVERAGE EXTENSION -
SUPPLEMENTARY PAYMENTS**

- a. We will pay, with respect to any claim or "suit" we investigate or settle, or any "suit" against an insured we defend:
 - (1) All expenses we incur.
 - (2) Up to \$1,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.
 - (3) The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - (4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.
 - (5) All costs taxed against the insured in the "suit".
 - (6) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
 - (7) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

Any amounts paid under (1) through (7) above will not reduce the limits of insurance.

b. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- (1) The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- (2) This insurance applies to such liability assumed by the insured;
- (3) The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- (4) The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;
- (5) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- (6) The indemnitee:
 - (a) Agrees in writing to:
 - (i) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (ii) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (iii) Notify any other insurer whose coverage is available to the indemnitee; and
 - (iv) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (b) Provides us with written authorization to:
 - (i) Obtain records and other information related to the "suit"; and
 - (ii) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Notwithstanding the provisions of Paragraph **1.b.(b)** of Section **B.** – Exclusions, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the Limits of Insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- (1) We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- (2) The conditions set forth above, or the terms of the agreement described in Paragraph (6) above, are no longer met.

B. EXCLUSIONS

1. Applicable To Business Liability Coverage

This insurance does not apply to:

a. Expected Or Intended Injury

- (1) "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property; or
- (2) "Personal and advertising injury" arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

b. Contractual Liability

- (1) "Bodily injury" or "property damage"; or
- (2) "Personal and advertising injury"

for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages because of:

- (a) "Bodily injury", "property damage" or "personal and advertising injury" that the insured would have in the absence of the contract or agreement; or

- (b) Performing duties related to the conduct of the insured's business, or

- This exclusion applies:

- This exclusion does not apply to liability assumed by the insured under an "insured contract".

(1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- (a)** At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured. However, this subparagraph does not apply to:

- (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

- (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
- (a) Employment by the insured; or

- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible;
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or

released as part of the operations being performed by such insured, contractor or subcontractor;

- (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
 - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 51 feet long; and
 - (b) Not being used to carry persons for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment"; or
- (6) An aircraft that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

- (2) The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.

i. War

"Bodily injury", "property damage" or "personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Professional Services

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications;
- (3) Supervisory, inspection, architectural or engineering activities;
- (4) Medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
- (5) Any health or therapeutic service treatment, advice or instruction;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
- (7) Optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

- (8) Optometry or optometric services including but not limited to examination of the eyes and the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products;
- (9) Any:
 - (a) Body piercing (not including ear piercing);
 - (b) Tattooing, including but not limited to the insertion of pigments into or under the skin; and
 - (c) Similar services;
- (10) Services in the practice of pharmacy; and
- (11) Computer consulting, design or programming services, including web site design.

Paragraphs (4) and (5) of this exclusion do not apply to the Incidental Medical Malpractice coverage afforded under Paragraph 1.e. in Section A. - Coverages.

k. Damage To Property

"Property damage" to:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

BUSINESS LIABILITY COVERAGE FORM

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate Limit of Insurance applies to Damage To Premises Rented To You as described in Section D. - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3) and (4) of this exclusion do not apply to the use of elevators.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at a job site.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

l. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

m. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

n. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

o. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

p. Personal And Advertising Injury

"Personal and advertising injury":

- (1) Arising out of oral, written or electronic publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of a criminal act committed by or at the direction of the insured;
- (4) Arising out of any breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement";
- (5) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (6) Arising out of the wrong description of the price of goods, products or services;
- (7) Arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity.

However, this exclusion does not apply to infringement, in your "advertisement". of

- (a) Copyright;
- (b) Slogan, unless the slogan is also a trademark, trade name, service mark or other designation of origin or authenticity; or

- (c) Title of any literary or artistic work;
- (8) Arising out of an offense committed by an insured whose business is:
 - (a) Advertising, broadcasting, publishing or telecasting;
 - (b) Designing or determining content of web sites for others; or
 - (c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **a.**, **b.** and **c.** under the definition of "personal and advertising injury" in Section **G.** – Liability And Medical Expenses Definitions.

