

WORK SESSION AGENDA

AMENDED

Mayor Ken
Miyagishima

Monday, August 22, 2022 at 1:00 PM

Mayor Pro Tem
Kasandra Gandara

Councilors
Tessa Abeyta
Becki Graham
Johana Bencomo
Becky Corran
Yvonne Flores



City of Las Cruces®

CITY HALL
P.O. BOX 20000
LAS CRUCES, NM
88004

700 N. Main St.
PHONE (575) 541-
2067

City Council Chambers

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

	Page
1. <u>PETS OF THE WEEK</u>	
2. <u>JOBS OF THE WEEK</u>	
3. <u>AGENDA ITEM</u>	
3.1. THE POLICE AUDITOR SEMI-ANNUAL REPORT PRESENTED BY THE OIR GROUP. WS #22-039 - Pdf	2 - 168
3.2. PUBLIC COMMENT REGARDING OIR GROUP AUDIT.	
3.3. PROGRESS REPORT ON REALIZE LAS CRUCES WS #22-042 - Pdf	169
3.4. AUTOMATED SPEED ENFORCEMENT. WS #22-043 - Pdf	170



Council Work Session Summary

Meeting: Work Session - Aug 22 2022

TITLE: THE POLICE AUDITOR SEMI-ANNUAL 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 Second Semi-Annual Audit of LCPD - August 2022](#)

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

[OIR Group 2nd Year Extension](#)

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

Oversight Committee

Las Cruces Police Department

SECOND SEMI-ANNUAL CASE REVIEW AUDIT REPORT

August 2022



Michael Gennaco
Stephen Connolly
Teresa Magula
Julie Ruhlin



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

Table of Contents

Introduction0

Internal Affairs Case Review3

 Civilian Demographics4

 Officer & Allegation Data5

 Summary of Case Data8

Review, Findings & Recommendations14

 Internal Affairs Practices15

 Complaint Intake Form Modifications15

 Following Investigation Protocol16

 Timeliness17

 Transparency for Complainants.....18

 Philosophy of Discipline.....19

 Policy and Training.....21

 Officer Professionalism.....21

 Transport of Subjects22

 Reports and Other Procedural Allegations23

 Application of Policy to All Personnel23

 Use of Force Considerations24

 Positive Findings.....25

 Update to “Preliminary Inquiry” Process25

 Supervisor Professionalism26

 Customer Service Metrics27

Litigation Case Review28

 Case #1.....28

 Case #2.....28

 Demographics and Findings29

Next Steps30

Appendix A: OIR Group IA Case Memos.....31

Appendix B: OIR Group Litigation Case Memos.....32

Appendix C: OIR Group Member Biographies.....33

Introduction

OIR Group ¹ is pleased to have completed a full year as the City of Las Cruces' Independent Police Auditor, a role that we have fulfilled since May 1, 2021.² In our role as the IPA, OIR Group reviews investigations of formal civilian and Department-initiated complaints completed by LCPD to determine whether they were complete, objective, and thorough, and that actions taken in response to the investigations were appropriate. The independent review adds a layer of outside scrutiny to the Department's efforts at addressing allegations of misconduct, and our recommendations 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 second such report.

In this second Report, we discuss our review of Internal Affairs cases that were initiated, investigated and closed by LCPD between December 1, 2021,

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

Full biographies of each team member are provided at the end of this report as Appendix C.

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.

and May 31, 2022. We share the recommendations derived from those reviews and provide a limited statistical analysis. We then summarize our review of closed civil litigation against the city that involved Las Cruces Police Department and/or its officers.

A year into our engagement, we are pleased to report that the Department has made notable improvements to the Internal Affairs complaint process. We initially identified several systemic issues that suggested room for improvement in the LCPD complaint process – mostly related to the manner in which cases were classified and investigated -- that the Department has already implemented or is in the process of implementing. For example (and as we detail later in this Report), the Department immediately improved its case classification system to better track cases that rise to higher levels of misconduct. The Department now consistently makes official findings for all cases, even those more straightforward complaints that are resolved after viewing body-worn camera video and without a more extensive, formal investigation (called the “Preliminary Inquiry” level), so that every case is file is complete and accurate.

The Department also accepted or is considering recommendations related to other internal review systems, such as their use of force review process; as we detail later in this Report, LCPD is currently expanding its use of force review process to better evaluate force and the performance of officers in the field. The Department has addressed our recommendations regarding training concerns, the role of supervisors, and policy (most notably, considerations regarding the use of the Taser and related policy).

