

WORK SESSION AGENDA

Mayor Ken
Miyagishima

Mayor Pro Tem
Kasandra Gandara

Councilors
Tessa Abeyta
Becki Graham
Johana Bencomo
Becky Corran
Yvonne Flores

Monday, February 27, 2023 at 1:00 PM



City of Las Cruces®

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City of Las Cruces

Council Work Session Summary

Meeting: Work Session - Feb 27 2023

TITLE: 3rd 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 Police Department internal affairs complaints.

SUPPORT INFORMATION:

[OIR Group Third Semi-Annual Review of LCPD with Cases - February 2023](#)

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

[19-20-077A Police Auditor Svcs - Yr 2 Executed](#)

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

Oversight Committee

Las Cruces Police Department

THIRD SEMI-ANNUAL CASE REVIEW AUDIT REPORT

February 2023



Michael Gennaco
Stephen Connolly
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Introduction

OIR Group¹ has completed a year and a half tour 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. The independent review adds a layer of outside scrutiny – and public transparency – to the Department's efforts at addressing allegations of misconduct. Additionally, the recommendations we often make in conjunction with individual cases are intended to enhance the future strength of the underlying processes.

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.

And, as part of our assignment, we produce a Semi-Annual Audit Report to share our work with City leadership, stakeholders, and the community to increase communication and transparency. This is our third such report.

In this third Report, we discuss our review of sixteen Internal Affairs cases that were closed after investigation by LCPD between June 1, 2022, and

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.

November 30, 2022.³ We share the recommendations derived from those reviews and provide a limited statistical analysis. We then summarize our review of one closed civil litigation case against the city that involved LCPD.

After almost two years into our engagement, the Department has continued to make notable improvements to the Internal Affairs complaint process. Many of the systemic internal issues that we identified early in our engagement – related to the way cases were classified and investigated – have been resolved. The Department is producing more complete and comprehensive investigations that include, for example, recorded interviews of complainants and witnesses. The Department has also increased external transparency by writing more detailed close-out letters to public complainants.

In this period, the Department also implemented changes based on our recommendations and their own identification of concerns: it re-structured management of two specialized units, quickly filled openings within the Internal Affairs unit after transfers and promotions led to period of understaffing, and began to implement the Force Review Cadre, an expanded use of force review process to better evaluate force and the performance of officers in the field.

The Department also continues its efforts to establish a “Disciplinary Matrix” that standardizes – and makes known to LCPD’s employees – the range of consequences that will result from future violations of each specific policy. While the development of such an instrument is painstaking work, we encourage it as a means of ensuring that the discipline process is guided by clear, consistent, and effective protocols.

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.

It is with that continued improvement in mind that we detail our findings from this review period. The recommendations offered in this Report are made in

³ Some of the underlying incidents occurred prior to this window of time.

Agenda Item #3.1.

recognition of the continued importance of internal review to the operational effectiveness and public legitimacy of LCPD, and are meant to help contribute to that process.

Internal Affairs Case Review

As reported by LCPD, in the period from June 1, 2022, to November 30, 2022, LCPD initiated 33 Internal Affairs cases across all complaint case categories.⁴ We looked at a percentage of them for this report; the others were either still pending completion or of a nature that fell below our established review threshold in terms of the seriousness of the allegations at issue.

While the receipt of new complaints indicates that the Department fell short of *complete* public satisfaction, it is also instructive to put these numbers into context. In this period, LCPD responded to 68,691 calls for service.⁵ Proportionally, then, the total number of encounters that generated a complaint in this period constitutes just a tiny fraction of Department's overall interactions with the public. And the number of new complaints is lower than in the previous six-months of our review schedule, even though that earlier time period produced significantly fewer calls (54,552).⁶

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. We received and reviewed 16 cases in the six-month period covered here.

- **5 II.** Internal Investigations, or "II," are complaints generated by the department when there is an internal allegation related to misconduct or

⁴ This data was provided by LCPD Internal Affairs from its IA Pro system; this case count includes all Internal Investigations, External Investigations classified as Category 1, 2, or 3, Supervisory Matters, Vehicle Crashes, and Vehicles Pursuits.

⁵ This data was provided by Mesilla Valley Regional Dispatch Authority (MVRDA) via LCPD. It is important to note that not all complaints come from calls for service. Some might come from interactions that were not precipitated by a call, such as a traffic stop, accident investigation, or enforcement contact initiated by the police. But this increase does reflect a high level of officer activity during these months.

⁶ LCPD attributes some of the rise in calls for service to an ongoing expansion of issues with the unhoused population within the City.

operational actions of employees on or off-duty; these may involve allegations that are raised during encounters with members of the public. Unless serious or complex in nature, these operational concerns are investigated by the employee's chain of command and then forwarded to IA for tracking and filing. In this period, one of these cases -- involving internal supervision -- was reported to the Ethics Hotline.

- **11 EIC1.** External Investigations, or "EI," are complaints reported by the Las Cruces public. These fall into one of three sub-classifications based on the perceived seriousness of the allegations.⁷ Category 1, which we review, is a "formal" complaint that is documented and investigated by Internal Affairs. One of these was reported via the Ethics Hotline.

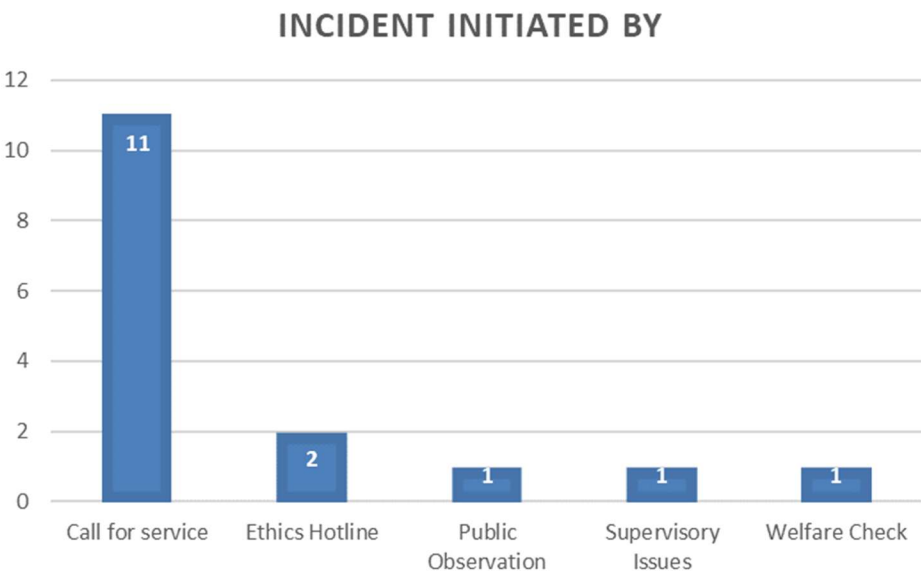
Ten cases were initiated by members of the public through the public complaint process, and one was initiated by a member of the public through the Ethics Hotline. LCPD classified these as Category 1 External Investigations.

Civilian Demographics

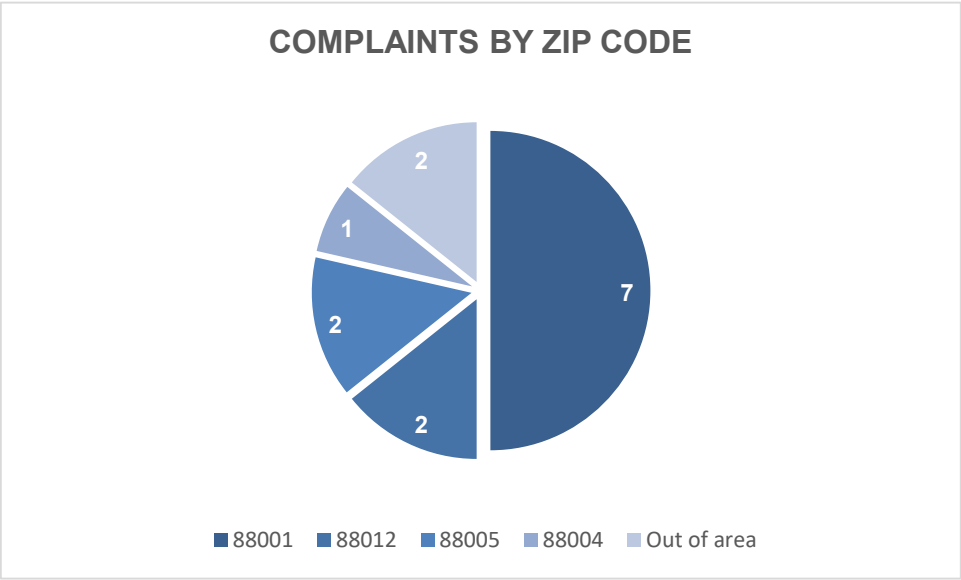
While only 11 cases were officially classified as "External," a total of fourteen cases involved at least some interaction with a member of the public. Six of these cases involved interaction with a Hispanic civilian and seven a white civilian. One was anonymous. The remaining two cases did not involve interaction with the public.

The majority of these incidents (11) stemmed from employees' actions or conduct during a call for service.

⁷ Of these External Investigations, OIR Group only reviews EI Category 1, or "EIC1." There are two other categories for External Investigations: 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.



Most cases involved incidents in or the residents of the zip code 88001. Two were reported by complainants who reside in out-of-area zip codes. Two were reported “anonymously;” as such, there was no related zip code.



Officer & Allegation Data

The sixteen complaint cases that we reviewed encompassed 39 separate formal allegations against 21 LCPD employees across several rank levels.⁸ This is down markedly from our last period, which featured nearly 60 formal allegations within the sixteen separate investigations we reviewed.⁹

According to the Department, 14 of these employees are Hispanic, six are white, and one is Black.

Here again, as in our last report, we did not find any notable trends related to officer race or race of the complainant relative to the officer(s). We also previously reported no notable racial disparities in traffic or pedestrian stops; this continues to be true because there were no new cases related to traffic stops in this period. OIR Group intends to continue tracking officer and complainant demographics and will report any findings of significance related to race, area, and / or rank.

We also evaluated cases by allegation type to determine trends or areas of repeat concern. The allegation types were as follows:

- Procedural – Other, which includes allegations of failure to investigate, reporting delays, or breaches of security / confidentiality, among others)
- Procedural – Code of Conduct, which includes conduct unbecoming, discourtesy, and insubordination, among others

⁸ At the time of the investigation, 1 accused employee was a Lieutenant, 2 were Sergeants, 11 were Officers, 2 were non-sworn supervisors, and 5 were non-sworn employees. Two complaints were against the same officer for similar issues (2021II-003 and 2021EIC1-027).

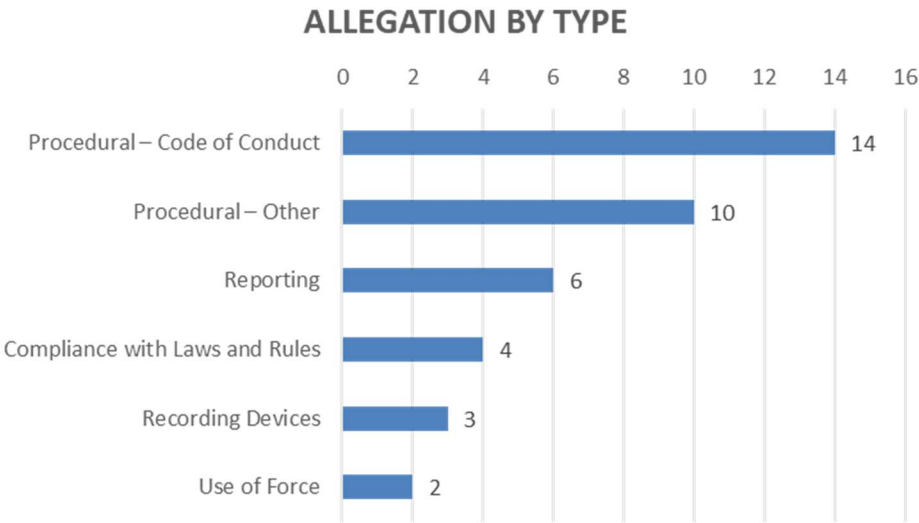
⁹ While this is obviously a reduction in the total number of specific policy violations that were alleged, the connection to relative “customer satisfaction” or officer performance is not an exact one. Some of it is a function of factors such as fewer officers being present on the calls that generated complaints. Moreover, as we discuss in our analysis section below, we found that LCPD did not fully frame all allegations in some investigations, which contributed in part to this lower count.

- Use of Force, which includes allegations of excessive force
- Compliance with Laws and Rules
- Recording Devices, which involves an employee’s failure to activate a body-worn recording device or properly store recorded evidence.

In our last report, we identified an increase in allegations related to the more procedural components of police work, such as report writing and appropriate evidence storage. Last period, these were internal complaints, identified by the Department during the complaint investigation process. In this period, we noted an increase in external complaints of report writing (e.g., made by members of the public). For this reason, we added an allegation category specific to report writing: “Reporting.”

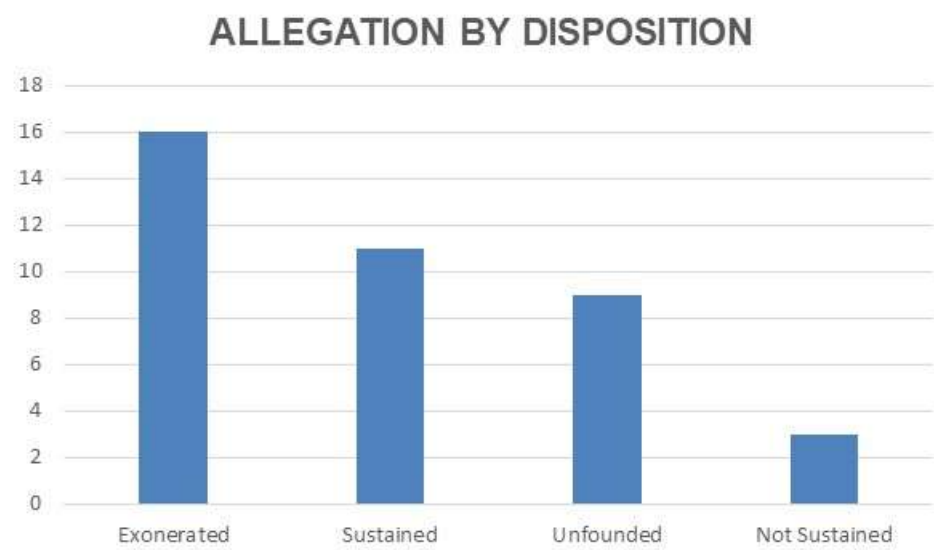
Through investigation, the Department found, and we agreed, that half of these allegations had merit, while the remaining half were exonerated or unfounded. In the cases where the allegations were sustained (3 allegations against 2 officers), the Department sought to remedy report-writing deficiencies through discipline and training, but, eventually, both officers left the Department to seek other employment.

We will continue to track the Department’s progress in report writing training and supervision by using this allegation type in future reports.



We also review case outcomes, or “dispositions.” In this period, officers were exonerated in 16 of these allegations, which means that the alleged action(s) occurred, but the officer acted lawfully and within Department policy. Eleven (11) of the allegations were sustained. Nine were unfounded and three were not sustained. We discuss these last two dispositions in greater detail in our analysis section below.

For those sustained allegations, the discipline ranged from a verbal or written reprimand up to a 20-hour suspension. In most cases, these officers were also directed to some form of training. In one case, an employee was terminated for an unrelated matter, and, in another, the officer resigned before the case investigation was complete.



Summary of Case Data

Here, we provide a very brief summary of each case with the rank of the accused employees, allegations and dispositions. Our final memos with full case summaries, recommendations, and LCPD’s Management Responses, are included as **Appendix A** to this Report.

2021II-003

Public-initiated complaint related to a welfare check. Officers responded to check on the safety of a couple who were fighting in a parking lot. Officer forcefully shoved the female into the police vehicle. Included a related use of force investigation.

Officer	Police Reports	Sustained
Officer	Prisoner Transport	Sustained
Officer	Use of Force	Sustained

2021II-015

Complaint to the Ethics Hotline regarding ongoing harassment of female employees by a supervisor and related management concerns within a particular unit.

Non-sworn supervisor	Discrimination and Harassment	Unfounded
Non-sworn supervisor	Personnel Manual: Leave	Exonerated
Non-sworn supervisor	Overtime Procedures	Exonerated
Non-sworn supervisor	Code of Conduct	Sustained
Non-sworn employee	Recording Devices	Sustained
Non-sworn employee	Recording Devices	Sustained

2021EIC1-024

Public complaint resulting from a call for service. After the incident, the complainant alleged that the sergeant was rude, used excessive force, arrested him without cause, failed to provide him medical treatment, and failed to communicate with him effectively, as he is deaf and uses sign language.

Sergeant	Persons with Disabilities	Exonerated
Officer 1	Persons with Disabilities	Exonerated
Officer 2	Persons with Disabilities	Exonerated

2021EIC1-026

Public complaint alleging that officers failed to write an accurate incident report, was rude, and had inappropriately accused her grandson of watching a neighbor.

Officer	Code of Conduct - Conduct Toward Public	Exonerated
Officer	Police Reports	Exonerated

2021EIC1-027

Public complaint alleging that an officer had not appropriately conducted a traffic investigation, resulting in her missing necessary insurance information to file a claim.

Officer	Traffic Crash Investigation	Exonerated
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2022II-003

Public complaint alleging that an officer inappropriately cited the complainant. This investigation resulted in discovery of additional management issues in a specific Department unit.

Lieutenant	Supervisor Responsibilities	Not Sustained
Lieutenant	Code of Conduct	Not Sustained
Non-sworn supervisor	Supervisor Responsibilities	Not Sustained
Non-sworn employee	Code of Conduct	Exonerated

2022II-005

Public complaint alleging that, while conducting investigations at her place of work, an officer harassed her repeatedly and, later, pulled her over while she was driving in a vehicle that was known to the officer.

Officer	Discrimination and Harassment	Unfounded
Officer	Unsatisfactory Performance	Unfounded
Officer	Standards of Conduct	Unfounded
Officer	Conduct Unbecoming	Unfounded

2022II-009

Department-generated complaint of harassment of a subordinate by a supervisor as reported by the subordinate.

Sergeant	Discrimination and Harassment	Unfounded
Sergeant	Standards of Conduct	Unfounded

2022EIC1-001

Public complaint that officers used excessive force while detaining a subject.

Officer	Use of Force	Unfounded
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2022EIC1-002

Public complainant alleged that the officer did not provide satisfactory service when he responded to resolve a neighbor dispute.

Officer	Code of Conduct	Exonerated
Officer	Release of Property	Sustained
Officer	Evidence and Property	Sustained
Officer	Recording Devices	Sustained

2022EIC1-006

Public complainant observed a non-sworn employee driving recklessly in a Department vehicle. Investigation revealed that this non-sworn employee, who was already on probation, was late reporting for her shift.

Non-sworn employee	Code of Conduct - Reporting for Duty	Sustained
Non-sworn employee	Vehicle Operation	Sustained

2022EIC1-009

This investigation was initiated when a complainant alleged that an LCPD officer committed an unlawful search, seizure, and questioning of her juvenile son.

Officer	Search and Seizure Procedures	Exonerated
Officer	Juvenile Interviews	Exonerated

2022EIC1-011

Public complainant alleged that he was the subject of targeted, harassing enforcement by code enforcement employees.

Non-sworn employee	Code Enforcement - Duties and Responsibilities	Exonerated
Non-sworn employee	Code Enforcement - Observation	Exonerated

2022EIC1-017

Public complainant alleged that officers did not appropriately respond to his call for service after a dispute in a coffee shop.

Officer	Code of Conduct - Unsatisfactory Performance	Exonerated
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2022EIC1-018

Public complainant alleged that officers failed to control her partner's movements in their shared residence when she called for a civil standby to enforce an emergency protection order.

Officer	Domestic Family Disturbance - Standby Calls	Exonerated
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2022EIC1-026

Public complaint to the Ethics Hotline regarding an officer idling his Department vehicle.

Officer	City Policy - Idling Vehicle	Unfounded
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Review, Findings & Recommendations

Since 2001, OIR Group's monitoring responsibilities have provided its members with unique outsider access to a full range of internal review processes for many police agencies. This includes countless Internal Affairs investigations into officer misconduct. We have seen firsthand the way that different agencies perform such important functions with greater or lesser effectiveness. We recognize the principles of sound, thorough investigation and its importance to appropriate accountability.