For the purposes of this exclusion, placing an "advertisement" for or linking to others on your web site, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting;

- (9) Arising out of an electronic chat room or bulletin board the insured hosts, owns, or over which the insured exercises control;
- (10) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers;
- (11) Arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act:

- (12) Arising out of:
 - (a) An "advertisement" for others on your web site;
 - (b) Placing a link to a web site of others on your web site;
 - (c) Content from a web site of others displayed within a frame or border on your web site. Content includes information, code, sounds, text, graphics or images; or
 - (d) Computer code, software or programming used to enable:
 - (i) Your web site; or
 - (ii) The presentation or functionality of an "advertisement" or other content on your web site;

- (13) Arising out of a violation of any anti-trust law;
- (14) Arising out of the fluctuation in price or value of any stocks, bonds or other securities; or
- (15) Arising out of discrimination or humiliation committed by or at the direction of any "executive officer", director, stockholder, partner or member of the insured.

q. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

r. Employment-Related Practices

"Bodily injury" or "personal and advertising injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to the person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

s. Asbestos

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:

- (a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";
- (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
- (c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

t. Violation Of Statutes That Govern E-Mails, Fax, Phone Calls Or Other Methods Of Sending Material Or Information

"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Damage To Premises Rented To You – Exception For Damage By Fire, Lightning or Explosion

Exclusions **c.** through **h.** and **k.** through **o.** do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with permission of the owner. A separate Limit of Insurance applies to this coverage as described in Section **D.** - Liability And Medical Expenses Limits Of Insurance.

2. Applicable To Medical Expenses Coverage

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.

f. Products-Completed Operations Hazard

Included with the "products-completed operations hazard".

g. Business Liability Exclusions

Excluded under Business Liability Coverage.

C. WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a.** An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b.** A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c.** A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d.** An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

- e.** A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

a. Employees And Volunteer Workers

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

- (a)** To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b)** To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph **(1)(a)** above;
- (c)** For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1)(a)** or **(b)** above; or
- (d)** Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services, Paragraph **(d)** does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

(2) "Property damage" to property:

- (a)** Owned, occupied or used by,

- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians Of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

d. Legal Representative If You Die

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

e. Unnamed Subsidiary

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

3. Newly Acquired Or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

- b. Coverage under this provision does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

4. Operator Of Mobile Equipment

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Operator of Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section **F. – Optional Additional Insured Coverages.**

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- This insurance does not apply to:

- (e)** Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- (f)** Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- (g)** Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (h)** "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

 - (i)** The exceptions contained in Subparagraphs **(d)** or **(f)**; or
 - (ii)** Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

(1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

c. Lessors Of Land Or Premises

- (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
 - (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers Or Surveyors

- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
 - (a) In connection with your premises; or
 - (b) In the performance of your ongoing operations performed by you or on your behalf.
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:
 This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:
 - (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Supervisory, inspection, architectural or engineering activities.

e. Permits Issued By State Or Political Subdivisions

- (1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
 - (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

- (1) Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
 - (a) In the performance of your ongoing operations;
 - (b) In connection with your premises owned by or rented to you; or
 - (c) In connection with "your work" and included within the "products-completed operations hazard", but only if
 - (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
 - (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section **D. – Limits Of Insurance.**

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section **E. – Liability And Medical Expenses General Conditions.**

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The Most We Will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

2. Aggregate Limits

The most we will pay for:

- a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

3. Each Occurrence Limit

Subject to **2.a.** or **2.b.** above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

4. Personal And Advertising Injury Limit

Subject to **2.b.** above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

5. Damage To Premises Rented To You Limit

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

6. How Limits Apply To Additional Insureds

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. Notice Of Occurrence Or Offense

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. Notice Of Claim

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

BUSINESS LIABILITY COVERAGE FORM

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insured's Own Cost

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. Additional Insured's Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs **a.** and **b.** apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

This Paragraph f. applies separately to you and any additional insured.

3. Financial Responsibility Laws

- a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.
- b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

4. Legal Action Against Us

No person or organization has a right under this Coverage Form:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

5. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom a claim is made or "suit" is brought.

6. Representations

a. When You Accept This Policy

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and

- (3) We have issued this policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

7. Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when b. below applies. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section A. – Coverages.

(5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion k. of Section A. – Coverages.

(6) When You Are Added As An Additional Insured To Other Insurance

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (a) and (b) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

8. Transfer Of Rights Of Recovery Against Others To Us

a. Transfer Of Rights Of Recovery

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

F. OPTIONAL	ADDITIONAL	INSURED
COVERAGES		

If listed or shown as applicable in the Declarations, one or more of the following Optional Additional Insured Coverages also apply. When any of these Optional Additional Insured Coverages apply, Paragraph 6. (Additional Insureds When Required by Written Contract, Written Agreement or Permit) of Section C., Who Is An Insured, does not apply to the person or organization shown in the Declarations. These coverages are subject to the terms and conditions applicable to Business Liability Coverage in this policy, except as provided below:

1. Additional Insured - Designated Person Or Organization

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations; or
- b. In connection with your premises owned by or rented to you.