We find that the Department continues to be extremely cooperative and collaborative, and receptive in addressing our questions and responding to our ideas for change. And it is with that continued improvement in mind that we detail our findings from this review period. The considerations and recommendations offered in this Report are made in recognition of the importance of internal review to the operational effectiveness and public legitimacy of LCPD.

Internal Affairs Case Review

As reported by LCPD, in the period from December 1, 2021, to May 31, 2022, LCPD initiated 37 Internal Affairs cases across all case categories.³

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. This report covers cases that were initiated, investigated, and closed by LCPD from December 1, 2021 to May 31, 2022.

We received and reviewed sixteen cases⁴ in this period:

- **5 II.** Internal Investigations, or “II,” are complaints generated within the department that may result when there is an internal allegation related to misconduct or operational actions of employees on or off-duty. 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.
- **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.⁵ Category 1, which we review, is a “formal” complaint that is documented and investigated by Internal Affairs.

In our first Report, we also reviewed Supervisory Matters that rose to the level of serious misconduct. However, as a result of our recommendations regarding case classification, LCPD now classifies these matters as Internal Investigations (II). This re-classification is more effective to track cases involving more serious misconduct.

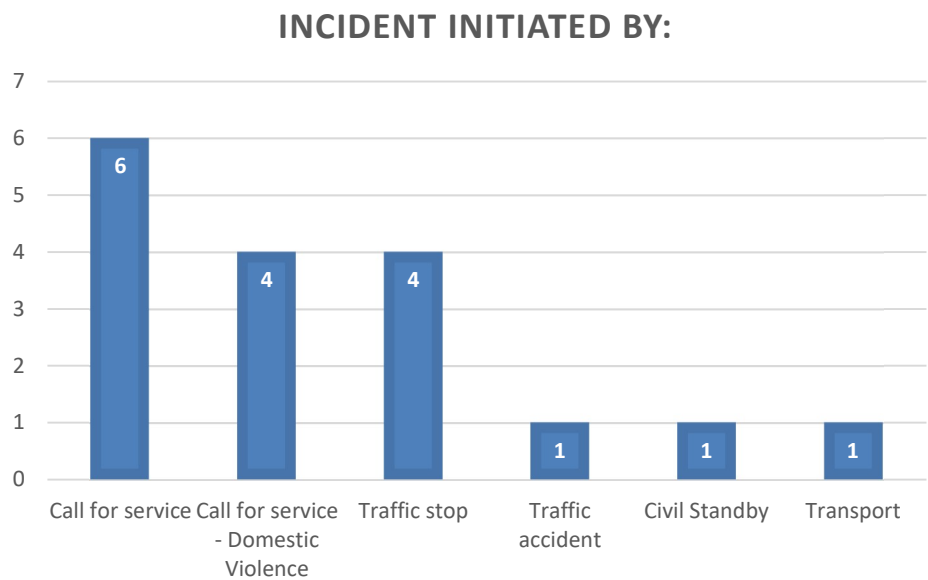
³ This data was provided by LCPD Internal Affairs from its IA Pro system.

⁴ We found that Department investigated two distinct complaints filed by the same complainant on the same day under one EIC1 number: 2021EIC1-016. As such, some of the counts in this Report will total 17.

⁵ Of these External Investigations, OIR Group only reviews EI Category 1, or “EIC1.”