We brought this experience to these case reviews. Our review included an assessment and discussion of the following components:

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

To accomplish this, OIR Group reviewed all evidence provided by LCPD and consulted with LCPD regarding case questions or potential recommendations.¹⁰

OIR Group submitted a memo for each case and LCPD provided a Management Response. As noted above, our completed memos are included as **Appendix A** to this Report. In this section, we summarize the findings and recommendations from our reviews.

¹⁰ When LCPD closed an Internal Affairs investigation within the scope of our work, LCPD 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 Practices

We continue to find LCPD's Internal Affairs practices to be robust and effective, and the Department has incorporated many of our recommended best practices in the past year and a half. We were pleased to learn that Internal Affairs has new personnel starting in late January to replace staff members who have left the unit; ensuring sufficient resources is one way that an agency manifests its commitment to administrative accountability.

Along with these encouraging developments, we identified additional areas where LCPD process and approach might better align with the most effective practices.

Inclusion of “Background” Information

We are exceptionally pleased with the Department's responsiveness to our work generally, which includes prompt responses to our myriad of questions about Department systems and other Las Cruces-specific information that we, as “outsiders” might not be aware of. This has proven to be especially helpful in clarifying issues that arise during our review of cases as we attempt to fully understand what transpired and the Department's decision-making.

We appreciate and enjoy these conversations: the Department's candor and transparency is always illuminating in ways that enhance the accuracy of our own process. At the same time, though, we have repeatedly recommended that any peripheral information that influences the Department's approach to the case or its ultimate findings should be included in the investigative report.

For example, in case 2022EIC1-011, the complainant alluded to on-going disputes with the Department that included various other allegations, but the case we were reviewing did not identify or investigate these matters. When we inquired, LCPD responded that the complainant had filed numerous other complaints, some of which were being investigated as “Supervisory Matters”

and others that were pending civil litigation.¹¹ Including that relevant background information, such as cross-referencing other active IA case numbers, would have helped us, as reviewers, to better understand the totality of the circumstances.

Ideally, a case file will stand on its own as a clear depiction of what occurred and why – without reliance on additional and unmentioned information that is understood by participants in the moment, and shapes the outcome in some way, but is not preserved for future reference. Regular and thorough documentation has a value that transcends our auditing purposes and contributes to effective supervision, proper accountability, and risk management.

Following Investigation Protocol: Allegations

In our last reports, we recommended areas of improvement in following investigative protocol. LCPD responded by more regularly interviewing witnesses and complainants and assigning unique case numbers to each investigation.

We continue to see challenges, however, with the completeness of investigations. These concerns are twofold: first, because of occasional gaps in framing allegations comprehensively, and second with regard to whether investigation is appropriately rigorous for all allegations that are appropriately framed.

We continued to identify cases where the investigators did not thoroughly frame and pursue every aspect of the concerns raised by the complainant. For example, in case 2021II-003, which involved an excessive use of force during a welfare check, the investigator did not fully address allegations potentially related to the Code of Conduct for use of aggressive and profane language.

¹¹ Supervisory Matters, or “SM” is another complaint category. These complaints involve low-level issues that may not rise to the level of serious misconduct and are investigated at the supervisor level. Review of SMs is not part of our scope of work.

And in 2022EIC1-018, we noted that only one officer was named and investigated when *two* officers responded to the call and had significant involvement with the complainant. In that same case, the complainant also alleged that the first officer was rude when he stated, “I’m not a handyman” at the end of the incident. The IA investigator wrote that he was “unable to locate where [the officer] stated that he ‘was not a handyman’” and accordingly did not frame a formal allegation regarding this statement. In our view, it would have been more accurate – and better practice to analyze the relevant policy question and use the lack of corroboration as a factor in any conclusion.

Again, we recommend that LCPD frame all allegations to ensure complete and thorough investigations that accurately reflect the totality of the complainant’s concerns.

We also recommend that IA continue to provide training for investigators in interview techniques. In one case (2022EIC1-026), we noted that the Department did not conduct a sufficiently thorough interview of the involved officer. When we raised this issue previously, LCPD responded that it planned to provide more training regarding conducting thorough and complete interviews for all Internal Affairs personnel and other supervisors who conduct personnel investigations. This training will occur via a webinar in early February 2023. LCPD is also sending its investigators to the Public Agency Training Council’s annual 5-day conference in November 2023; that training conference serves to certify personnel in conducting Internal Affairs investigations.

Timeliness Protocol

In our January 2022 Report, we noted delays in opening a case or initiating an investigation. We noted timeliness concerns again in this review period; however, unlike in our previous reports, these delays mostly resulted from insufficient staffing in the Internal Affairs unit. LCPD reported that at least one case was not assigned until late in the year due to staffing issues.

We were pleased to learn that Internal Affairs is currently fully staffed and commend that Department for appropriately staffing this important unit.

In this period, we identified an inconsistency between the investigation timeline listed in the Department’s General Order 160 – which requires a 90-day

investigation -- and the Collective Bargaining Agreement (CBA) – which requires a 180-day investigation.¹² We recommend that the Department review this discrepancy immediately and align its policy with the agreement. In our experience, and as we have presented to the City in our past reports, a 180-day timeline is reasonable.

We also again recommend that LCPD formally address any delays in case completion by:

- Following its investigative protocol for case extension as written in **General Order 160**. This policy currently states that any extension beyond 90 days requires a written authorization from command staff, which will be included in the investigative file (should the policy be amended to 180 days, we expect a written case extension be provided and included in the file):

The department will strive to complete administrative investigations within ninety (90) calendar days of distribution to an assigned investigator. Requests for extension must be made in writing to the IA Lieutenant and / or Chief of Police and include the reason for the extension request. Such requests, and their responses, shall become part of the investigative file.

- Sending update letters to public complainants when completion of their case extends beyond 90 (or, if policy is amended, 180) days, a practice that LCPD agreed to take on when we recommended it. Copies of these letters should be included in the investigative file.

Not Sustained versus Unfounded

We concurred with the Department's findings in most of the cases; their investigations and analysis supported the final dispositions. However, we noted a nuanced distinction in two cases (2021EIC1-026 and 2022II-005). In both of these, LCPD reached a conclusion that allegations were "Unfounded,"

¹² The Collective Bargaining Agreement is an agreement between the City of Las Cruces and the Las Cruces Police Officer's Association. This agreement applies to sworn LCPD personnel and remains in effect until 2025.

which means that it was established clearly that the alleged misconduct had not occurred. In our view, though, the evidence was more accurately characterized as supporting a finding of “Not Sustained,” which means that the allegation could not be proven or unproven.¹³

In some respects, this distinction is a minor one: neither an “Unfounded” nor a “Not Sustained” finding leads to a disciplinary consequence. But accuracy and attention to detail matter for their own sake. And imposing a more definitive “pro-officer” outcome than is warranted by the facts is, in its way, no more appropriate than a disciplinary sanction would be without clear proof.

We will continue to assess the dispositions of cases going forward in an effort to encourage the most appropriate, evidence-based findings.

Policy, Management and Training

During our reviews, we noted areas where LCPD might consider additional training and/or policy recommendations. While these recommendations are detailed in each memo, we have summarized them here. As with our recommendations regarding procedural concerns, LCPD committed to exploring these areas and providing relevant training or policy modifications as needed.

Persons with Disabilities Policy

In this period, we reviewed a unique case in which a subject was unable to comply with officers’ commands because he was hearing impaired (2021EIC1-024). This had us conduct a review of the Department’s current policy relating to persons with disabilities. We found it to be outdated, and the Department emphatically agreed.

We recommended that LCPD update its policy to reflect progressive policing in dealing with those who may be hearing impaired and provided model policies

¹³ In 2021EIC1-026, for example, the Department’s own investigative memo indicated “there are insufficient facts available in this case to either prove or disprove the allegation.”

for the Department's review and reference. Most importantly, current policy advises officers that they are not required to request a sign language interpreter if the officer does not need to interview a subject with a hearing impairment in order to issue a citation or effectuate an arrest, so long as the officer can explain the nature of the infraction.

The Department reported that its Academy is working with local advocates for the deaf and hard of hearing to update their curriculum for their Persons with Disabilities course, and that they would immediately review their Persons with Disabilities policy as we recommended.

It is well worth the effort to promote approaches that help both officers and deaf persons (subjects, witnesses, and victims) better navigate through the challenges of investigative encounters, citations, and arrests.

Unit Management

In our previous reports we noted challenges with the management of and personnel serving in two of the Department's non-sworn specialized units; in this period, we reviewed three cases (2021II-015, 2022II-003 and 2022EIC1-011) involving these units.

Our reviews identified several factors that contributed to the challenges. First, because they each had a separate manual defining their "standard operating procedures," personnel (including supervisors) in these units seemed unaware that the Department's General Orders applied to their work. Second, several of the Department's General Orders specifically stated that the order only applied to sworn personnel. Because they were staffed by non-sworn personnel, then, personnel assumed that these orders did not formally apply to these units. Finally, mid-level unit supervisors were not sufficiently trained for adequate supervision of the units, an oversight for which the Chief himself took direct responsibility (see case 2021II-003, in which the Chief wrote that the Department had failed to appropriately consider new training needs for personnel in supervisory and command roles).

We were impressed with how swiftly the Department addressed these concerns. Within months of our recommendations, the Department re-

examined and significantly updated operation of these units and completed the following important tasks:

- Consolidated the stand-alone procedural manuals into the existing Department General Orders
- Updated language in all General Orders so that all orders apply to all personnel, irrespective of their sworn/non-sworn status
- Restructured unit organization so that mid-level non-sworn supervisors are under the command of a sworn (and experienced) lieutenant
- Provided additional training and one-on-one training/counseling to unit supervisors and personnel.

While the responsibilities of these units are distinct from policing in basic ways, they fall within the Department's ultimate responsibility. The Department reported that these systemic changes have already largely improved management of these units. We will continue to report on these units if recurring issues arise.

Use of Force Considerations

Three of the cases that we reviewed in this period included use(s) of force and/or allegations of excessive use of force (see cases 2021II-003, 2021EIC1-024 and 2022EIC1-001). As we have explained in previous reports, the use of force review process is a separate internal process that is conducted by the involved officers' chain of command, not Internal Affairs, and one that is not within our scope of work. However, we remain committed to raising recommendations related to use of force when these arise during our complaint case reviews.

In our last report, we wrote that the Department was in the process of creating a Force Review Cadre – a team of seven subject matter experts from force training and Internal Affairs – to conduct more robust and thorough force reviews. After extensive specialized training, LCPD reported that this team is now in place. LCPD reported that the team currently evaluates any incidents where the force used does not seem commensurate with the call for service

(e.g., a trespassing call that results in force) or where force is used frequently (e.g., domestic violence calls), as well as any questionable uses of force that require more than the standard chain of command review.¹⁴

This is an encouraging commitment by LCPD, and one we look forward to learning more about. In the meantime, and based on our decades of collective experience reviewing force cases, we continued to make recommendations related to the use of force when we observed areas for improvement in the cases from this cycle. Here, we identified three areas from our case reviews that we hope the Department's new Cadre will consider.

Force Directed at the Head or Neck

In one case, the involved officer self-reported that he lightly placed his foot on the subject's head while the subject was in a prone position. This tactic was briefly evaluated in the investigation; the involved supervisor reported that the tactics were reasonable and appropriate. LCPD's internal force review process also found this tactic to be reasonable.

While the tactic was not technically out of current policy,¹⁵ we found it to be inadvisable given the totality of the circumstances in this incident. Physical force directed at the head and neck has received new levels of scrutiny in recent years, is a matter of understandable public concern (as this complaint reflects) and should be avoided when feasible. We recommend that the Force Review Cadre evaluate uses of physical force directed at the head to determine if they are reasonable and necessary, both in this incident and going forward, and evaluate the current language in General Order 255.

¹⁴ LCPD uses a well-known tracking software called "BlueTeam" to evaluate uses of force. In this system, the case is assigned for review up an officer's chain of command, with a lieutenant making the final finding(s) as to the reasonableness and necessity of the use of force.

¹⁵ General Order 255 prohibits any tactic that puts pressure on a subject's neck but does not contain any language about placing pressure on a subject's head area with a foot or otherwise.

De-escalation Tactics & Communication

In two cases, we observed officer communication that seemingly heightened tension, rather than officers utilizing the de-escalation tactics at their disposal.

In one case (2021II-003), the officer who first arrived at the scene immediately engaged with the subject in an aggressive manner, threatening her with force and using profane and aggressive language, he reported, to gain compliance. But this had the opposite effect as it escalated the situation and reduced cooperation.

In reviewing recordings from another case (EIC12022-001), we observed an officer use extensive profanity when commanding a subject to stop and get on the ground. While the use of profane language here did not rise to the level of misconduct, we found it to be unhelpful in the context of an already-intense incident. This officer then gave conflicting commands that appeared to confuse the subject, who eventually responded that he was scared and was just putting his hands behind his back in an effort to comply.

We have commented on the effectiveness and necessity of de-escalation tactics, including clear communication, in previous memos, and LCPD has responded that they are actively pursuing more training in this skill set. We recommend that the Force Review Cadre evaluate the Department's de-escalation training and consider evaluating use of de-escalation in their force reviews.

Use of the WRAP Device

In case 2021II-003, we noted that a subject was detained in a WRAP device for approximately one hour and possibly longer, and even after she advised officers that she was pregnant. Per LCPD's General Order for Prisoner Transport (General Order 233) and best practices, the WRAP is intended to be a temporary restraint device, and one that should be used with extra caution if the restrained subject is pregnant.

We recommend that the Force Review Cadre evaluate the use of the WRAP device to ensure it complies with policy.

Officer Professionalism

We continued to see the occasional issue with officer professionalism, and continued to recommend that the Department address and remedy these issues when they arise in the context of investigations. As we noted last period, these instances of unprofessional language or actions are the exception in our experience of reviewing incidents involving LCPD. On the contrary, we generally observe patience and professionalism in watching recordings of LCPD encounters with the public. Still, the times when officers fall short merit attention, and often contribute to the perceptions from which complaints arise.

Above, we mentioned this issue in the context of de-escalation and profane / aggressive communication (cases 2021II-003 and 2022EIC1-001). But we also identified unprofessional behavior of a different type: in case 2021EIC1-027, where an officer responded to a traffic collision in a fast-food restaurant parking lot, the responding officer was overly “friendly” and informal. He allowed both parties to remain in line in the drive-thru line, even encouraging the at-fault party to place her fast-food order in the middle of their conversation. The specific call for service requested that the officer assist the complainant in collecting important information from a resistant, at-fault party. But the officer’s casual approach resulted in his failure to collect adequate identifying information from either party. Here, a more professional and formal demeanor – and a more typical protocol for investigating a traffic collision – would have better accomplished the goals of that call.

In response to this recommendation in our last Semi-Annual Report, the Department stated that when it became aware of unprofessional communication or demeanor, it would follow-up with section supervisors to ensure that supervisors are providing counseling to the involved officers regarding Code of Conduct expectations. More recently, the Department reported that it has done so, both individually (e.g., with the officers in each case) and holistically during daily briefings and biannual training.

This seems to be working, at least in one important way: we have not seen “repeat offenders” in our case reviews. And if the Department’s heightened attention to these issues leads in the short run to a higher volume of identified

violations, we are nonetheless confident that the officers will adapt to the expectations in ways that improve overall performance.

Litigation Case Review

OIR Group also received and reviewed one case from the Las Cruces City Attorney that was closed during our review period. The matter involved one claimant who did not name any specific Las Cruces Department employees.

This case was related to an active shooter training session provided in 2013 by the Las Cruces Police Department during which an unidentified officer fired a rifle with blank ammunition in an enclosed space. The Plaintiff alleged that, due to her proximity to the blank, she experienced long-term medical issues and that the City was negligent when they failed to provide appropriate ear protection for the training session. The case was dismissed pursuant to a settlement in the amount of \$230,000. No charges were associated with this claim.

The case file included LCPD's active shooter training materials as delivered in 2013, which we reviewed and found to be significantly outdated. As such, we corresponded with the LCPD Training Division to learn about the Department's current active shooter training. The Department reported that it has changed its training curriculum to a federally funded program used nationwide, and it provided the course outline for review. Training personnel have attended "train-the-trainer" qualification sessions and the Division provided their certificates of completion.

The Department also advised that civilian training classes no longer include any use of ammunition or scenarios of any kind.

Our scope of work also requested that we summarize demographics related to the civil cases.

- There were no identified LCPD officers in this period.
- The claimant was white.
- The case occurred in the zip code 88001.

Next Steps

OIR Group looks forward to our continued engagement with LCPD and to future opportunities to deepen our understanding of the Department's practices. We will continue to review cases as they are completed by Internal Affairs.

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

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: December 12, 2022
RE: Review of Administrative Investigation – #2022EIC1-001

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 November 23, 2022.

Case Summary

This case was initiated by a complaint form submitted by a community member who observed this incident. The complainant reported that she observed an officer place his foot on a detained subject's neck, which the complainant believed to be excessive force.

The incident itself began with a call for service for a suspicious person trying to open doors in an apartment complex. A supervisor responded to the apartment complex. A second caller reported that her ex-boyfriend was near her apartment in the same complex and harassing her. The supervisor then observed a male subject matching the ex-boyfriend's description on the second floor of the apartment complex. The supervisor asked the subject his name, and the subject identified himself as the caller's

ex-boyfriend. The subject began to walk away from the supervisor and went down the stairs but beckoned the supervisor to follow him. The supervisor commanded the subject to “stop moving.” The subject kept walking. The supervisor said, “I’m going to detain you, man” and “you’re making me nervous.”

The supervisor attempted to grab the subject but was unsuccessful. The subject began to run and jumped over a railing, fell, got up, and resumed running through a courtyard. The supervisor broadcast that he was “going on a foot pursuit” and chased the subject. After the subject jumped over a second railing and continued to run, the supervisor deployed his Taser. The Taser probes appeared to attach to the subject’s outer clothing; the subject discarded his jacket with the probes attached and continued to run away.

The supervisor continued to chase the subject while broadcasting the subject’s direction of travel.

Meanwhile, Officer 1 (the subject of this complaint) responded to the apartment complex. When he heard the foot pursuit broadcast, he re-entered his police vehicle and drove to the supervisor’s location. He saw the subject, exited his vehicle, and pursued the subject on foot. Officer 1 yelled, “Police Department, stop!” and “stop or you’re going to get [unintelligible, possibly ‘Tased’].” He commanded the subject to get on the ground using profane language. The subject lay on the ground on his stomach.

Officer 1 then instructed the subject to put his hands behind his back. Seconds later, Officer 1 stated, “if you move, you will get Tased.” The subject said, “I’m gonna do what you say” and put his hands behind his back. The supervisor arrived. Officer 1 stated that he would provide cover and unholstered his firearm.

The supervisor knelt down, placed his knee on the subject’s back, and proceeded to handcuff the subject. The subject stated, “get off my neck; I can’t breathe.” The supervisor responded, “I’m not on your neck, I’m on your shoulder blade.” The subject responded, “now you are.” The subject called out to a witness to record the incident and attempted to lift his head. Officer 1 placed his foot on the subject’s shoulder area and head.

The officers informed the subject that he was under arrest for “resisting” because he ran from the supervisor. The supervisor then rolled the subject onto his side. Officer 1 then placed his foot in the subject’s groin area, and then moved his foot to the subject’s knee joint. Additional officers arrived at the location.

The officer and supervisor then stood the man up and moved him to the police vehicle, where another, uninvolved officer took photos of him. The subject said that he was not hurt but he was having trouble breathing. The subject would not put his legs into the

police vehicle; two officers moved his legs and upper body until he was seated inside. The officers called for paramedics because the Taser was deployed, though it did not strike the subject.

While waiting for the paramedics, the subject began to yell from the back of the police vehicle, stating that officers were pointing a gun at him and that he was uncomfortable. The officers identified that the subject was referring to a fire extinguisher in the rear of the police vehicle; they informed the subject that they could not move it. The paramedics arrived. Officers determined that the man should be transported to the hospital, where he was medically cleared for booking, and transported to the Dona Ana County Detention Center.

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 255.02 (A)(1) Use of Force – Procedures – Applying Force** as follows:

1. The complainant alleged that an officer used excessive force when he forcibly placed his foot on the subject's neck. Based on the complainant's description of the officer and using body-worn video camera footage, LCPD identified this allegation to be against Officer 1.

LCPD Unfounded this allegation, stating that the evidence showed that Officer 1's foot was on the subject's shoulder and head, not his neck.

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, including all documentation related to the uses of force in this incident.

Assessment of Investigation as Completed by LCPD

We identified issues with the investigative process of this case.