2. Additional Insured - Managers Or Lessors Of Premises

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Designated Person Or Organization; but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Declarations.
- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

3. Additional Insured - Grantor Of Franchise

WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Grantor Of Franchise, but only with respect to their liability as grantor of franchise to you.

4. Additional Insured - Lessor Of Leased Equipment

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Lessor of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).
- b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

5. Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased

- a. **WHO IS AN INSURED** under Section **C.** is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Declarations.
- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" that takes place after you cease to lease that land; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

6. Additional Insured - State Or Political Subdivision – Permits

- a. WHO IS AN INSURED** under Section **C.** is amended to include as an additional insured the state or political subdivision shown in the Declarations as an Additional

Insured – State Or Political Subdivision - Permits, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2) "Bodily injury" or "property damage" included in the "product-completed operations" hazard.

7. Additional Insured – Vendors

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) (referred to below as vendor) shown in the Declarations as an Additional Insured - Vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- b. The insurance afforded to the vendor is subject to the following additional exclusions:

- (1) This insurance does not apply to:
 - (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - (b) Any express warranty unauthorized by you;
 - (c) Any physical or chemical change in the product made intentionally by the vendor;
 - (d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or
- (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

8. Additional Insured – Controlling Interest

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Controlling Interest, but only with respect to their liability arising out of:

- a. Their financial control of you; or
- b. Premises they own, maintain or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

9. Additional Insured – Owners, Lessees Or Contractors – Scheduled Person Or Organization

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owner, Lessees Or Contractors, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In the performance of your ongoing operations for the additional insured(s); or
- (2) In connection with "your work" performed for that additional insured and included within the "products-completed operations hazard", but only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to "bodily injury", "property damage" or "personal an advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

10. Additional Insured – Co-Owner Of Insured Premises

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or Organization(s) shown in the Declarations as an Additional Insured – Co-Owner Of Insured Premises, but only with respect to their liability as co-owner of the premises shown in the Declarations.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

- a. (1) Radio;
- (2) Television;
- (3) Billboard;
- (4) Magazine;
- (5) Newspaper;

b. The Internet, but only that part of a web site that is about goods, products or services for the purposes of inducing the sale of goods, products or services; or

c. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

- a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or
- b. An interactive conversation between or among persons through a computer network.

2. "Advertising idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

5. "Bodily injury" means physical:

- a. Injury;
- b. Sickness; or
- c. Disease

sustained by a person and, if arising out of the above, mental anguish or death at any time.

6. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above;
- c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in a. above;
 - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory, or in a settlement we agree to.

- 7. "Electronic data" means information, facts or programs:
 - a. Stored as or on;
 - b. Created or used on; or
 - c. Transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
- 8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- 9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
- 10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
- 11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

- b. You have failed to fulfill the terms of a contract or agreement;
- if such property can be restored to use by:
- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
 - b. Your fulfilling the terms of the contract or agreement.

12. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section D. – Liability and Medical Expenses Limits of Insurance.
- b. A sidetrack agreement;
- c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement; or
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.

However, Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
 - (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.
 13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
 14. "Loading or unloading" means the handling of property:
 - a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
 15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
 - a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, on which are permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
 - e. Vehicles not described in a., b., c., or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
 - f. Vehicles not described in a., b., c., or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

 - (1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
 - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
 16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
 17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
 - a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;

- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that the person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral, written or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral, written or electronic publication of material that violates a person's right of privacy;
 - f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement";
 - g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement"; or
 - h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.
- 18. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.**
- 19. "Products-completed operations hazard";**
- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed to be completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.

- b. Does not include "bodily injury" or "property damage" arising out of:
 - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials.

20. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of "occurrence" that caused it.

As used in this definition, "electronic data" is not tangible property.

21. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

22. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

23. "Volunteer worker" means a person who:

- a. Is not your "employee";

- b. Donates his or her work;
- c. Acts at the direction of and within the scope of duties determined by you; and
- d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

24. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

- (2) The providing of or failure to provide warnings or instructions.

- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

25. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- (2) The providing of or failure to provide warnings or instructions.