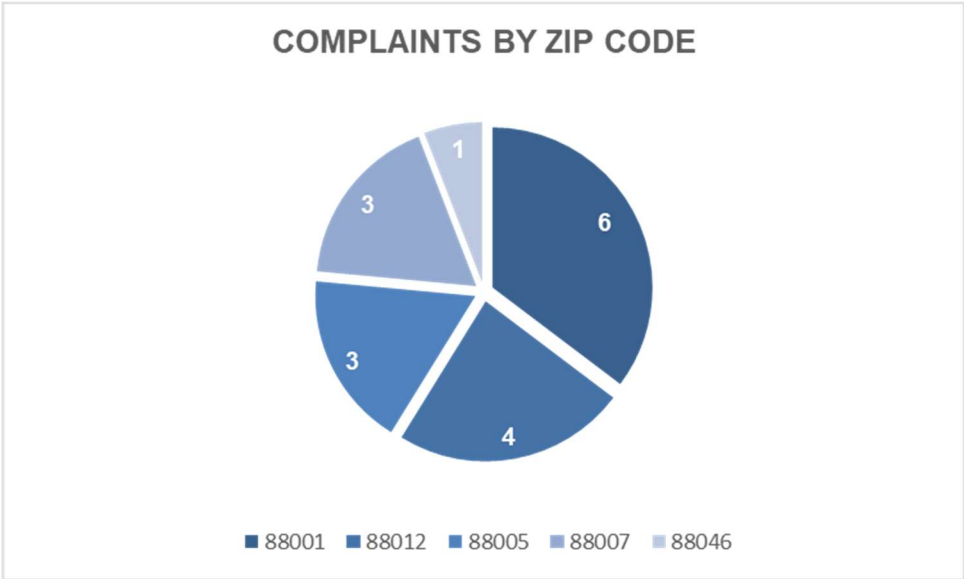
Civilian Demographics

Eleven of these cases were initiated by members of the public through the complaint process. Five were opened at the Department’s own initiative after becoming aware of potential misconduct. The majority of these incidents (10) stemmed from employee’s actions or conduct during a call for service. Notably, four of the ten “call for service” cases involved calls for service related to incidents of alleged or in-progress domestic violence.⁶



⁶ In our first Report, we noted a potential trend in policy violations during calls for service related to domestic violence, welfare checks and/or domestic/civil stand-bys. We reported that LCPD had recognized this trend and issued a Department-wide Training Bulletin regarding the Domestic Standby General Order after seeing repeated policy violations, and recommended that LCPD also consider additional, Department-wide training to supplement the bulletin it has issued, which it reportedly held in February 2022 and plans to repeat annually. Most cases that we reviewed this period occurred prior to these training updates. We will continue to monitor the trend in violations related to these types of calls for service to measure the effectiveness of the training moving forward.

As in the previous Report, of the 17 complaints, most (6) were initiated by incidents in or residents of the zip code 88001.



In our first Report, we noted that LCPD’s internal tracking system did not always note the race of the complainant unless it was provided by the complainant or relative to the investigation. As such, most cases in our first review had no record of the complainant’s race. However, LCPD improved its tracking and reported race in every case during this period. Eight cases involved a Hispanic complainant, 7 cases a white complainant, and 1 case a Black complainant.

Officer & Allegation Data

These complaint cases involved 59 formal allegations against 27 LCPD employees across several rank levels.⁷ According to the Department, 15 of these employees are Hispanic and 12 are white.

⁷ At the time of the investigation, 1 accused employee was a Detective, 2 were Sergeants, 22 were Officers, 1 was a Transport Officer, and 1 was a non-sworn Police Service Aide.

In our first report, we stated that our small sample size did not result in any statistically significant findings relative to demographics. We now have a larger total case count. We looked for, but did not identify, any notable trends in the following categories:

- Race of involved officers. We reviewed the race of the accused officers. There were no statistically significant findings that officers of a particular race were more likely to engage in potential misconduct or receive complaints of misconduct. Similarly, we looked for any notable trends in the findings relative to officers' race (e.g., was the Department more likely to sustain misconduct for officers of a certain race or issue more punitive discipline, which may indicate an internal bias); again, we did not find any significant findings in this area.
- Race of complainant relative to race of officer(s) generally. We reviewed the race of the complainant relative to the race of the accused officer(s); for example, we reviewed if officers of a certain race were more likely to engage in misconduct against complainants of a certain race (e.g., white officers against Hispanic complainants). We did not find any statistically significant results here.⁸ Most often, we found that the race of the involved officer(s) was the same as the race of the complainant; this small sample supports the Department's assertions that their personnel reflect the demographics of Las Cruces.
- Traffic stops. Traffic stop data is often used in studies of biased policing. We reviewed the race of the complainant relative to the race of the officer(s) for complaints related to traffic stops specifically.⁹ Here again, we did not note any significant disparities to suggest a pattern of bias.