First, we noted a significant delay in this investigation. The complaint was filed on January 19, 2022; LCPD sent a complaint receipt/verification letter on January 25. However, the subject and witness officers were not notified and interviewed until late September, and the investigation was finalized at the end of October.¹

When asked about the delay, LCPD responded that the case was not assigned until late in the year due to staffing issues and that scheduled vacations resulted in further delays in finalizing the case.

Certainly, LCPD's staffing issues are of ongoing concern; staffing, recruitment, and hiring shortages have had a tremendous impact on law enforcement functions nationwide. We understand that LCPD's Internal Affairs unit has been particularly impacted as skilled personnel have retired or transferred. We urge the Department to appropriately staff this important unit.

RECOMMENDATION 1

As soon as practicable, LCPD should prioritize sufficient staffing for the Internal Affairs unit to ensure timely case completion.

As we have commented in previous memos and in our Semi-Annual Reports, the timely completion of cases is essential to ensure accurate outcomes for the accused officers, identify and remedy any issues, and to assure the public that the complaint system is effective. We have previously recommended that cases be completed within a 90-day timeframe, an industry best-practice that LCPD adopted.

But given that timeliness has been, and may continue to be, a concern with staffing shortages, we again recommend that LCPD formally address any delays in case completion by:

- Following its investigative protocol as written in **General Order 160**. This policy states that any extension beyond 90 days requires a written authorization from command staff, which will be included in the investigative file:

¹ The related use of force report was completed in a timely fashion within several days of the incident.

The department will strive to complete administrative investigations within ninety (90) calendar days of distribution to an assigned investigator. Requests for extension must be made in writing to the IA Lieutenant and / or Chief of Police and include the reason for the extension request. Such requests, and their responses, shall become part of the investigative file.

- Sending update letters to public complainants when completion of their case extends beyond 90 days, a practice that LCPD agreed to take on when we recommended it in a previous memo and our Semi-Annual Report. Copies of these letter should be included in the investigative file.

RECOMMENDATION 2

LCPD should formally request extensions and send formal update letters to complainants when case completion takes, or is anticipated to take, beyond 90 days, and include this documentation in the investigative file.

Our final issue with the investigative process is another that we have raised in previous memos: LCPD did not interview the complainant in this case or canvass for or interview any witnesses.² The complainant provided a detailed narrative in her complaint form, wherein she described the incident and involved officers; LCPD opined that this sufficed. However, we advocate for complainant interviews to understand the complainant's full perspective and to capture all relevant concerns.

Further, in this case, the officers' body-worn camera footage was at times obstructed. If LCPD had conducted an interview of the complainant and/or a timely canvass for witnesses, additional, third-party footage might have shown a clearer picture of the officers' actions.

Additional Policy, Training, or Other Findings

Because this incident involved a complaint of excessive force, the Department provided all documentation related to the uses of force. We reviewed this material and noted three areas of consideration for LCPD as they conduct their internal use of force reviews.

² In body-worn camera video, we observed the subject ask an unidentified third party to record the incident; indicating that there was at least one witness (perhaps the complainant).

The first relates to the required level of detail in the supervisor's own force report. Per **General Order 255: Use of Force**, an account of force, called the "show of force report," must include:

- a. The justification for police contact with the subject (nature of call).*
- b. All circumstances which led to the decision to show force, including a specific description of the subject's behavior.*
- c. The amount and type(s) of force shown, including a specific description of the officer's actions.*
- d. A specific description of resistance by the subject if any*

We noted that, while Officer 1's account detailed each of these items (as related to using his foot as a control technique), the report of the supervisor who deployed the Taser and also used a control technique did not provide similar detail. In past reviews, we noted that LCPD framed formal allegations for incomplete or inaccurate reports and counseled officers on the importance of their report writing. We advise that LCPD carefully review incident reports to ensure that officers include all required details as part of the force review process, send back incomplete reports for revisions when necessary, and provide follow-up counseling or directed training on report writing when warranted.

RECOMMENDATION 3

As part of the force review process, LCPD supervisors should review incident reports to ensure that officers include all required details as listed in General Order 255. If a "show of force" report is incomplete, supervisors should require the officer to make necessary revisions and should provide counseling/training on report writing when warranted.

We also recommend that the Department evaluate the tactic utilized by Officer 1: placing his foot on the prone subject's head to control the subject's movements during handcuffing. While the alleged action – Officer 1 placing his foot on the subject's **neck** - did not occur, Officer 1 self-reported that he placed his foot on the subject's head while the subject was in a prone position. Officer 1 stated that he did this to control the subject, who was "tensing up." Officer 1 reported that he did not place any significant weight on the subject's head and that most of his body weight was on his grounded foot.

This tactic was briefly evaluated in the investigation; the involved supervisor reported that, as a defensive tactics instructor, he found Officer 1's actions to be reasonable and

appropriate. LCPD's internal force review process also found this tactic to be reasonable.

While the tactic is not technically out of policy,³ we found it to be inadvisable given the totality of the circumstances in this incident. The subject was prone and largely controlled by the supervisor, who had his knee on the subject's shoulder blades. Officer 1 was providing lethal cover with his duty firearm. Placing a foot on the subject's head at this point did not appear to offer additional control considering the subject's low level of resistance. Arguably, it may have added risk to both the officer and the subject: it left Officer 1 in an inherently unbalanced and thus disadvantageous position, and it exposed the subject to foreseeable, unwarranted head injury if additional pressure had resulted.

Physical force directed at the head and neck has received new levels of scrutiny in recent years, is a matter of understandable public concern (as this complaint reflects) and should be avoided when feasible.

RECOMMENDATION 4

LCPD should evaluate uses of physical force directed at the head to determine if it is reasonable and necessary, both in this incident and going forward.

Finally, we noted two areas of concern with Officer 1's communication and commands to the subject that were not identified in the force review:

- Officer 1 used extensive profanity when commanding the subject to stop and get on the ground. We have previously commented on use of profane language in the context of officer professionalism (see Semi-Annual Report, August 2022); while the use of profane language here did not rise to the level of misconduct, we found it to be unhelpful in the context of an already-intense incident.
- Officer 1 gave the subject conflicting commands. Once the subject had surrendered, Officer 1 commanded, "put your hands behind your back." Almost immediately following this command, Officer 1 yelled, "if you move, you will get Tased!" These conflicting commands appeared to confuse the subject, who eventually responded that he was scared and was just putting his hands behind his back in an effort to comply.

³ General Order 255 prohibits any tactic that puts pressure on a subject's neck but does not contain any language about placing pressure on a subject's head area with a foot or otherwise.

In response to our Semi-Annual Report, the Department stated that when they become aware of unprofessional communication such as use of repeated profanity, it would follow-up with section supervisors to ensure that supervisors are providing counseling to the involved officers regarding their use of profane language. We advise that Officer 1's supervisor be made aware of this incident and use it as a "teachable moment" for the future.

RECOMMENDATION 5

LCPD supervisors should review officers' communication during incidents and, when appropriate, counsel officers on use of profane language or ineffective communication.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The Las Cruces Police Department Internal Affairs is currently in the process of filling a detective vacancy in the unit with plans to staff another detective position as department staffing increases to address the timely case completion. Notifying complainants of any delays and complaint progress has been addressed and will continue to improve. Investigations involving use of force are forwarded to our Use of Force instructors to determine reasonableness and to improve our training.



7142 Trask Avenue
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323-821-0586
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TO: City of Las Cruces
FROM: OIR Group
DATE: June 7, 2022
RE: Review of Administrative Investigation – #2022EIC1-002¹

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) and investigated by Internal Affairs.

OIR Group received the above-referenced case file on May 12, 2022.

Case Summary

The complainant, a woman, called LCPD about an on-going property dispute with a neighbor. An officer responded to the location.

When the officer arrived, the woman appeared to be agitated. She stated that another LCPD officer had responded to her residence earlier that day and that the neighbor was at his property now. The officer asked for clarification, stating that he was confused about the nature of the call and did not have any background information from the previous call. After conversation with the woman, the officer determined that the woman was accusing the neighbor, a man, of stealing items off of her property –

¹ This complaint is related to LCPD case number 22-009069.

specifically, a utility-terrain vehicle (UTV) -- that she had recently inherited from her late father. She also said that people were trespassing on her property.² The woman requested that the officer document the incident in a report so that she could consult with an attorney.

A second officer arrived. The first officer stated that he was “okay” on his own because everyone was calm.

The officer then contacted the neighbor. The man stated that a mechanic had been working on the UTV and erroneously left the UTV on the woman’s property instead of on his property. At some point, the man moved the UTV back into his yard. The man claimed that he had proof of ownership.

The officer returned to the woman for clarification. The woman stated that the UTV was on her property, that it may have belonged to her late father, and that, therefore, it was hers. She went on to say that, in addition to moving the UTV to his property, the man has stolen “tons of things” off her property but that those things were not on his property now. The officer stated, “I understand that you’re frustrated. We’re frustrated, too, because we have to keep coming out here to try to figure this out.”

As the woman became more frustrated and accused the man of stealing, the officer stated that the woman could “not just make blank claims” stating that the male had stolen property without being specific. He asked the woman to point out specifically what had been stolen or show proof of ownership of the UTV. She stated that she might have proof of ownership in her files.

The woman then stated that she did have keys to the UTV, which she had recovered from the floor of her home.³ She gave them to the officer.

The officer returned to the man and asked who the UTV was registered to; the man gave a name of a third party (not the woman’s father as she had claimed, nor his own name). The officer contacted dispatch and confirmed that this person was the registered owner.

The man returned to the woman and explained this discovery. The woman started to argue with the officer. The officer stated, “I just don’t want to keep coming out here” as he continued to explain that he could not confirm that the UTV had been stolen.

² According to the investigative memo, other LCPD officers had responded to that residence the night before and had arrested several trespassers who were “squatting” in the woman’s house when she was away.

³ The officer later hypothesized that one of the squatters/trespassers who had been arrested the previous night had left the UTV keys in the woman’s home.

Eventually, the woman asked the officer to put all the information into a police report because it was a civil matter that she wanted to take to court. The officer responded, "I am happy to do that." The woman then began filming the officer on her cell phone. The officer summarized the situation for the woman and walked back to the man.

The man then showed the officer a cell phone photo of the UTV's title, which he had obtained from the third-party owner identified on the registration. The officer, satisfied that this was enough to prove ownership, handed the man the keys to the UTV.

The officer returned to the woman, who stated that she wanted the UTV keys back. The woman began to argue again. Another male asked if they could file a trespassing claim against the man for taking the UTV off her property. The officer asked for evidence that the man had trespassed. The officer continued to explain the situation and said that the man had provided proof of ownership, but she had not. When the woman continued to interject arguments, the officer asked the woman to stop interrupting him.

The officer stated that the call for service had been resolved and attempted to end the encounter. The second male continued to ask questions. As the officer continued to explain the situation to that man, the woman told the man to walk away. The officer responded, "he can keep talking to me." The woman interjected to request the officer's name, which the officer provided immediately. The officer then stated, "I'd like to stop coming out here."

The second man then said that most of the issues were resolved. The officer offered to return if the woman found proof of ownership or if anything else criminal occurred. During this conversation, the woman left.

The officer told the second man that it would take seven to ten days to obtain police reports.

The officer gave the man his name and badge number and said, "you guys already have a case number." He ended the call.

Four days later, the complainant submitted a Citizen Complaint form in-person at LCPD. On the form, she stated that the officer was generally unhelpful, and that he was rude when he stated, "I'm tired of coming to this residence." She stated that she felt unsafe when the officer negotiated with the neighbor and gave him the UTV keys. Finally, she stated that the officer left the scene when she asked for a case number.

LCPD later learned that the officer had not requested a new case number for this incident from dispatch. The officer also never filed a report related to this matter (either his own independent report or a supplemental report to the prior calls for service at the

address). Finally, LCPD learned that the officer had initially failed to properly tag the body-worn video related to the incident.

LCPD's Investigation and Analysis

LCPD's Internal Affairs conducted a formal investigation of the incident and framed five allegations against the officer:

1. **General Order 103.5(A)(B). Conduct Toward the Public**

Among other guidelines, this General Order states that employees shall be respectful to the public, responsive and attentive, and "attempt to facilitate the problem-solving process.

After reviewing the body-worn camera footage of this incident, the IA investigator determined that the officer's conduct was lawful and justified and that he engaged in extensive problem-solving. The officer was exonerated for this allegation.

2. **General Order 141.01. Police Reports, Required Reporting**

This General Order details the matters for which an employee shall write a police report, which includes "collection of any evidence" and/or "when the officer believes a report is necessary," but not in civil matters.

3. **General Order 300.09. Evidence and Property Control**

This General Order detailed the requirement for using a Property Control Form for any evidence recovered, seized, or otherwise taken.

4. **General Order 300.03. Release of Property**

Among other guidelines, this General Order states that employees shall make reasonable efforts to identify and locate the owners of property and return that property when appropriate.

The IA investigator determined that, on its face, this matter did not require a police report because it was a civil dispute. However, the IA investigator noted that this matter also involved "transfer of contested property" (the keys) and that the actions taken by the officer did, in fact, "generate a requirement to file [...] documentation:" a Property Control Form. Completing that form would have required the officer to have an accompanying police report and incident number.

Because of the presence and transfer of contested property, the IA investigator determined that allegations 2 and 3 were sustained.

Allegation 4 was “not sustained.”⁴ The IA investigator determined that the officer had given the keys (the “property” in question here) to the man, who he believed to be the rightful owner. The IA investigator went on to say that the keys were “not part and parcel of a crime and did not serve as evidence” and that, as such, their return was appropriate.

5. General Order 151.02. Disposition of Recordings

This General Order requires that employees properly label all video recordings on or before their next duty day.

The IA investigator determined that the officer did not follow this policy requirement when he failed to label his body-worn video in a timely manner. This allegation was sustained.

The accused officer resigned from LCPD on March 25, 2022, prior to the completion of the investigation, for unrelated reasons. As a result, the officer did not participate in a focus interview and LCPD did not conduct a disciplinary review.

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 objective, fair and thorough. We made the following additional observations:

Despite this being appropriately escalated from a preliminary inquiry to a formal investigation, the complainant was not interviewed; the IA investigator relied on the woman’s written complaint form and the body-worn camera footage. In this case, that evidence sufficed for purposes of the investigation. But the IA investigator stated that he was unable to interview any witnesses because he did not have full names or contact information for them. Here, an interview of the complainant might have provided information about the witnesses, should the IA investigator have sought to interview them. We have previously recommended interviews of complainants and

⁴ A finding of “not sustained” means that insufficient evidence exists to prove or disprove complaint.

witnesses to help fully frame and investigate all allegations; LCPD accepted these recommendations.⁵

We also offer that the rationale for sustaining the second allegation of failure to write a report could have gone a step further: while the report was not “technically” necessary for this civil matter, except for the matter of property (the keys), we noted that the woman specifically requested, and the officer agreed to write, a detailed police report for later use in court. Here, the officer failed in fulfilling an explicit request from a member of the public to which he had agreed. Further, this call for service was arguably a continuation of the previous incident involving this woman earlier that same day for which a report **had** been written (the officer himself stated, “you guys already have a case number,” indicating knowledge of the prior call); a supplemental report from this officer would have been appropriate.

Finally, we noted that the close-out letter to the complainant, while thorough, also contained inaccurate information. The close-out letter stated that “[LCPD had] taken the appropriate remedial action.” However, no remedial action was taken in this case because the officer resigned prior to completion of the investigation. As written in previous memos, LCPD is in the process of updating their close-out letter to ensure that it contains accurate and thorough information.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The review is thorough and accurate, LCPD will take recommendations into consideration.

⁵ See memos related to 2021EIC1-006, 2021EIC1-007, and 2021EIC1-011, all submitted and finalized before this investigation began.



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323-821-0586
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TO: City of Las Cruces
FROM: OIR Group
DATE: August 18, 2022
RE: Review of Administrative Investigation – #2022II-003

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 ultimately classified as an Internal Investigation (II) and investigated by Internal Affairs.

OIR Group received the above-referenced case file on July 11, 2022.

Case Summary

This case was initiated by an external complaint: a male alleged that a non-sworn employee had tried to cite him when he was unloading items from his vehicle into his business in a marked loading zone. During that incident, the man refused to comply with the non-sworn employee's instructions to give her his identification and drove away from the non-sworn employee. As a result, the non-sworn employee drafted a criminal citation for resisting, evading or obstruction using her unit's internal records system.

The man called the unit's non-sworn supervisor to report the incident. The non-sworn supervisor forwarded this to the sworn supervisor in command of that unit because the complainant was a financial sponsor of a unit event (and the supervisor wanted to avoid any perception of bias).

The sworn supervisor interviewed the complainant, who stated that he wanted to file a formal complaint, and reviewed body-worn camera footage of the incident. After viewing the video footage, the sworn supervisor believed that the non-sworn employee had acted outside of her capacity as a non-sworn employee. She instructed the non-sworn employee to dismiss the criminal citation. The non-sworn employee disagreed but followed this direction.

At a later date, and after the formal complaint investigation had been initiated, the sworn supervisor accompanied the non-sworn employee to the man's business and engaged in a conversation with the man. She stated that she did so to help train the non-sworn employee in "problem-solving policing" and "progressive training."

During the course of the investigation and after seeking legal advice, LCPD discovered that the sworn supervisor had misinterpreted the unit's Standard Operating Procedures as they were written at the time. Further, they discovered that the non-sworn supervisor had failed to appropriately document and classify other misconduct issues in the non-sworn employee's employment history.¹

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

In investigating the initial complaint regarding the non-sworn employee, Internal Affairs discovered several internal concerns related to leadership and management in the particular unit. As a result, IA elevated this from an "External Complaint" to an "Internal Investigation," and expanded the scope of the case to encompass potential misconduct by the involved supervisors.

IA framed two allegations related to **Code of Conduct - Unsatisfactory Performance, General Order 103.01**, as follow:

1. The non-sworn employee was alleged to have violated this General Order when she attempted to issue a parking violation and later issued a criminal citation. LCPD found that the non-sworn employee was within policy and within her scope of duties during this incident. LCPD exonerated the officer.
2. The sworn supervisor allegedly did not know the policy and scope of duties related to non-sworn employees, a unit that was under her direct command, and directed the non-sworn employee to dismiss legitimate charges. LCPD initially

¹ These other issues are being addressed under separate Internal Affairs case numbers, including a Vehicle Accident investigation.

found this to be sustained. After a review by the Chief of Police and further consideration, LCPD modified the disposition to not sustained, which means that insufficient evidence existed to clearly prove or disprove allegation. We discuss this modification in our review below.

IA framed two allegations related to **Supervisor Responsibilities, General Order 108.04(A)** as follow:

3. The non-sworn supervisor allegedly failed to appropriately manage, train or otherwise correct the behavior of the non-sworn employee. The non-sworn supervisor also did not document his concerns regarding the officer using the proper Department system. LCPD initially found this to be sustained, but, as above, modified this to not sustained.
4. The sworn supervisor was alleged to have inappropriately facilitated direct communication between the complainant and the non-sworn employee during an on-going Internal Affairs investigation, using it as a “training opportunity.” The sworn supervisor also failed to properly manage, train or supervise the non-sworn supervisor. LCPD initially found this to be sustained but modified this to not sustained.

Outcome: Discipline or Other Action

As noted, three allegations were not sustained. The officer was exonerated in the fourth. As a result of these findings, LCPD did not impose any formal disciplinary action.

However, we learned that at the time of the incident, the non-sworn employee was still in her probationary period. Because of other related personnel matters, LCPD extended the probation period of this officer. This officer is no longer with the Department.

As a result of this investigation and issues that it uncovered, the Department also stated that the following non-disciplinary actions will occur:

- The unit’s Standard Operating Procedures shall be reviewed, rewritten where necessary for clarity, and incorporated into the LCPD General Orders (rather than being a stand-alone manual).

- The unit shall review their records retention protocols and align them with the Department's protocols.
- The Department will develop and deliver a new training program for all unit supervisory personnel and officers to include the scope of duties for this unit.
- The Department will provide formal supervisor training to the non-sworn supervisor to include instructions on how to write progress reports for personnel under his command.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file.

Assessment of Investigation as Completed by LCPD

With respect to allegation 1, the allegation that the non-sworn employee had attempted to improperly issue a parking citation and later a criminal complaint, we found that the evidence supported the finding of exonerated.

Allegations 2, 3, and 4 involved a part of the LCPD Internal Affairs process that we had not previously encountered in our time as Las Cruces' IPA. In this investigation, the Chief of Police's review resulted in a re-examination of the allegations and eventual change of the final dispositions, which is within the Chief's authority under **General Order 160.13**.

Essentially, the Chief issued an Addendum to the original investigation in which he modified the dispositions related to the sworn and the non-sworn supervisors from "sustained" to "not sustained." In this Addendum, the Chief acknowledged that the Department's recent re-organization of the unit had failed to appropriately consider new training needs for personnel in command roles. The sworn supervisor and non-sworn supervisor, he wrote, had not been sufficiently trained in their new positions, resulting in their actions as discovered by the initial investigation. Further, the Department noted that the unit's Standard Operating Procedures were outdated and confusing.

In short, the Chief attributed the actions of these supervisors to these larger systemic failures, rather than to their own intentional or otherwise blameworthy misconduct.

According to the Chief, the involved personnel were “acting in good faith,” and it was the Department, not the individuals, that was responsible for the outcomes.

We found these updated findings to be reasonable with regard to two of the allegations:

- Regarding allegation 2, above -- the sworn supervisor’s “confusion” over the non-sworn employee’s actions -- we agree. We have previously reported our concerns with the personnel in this unit being held to a different standard than other Department personnel by having its own (and unclear) Standard Operating Procedures. While it is a supervisor’s responsibility to know all policies, the ultimate outcome here -- the Chief’s direction to re-write the SOP, incorporate them into the LCPD General Orders, and train all personnel -- resolves the broader systemic concern. Further, the Chief assigned the sworn supervisor the job of new policy and training development for this unit, which will ensure that she become well-versed in the policies and procedures of the unit she now supervises.
- Regarding allegation 3, above -- the non-sworn supervisor’s failures as a supervisor -- we agree with the Chief’s assessment that the non-sworn supervisor had never been in a supervisory role and had not received appropriate training for his new position, despite requesting it. We found the referral to training for this employee to be an appropriate outcome: it addressed the need for corrective action in a constructive way while acknowledging the different mitigators that contributed to the supervisor’s prior performance.

We were less persuaded by the modification to allegation 4, the sworn supervisor’s failures to supervise both the non-sworn employee and the non-sworn supervisor. In the original investigation, LCPD determined that, in her role as a lieutenant, this employee’s actions violated the supervisory responsibilities listed in **General Order 108.04**. We agree with that assessment and found that the disposition of “sustained” was supported by the evidence. Unlike the non-sworn supervisor, the sworn supervisor was *not* new to her supervisory position; she was new to command of the unit but had held supervisory roles in the Department. We also found that the sworn supervisor’s use of an on-going internal investigation as a training opportunity was well-intentioned but ill-advised, giving the pending nature of the complaint.²

² Under other circumstances, we would commend the sworn supervisor’s attempt to mediate and use this type of incident as a “teachable moment.” Here, however, both the non-sworn employee and the sworn supervisor were focus employees in an on-going investigation directly involving a civilian complaint of misconduct where the civilian explicitly requested a formal investigation (e.g., had not wished to engage in mediation or other resolution).

In short, a sustained finding for supervisorial deficiencies seems to have been warranted by the facts. We accordingly do not concur with the decision to modify this disposition. It is true that some of the goals of the discipline process appear to have been met in the overall handling of this matter, and that several factors seem to lessen the need for a major disciplinary consequence. Nonetheless, accurate outcomes matter, both to the legitimacy of the process and to create a record for effective management of involved personnel in the future. In our view, those benefits were not fully realized in this case.

Additional Policy, Training, or Other Findings

As we listed above, the Department discovered several action items related to operations of the unit involved in this investigation. We concur with these and recommend that the Department timely complete them.

RECOMMENDATION 1

LCPD should timely complete all action items related to policy and training for the unit involved in this investigation.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. This was a complex investigation which exposed policy flaws, supervisor training opportunities, and required clarification of municipal code from the City Attorney's Office. These factors resulted in a re-examination and eventual change of final dispositions. The sworn supervisor was not new to her supervisory roles in the department as stated, however she was new to the section. She had limited opportunities to provide training to her subordinate supervisors due to significant amounts of protected leave.



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TO: City of Las Cruces
FROM: OIR Group
DATE: August 11, 2022
RE: Review of Administrative Investigation – #2021II-003

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 July 19, 2022.

Case Summary

Two LCPD officers responded to a call for service requesting a welfare check of two individuals, a man and woman, who were possibly intoxicated. The reporting party stated that the man was running into oncoming cars and that when he had tried to intervene, the woman began throwing rocks at him. This was the second call for service that day regarding this same man and woman; the first call, which had occurred ten minutes prior, involved a fight where the woman had shoved the man to the ground.

The first two officers to arrive were an officer trainee and his Field Training Officer (FTO). They encountered the man and woman, who the FTO knew from previous calls for service, in a parking lot. The couple also had a dog that was off leash and at times acting aggressively toward the officers. The woman, who was seated on the concrete

base of a lamppost, cursed at one officer. The man was laying on the curb near her. The FTO instructed the woman to stand up, but she refused. The officer grabbed her arm and threatened to throw her to the ground. The woman still refused to comply. The FTO pulled her to the ground. The woman continued to struggle and refused to give up her arm, which was initially tucked under her body. The officer trainee eventually was able to successfully handcuff the woman and searched her.

A third officer, the officer named in this investigation, arrived. He advised the man to secure the dog. He then assisted the other two officers in rolling over and sitting up the female, who was still struggling, yelling, and uncooperative.

The third officer and officer trainee lifted the woman from the ground and walked her toward the police vehicle. The woman leaned heavily on the third officer, turned toward him, cursed, and spit in his face. The officer yelled, "she f* spit on me!" as they continued to walk toward the police vehicle.

Once at the police vehicle, the third officer instructed the officer trainee to open the rear door of the vehicle. The officer trainee struggled to open the rear door, which further aggravated the third officer.¹ When the vehicle door was finally opened, the third officer forcibly shoved the woman into the police vehicle face first, causing her to strike her head and fall between the seat and the floor.

The third officer walked away from the immediate scene and wiped his face and hands.

Meanwhile, the woman had moved from the floor of the police vehicle (where she had landed after being pushed) to the ground, where officers restrained her.² The Fire Department arrived and provided medical attention. The woman continued to struggle and yell, was eventually placed in a WRAP device³ and was transported to booking. While being booked, the woman stated that she was pregnant. A supervisor determined that she should be transported to the hospital for medical evaluation because she was pregnant and had struck her head on the vehicle door. She was transported to the hospital. Once she was secured to the hospital bed, officers removed the WRAP device.

¹ Toward the conclusion of the body-worn camera footage, we observed the third officer apologize to the officer trainee for losing his temper. This is commendable self-correction.

² Here, we observed the FTO instruct the trainee on proper placement of his knee while holding the struggling woman on the ground. This is a positive intervention.

³ The WRAP is a restraint system designed to immobilize a person's body, restricting the subject's ability to kick, hit or inflict harm upon oneself or others.

The man was transported to the hospital because he was heavily intoxicated and had a head injury from the initial push by the woman.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD conducted a Use of Force Review of the two uses of force in this incident. The review found the “takedown” used by the FTO on the woman to be in policy. The review found the forcible push used by the third officer to be out of policy.

As a result of the out of policy finding, Internal Affairs initiated an internal investigation of the incident. IA framed three allegations against the third officer for his actions both on scene and after. These were as follow:

1. General Order 255.02 (A) Use of Force - Applying Force

This General Order section states that “personnel will use only reasonable force necessary to accomplish lawful objectives.”

LCPD sustained this allegation because the officer used unreasonable force that did not accomplish any lawful objective when he forcibly shoved the woman into the back of the police vehicle.

2. General Order 233.01(A) Prisoner Transport – Treatment of Prisoners

Among other requirements, this General Order section states that “all prisoners shall be guaranteed protection of their Constitutional Rights and given humane treatment while in the custody of LCPD employees. There shall be no verbal abuse directed at a prisoner or any unnecessary physical violence directed against any prisoner by any employee. Nor shall any employee permit or allow abuse or mistreatment of any prisoner in their custody by anyone else.”

LCPD sustained this allegation because the officer used unreasonable force in moving the woman, a prisoner, into the police vehicle.

3. General Order 255.04(B)(1) Use of Force – Reporting and Review of Use of Force Incidents

This General Order section states that “in all other instances when force is used, whether or not it results in an injury, officers shall document the use of force, any

injury or alleged injury, in the offense/incident report. Officers who directly or indirectly witness such police actions, shall document their involvement on a supplement report.”

LCPD sustained this allegation because the officer failed to submit a report regarding the use of force.

Outcome: Discipline or Other Action

As noted, the three allegations listed above were sustained. An LCPD Lieutenant reviewed this investigation, the related Use of Force Review, and the officer’s personnel history. As a result of this evaluation and considering the officer’s remorse at his actions, the Lieutenant determined that the officer should be provided significant discipline.

The officer was also directed to attend a 2-day Force Training Academy, which is scheduled for September 2022.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file.

Assessment of Investigation as Completed by LCPD

Based on our review of the investigation as completed by LCPD, we concur with LCPD’s disposition of the three framed allegations. The evidence supported a finding of “sustained” for all three violations of General Orders.

We also concur with the disciplinary outcome. Based on our own review of the officer’s personnel history, which showed no pattern of this conduct, the remorse expressed both on scene and in his administrative interview, the Use of Force Review, and the investigation, we found that the discipline issued was fair and commensurate with the misconduct. The referral to training was appropriate.

Area of Improvement: Timeliness

We noted that this investigation had a long lapse between the time it was completed by Internal Affairs and the date that discipline was officially issued. LCPD explained that this long delay was due to various personnel transitions at the command staff level, including the retirement of one lieutenant responsible for the case and a leave taken by the incoming lieutenant. As a result, the case remained unattended for several months.

When we began our work with the Department in mid-2021, we noted (and commented on) timeliness concerns. The initial timeline of *this* case largely precedes our recommendations. From that time to today, LCPD has taken proactive steps to improve the case tracking process. We will continue to track this important aspect of effective accountability.

Area of Improvement: Completeness

While we concur with the findings, we also found this investigation to have failed to address issues relating to responding officers' performance. Specifically, we found that two officers use repeated unprofessional, profane and aggressive language and temperament during the course of this incident. This aspect of the responding officers' conduct was not identified nor addressed by LCPD.

General Order 103.05 states:

103.05 CONDUCT TOWARD THE PUBLIC

A. Employees shall be respectful to the public, other employees, and supervisors, as well as any person the employee has contact with during the performance of his/her duties and responsibilities. Employees shall be tactful and control their tempers in the performance of their duties. Employees must exercise the utmost patience and discretion, and shall not engage in argumentative discussions even in the face of extreme provocation. Employees shall not use coarse, violent, profane or insolent language or gestures, nor express any prejudice concerning race, religion, politics, national origin, sex, sexual orientation, or similar characteristics.

The first officer to arrive on scene immediately and repeatedly used profanity when addressing the woman, who was known to him from previous encounters. He then stated, "I'm gonna throw you on the ground" as he grabbed the woman's arm. In his Incident Report, the officer commented, "I MADE THE STATEMENT TO HER TO TRY TO GET HER ATTENTION IN HOPES THAT SHE WOULD COMPLY JUST BY RAISING

MY LEVEL OF VERBAL COMMANDS TO THE LEVEL OF BELLIGERENCY THAT SHE HAD.”

But the aggressive and unprofessional nature of this language only served to escalate the situation, and, eventually, the officer did pull the woman to the ground.⁴ Once the woman was handcuffed, the officer stated, “knock your s*** off and stand up.” And, later, the officer continued to use profanity as he communicated with the man.

The third officer also made various profane statements and acted in an aggressive manner toward the officer trainee. And, as he walked away, the officer continued to curse out loud, both to himself and to his fellow officers on scene.

We know from experience that profanity and upset temperament is hardly unique to LCPD, that officers are human and can experience stress and high emotion like the rest of us,⁵ and that limited and rare instances of these behaviors need not necessarily be cause for extreme alarm. At the same time, we remain convinced that this behavior clashes with public expectations and Department policy. When this behavior does occur, it deserves consideration, evaluation, and course correction.

Further, as a Field Training Officer, the first officer should be held to a higher standard; FTOs are meant to lead by example. That this FTO approached the incident from the onset in an unprofessional and profane manner in front of his trainee was notable and disappointing.⁶

⁴ Indeed, LCPD’s General Order regarding Use of Force, GO 255, states that, “an officer’s approach to an individual can influence whether a situation escalates, resulting in the use of force” and advises de-escalation tactics be used when feasible. We have previously commented on the use (or lack thereof) of de-escalation tactics and tools, an area where LCPD is actively pursuing additional training.

⁵ In his administrative interview, to his credit, the third officer admitted that he lost his temper and had an emotional reaction. He further explained that he knew that the woman was possibly positive for COVID-19 and that he had nearly lost his own mother to the illness (this case occurred at the height of the national pandemic).

⁶ We did note that in a debrief at the conclusion of the incident, the FTO explained to the trainee that he acted in the manner that he did because he knew the man and woman to be intoxicated and aggressive from previous encounters. He also wanted to gain a position of tactical safety and advantage by moving the woman away from the man. While these are all tactically sound explanations, none explain or excuse the use of profanity and immediately aggressive behavior displayed by the officer.

Therefore, LCPD should have framed allegations for violations of **General Order 103.5** against the FTO and the third officer. We recommend that LCPD revisit this specific case to determine if any further action is warranted at this time to correct the officers' behaviors.

RECOMMENDATION 1

LCPD should revisit this specific case to determine if any further non-disciplinary action is warranted at this time to correct the officers' behaviors as identified in this memo, including their use of profane language, their aggressive manner, and their failure to use de-escalation.

Framing all allegations in an investigation has been the subject of previous recommendations, and one that LCPD has accepted. This is an on-going area of review that we will continue to monitor. We advise LCPD to continue to emphasize this in its Internal Affairs training.

Additional Policy, Training, or Other Findings

We noted three additional issues in this incident: failure to use de-escalation tactics, the lack of a timely Animal Control Officer response, and the length of time that the woman was kept in the WRAP device.

First, as we noted above, the FTO who first arrived at the scene immediately engaged with the woman in an aggressive manner, rather than utilizing any type of de-escalation tactic. We have commented on the effectiveness and necessity of de-escalation tactics in previous memos, and LCPD has responded that they are actively pursuing more training in this skill set. Here again, we advise that LCPD train officers in effective de-escalation tactics on a frequent basis. We also recommend that LCPD focus on training FTOs in de-escalation to ensure that new officer trainees are exposed to and taught de-escalation in the field.

RECOMMENDATION 3

LCPD should continue to train officers in effective de-escalation tactics on a frequent basis, with a focus on training FTOs in these techniques.

Second, we did not find reference to any Animal Control Officer response to this scene, which involved an aggressive dog. In the body-worn camera footage of all three responding officers, we observed the dog who, at times, became aggressive toward the officers. At various points, officers threatened to shoot or use a Taser on the dog if the dog was not restrained.

For example, the third officer is heard instructing the man to hold his dog, stating, “if [the dog] comes at us, it’s getting Tased.” Moments later, after the woman was detained on the ground receiving medical attention from Fire personnel, the dog approached. It appeared that the third officer used his Taser in spark test mode aimed at the dog (no Taser probes were deployed from the weapon). The dog scurried away at the noise but continued to act aggressively as the man was arrested.

We noted that at least two officers called for an Animal Control Officer to respond to the scene. But in the footage that we observed, which lasted well over thirty minutes, we did not see an Animal Control response.

Here, we recommend that LCPD assess Animal Control’s response times, specifically as they relate to this incident, to determine why an Animal Control Officer did not respond to the scene in a timely manner and what, if any, future actions are warranted to ensure a timely response.

RECOMMENDATION 3

LCPD should assess Animal Control’s response times and what, if any, future actions are warranted to ensure a timely response to scenes.

Finally, we noted that the woman was detained in a WRAP device for approximately one hour and possibly longer,⁷ and even after she advised officers that she was pregnant.

LCPD’s General Order for Prisoner Transport, GO 233, advises:

233.03 AUTHORIZED PRISONER RESTRAINTS

⁷ We estimated the woman’s time in the WRAP based on times listed in the CAD and officers’ Incident Reports. Officers responded to the scene at approximately 5:00PM. They applied the WRAP device at approximately 5:15PM. The woman advised officers that she was pregnant while in booking at approximately 6:00PM. The WRAP device was removed *after* the woman was transported to the hospital and handcuffed to a hospital bed sometime after 6:00PM.

c. All caution and reasonableness should be considered when using the “WRAP” on a known pregnant person.

d. The “WRAP” is to be considered a temporary restraint device and the subject should be transported as soon as possible.

In their Incident Reports, the involved officers stated that the woman continued to be uncooperative until she was in a hospital bed. This, they stated, necessitated the continued use of the WRAP. However, we recommend that LCPD review the use of the WRAP in this incident and generally, including considering the length of time that is necessary and appropriate and alternatives to its use, especially on vulnerable populations.

RECOMMENDATION 4

LCPD should review the use of the WRAP device in this incident and generally, including considering the length of time that is necessary and appropriate and alternatives to its use, especially on vulnerable populations.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The Las Cruces Police Department continues to develop and implement additional training on de-escalation and professionalism. Additional efforts have also been implemented in the field training program. Since this incident, several officers have received training on Interpersonal communications. The WRAP system deployment will be reviewed.



7142 Trask Avenue
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TO: City of Las Cruces
FROM: OIR Group
DATE: August 9, 2022
RE: Review of Administrative Investigation – #2022 II-005

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 eventually classified as an Internal Investigation.

OIR Group received the above-referenced case file on July 7, 2022.¹

Case Summary

A woman contacted the Police Department to allege repeated instances of inappropriate personal overtures that she said she had received from LCPD officer during his on-duty hours. She spoke of two separate days in particular, both of which had happened several months prior to her contacting the Department to register her complaint.

At the time of the alleged misconduct, the woman had been employed as a maid at a local motel. She described a specific day when multiple officers were on scene, and said that she was cleaning a room when one of the officers (whom she named), came

¹ We were unable to complete the case within our usual 30-day window due to the temporary illness-related unavailability of one of the Department's uniquely knowledgeable parties.

into the room and startled her. After engaging in some initial banter with her, he allegedly made a graphically sexual remark that, in her version, prompted her to ask him to leave. He did, only to return later with a soft drink that he had purchased for her. She accepted it, and that was the end of the encounter.

As for the second incident, the woman claimed to have a very distinctive vehicle that people regularly associated with her. She told the investigator that on the day after he had approached her in the motel room, she was pulled over by the same officer as she was driving. When she questioned him about the reason, he said that he had just wanted to say hello to her, and then allowed her to go.

While she did not report any additional instances of this kind of harassing behavior, she eventually decided to come forward based on her sense that it was inappropriate for the officer to have acted in this way.

LCPD's Investigation and Analysis

LCPD conducted a telephonic interview with the complainant in which she described the incidents in question and offered supporting details. The interview with the woman lasted approximately 12 minutes. She related her allegations, and attempted to establish time markers that would assist in corroborating her story. (At least several months had passed since the alleged incidents had occurred.) This became the basis for an Internal Affairs audit of calls for service that were associated with the motel where the woman worked.

The officer named by the woman was assigned to a special street crime unit that did in fact respond to that location on numerous occasions. Per the memo, the investigator looked at documentation and video recordings that totaled more than 100, and did not find information that corroborated her specific claims, corresponded to alleged supporting details, or was otherwise suspicious. The investigator also reported subsequent contacts with the complainant in which she revised her time estimates considerably – also to no avail in terms of providing proof of the conduct at issue.

Although the initial investigation had not substantiated the claims – and although several factors raised questions about the complainant's motivations and credibility² – the Department took the step of interviewing the officer. The interview was very direct and straightforward. The officer denied having any personal knowledge of the woman

² Prior to raising her claims about the LCPD officer, the woman apparently had been arrested by a multi-agency task force in conjunction with criminal activity. This information was not included in the investigative memo,

and denied engaging in the sexually harassing behavior that had been described, or otherwise having had contact with her. Although he did recall an enforcement stop of a vehicle similar to the distinctive one driven by the complainant, he did not recall details and professed to have no recollection of the driver's identity.

Based on this evidence (or lack of evidence), the Department determined that the four policy violations at issue were Unfounded. These included the following sections:

- City of Las Cruces Policy 1103: Discrimination and Harassment
- General Order 103.01: Unsatisfactory Performance
- General Order 103.04: Standards of Conduct, and
- General Order 103.28: Conduct Unbecoming

OIR Group Review

LCPD provided OIR Group the case file, which consisted of an investigative memorandum and recordings of the interview with both the complainant and the subject officer. Although numerous body-worn camera recordings were mentioned in the search for potentially relevant incidents and incriminating behaviors, these reportedly had no affirmative evidentiary value in terms of supporting the woman's contentions and were not included in the case package. (Instead, the *absence* of anything corroborative was their most useful feature.). Because of this, the "package" we received for this case was one of the most limited in our experience with LCPD.

This is unfortunate insofar as it limits our ability to corroborate LCPD's due diligence in attempting to address these allegations. Just as importantly, it is entirely possible for the Department's survey of relevant calls to have produced no helpful evidence, *and* for misconduct to have occurred in some form and in some undocumented way. As vague as the woman's story was at times, and as unhelpful her timeline, the investigative memo would have been more persuasive if it had taken a more methodical approach to those details that did emerge in her version of events.³ This is an issue we have raised with the Department previously, and we hope it will get renewed consideration.

If that had been the case, we might be more inclined to concur with the "Unfounded" determination that LCPD reached for all charges. As it stands, we believe a more

³ For example, the woman made a passing reference to having been arrested by the officer at some subsequent point. In a conversation with LCPD, we learned that a records check had failed to support this assertion. But the memo we received did not explain this process or otherwise highlight its relevance to the overall accuracy of her story.

appropriate outcome would have been “Not Sustained,” which is the Department’s designation for allegations about which the evidence is not conclusive in either establishing or refuting their veracity.

We recognize that the circumstances here were unusual. This was in part because of credibility issues with the complainant, and in light of obstacles that were created by her limited participation and the possibility of outside agency involvement in one or more of the episodes that involved her. We recognize also that some of the specific details about the officer that she cited clashed with known facts about him – thus diminishing the likelihood that her claims were true. But the allegations were oddly particular and grounded in some apparent familiarity with the officer at issue. (For example, it was not as if he had never responded to a call for service at the location; on the contrary, he was apparently there quite regularly.) Their illegitimacy – or even the Department’s inability to “choose” between her claims and the officer’s denials – would have been more convincing if the investigative paper trail had been presented more completely and systematically.

As for the interview, it was appropriate for the Department to take this formal step (which does not always happen in the absence of other corroborating evidence). If nothing else, it put the officer on notice of the allegations and required him to be accountable in responding to claims that were disturbing. His denials were unequivocal. At the same time, the interview’s very limited duration (three minutes) foreclosed a more comprehensive exploration of the woman’s various assertions. Accordingly, as with the remainder of the review, while the *substance* supported the Department’s conclusion, the *process* seemed less robust than it might well have been.

To reiterate, we are not aware of any evidentiary basis for a finding that the woman’s allegations were sustained. We also acknowledge the evidence to the contrary that was developed, as well as the credibility issues presented by the woman at different stages of the process. However, while the “she said/he said” aspects of this case posed inherent challenges, the Department could have done a stronger job of showing its work and conducting comprehensive interviews of the key parties.

RECOMMENDATION 1

LCPD should ensure that documentation within its investigative memoranda is a complete reflection of the steps that were taken to gather and assess potential evidence.

RECOMMENDATION 2

Investigative interviews should be thorough about pursuing verifiable details with specificity and with any necessary follow-up, particularly in cases that are heavily dependent on individual persons' conflicting versions of events.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. We concur that the circumstances here were unusual. Internal Affairs will employ a more methodical approach when documenting investigative steps taken as recommended, as in this case, documenting the specific recordings which were reviewed.



7142 Trask Avenue
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323-821-0586
OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: August 29, 2022
RE: Review of Administrative Investigation – #2022EIC1-006

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) and investigated by Internal Affairs.

OIR Group received the above-referenced case file on August 26, 2022.

Case Summary

This case was initiated by a call to dispatch: a civilian alleged that she observed an LCPD employee speeding at 110 MPH without lights or sirens on the interstate in a marked LCPD vehicle. She reported that she honked and waved at the employee to alert her of her speed and recorded the license plate number. LCPD discovered that the vehicle belonged to a non-sworn employee.

Shortly after, the employee contacted her supervisor to report the incident and claimed that she was not speeding. The employee also noted the location of the incident and that it had occurred at approximately 7:20AM.

The supervisor determined that given the location, route of travel and time, the employee was likely late to her shift, which began at 7:00AM. He escalated the issue to his chain of command. Command staff met with the supervisor and employee and suspended her take-home vehicle privileges.¹

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD's Internal Affairs conducted a preliminary investigation of the incident and framed two allegations against the non-sworn employee. LCPD was not able to interview the non-sworn employee because she was on administrative leave related to another disciplinary matter.

IA framed one allegation related to **Code of Conduct – Reporting for Duty, General Order 103.02**, as follow:

1. The non-sworn employee was alleged to have violated this General Order when she acknowledged that she was outside of the City limits and enroute to her shift approximately 20 minutes past the start of her shift. LCPD found this to be sustained.

IA framed one allegation related to **Vehicle Operations, General Order 119.01** as follows:

2. The non-sworn employee was alleged to have violated this General Order when she was observed by a civilian speeding on the interstate in a LCPD vehicle without lights or sirens.

LCPD found this to be sustained because, while the officer initially denied speeding, she also did not dispute the decision to suspend her take-home vehicle privileges and had other sustained complaints.

Outcome: Discipline or Other Action

Immediately upon learning of this alleged misconduct, the Chief of Police suspended the non-sworn employee's take-home vehicle privilege.

¹ According to LCPD, suspension of take-home vehicle privileges is not a disciplinary action.

Both allegations were later sustained. However, because the non-sworn employee was already on administrative leave pending the outcome of a termination proceeding, LCPD opted not to issue any formal discipline findings for this case, but instead left the case “pending discipline.”² This employee is no longer with the Department.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file.

Assessment of Investigation as Completed by LCPD

We found that the evidence supported the finding of “sustained” for both allegations. The investigation was complete and the outcome appropriate given the circumstances of this employee’s ongoing personnel issues.

Additional Policy, Training, or Other Findings

We noted an area of future investment for LCPD. Many agencies use in-car GPS technology to track the speed and location of department patrol and other official vehicles. LCPD reported that they do not use such technology. We recommend that LCPD explore this technology for both officer and public safety.

Recommendation 1

LCPD should explore GPS tracking technology for all Department-owned vehicles to enhance officer and public safety.

² LCPD reported that it made this choice because the employee was likely going to be terminated and any discipline related to this case would not be issued. They further noted that this employee is listed as “no-rehire” if the employee chooses to reapply in the future.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The Las Cruces Police Department will explore the technology recommended by OIR.



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TO: City of Las Cruces
FROM: OIR Group
DATE: October 27, 2022
RE: Review of Administrative Investigation – 2022EIC1-009

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) and investigated by a first level supervisor.

OIR Group received the above-referenced case file on September 27, 2022.

Case Summary

This investigation was initiated when a complainant alleged that an LCPD officer committed an unlawful search, seizure, and questioning of her juvenile son. The complainant alleged that her son was contacted and questioned without parental consent; nor was he afforded legal representation.

The incident arose when another juvenile alleged that the complainant's son had inappropriately pinched or hit him in groin area. The school reported the allegation to LCPD, and an officer responded. The officer first interviewed the parent of the juvenile victim, the juvenile victim and two juvenile witnesses to the incident. The officer

attempted to telephone the complainant several times but was unsuccessful and left a voice message.

The officer then talked to the subject juvenile, first reading him his Miranda rights. The juvenile invoked his rights and said he did not want to answer questions posed by the officer. Subsequently, the complainant called and expressed unhappiness with the questioning of her son before contacting her. The officer explained that he had tried to call her, but she had not been available.

The officer determined that there was insufficient evidence of a sexual assault but sufficient probable cause for battery and prepared a battery citation.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD's Internal Affairs conducted a preliminary inquiry into the incident and considered the following General Orders:

The complainant alleged that the officer failed to follow **General Order 243.03 – Juvenile Interviews and Statements, General Order 292.01 – Search and Seizure Provisions, and General Order 103.05 – Conduct Toward the Public**

The preliminary inquiry resulted in an EXONERATED finding with regard to the allegations.

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 unfounded.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file.

Assessment of Investigation as Completed by LCPD

We found that the evidence directly related to these allegations supported the findings of exoneration.

The LCPD General Order regarding interviews with juveniles does not require contacting the parent prior to endeavoring to interview the juvenile. Even so, there is body-worn camera evidence that the officer did in fact try to contact the parent multiple times before his effort to do so. Then, when the officer interviewed the juvenile, he patiently explained the Miranda rights to the juvenile, and the juvenile chose to invoke his right not to answer questions. These efforts were creditable and suggest that – beyond compliance with relevant policy – the officer was appropriately sensitive to the circumstances.

There were also no violations of LCPD's Search and Seizure Policy or Conduct Toward the Public. During a trying telephone conversation with the complainant, the officer remained professional.

While there were no violations of policy with regard to this matter, there were several issues worthy of course correction that were identified by the investigator. First, the officer's report diverges from the video footage regarding the timing of his actions. In the report the officer writes that he met with the subject juvenile prior to calling the juvenile's mother, when in fact the attempted contact with the parent preceded the meeting with the subject juvenile. Further, in the report, the officer wrote that he could not leave a message when he tried to contact the mother, but the footage depicts the officer actually leaving a voice mail.

Moreover, the investigator noted that when the officer talked to the mother of the subject juvenile over the phone, he advised her on two occasions that her son had "waived" his Miranda rights, when in fact, he had invoked his rights. In the context of the conversation (which we were able to review), this appeared to simply be a misstatement; however, it conveyed obviously incorrect information to the parent about a key aspect of the encounter.

While these inaccuracies in the report and in the officer's discussion with the complainant were identified by the investigator, there was no apparent follow-up or intervention to correct them. The investigator could and should have recommended that the accuracy issues be addressed at the conclusion of the case.

Report writing and verbal interactions with aggrieved individuals are obviously skills that merit attention – and shortcomings should be addressed when they are identified in the context of any review process. These types of course correction can improve performance of the particular officer and the Department overall, and administrative investigations are often a fruitful source of such opportunities.

RECOMMENDATION 1

LCPD should advise internal investigators that they should forward any identified performance lapses (including in report writing or verbal accounts) for additional follow up as needed.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. LCPD IA will make note of lapses in report writing and follow-up with section supervision to address.



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TO: City of Las Cruces
FROM: OIR Group
DATE: October 10, 2022
RE: Review of Administrative Investigation – #2022II-009

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 September 22, 2022.

Case Summary

This case was initiated by correspondence submitted by a non-sworn LCPD employee to various LCPD and City personnel.¹ The non-sworn employee first reported that sometime in 2020, she was not paid for a week of work. According to the non-sworn employee, she brought this to the attention of her chain of command and LCPD immediately resolved this pay discrepancy.

¹ The non-sworn employee stated that she had originally reported her complaint in a handwritten letter to the Chief of Police in March of 2022. However, the Chief did not receive this letter. And, when asked about the letter by Internal Affairs during her interview in July, the non-sworn employee explained that the letter was still in her possession and provided photographs of the letter to Internal Affairs. We discuss this later.

The non-sworn employee also alleged that, approximately one year later, her unit's supervisor "made her feel like trash" during a meeting. According to the complainant, this same supervisor then began to follow, stalk, and sexually harass her both during her working hours and on her personal time, using Dona Ana County Sheriff and New Mexico State Police personnel to assist in his efforts.² The non-sworn employee further asserted that no one in the Department helped her when she brought these matters to their attention over a two-year time frame.

As part of the investigation, LCPD interviewed the non-sworn employee's supervisors. One supervisor reported that in December of 2021 and January of 2022, the non-sworn employee had requested his assistance because she was being stalked by "an ex;" the non-sworn employee did not name this person nor state that he was a LCPD employee. According to one supervisor, he reported this to his chain of command and to the Victim's Assistance Unit and advised the non-sworn employee to call 9-1-1 if the stalking continued. This supervisor's commanding officer confirmed this, further stating that he instructed the non-sworn employee to come directly to him with any future issues. According to all of the supervisors interviewed, the non-sworn employee did not communicate with them regarding these issues after January of 2022.

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 two allegations against the named supervisor:

IA framed one allegation related to **General Order 103.4, Code of Conduct – General Standards of Conduct** as follows:

1. The non-sworn employee alleged that the supervisor did not treat her with respect and courtesy when he first disparaged her in a meeting and later followed, stalked, and sexually harassed her.

LCPD unfounded this allegation, stating that there was no evidence other than the non-sworn employee's assertions to suggest that the supervisor treated this non-sworn employee in a manner inconsistent with the Code of Conduct.

² The non-sworn employee's accounts of following, stalking, and sexual harassment varied in degree throughout the investigation. At one point, the non-sworn employee alleged that the supervisor was showing up at her work site. At another, she alleged that the supervisor had tied her up and assaulted her "in a dark jail" and "attacked" her in her car. Later, she alleged that the supervisor coordinated with the State Police to have her followed home from a vacation in Mexico.

Conversely, there was evidence that the supervisor had extremely limited and professional contact with the non-sworn employee, only in the presence of others and only in his capacity as a supervisor of her unit.

IA framed one allegation related to **City of Las Cruces Personnel Manual 1103: Discrimination and Harassment** as follows:

2. The non-sworn employee alleged that the supervisor sexually harassed and stalked her in violation of the City's policy regarding harassment.

LCPD unfounded this allegation for the reasons listed in #1, above.

Outcome: Discipline or Other Action

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

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file.

Assessment of Investigation as Completed by LCPD

We found that the evidence directly related to these allegations supported the findings. LCPD conducted an extensive investigation that went well beyond interviews of the involved parties to ensure that these serious allegations were appropriately considered. For example, the investigator reviewed logs for the dates and times that the complainant alleged that she was being followed and discovered incidents or calls for service that would place a LCPD police vehicle at the location.

However, we found that LCPD did not follow its own protocol when communicating with the complainant (the non-sworn employee), both at the initiation and completion of the investigation. It is unfortunate that LCPD did not follow its usual rigor in transparent communication with complainants in this specific case because, in her communications with the City and Department, the non-sworn employee alleged that "no one" was taking action to assist in her situation. Formal letters may have served to alleviate her

concerns or, at the very least, provided a clear mechanism for LCPD to track the actions taken on this case.

We noted that communication with the non-sworn employee throughout this investigation was, according to LCPD and documented in the file, fragmented, extensive, and difficult to comprehend as it occurred in two languages via different technologies (email, telephone, text message, and, according to the complainant, handwritten correspondence) to various parties. According to LCPD, this confusing communication resulted in a failure to send the non-sworn employee a formal complaint initiation letter as is its usual practice. Instead, noted the IA investigator, LCPD communicated receipt and initiation of the complaint verbally when discussing the case with the non-sworn employee on the phone.

And, once the investigation was complete, IA did not send the complainant a close-out letter. The IA investigator acknowledged that this was an administrative oversight and has since sent the non-sworn employee a detailed close-out letter, which he provided for our review.

RECOMMENDATION 1

LCPD should follow its protocol for formal letters to complainants at the initiation and conclusion of every case.

The missing formal complaint initiation letter also contributed to confusion regarding the case timeline that might have been resolved by including more “background” information in the report. We have previously recommended that LCPD include relevant “background” information that may inform the case, investigative process and/or outcome in the investigative report.

For example, the report began by referencing the complainant’s handwritten letter to the Chief, which was allegedly submitted by the complainant in March of 2022. But the complaint was not formally initiated until July. This apparent four-month delay caused OIR Group concern. After conversation with LCPD, we learned that the Chief never received this letter; in fact, the complainant still had it in her possession in July. The Department only became aware of the complaint in July, when the non-sworn employee sent an email to City personnel, and immediately initiated the formal complaint process.

RECOMMENDATION 2

LCPD should include relevant background information that may inform the case, investigative process and/or outcome in the investigative report.

Additional Policy, Training, or Other Findings

There were no additional findings in this case.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group and agrees it is important to add relevant information to mitigate confusion. LCPD will add relevant background information to investigations, when necessary, as recommended. Formal letters to complainants at the initiation and conclusion of every case will be sent as protocol.



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TO: City of Las Cruces
FROM: OIR Group
DATE: August 7, 2022
RE: Review of Administrative Investigation – #2022EIC1-011

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) and investigated by Internal Affairs.

OIR Group received the above-referenced case file on July 7, 2022.

Case Summary

On April 5, 2022, a LCPD supervisor received an email from a resident, the complainant, who reported what he believed to be an on-going code violation in his neighbor's yard; specifically, the neighbor was storing building materials on the roof of his residence. The complainant stated that a code officer had incorrectly determined that the building materials were *not* a code violation. The LCPD supervisor sent a code officer to the location for further investigation. That investigation revealed that the building materials were, in fact, a violation of code.¹ The LCPD supervisor shared this

¹ According to LCPD, that incident is being investigated by LCPD as a "Supervisory Matter." LCPD also shared that this complainant has filed several complaints with LCPD related to code

updated information with the resident via email and considered the situation to be resolved.

On April 12, a different code officer was patrolling the complainant's neighborhood. The officer observed potential code concerns on the complainant's property, including unpermitted shipping containers and abandoned airplanes, and spoke to the complainant about them. The complainant asked if the officer was responding to a complaint, and the officer responded that it was self-initiated activity. The complainant became frustrated. He stated that the code officer was targeting him and not others in the area who also had shipping containers on their property. The complainant asked the officer to leave him alone and began to walk away from the officer. The officer requested that the complainant resolve the shipping container permit situation and left the location.

The officer then responded to a neighboring property that also had unpermitted shipping containers and advised that property owner of the need for a permit. That property owner said that he would comply.

As the officer was driving away from the second locations, the complainant approached the officer's vehicle. When the officer rolled down his window, the complainant asked for information about the shipping container code, which the officer provided, along with a phone number to Community Development, where the complainant could get more information about the permit. The complainant began to argue with the code officer about the code. As the complainant became more frustrated, the officer exited his vehicle and informed the complainant that he would file a criminal summons if the complainant did not obtain a permit. The complainant continued to argue, and the code officer explained that the complainant could raise his concerns in court. The code officer went back to his vehicle and drove away.

Later that same day, the complainant emailed the LCPD supervisor wishing to file a complaint. The complainant alleged that the officer had lied to him, was engaging in selective enforcement by citing him and not others in the area and was harassing him.

enforcement, all of which are currently being investigated either by Internal Affairs or at the supervisor level.

LCPD's Investigation and Analysis

LCPD's Internal Affairs conducted a preliminary investigation of the incident and framed three allegations against one Code Enforcement officer based on the Code Enforcement Section Standard Operational Procedures manual:

1. 8b. Duties and Responsibilities

This section outlines the duties of code enforcement officers, which is to routinely monitor non-compliance areas to ensure corrective action is taken, including issuing a criminal complaint or citation with the Municipal Court.

2. Code Enforcement Officers may initiate enforcement any time a violation is observed.

This section states that code officers can engage in self-initiated code enforcement upon observation of a violation.

After reviewing the body-worn camera footage of this incident, related dispatch, and Municipal Court records, the IA investigator determined that the officer's conduct was lawful and justified. The officer was exonerated. No further investigation was conducted.

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 preliminary inquiry to be incomplete in framing all allegations as communicated by the complainant in his email to the LCPD supervisor.

In his email, the complainant alleged that, in addition to engaging in selective enforcement, the code enforcement officer lied to him and harassed him. These two allegations were not framed by LCPD. These allegations are related to the code officer's conduct on scene during the call and, as such, should have been framed as Code of Conduct violations (**General Order 103**).

We highlight this for two reasons. First, framing all allegations as reported by the complainant, especially when these are explicitly stated via email, ensures a thorough and complete investigation into the complainant's concerns. While the body-worn camera footage showed that the officer did not lie to the complainant or engage in

harassment (in fact, the code officer was patient and deliberate in his interaction and was enforcing the shipping container violations in that neighborhood at several locations), and his behavior was within the parameters of his job duties, we advise that investigators frame and investigate all allegations as reported by complainants.

Second, in previous reviews we noted that employees were confused over what policies applied to the different types of personnel employed by LCPD (e.g., commissioned and non-commissioned). To remedy this, we previously recommended that LCPD update language in all the Department's General Orders to apply to all personnel, including code officers.² LCPD did so. As such, it is important that LCPD equally apply the Department's General Orders (here, **General Order 103**) across all personnel types, and frame allegations accordingly.

Framing all allegations as reported by the complainant has been the subject of previous recommendations, and one that LCPD has accepted. This is an on-going area of review that we will continue to monitor. We advise LCPD to continue to emphasize this in its Internal Affairs training.

We also noted that the initial email correspondence between the LCPD supervisor and the complainant revealed a "debate" between the complainant and code enforcement that, according to the complainant, had gone on for a year. This included an erroneous assessment by a different code officer that, in our opinion, should have been the subject of a complaint or at least some type of performance course correction.

When we inquired about this, LCPD responded that this complainant has filed several complaints with the Department. Some of these are being investigated at the "Supervisory Matter" level while others are pending action by the civil courts. As we have recommended in previous memos, including relevant background information, such as cross-referencing other active IA case numbers, can help to better understand the totality of the circumstances. We recommend this again here.

RECOMMENDATION 1

In each investigation, LCPD should include any relevant information that may help inform the investigation and/or assist with understanding the totality of the circumstances.

² LCPD confirmed that Department General Orders (including General Order 103) are applicable to code officers and that code officers *also* must adhere to their unique procedure manual, the Code Enforcement Section Standard Operational Procedures.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. LCPD Internal Affairs will closer review complaint allegations as reported and frame allegations as recommended.



7142 Trask Avenue
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TO: City of Las Cruces
FROM: OIR Group
DATE: June 27, 2022
RE: Review of Administrative Investigation – IA # 2021II - 015

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.

OIR Group received the above-referenced case file on May 26, 2022.

Case Summary

This formal administrative investigation began in response to a pair of overlapping anonymous complaints that were submitted to the City's online Ethics Hotline within a few weeks of each other. Both alleged misconduct on the part of an Animal Control supervisor, specifically with regard to discrimination against female employees who were Animal Control Officers (ACO's). Two women – only one of whom was still with the agency – were cited in particular as having experienced inappropriate treatment related to their respective pregnancies. The more recent allegation involved an assertion that the supervisor had prompted one of his subordinates to terminate her pregnancy by saying she would lose her job if required to take a substantial amount of leave.

In the aftermath of receiving these complaints, a representative from both the City Attorney's Office and the City Auditor's Office interviewed the woman who still worked

for LCPD. After processing this intake interview, they forwarded the complaint to the Department. The supervisor was put on administrative leave and Internal Affairs conducted a formal investigation.

During a witness interview with another female ACO, a number of collateral issues emerged regarding the practices of this supervisor; these too became components of the investigation. They consisted of various forms of alleged discriminatory treatment toward women as well as improper practices such as failure to pay overtime, denial of time off, and refusal to respond to questions and concerns.

Additionally, there was important evidence in the case in the form of recordings that involved ACO's had created during conversations with their supervisor – unbeknownst to him. One in particular – created by the employee whose pregnancy was at the center of the investigation – was especially important in assessing the supervisor's handling of the situation. However, the practice of surreptitious recording was recognized as inappropriate and became the basis for a charge against these individuals for violation of LCPD policy.

LCPD's Investigation and Outcomes

The Department made the decision to put the supervisor on administrative leave during the pendency of the investigation. The investigator reviewed the recording of the key conversation and received information from the City officials who had conducted the initial intake interview. The investigator conducted formal witness interviews of the two female employees as well as the lieutenant to whom the supervisor reported in the normal chain of command.¹ The supervisor was also interviewed as the subject of the investigation. The investigator also assessed other sources of potential evidence, including emails and text messages sent by the various participants.

Notably, the woman whose recent pregnancy had been a galvanizing event in the investigation said she was not responsible for the anonymous complaints. She said in her interview that was bothered by the idea that her situation was being “used” by someone who sought to air the unit's wider range of grievances against the supervisor for his treatment of subordinates. She also denied that he had been responsible for her decision to terminate her pregnancy, and took full responsibility for that choice.

¹ Both of the other witnesses spoke very positively about the lieutenant; she, in turn, shared in her interview that she had not received complaints about the supervisor and that her basic impression was that he was “well-liked” and not biased against female subordinates. She was largely supportive of his performance.

At the same time, she corroborated other aspects of the concerns about his management style, and said that she had found him to be inappropriately pleased when she informed him that she was no longer pregnant.² She was emotional at times about her personal circumstances and the stress that the situation had created, both at the time of her pregnancy and in terms of the overall work environment.

In his interview, the supervisor shared his perspective as to the range of concerns that had emerged. He had plausible explanations for many of the particular criticisms that had been raised, and some of the dynamics seemed to be attributable to differences in perspective or to the relatively common friction points between supervisors and subordinates. Many of the specific incidents cited as improper management were exonerated as within the supervisor's authority and within policy.

The investigation did identify two significant performance lapses that became the basis for "sustained" findings. One related to the supervisor's apparently inaccurate understanding of the Family Medical Leave Act as it pertained to the woman who became pregnant. While it was true that her status as a probationary employee was relevant to her eligibility, he was incorrect in thinking that it would not apply to a childbirth that had already occurred once she reached the required one year of employment. While the resulting confusion was apparently not dispositive in the ACO's ultimate decision-making, it was certainly an error that constituted a failure in the supervisor's responsibilities as a manager.

Additionally, the investigator (and LCPD) found fault with the supervisor's insensitive handling of the discussion in which he learned that the pregnancy had been terminated. While his affirmations were presumably well-intentioned, and while his occasional laughter and other off-putting reactions during that encounter were presumably a function of nervousness, the behavior was hurtful to the ACO in a way that the supervisor could and should have avoided.

In all, the two ACO's who had violated the recording policy and the supervisor himself received low-level consequences for what were "first offenses" in their employment history. Importantly, the supervisor also received relevant training on the legal standards for medical leave, as well as techniques of effective supervision.

² She understood if he was gratified that he would not be faced with a staffing challenge, but she found his show of enthusiasm to be inappropriate and insensitive.

OIR Group Findings and Analysis

This was an unusual case in our experience with the City, given that the issues were essentially internal personnel matters and not incidents involving LCPD interactions with the public. But the allegations at issue were obviously serious, and the Department's ability to investigate such matters rigorously and effectively is obviously within the scope of our concerns as auditors. Accordingly, we had our usual full access to the investigation materials.

We concurred with the Department's findings as to the framing of individual allegations and the outcomes that resulted. The supervisor's mishandling of his subordinate's medical issue – both technically and in terms of his sensitivity and sense of boundaries – was appropriately recognized as the predominant concern and was addressed appropriately. As for the allegations about discrimination or faulty management of overtime, leave, and other workplace issues, the investigator made good faith efforts to evaluate whether specific violations occurred, and did not find such evidence.

Interestingly, the investigator grouped together the more generalized grievances about the supervisor's demeanor and management style under the heading "Ancillary Issues." While none of them seemed to be definitively matters of policy, the case report included a recommendation that the unit's dynamic be assessed more holistically by LCPD management. We concur, and hope this happened.

In speaking with the Department about how the unit is faring in the several months since these allegations emerged, we learned that they are also in process of re-examining some of the operative structures. The Code Enforcement and Animal Control functions are obviously distinct from policing in basic ways. However, to the extent they fall within the Department's ultimate responsibility, it is important that LCPD management be clear on substantive issues and sufficiently engaged in ensuring that operations are consistent with policy and the City's expectations.

RECOMMENDATION 1

LCPD should work with the City to ensure that clarification of roles, responsibilities, and lines of authority occurs as needed for the effective management of Code Enforcement and Animal Control.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The review is thorough and accurate, LCPD will take recommendations into consideration. Standard Operating Procedures for both Codes and Animal Control are currently being revised to allow for better management of each section.



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TO: City of Las Cruces
FROM: OIR Group
DATE: October 27, 2022
RE: Review of Administrative Investigation – #2022EIC1-017

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 the member of the public that received a formal review – and was investigated by Internal Affairs.

OIR Group received the above-referenced case file on September 27, 2022.

Case Summary

The complainant had an encounter with another customer at a local coffee shop that prompted a manager there to contact LCPD. When two officers arrived, they found the complainant – who had been told to leave – still at the location, while the other involved party had left. The man's subsequent complaint (which he made approximately six months later) articulated his frustration with LCPD's response to the incident and its aftermath. He contended that the Department's efforts (or lack thereof) to pursue the criminal conduct of the other party was politically motivated, and listed several specific supporting details in his written complaint.

On the day of the original incident, the responding officers had listened to the man's account of what occurred. Based on the overlapping elements in his version and the somewhat different one offered by the shop's manager, they understood that a verbal confrontation had devolved into yelling for several minutes before the other individual had left. The manager's position was that the complainant had been the antagonist, and that there had possibly been a racial undercurrent to the exchange. (The complainant was white and the other customer was Black.) The complainant had a different perspective, and asserted that he done a good job of handling the other person's unprovoked aggression. He explained that he was intending to meet someone on the location who had yet to arrive, and that he was also reluctant to leave because of a concern that his antagonist might be waiting outside for him.

Regardless of who had initiated/perpetuated the conflict with the other customer, the officers explained that the manager was authorized to have the man leave the premises and that his ongoing failure to comply would constitute a trespassing violation. They escorted the man outside, and he got into his car after obtaining the officers' names and badge numbers. The officers waited and watched the man drive off. The whole call lasted approximately seven minutes.

Nearly three weeks later, the complainant contacted the Department to express his interest in ensuring that a police report be taken about the incident at the coffeeshop. He spoke to one of the involved officers by phone later that same day. The officer explained that the resolution of the trespassing issue had meant that no formal report was taken, given that they did not have enough facts to establish that the clash between the two men had reached the level of a crime. But the complainant offered additional details and asserted his belief that the other man's alleged verbal abuse and threats constituted an assault for which the complainant sought to press charges. He went on at some length about his version of the story.

Asked about the additional information he was now providing (including the seemingly newfound interest in criminal allegations), the man answered that he had felt rushed by the need to leave the premises on the day of the incident. He also shared a theory that he had been the victim of a politically motivated set up.

The officer said he would return to the coffeeshop for additional investigation, including a request for any surveillance video of the incident and further information about the other patron, whose identity was not known. In keeping with the complainant's request and in order to capture the new information, the officer wrote a police report documenting the substance of the call and the complainant's allegations. The officer added in his report that he followed up with a return visit to the coffee establishment; however, he said that none of the staff who happened to be working at the time of this outreach had been present for the incident or had useful information about its

particulars. He also mentioned in his report that the press of other calls for service had impeded his ability to do additional follow up.

After several weeks had passed, the complainant re-engaged with the Department to ask about the status of the case. The handling officer spoke with him on the phone and explained that he had been unsuccessful in his initial efforts to get useful information at the coffee shop, and acknowledged that he had let the issue slip in light of other obligations. The officer tried to explain that the lack of information about the other party's identity was limiting his ability to take action. The complainant said he himself would attempt to determine the person's name, and that he was willing to make repeated visits to the establishment until he spotted the person again – but he wanted assurance that LCPD would be responsive if he succeeded.

In the aftermath of that call, the officer returned to the coffeeshop. This time, he was able to speak with the employee who had originally called in the request for police assistance. She reiterated her original impressions of the event, but added that the shop now had its own file about the incident. The officer then got contact information for a district manager, and had a ten-minute phone call with that person.

The district manager explained that the company was familiar with the complainant's concerns, and that the man had expressed his dissatisfaction over having been accused of trespass and with other aspects of the incident. He had apparently also threatened litigation. Per the district manager, the officer also learned that they knew the other customer's first name, but did not have other identifying information, and that they had saved surveillance video from the incident.

What followed over the next several weeks was a period in which the Department's efforts with regard to the case essentially came to an end based on the lack of workable information. The complainant, meanwhile, remained highly engaged and insistent on filing assault charges against the other man in the dispute.

He spoke to various individuals and rank levels within LCPD, gained access to body-worn camera recordings, his 911 call, reports, and other information, and gradually expanded the scope of his allegations. He was now asserting a "conspiracy" against him. His list of involved participants now included the man whom he was supposed to meet on the day of the incident (whom he had come to believe was responsible for "setting him up") and the coffee shop manager who originally called the police (whom he accused of lying).

After reaching impasse with the Department in his efforts to have them pursue assault charges or conduct further investigative efforts about his conspiracy theory, he met with Internal Affairs for an in-person interview in which he laid out his various concerns. This

was supplemented by a number of email communications and video links over the course of the ensuing weeks. These did not prove to be helpful or directly relevant in the Department's eyes.

Some two months after meeting with Internal Affairs, and approximately six months after the original incident, the man filed a written complaint that the Department used to frame its investigation. At this point, he was making further accusations about possible federal crimes, and about the involvement of other elected officials in Las Cruces. He claimed he was the victim of "domestic political terrorism."

Various communications have reportedly continued, and have included mentions of potential litigation. He has also made a number of public records requests, including for background information about some of the different Department members he has encountered.

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 combined the various aspects of the complainant's concerns into one policy section. This was **General Order 103.01 UNSATISFACTORY PERFORMANCE**, which contains the following elements:

1. Lack of knowledge and proper application of laws and procedures.
2. An unwillingness or inability to perform assigned tasks.
3. Failing to conform to work standards.
4. Engaging in personal conduct which interferes with the proper performance of any employee's duties.
5. Failing to take appropriate action regarding a crime or other condition brought to their attention.

The Department focused on the officer who had been one of the two to initially respond, who had followed up with the complainant, who wrote the disputed report, and who engaged in subsequent investigative efforts. LCPD determined that the officer's performance was consistent with policy and expectations under the challenging circumstances of the complainant's evolving requests. The investigator found that the officer had done appropriate due diligence in investigating the incident. Although there

were unanswered questions and potential “leads” that were not pursued (or not able to be pursued), the Department took the position that the efforts that were undertaken constituted appropriate due diligence in light of the known information.

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 the documents and digital evidence, which included numerous emails from the complainant as the matter unfolded over several months. We also reviewed body-worn camera recordings of the initial call for service.

Assessment of Investigation as Completed by LCPD

This case posed a challenge to the Department, insofar as the evolving demands and allegations of the complainant created a “moving target” of sorts and seemed to be increasingly extreme. LCPD chose to limit its formal review to the initial incident and the different phases of the officer’s response. Within that framework, the finding that the officer had acted appropriately seemed to be supported by the evidence.

The initial call for service was brief and uneventful, and the complainant’s explanation of what occurred was significantly less detailed and accusatory than his later recollections. He later acknowledged this, but accounted for it by saying that the officer’s had rushed him, and that he was reluctant to delve into the true story. That said, the officers were polite, professional and efficient in resolving the issue by escorting him out of the establishment.

The subsequent outreach by the complainant shifted the burden for further documentation and inquiry on to the officer, but the officer’s subsequent efforts seemed responsive. He documented the additional information as relayed to him by the complainant, and said he would investigate further back at the scene of the incident. Though his initial efforts to do so were reportedly unsuccessful,¹ he supplemented these

¹ He wrote in his report that when he had first returned to the coffee shop, none of the staff working at that time was familiar with the incident. This contact was apparently not recorded on body-worn camera.

several weeks later after additional outreach from the complainant. At that point, he learned that the “missing” customer had not returned to the location, that he was known only by his first name, and that the company had opened its own file into the matter based on the complainant’s contentious interactions with staff since the time of the incident.

While there were more avenues that potentially *could* have been pursued (such as re-interviews of staff), the conflicting evidence, unknown subject, and low-level nature of the original “assault” incident limited the viability of further action. This meant that the officer had performed in a manner that LCPD was prepared to endorse, and they exonerated him of the applicable performance violations that were at issue.

Unfortunately, the stalemate in communicating with the complainant (which amounted to his insisting on assault charges, and the Department saying that further documentation was not warranted) eventually morphed into his belief that LCPD was somehow complicit and then cover up what had actually occurred at the coffeeshop. He became frustrated and then accusatory with several different LCPD officers of various ranks. Moreover, as stated above, the nature of his allegations – and the investigation into wrongdoing that he sought – expanded to include a larger and larger circle based on increasingly unlikely theories. This was not completely reflected in the administrative investigation as documented.

Where that investigation could have been stronger, in our view, was in a more methodical assessment of the various claims raised by the complainant in his written submission. These ranged from the particular (an allegation that the officer had called him a “fucking clown” at some point, and an allegation that certain report dates had been inaccurate) to the more elaborate (the refusal to consider new evidence and to follow up on leads provided by the complainant). By choosing to focus exclusively and narrowly on the original officer’s actions, the investigation left a few loose ends that would have benefited from formal response.

We spoke with the Department about the case and learned some additional information about its decision-making and posture toward the complainant and his concerns. This was helpful to our understanding in both general and specific ways.

More broadly, we learned the Department made the decision at some point that, given the complainant’s increasing demands and litigious posturing, it would be best to focus on the essence of the original complaint and not provide additional fuel for the other theories or grievances. We also heard about further steps that had informed the agency’s analysis but were not documented in the materials we received.

We learned, for example, that any surveillance video from the coffeeshop could not be obtained without the company's cooperation, which it was reportedly declining to provide. And that the Department had heard from the man who had supposedly invited the complainant to the coffeeshop on the day in question – and who disavowed any desire to be involved in the matter at all based on his own concerns about the complainant. Lastly, the Department assured us that it had looked into the “fucking clown” allegation and discounted it as it related to the officer.²

These steps showed additional “due diligence” that would have been helpful to know about it. This information would have furthered our sense (and reinforced the Department's conclusion) that no misconduct had occurred, and it should have been included in the investigative package. Accordingly, we have occasion to repeat a recommendation that we have made before:

RECOMMENDATION 1

LCPD should include relevant background information that may inform the case, investigative process and/or outcome in the investigative report.

Moreover, the concerns about the difficulty in satisfying an increasingly frustrated, skeptical complainant are understandable here. But in some ways, they militate *in favor of* a comprehensive response. Here, we would have preferred LCPD to make a concerted effort to frame and respond to each allegation to the best of its ability – and to be clear if it chose not to pursue certain matters in light of their unlikelihood or seeming illegitimacy.

RECOMMENDATION 2

LCPD should approach the investigative response to, and analysis of, each element within a complaint in a clear, direct, and methodical way.

² The complainant sent voluminous emails to the Department, many of which linked to videos that supposedly had evidentiary value (and one of which referenced this disparaging comment allegation). We had access to the emails, but the videos (posted by the complainant) had been taken down from the internet and were not available. The Department told us their own access had been limited as well.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. LCPD IA will continue to improve our investigative process and include more background information in the investigative report.



7142 Trask Avenue
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323-821-0586
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TO: City of Las Cruces
FROM: OIR Group
DATE: September 12, 2022
RE: Review of Administrative Investigation – #2022EIC1-018

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) and investigated by Internal Affairs.

OIR Group received the above-referenced case file on August 26, 2022.

Case Summary

This case was initiated by a call for a “disorderly subject.” A woman met the responding officer on the street. She requested that the officer serve her female domestic partner a protection order that would remove her from the residence that they shared.

A second LCPD officer arrived. The officers served the protective order to the woman's partner while the woman waited in her parked car a block away.

The partner said that she was fighting cancer and had nowhere to go. The first officer apologized and said that she had to vacate the property.

The partner yelled in the direction of the woman's car and then asked the officers how she could take all of her property from the home, stating that everything was her property. The officers advised the woman to take care of that in court, and to only pack her essentials and leave. The partner then entered the home, out of sight, and the officers waited outside.

The partner came out and asked the officers if they wanted to "get [the woman's] crack pipe for her." She advised that she had also called the police. The officer explained that he could not enter the home and that they were only there to serve the court order. The partner then asked the officers for something to open her bedroom door because she had locked herself out. The officers briefly entered the home. The partner said that the woman had her bedroom key.

The first officer walked over to the woman's car to obtain the key, but the second officer managed to open the bedroom door without it. Both officers then exited the home and continued to stand outside.

The partner came out again and asked the first officer to speak to her cancer care provider on her phone. The provider asked the officers where the partner was supposed to go. The officer said that he did not have any options for her. The partner, frustrated, then left the residence in her car.

The woman drove into the driveway and told the officers that, via the home's security cameras, she had observed the partner "plant" a crack pipe in her bedroom. The officers advised her to just throw it away, stating that they would not "get into it."

After a brief exchange, the woman thanked the officers and walked away. The officers turned off their body-worn cameras. According to the woman, she then asked the officers to help her with her broken garage door, and the first officer responded, "I'm not a handyman."

The next day, a third officer responded to the residence because the woman reported that her partner was threatening her. The woman asked this officer if the other two officers should have entered the home with the partner the prior evening. The third officer responded that, yes, the officers should have followed the partner around the home as part of a civil standby.¹

The officer then explained that the LCPD policy on civil standbys states that officers must ensure that the other party does not take property that does not belong to them

¹ A Civil Standby, also known as a Domestic Standby, is when one or both parties request that a police officer "stands by" to keep the peace in a situation involving a civil dispute.

and only take clothing and hygiene supplies. The officer advised the woman to file a complaint and offered the first officer's name and badge number. The woman filed a complaint.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD's Internal Affairs conducted a preliminary investigation of the incident and framed two allegations against the first responding officer:

IA framed one allegation related to **General Order 203.10.A., Domestic Family Disturbance – Reports** as follows:

1. The Department alleged that the officer failed to submit a "priority offense/incident report" that documented the domestic family disturbance.

LCPD exonerated the officer, stating that the initial call for service was for a "disorderly subject," that no direct instance of domestic disturbance was observed by the officer on the evening in question, and that the call as originally classified did not explicitly require an incident report.

LCPD did note that the call could have been re-classified as a domestic disturbance by the responding officer, which would have required a report. As we discuss later, LCPD referred the officer to training on this topic.

IA framed one allegation related to **General Order 203.11 Domestic Family Disturbance Domestic Standby Calls for Service** as follows:

2. The woman alleged that the officer did not follow Department protocol for serving the protective order and performing a civil standby because he allowed the partner to be in the home unattended, during which time the partner destroyed property and "planted" drug paraphernalia.

LCPD exonerated the officer, stating that the officer acted in a manner consistent with LCPD policy related to civil standby calls.

Outcome: Discipline or Other Action

There was no formal discipline in this case because the officer was exonerated; however, LCPD did issue a training referral for the officer to review the Department's

policies regarding reports for domestic disturbances. LCPD reported that the officer attended the mandatory Department-wide Biennium Training during which this specific topic was covered.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file.

Assessment of Investigation as Completed by LCPD

We found that the evidence directly related to this incident supported the findings. However, we found the investigation to be incomplete. As we have reported in past reviews, LCPD did not frame all allegations in this incident.

First, we noted that only one officer was named and investigated. But *two* officers responded to the call and had significant involvement with the complainant. We noted that the complainant only named the first officer, but her complaint involved the way that LCPD – in the form of both officers -- executed the civil standby. LCPD should have also framed an allegation regarding failure to properly execute the civil standby (allegation #2 above, related to **General Order 203.11**) against the second officer.

Second, the woman alleged that the first officer was rude when he stated, “I’m not a handyman” at the end of the incident. The IA investigator wrote that he was “unable to locate where [the officer] stated that he ‘was not a handyman’” and did not frame an allegation regarding this statement.

But to seemingly disregard the allegation because it was not captured on body-worn camera is not a good practice and sets a troubling precedent. While we also did not hear this comment on the officers’ body-worn cameras, it is possible that the interaction, which the woman described in detail, occurred off-camera; in fact, the woman stated that she called the officers back as they were leaving to request help with her garage door, possibly after they had de-activated their cameras.

Here, the appropriate allegation would be related to the **Code of Conduct** as listed in **General Order 103**.

Again, we recommend that LCPD frame all allegations to ensure complete and thorough investigations that accurately reflect the totality of the complainant’s concerns.

RECOMMENDATION 1

LCPD should frame all allegations to ensure complete and thorough investigations that accurately reflect the totality of the complainant's concerns.

Additional Policy, Training, or Other Findings

We noted one additional finding. In our second Semi-Annual Audit Report, we noted an upward trend of complaints arising from domestic disturbances (specifically, calls for civil/domestic standbys) and allegations related to report-writing. This is another case dealing with both issues.

When we previously identified these issues, Department leadership responded that it would provide more explicit and frequent training on domestic disturbances, including the role of officers in standby calls, and on report-writing. As noted above, the Department-wide mandatory training covering these topics occurred from August to September 2022 (notably, *after* this incident occurred). The Department-wide training may have provided some clarity for officers, and we will continue to review these cases as they arise to ensure that the training had the intended effect.

But we also recommend that LCPD consider clarification of the policy related to civil standbys, **General Order 203.11**. As noted in the Case Summary above, the third officer's interpretation of **General Order 203.11** differed from the first and second officers' interpretation: one believed that the officer should accompany the parties as they collected personal belongings while the other two thought that they should simply "stand by" and wait outside.

None of the officers are wrong, which points to room for clarification in both the policy itself and in related training. The policy does not explicitly state what the officers should do – accompany the parties or wait outside – and we recommend that the Department consider drafting more specific expectations for officers who respond to these calls.

RECOMMENDATION 2

LCPD should consider creating more explicit guidelines for officers who respond to domestic standbys by clarifying **General Order 203.11**.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The Las Cruces Police Department Internal Affairs Lieutenant will conduct training with all personnel in Internal Affairs specific to framing of all allegations. A note will be added to the checklist prior to turning investigation in for review.

The compliance sergeant will review General Order 203.11 (Domestic Standbys) for specific expectations and to confirm that the policy matches the training provided to our officers.



7142 Trask Avenue
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TO: City of Las Cruces
FROM: OIR Group
DATE: July 22, 2022
RE: Review of Administrative Investigation – #2021EIC1-024

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 eventually classified as an External Investigation – Category 1 (EIC1) and investigated by Internal Affairs.

OIR Group received the above-referenced case file on July 19, 2022.

Case Summary

A sergeant from LCPD stopped a man in parking lot after he made a food delivery. After the incident, the complainant alleged that the sergeant was rude, used excessive force, arrested him without cause, failed to provide him medical treatment, and failed to communicate with him effectively, as he is deaf and uses sign language. The complainant provided information about his concern to an LCPD detective, who used the information and a translation service to complete a complaint form.

The complainant indicated that the conflict had started when he delivered a large order but received a minimal tip. The complainant indicated that he had returned to his vehicle, when the police arrived and an officer told him to turn off the engine. The

complainant alleged that he had been placed in handcuffs, that his vehicle was illegally searched, and that he was not provided an interpreter to help him understand what was happening and explain to him the four citations he received. The complainant further alleged that he was not provided medical treatment on scene.

According to police records, a 911 call was received from an individual who indicated that the man who had delivered a food order was upset about the size of the tip. She claimed that he had thrown her food down in response, was banging on the apartment door, and was shining a flashlight in her windows.

The complainant was cited for obstructing movement, disorderly conduct, prowling, and use of a telephone to terrify. The charges were eventually dismissed against the complainant.

A review of the body-worn camera footage shows the sergeant arriving in the parking lot and a van moving forward slowly and coming to a stop in front of the sergeant's patrol car. The van then continued to move forward, then backward, and the sergeant instructed the driver (later the complainant) to stop. The sergeant moved to the van and grabbed the driver's wrist, while instructing him to turn the vehicle off.

The driver only stared at the sergeant as the engine revved and he was ordered out of the vehicle. After the driver pointed to his mouth and right ear, the sergeant began gesturing to the driver to turn off the vehicle. A back up officer arrived with his Taser drawn, but the sergeant advised the officer that the driver was deaf. The back up officer holstered his Taser and turned off the engine. Officers then removed the driver from his seat. At this point, the tone of the officers changed from authoritative to helpful.

The sergeant retrieved the driver's identification, which was visible from outside the van. No further search was done of the van. The sergeant used a "sign" to ask the driver if he was hurt. In response, the driver nodded and gestures to his left arm. The sergeant used a "sign" to ask the driver if he needed a doctor, and the driver again nodded yes. Accordingly, the sergeant requested emergency paramedics to respond to the location.

The Fire Department arrived and one of the LCPD officers on scene advised that the driver was deaf and that there had been some communication issues. The Fire Department advised that they did not have someone on scene who knew sign language. This officer removed the driver's handcuffs and took him out of the back of the patrol vehicle (where he was being detained) so that he would be able to communicate in writing. The driver was provided a pen and paper and immediately wrote that he wanted another supervisor to come on scene. Multiple pieces of paper were used to write notes to the driver, who ultimately decided not to accept a transport

to the hospital and signed a “medical refusal” form. The driver was then seated, still uncuffed, in the rear of the backup officer’s patrol unit.

The officers completed the citations and removed the driver from the rear of the patrol vehicle. The driver then made a request for his walker, which was retrieved by the sergeant and given to the driver. The driver made further efforts to communicate with the sergeant to varying degrees of success. At one point, the sergeant told the driver that they would discuss the incident in court, but it was clear that the driver did not understand the comment and the sergeant verbally admitted not knowing the sign for “court.” Similarly, the driver asked about the “prowling” citation and the sergeant tried to explain verbally how it applied to the driver in this incident.

The body-worn camera footage then showed responding officers presenting the citations to the driver for signature and motioning for him to sign them, which he did. The responding officers attempted to explain to the driver the court date, provided copies of the citations to the driver, and the driver was advised he could return to his van.

LCPD’s Investigation and Analysis

LCPD determined that:

- The sergeant and other responding officers treated the driver respectfully
- There was no illegal detention or search
- The minimal force used was reasonable and consistent with policy
- The driver was examined by Fire Department personnel and refused an offer to be transported to the hospital

LCPD’s “Persons with Disabilities – Procedures for Handling Deaf/Speech Impaired Persons” policy requires that all written questions and responses between and among officers and persons with hearing impairments must be placed into evidence. In this case, however, the notebook that was used to communicate between the driver, the officers, and the Fire Department was not booked into evidence and could not be located. As a result, the investigator assigned to the case determined that the failure to book the written communications was a violation of the Persons with Disabilities policy.

However, this initial recommendation was countermanded by the chain of command. The reasoning was that those communications between the driver and the officers adequately captured the citation information. The further recommendation was that LCPD’s Persons with Disabilities policy needed to be updated.

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 objective, fair and thorough. We agreed with the “unfounded” findings regarding the driver’s allegations of rudeness, failure to provide medical attention, illegal search and detention, and excessive force. However, we did not find persuasive LCPD’s analysis that because the written communications were intended to explain the citations to the driver, they did not need to be booked into evidence. While a good part of the discussion between the sergeant and driver involved questions about the nature of the citations, there were other matters discussed (such as whether the driver wanted medical attention) that went beyond the scope of the citation and which were recorded in the notebook. The sergeant’s failure to book those communications resulted in a technical violation of current policy relating to persons with disabilities.

However, the more important point is that we emphatically agree with LCPD that its current policy relating to persons with disabilities needs to be updated to reflect progressive policing in dealing with those who may be hearing impaired. Most importantly, current policy advises officers that they are not required to request a sign language interpreter if the officer does not need to interview a subject with a hearing impairment in order to issue a citation or effectuate an arrest, so long as the officer can explain the nature of the infraction.

In this case, while the sergeant tried to use his limited sign language capabilities to communicate with the driver, it is apparent that the encounter with the driver in this case could well have benefitted from having an interpreter with sign language capabilities on scene. As it stood, LCPD policy did not require such an intervention, even though the arrest was effectuated by a use of force and paramedics were called to the scene, further complicating the communication with the deaf subject. The plethora of concerns later raised by the driver might well have been ameliorated if a signer had been present to assist in communicating with the driver.

Moreover, as identified by LCPD in this case, current policy is unclear on what is expected to be booked into evidence if officers use written communications to attempt to interact with the deaf person. Recently, the San Francisco Police Department updated its policy on dealing with the hearing impaired, and we attach that policy here to compare the depth of guidance provided to its officers with current LCPD policy.

Former President Obama’s Task Force on 21st Century policing recommended that law enforcement seek input from relevant stakeholders when policies are being updated.

In this case, seeking input from advocates such as the New Mexico Commission for Deaf & Hard of Hearing (which has offices in Las Cruces) would be helpful in determining how best to revise LCPD's current policy in order to provide clearer guidance. It is well worth the effort to promote approaches that help both officers and deaf persons (subjects, witnesses, and victims) better navigate through the challenges of investigative encounters, citations, and arrests.

RECOMMENDATION: LCPD should engage with advocates for the deaf and hard of hearing to revise its policies so that officers and deaf persons can use effective tools of communication in their encounters with each other.

Attachment

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The Las Cruces Police Department Academy is working with local advocates for the deaf and hard of hearing to update our curriculum for our Persons with Disabilities course. We are also currently reviewing our Persons with Disabilities policy as recommended by OIR.



7142 Trask Avenue
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TO: City of Las Cruces
FROM: OIR Group
DATE: November 28, 2022
RE: Review of Administrative Investigation – #2022EIC1-026

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 the member of the public that received a formal review – and was investigated by Internal Affairs.

OIR Group received the above-referenced case file on November 23, 2022.

Case Summary

This complaint arose from an anonymous phone call to the City's "EthicsPoint Hotline." The complainant claimed to have witnessed an LCPD vehicle idling outside of a Walmart entrance for an extended period of time, presumably with the air conditioning running as well. The complainant assumed (correctly) that the relevant officer was working an off-duty overtime security assignment for the store. He or she added a statement about having noticed the same dynamic on multiple occasions in previous months.

Interestingly, the concerns raised in the phone call had been brought to the Department's attention earlier in the year by various parties. This had prompted a

sergeant who was in charge of the Walmart assignment to issue an email to all commissioned LCPD personnel some two months before the specific shift that prompted the complainant's call. The sergeant's email mentioned two issues: the lack of visible activity by assigned officers and the potential violation of the City Manager's written policy on vehicle idling by City employees – which of course encompassed Police Department members. Both proved to be germane to the allegations as subsequently received over the Hotline.

Given the specific complaint and the backdrop of concerns about the identified behaviors, the Department initiated a formal investigation that was handled by Internal Affairs.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

The applicable City Manager Policy (CMP # 3.9), which expressly references “all City vehicles operating in a non-emergency situation,” contains the following relevant language that was used by the investigator to frame the case.

- II. ...Operators of City vehicles should take due care to assure vehicles are not left idling unless exempted as noted in sections herein. This would include the use of the vehicle/equipment during any breaks and/or lunch time.*
- III. All City Departments and employees will adhere to best practices for vehicle life cycle, efficient fuel consumption and improving air quality.*

Based on “sign-up” sheets for the Walmart overtime slots, the investigator was able to identify the officer who was working on the afternoon referenced in the telephonic complaint. Based on that information, the investigator pulled body-worn camera video from the shift in question and found one short police contact in the parking lot that occurred approximately two hours before the identified period. Accordingly, it was of limited relevance.

The investigator also interviewed the identified officer. The officer did not have a specific recollection of the day or time in question (which preceded the interview by several weeks), but he described his regular practice more generally. He claimed that he was conscious of the policy, that he refrained from running the vehicle while he was not inside of it, that he did periodically sit in his idling radio car to perform work-related tasks or take a break, that his practice was to be mostly out of the car, and that he had been more diligent in recent weeks about these matters in light of the sergeant's emailed admonitions.

The investigator determined that there was no basis for definitively establishing whether a policy violation had occurred. The original complaint was vague about certain key elements – such as whether the officer was spotted inside the car during the time in question, and what the exact time parameters may have been. Nor was investigative follow-up with the complainant feasible, given the anonymous nature of the telephonic message that initiated the case. And the officer's description of his own activity – as best as he could recall it – did not provide definitive corroboration that the City Manager's policy had been violated. The recommendation was that the allegation be "Unfounded," and this proved to be the final result.

Outcome: Discipline or Other Action

There was no formal discipline or review of the officer's personnel file in this case because no violation of policy was established.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed the underlying complaint write-up, the investigative memo, the other relevant documents, and listened to the investigator's interview with the officer.

Assessment of Investigation as Completed by LCPD

We concur with the determination that no basis for discipline was established.

However, by the Department's own assessment (as reflected in the investigative memo), "there are insufficient facts available in this case to either prove or disprove the allegation." This means that the more accurate formal disposition in the case would seemingly be "Not Sustained."

In some respects, this distinction is a minor one: neither an "Unfounded" or a "Not Sustained" finding leads to a disciplinary consequence. However, in these circumstances "Not Sustained" better captures the inconclusive nature of the review. It also better reflects the lingering ambiguity over whether the officer's actual conduct was consistent with expectations as framed by the City Manager's vehicle idling policy and the Department sergeant's email that specifically addressed the Walmart security assignment.¹

¹ Interestingly, in his comments at the conclusion of the interview (which he attended without representation), the officer seemed open to the possibility that discipline would be ensuing.

While the investigator did some effective due diligence here, the interview itself was short and somewhat generalized. When we raised this issue in prior case reviews, LCPD responded that it planned to provide more training regarding conducting thorough and complete interviews for all Internal Affairs personnel and other supervisors who conduct personnel investigations. This is encouraging, but we hope this topic will continue to receive managerial attention.

Here, there were few follow-up questions regarding the acknowledgements that the officer himself made about routinely (if only intermittently) spending Walmart shift time in his vehicle with the engine running. (How long were these sessions? Did his activities inside the vehicle require the engine to be running – for use of the in-car computer, for example? Why did he only have one recorded encounter with a member of the public during the shift? Did the officer believe his regular practice comported with both the spirit and letter of the policy?) It is true that the officer cited his familiarity with the sergeant's earlier guidance and said that he had been conscious of comporting with it, but the topic was not explored in detail.

It is creditable that LCPD devoted formal attention to a relatively minor issue. Ideally, the exercise itself was an effective way of reinforcing the ideas that the sergeant had tried to convey to all officers as an initial response to the problem. That said, our sense was that a "Not Sustained" disposition was much more in keeping with the uncertain state of the evidence and should have constituted the official finding. And we hope that the receiving of a formal complaint was also the impetus for a broader re-examination of officer performance in the context of the overtime security job at Walmart.

RECOMMENDATION 1

LCPD should ensure that its case dispositions are specific and accurate in responding to the state of the evidence and the Department's own findings.

RECOMMENDATION 2

LCPD should provide, or continue to provide, regular training to IA personnel regarding conducting thorough and complete interviews.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. We concur with the recommendation for the Not Sustained finding versus the Unfounded. LCPD also concurs with OIR in that the complaint was extremely vague leaving the investigator very little information on which to conduct their interview.



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

TO: City of Las Cruces
FROM: OIR Group
DATE: June 2, 2022
RE: Review of Administrative Investigation – IA # 2021EIC1 - 026

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.

OIR Group received the above-referenced case file on May 2, 2022.

Case Summary

The complainant in this case was a woman who was at odds with the neighbors whose homes adjoined her own property, with a fence in between. Those individuals were concerned that their privacy was being compromised by someone, and they suspected the woman's grandson – a juvenile. In the aftermath of a specific call for service which resulted in an LCPD visit to her home, the complainant alleged that the officer had been rude, had not taken a proper report about the incident, and had wrongly accused her grandson of being a "peeping Tom."

The officer in question responded to the neighbors' home on consecutive days. The first time, she was responding to a call for service regarding an incident that had just occurred. The woman who lived there alleged she had been taking a shower in her bathroom and saw someone attempting to film with a cell phone in the window. Her husband had happened to be sitting in his car on the street outside when this occurred,

and explained to the officer that he had not seen anyone entering or leaving. Additionally, he said that security cameras on the sides of the home would have recorded anyone on the property there, but no such sightings existed. This led them to believe that any intruder had come and gone from the area between their home and the neighbors with whom they had had previous tensions. There was a privacy wall in the relevant location that someone could stand atop. In their view, these facts pointed to the potential culpability of the people next door, whose previous comments and behaviors had raised concerns in their mind about whether their privacy was being respected.

The LCPD officer wrote a report but declined to take further action, saying she could not confront the neighbors on the sole basis of the couple's speculation as to what had happened. The couple was very accepting of this at the time. But they persisted in their suspicions, and the man installed an additional camera in the back portion of the house. He soon captured video of someone climbing up on the back fence in a manner consistent with trying to gain visual access to their window. Although the camera only captured the lower legs and feet of the trespasser, they noted that the person was wearing a distinctive brand of basketball shoes.

This prompted the officer to go to the neighbors with the new information. She spoke for several minutes with the juvenile's mother and with the complainant grandmother and explained the concern. It was after 10:00 PM when this occurred. The complainant and her adult daughter spoke to the officer for several minutes and adamantly denied that the boy had been engaged in such activity or was otherwise unaccounted for. They also claimed he did not have any shoes that matched the description from the video. They insisted they had monitored the boy at all relevant times and that he was now sleeping, and they declined to wake him to speak with the officer. They acknowledged that a voyeur was a valid concern, but pronounced themselves "furious" at the accusation, and freely denounced the strange and hostile behavior of the other couple.

After going back and forth between the parties for several minutes, the officer decided that she would take no further action at the moment, but would notify a school resource officer and pursue further investigation in case corroborating evidence materialized.

Although the mother and grandmother of the juvenile appeared to be understanding (if still quite indignant) as the officer left, the grandmother contacted LCPD the next day to express her displeasure with the way the call had been handled. She thought it was very inappropriate for the officer to contact them so late at night, thought that her grandson was being "accused" with no justification, and took exception to specific

comments that the officer made in an offhanded way (such as observing that the neighborhood was “fancy”).

The grandmother remained engaged in the issue in the ensuing weeks. She had two more phone conversations with sergeants and then a phone call with the involved officer herself, who had been away from work for several days and did not have any updated information. The grandmother expressed her frustration at this point over the idea that the relevant police report was reportedly still not ready for pick-up.

These elements – the officers’ initial handling of the contact and the adequacy of the subsequent reporting – eventually formed the basis of woman’s personnel complaint.

LCPD’s Investigation and Analysis

LCPD reviewed this matter and ultimately assessed the officer’s behavior with regard to two policies. The first was General Order 141.02 (A): Police Reports – Accuracy and Thoroughness. The second was General Order 103.05 (A,B): Code of Conduct, Conduct Toward the Public. The investigator reviewed the written report that the officer submitted after her initial conduct with the reporting parties; this was apparently the only documentation completed under the original case number. The investigator also reviewed relevant body-worn camera footage from the officer’s responses to the address on the consecutive nights of the incident, as well as recordings of the complainant’s subsequent outreach to LCPD in the following days and weeks. Based on this information, LCPD exonerated the officer.

We concur with this result in part, but disagree in part.

In our own review of the body-worn camera footage, we found the officer to have handled a difficult situation with sensitivity, balance, and sound judgment. A dispute between antagonistic neighbors is often inherently tense, and the alleged behavior at issue here clearly constituted a new level of concern. The officer worked to navigate her way through the strong emotions that the accusation engendered among the parties. She sought to reassure the husband and wife while recognizing that the evidence was significant but not conclusive, and that the youth of the grandson was a complicating factor that needed to be reckoned with. Her raising of the allegation in the manner that she did was appropriate to the circumstances, and none of the specific comments that (subsequently) proved offensive to the complainant made the same impression on us. Instead, they seemed like a benign attempt to establish rapport and defuse the agitation that the contact itself had created from the outset.

Accordingly, we concur that the “Conduct Toward the Public” policy was not violated.

We also believe that the Department mishandled the investigation into the adequacy of the officer’s report writing. The reporting had become a bone of contention for the complainant, presumably because she sought assurances that no unjustified representations against her grandson had made their way into official documents, and because she wanted to establish that he was not under lingering suspicion. She appears to have been correct in her concerns about the completeness of documentation, for reasons we explain below. However, the Department exonerated the officer.¹

The investigation memorandum makes the key mistake of focusing exclusively on the report that the officer prepared and submitted in reference to the *original* call for service, which ended with her explaining to the husband and wife that their speculation, however warranted, was not sufficient without other evidence to justify a contact with the family next door. *That* report was accurate and appropriately detailed. However, it does not include any of the events from the following evening, when the husband and wife were able to produce the time-stamped video from an additional camera that had just been installed in direct response to their suspicions. That video showed someone’s feet climbing onto the privacy wall that allowed a potential vantage point into their bathroom – and was proximate to the neighbor’s property.

It was on this second night that the officer encountered the complainant for the first time and broached the possibility of the grandson’s involvement. Naturally, that portion of the incident was highly germane to both the criminal case and the grandmother’s concerns. But no supplemental report appears to have been prepared or was made available to us, nor does the investigation acknowledge this missing information.

It was as if that part of the report-writing failure, which seemingly would have led to a different finding for that allegation, was not considered in the investigation at all. But we later learned that there was a reason for this: namely, that the issue of any subsequent report had been handled in a separate forum and was purposely excluded from the inquiry into the complaint.

It is our understanding from the Department that timely reporting was an established shortcoming in the officer’s performance history, and that relevant issues been

¹ Interestingly, it also sent the complainant a notification letter that only focused on the “Code of Conduct” policy and omitted any reference to the report-writing issue.

addressed with the officer *prior* to the complaint officially being received. Duplication of efforts (or consequences) was avoided in framing this subsequent administrative review, because the performance concern had already been identified and addressed.

While this makes at least partial sense as an explanation, this prior counseling was not reported in the investigative memo or otherwise documented to our knowledge. As a result, the investigation, which ended up *exonerating* the officer as if the complaint had no merit, missed an opportunity to accurately document the officer's performance lapse and did a disservice to the complainant. The process would have been better served if the investigation cited the previous intervention and left it at that. Instead, the investigator imposed a narrow frame on "eligible" conduct and reached a conclusion that was misleading. Put simply, the formal "Exonerated" outcome here is faulty and not reflective of the shortcoming that prompted a part of the complaint.

More broadly, this case is another example in which conversations with the Department helped to clarify processes or outcomes that were initially confusing to us. We appreciate the Department's candor and cooperation whenever we have questions. Ideally, though, a case file will stand on its own as a clear depiction of what occurred and why – without reliance on background information that is understood by participants in the moment but may not be helpful (or available) if future reference is required. Regular documentation is a sound practice with a value that transcends our auditing purposes and contributes to effective supervision, proper accountability, and risk management.

RECOMMENDATION 1

LCPD should work to better coordinate the interventions handled by supervisors with the formal administrative review process.

RECOMMENDATION 2

LCPD should reassess the underlying criminal case in this incident to ensure the adequacy of the police response and address any lingering deficiencies in report-writing.

RECOMMENDATION 3

LCPD should contact the complainant, explain the flaws in its original review and notification letter, and acknowledge the legitimacy of her concerns about the officer's reporting.

RECOMMENDATION 4

LCPD should follow up with the involved investigator to address flaws in the handling of the investigation and analysis in this matter.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. LCPD will take recommendations into consideration and review our processes to address any deficiencies noted.



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

TO: City of Las Cruces
FROM: OIR Group
DATE: June 2, 2022
RE: Review of Administrative Investigation – #2021EIC1-027

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) and investigated by Internal Affairs.

OIR Group received the above-referenced case file on May 2, 2022.

Case Summary

The complainant was involved in a vehicle collision in the drive-thru lane of a fast-food restaurant. When the at-fault party refused to provide any insurance or contact information, the complainant contacted LCPD. An officer arrived at the location.

The officer contacted the complainant while in her vehicle in the drive-thru line and advised her to remain in her vehicle.

The officer then contacted the at-fault party, who initially stated that she would not provide any information. The officer informed her that she could be charged with a hit-and-run. The officer provided the woman with a piece of scratch paper from his small notebook. The woman wrote down her insurance policy number. The officer took the

paper back, asked for the insurance company name and telephone number, and added that information to the piece of paper.

While walking back to the complainant's vehicle, a witness handed the officer a piece of paper with her name and phone number.

The officer then returned to the complainant and provided her both pieces of paper – one with the at-fault party's insurance information and one with the witness' information. The officer gave the complainant another piece of scratch paper to write down her insurance information. He walked this back to the at-fault party.

He instructed both parties to contact their insurance company, provide the insurance information and let the insurance companies deal with the matter.

Two days later, the complainant called LCPD. She stated that the at-fault party's insurance policy number as written was incorrect and that the officer did not collect additional information (e.g., the name of the at-fault party). As a result, she was unable to file an insurance claim because she did not have any additional identifying information for the at-fault party. She alleged that the officer prevented her from directly engaging with the at-fault party and did not provide sufficient and accurate information to file a claim.

LCPD's Investigation and Analysis

LCPD's Internal Affairs conducted a preliminary investigation of the incident and framed one allegation against the officer:

1. **General Order 274.11. Traffic Crash Investigation**

Among other guidelines for responding to traffic crashes, this General Order states that, when a crash occurs on a private property, officers will not complete a crash report unless it involved a hit and run, injury, or death, or an arrestable offense. Further, the General Order states that officers shall issue a "private property crash card" to the involved parties.

After reviewing the body-worn camera footage of this incident, the IA investigator determined that the officer's conduct was lawful and justified. The officer was exonerated. No further investigation was conducted.

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 objective. And while we agree with the finding of “exonerated” for the specific officer, we found that LCPD missed an opportunity to provide corrective training for both the officer in specific and Department-wide to prevent future occurrences.

The investigation concluded, and we agree, that the officer adhered to what he thought were the most basic requirements of responding to a private property traffic crash: he facilitated communication between the parties and obtained insurance information, albeit inaccurate and potentially intentionally so. In subsequent discussion with the Department, we learned that there are varied criteria and requirements for responding to traffic crashes depending on the nature of the crash, nuances that may not be clearly understood for officers working assignments other than the Traffic Unit.¹

In this case, the Department suggested, and we agree, that this topic could be useful for a Department-wide (and especially Patrol) training from the Traffic Unit. We recently recommended that the Department use relevant incidents that emerge in the complaint process as a forum for individual or Department-wide training and recommend this here again.

RECOMMENDATION 1

LCPD should Department-wide training from the Traffic Unit regarding the protocol and requirements for responding to traffic crashes.

We also recommend that the officer himself receive specific training on his performance during the incident. While none of his shortcomings rise to the level of formal misconduct, the officer’s actions resulted in the complainant’s inability to file an insurance claim because of missing/erroneous information. Considering the circumstances that formed the basis for the call for service, it would not be unforeseeable that the at-fault party might provide inaccurate insurance information.

¹ The Department suggested that, in his capacity as a Patrol officer (versus a Traffic Unit officer), the officer may not have been clear on the General Order requirements for coordinating a private property traffic crash information exchange. We cannot ascertain this because the investigation was closed out at the Preliminary Inquiry level with no officer interview required. As we have noted in previous memos, the lack of formal administrative interviews, especially of involved/accused personnel, is one significant drawback of the Preliminary Inquiry process. While it is suitable for resolving some complaints, it also sometimes leaves questions unanswered. We will continue to work with the Department to refine the complaint investigation process.

We first noted that the officer treated this call for service rather informally. The specific call for service requested that the officer assist the complainant in collecting important information from a resistant, at-fault party. But the officer engaged both parties in a very informal capacity while they were both still in the drive-thru line, even encouraging the at-fault party to place her fast-food order in the middle of their conversation, rather than having both parties pull over and formally exchange full information to complete his call for service.

Second, the officer was not thorough. When he did obtain compliance from the at-fault party, he did not issue a "Private Property Crash Card" because he did not have any at his disposal (we discuss this later). But he also did not otherwise collect relevant information that any civilian driver might know to exchange after a traffic collision (e.g., a name, phone number or address, photo of a Driver's License), nor did he confirm the accuracy of the insurance information that he did receive.

RECOMMENDATION 2

LCPD should direct training for this officer regarding the need to treat calls for service in a formal manner that serves the needs of the public thoroughly.

Further, in our discussion with the Department, we learned that most officers do not actually carry Private Property Crash Cards. If a General Order requires that officers provide specific paperwork, as is the case here with the "Private Property Crash Card," we recommend that all officers, regardless of assignment, be furnished the appropriate tools to adhere to Department policy and to serve the public.

RECOMMENDATION 3

LCPD officers, regardless of their assignment, should be furnished with and carry the appropriate tools and materials to adhere to Department policies and serve the public.

Finally, we noted that the LCPD "Citizen Complaint" form still includes language that could have the unintended effect of dissuading complainants from participating in the complaint process. In our January 2022 Semi-Annual Report, we recommended that the Department remove all references regarding possible penalties for making false

statements from the Complaint form. The Department agreed, and immediately removed the reference to one possible penalty (a polygraph examination).

However, the form still includes the following language:

Under penalties as provided by law pursuant to Section 30-39-1 NMSA 1978, False Reporting, I certify that the allegations set forth in this complaint are true and correct to the best of my knowledge. I understand that if I knowingly make false accusations, I may be subject to a criminal prosecution or civil penalties.

In subsequent discussions with LCPD, we learned that the Department is actively considering changes to the Citizen Complaint form. We look forward to reviewing an updated version of the form to ensure that complainants are in no way dissuaded from reporting a complaint.

RECOMMENDATION 4

LCPD should remove all language related to possible penalties from the Citizen Complaint form that might dissuade the public from participating in the complaint process.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The review is thorough and accurate, LCPD will take recommendations into consideration. Information will be forwarded to the Professional Development section of our academy for future training opportunities.



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

TO: City of Las Cruces
FROM: OIR Group
DATE: October 17, 2022
RE: Review of Closed Litigation

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews closed civil litigation against the city that involved Las Cruces Police Department and / or its officers. OIR Group received one case from the City Attorney that was closed in this review period. OIR Group received files related to this case on October 17, 2022.

Review Summary

In this period, OIR Group received one case from the Las Cruces City Attorney's Office. The case involved one Plaintiff. This case was related to an active shooter training session provided by the Las Cruces Police Department during which an unnamed officer fired a rifle with blank ammunition in an enclosed space. The Plaintiff alleged that, due to her proximity to the blank, she experienced long-term medical issues and that the City was negligent when they failed to provide appropriate ear protection for the training session. The case was dismissed pursuant to a settlement in the amount of \$230,000.

No charges were associated with this claim.

Our scope of work requires that we summarize demographics related to litigation cases. In this case:

Agenda Item #3.1.

- The Plaintiff is white.
- No LCPD officers were named.
- The case occurred in the zip code 88001.

The case file included LCPD's active shooter training materials as delivered in 2013, which we reviewed and found to be significantly outdated. As such, we corresponded with the LCPD Training Division to learn about the Department's current active shooter training. The Department reported that it has changed its training curriculum to a Federally funded program used nationwide and provided the course outline for review. Training personnel have attended "train-the-trainer" qualification sessions; Training Division provided their certificates of completion.

The Department also advised that civilian training classes no longer include any use of ammunition or scenarios of any kind.

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)

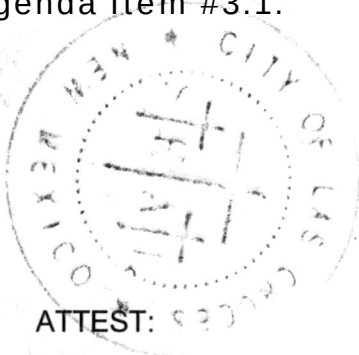
THAT a contract is hereby awarded to OIR Group, LLC of Playa del Rey, California for Police Auditor Services for an initial term of one (1) year period with the option to renew for four (4) additional one (1) year terms, in an amount not to exceed \$75,000.00 plus gross receipts tax as applicable, as 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 #3.1.

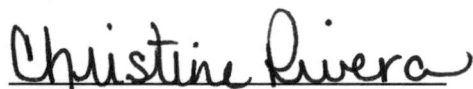


APPROVED



Mayor

ATTEST:



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

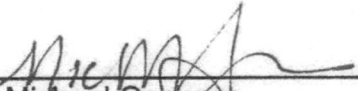
The parties agree that each provision of this Agreement is severable and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and this Agreement shall be construed in all respects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

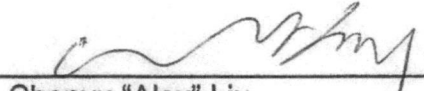
25. CONFLICT OF INTEREST

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

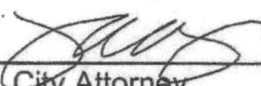
APPROVED AS TO FORM
 for JVB 01/20/2021
City Attorney

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

CANCELLATION

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	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 <i>Linda Worthington</i>
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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:**

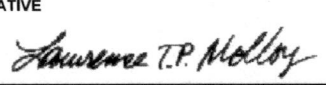
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE 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
	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 
---	--

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
A. COVERAGES	1
Business Liability	1
Medical Expenses	2
Coverage Extension - Supplementary Payments	2
B. EXCLUSIONS	3
C. WHO IS AN INSURED	10
D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE	14
E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS	15
1. Bankruptcy	15
2. Duties In The Event Of Occurrence, Offense, Claim Or Suit	15
3. Financial Responsibility Laws	16
4. Legal Action Against Us	16
5. Separation Of Insureds	16
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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 #3.1.

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 2 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, 2022 and terminate March 3, 2023. All other terms and conditions, including any amendments, of the Agreement remain the same.

AGREED:

OIR GROUP, LLC

CITY OF LAS CRUCES

 2.23.22
Signature Date

 02/23/22
Chenyu "Alex" Liu Date
Purchasing Manager Alfredo R. Pacheco
Interim

MICHAEL J. GENNARO
Printed Name/Title
PRINCIPAL, OIR GROUP



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/17/2021

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 Brakke-Schafnitz Ins. Brokers License #0K07568 3 Polaris Way, 4th Floor Aliso Viejo, CA 92656 Craig Lewis	CONTACT Loida Jalandra NAME: PHONE (A/C, No, Ext): 949-365-5156 FAX (A/C, No): 949-313-3287 E-MAIL: loida.jalandra@slg.us ADDRESS:																					
INSURED OIR Group c/o Michael Gonnaco 7142 Trask Avenue Playa del Rey, CA 90293	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A:</td> <td>Sentinel Insurance Company</td> <td>11000</td> </tr> <tr> <td>INSURER B:</td> <td>Lloyds of London</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	Sentinel Insurance Company	11000	INSURER B:	Lloyds of London		INSURER C:			INSURER D:			INSURER E:			INSURER F:		
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INSURER E:																						
INSURER F:																						

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	09/20/2021	09/20/2022	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	09/20/2021	09/20/2022	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/OWNER EXCLUDED? (Mandatory in NF) ☐ Y/N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				PER STATUTE ☐ OTHER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
B	Professional Liab (Claims Made)			94936	12/14/2021	12/14/2022	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

Loida Jalandra



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.

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- (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

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:

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.



MEMORANDUM

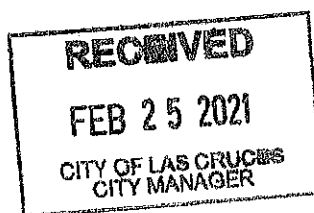
To: Ifo Pili, City Manager
From: Alex Liu, Purchasing Manager
Date: 1-20-21
Subject: Request for Waiver of Workers Compensation

Initials:
File #: F-21-022

On November 6, 2020, the City's Purchasing Program advertised RFP No. 19-20-077A for Police Auditor Services. On December 17, 2020, a Selection Advisory Committee recommended award of the contract to OIR Group, LLC (OIR) of Playa del Rey, CA. OIR will support the City's Internal Audit Office with its needs for periodic public reports based on monitoring/auditing activities for police accountability. This shall contribute to greater openness with respect to police complaint procedures. A Council Action Executive Summary is currently being drafted for contract award approval.

The City requires that the vendor provide insurance documentation indicating that they possess coverages that will best protect the City. The vendor has provided insurance documentation that meets all but one of the city's requirements. OIR has indicated that they have no employees, and do not carry worker's compensation insurance. The City's Risk Management Section has indicated that unless work is performed on site, there is no worker compensation exposure and because of the low exposure, they support waiving the workers compensation requirement.

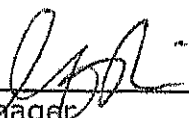
The Purchasing Program does not take this waiver lightly; however, it recognizes Risk Management's recommendation and the need for the Police Auditor Services. It is requested by the Internal Audit Office that you approve a one-time waiver of the workers compensation insurance for this vendor to provide services.



Agenda Item #3.1.

Approved: ☒

Disapproved: ☐



Ifo Pili, City Manager

3/21/21

Date

Attachments: Internal Audit Waiver Request Memorandum

cc: Barbara De Leon, Chief of Staff

cc: Terri L. Gayhart, Financial Services Director

cc: Alfredo R. Pacheco, Deputy Director of Finance

Initials: 

Initials: Approved via e-mail

Initials: Approved via email



MEMORANDUM

To: Viola Perea, City Auditor
From: Carl Conley, Risk Management Administrator
Date: January 13, 2021
Subject: Insurance Recommendation – PD Audit Services

Initials: CDC

File #:

Recommendations are based on the following information and review of submitted insurance documents. Michael Gennaco and Associates and Attorneys of the Office Independent Review dba OIR Group (OIR) will provide independent auditing services for LCPD. Work will primarily be off-site with occasional site visits. OIR is a group with 5 associates and no employees.

The contracted party must be the covered entity listed on the certificates of insurance. The contract can include both insured parties as defined in the certificates of insurance provided. Based on the type of work and location of work we can accept a, Per Policy Aggregate Limit on the General Liability Coverage. Based on the limited on-site work and their primary location, we can accept Hired and Non-Owned Auto Liability only. Based on the status of the associates involved and the limited on-site activity, we do not need them to provide evidence of Workers Compensation Coverage.

Enclosures/Attachments (Optional)

cc:

Initials:

cc:

Initials:



City of Las Cruces

Council Work Session Summary

Meeting: Work Session - Feb 27 2023

TITLE: LAS CRUCES POLICE DEPARTMENT UPDATE.

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

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The Las Cruces Police Department will be updating City Council on Crime statistics for 2022 and Year-To-Date results. Included in the presentation will be personnel updates, crime strategies, training, community engagement projects, and department initiatives.

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None