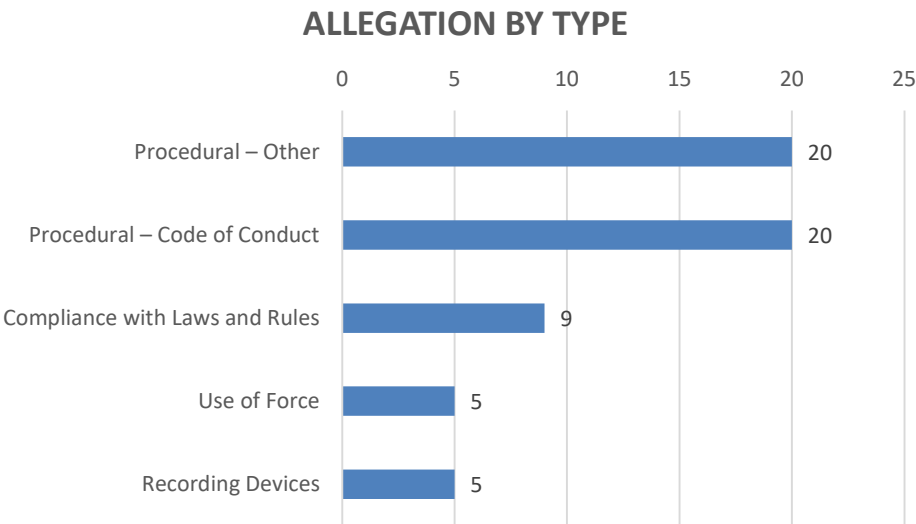
OIR Group intends to continue tracking officer and complainant demographics and will report any findings of significance related to race, area, and / or rank.

⁸ No cases reviewed in this period contained any allegations of racial bias.

⁹ It is important to note that such studies generally include a much larger sample size and are often done Department-wide. Here, we are very limited – this small sample only includes complaints of misconduct during a traffic stop. Again, none of these cases involved specific allegations of racial bias.

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

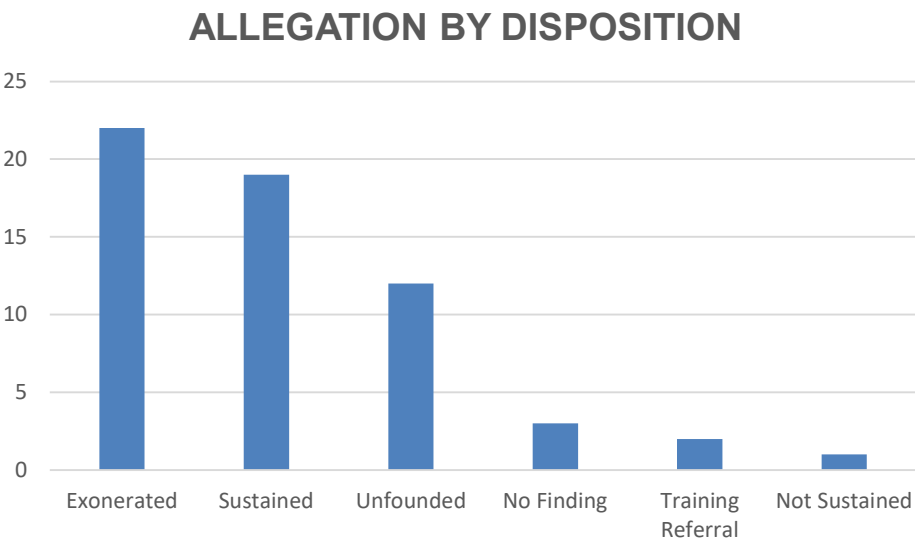
- Procedural – Other, which includes allegations of failure to investigate, reporting delays, or breaches of security / confidentiality, among others)
- Procedural – Code of Conduct, which includes conduct unbecoming, discourtesy, and insubordination, among others
- Use of Force, which includes allegations 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 this period, we saw an increase in allegations related to report writing and other procedural processes. Most often, the Department identified these procedural deficiencies in the course of investigating other allegations; for example, when pulling an Incident Report related to a complaint of discourtesy, the Internal Affairs investigator noted that the report was incomplete or not properly filed. Here, we commend the Department for identifying and framing allegations that are not part of the original complaint. And, as we detail below, this upward trend may suggest the need for more training regarding the procedural side of law enforcement work.

We also review case outcomes, or “dispositions.” In this period, officers were exonerated in 22 of these allegations, which means that the alleged action(s) occurred, but the office acted lawfully and within Department policy. Nineteen of the allegations (19) were sustained. One case was disposed before the Department implemented the new, OIR Group-recommended practice of making formal dispositions even when cases were closed out at the Preliminary Inquiry level; this resulted in three allegations that had “No Finding.”

And, for those sustained allegations, the discipline ranged from a verbal or written reprimand up to a 10-hour (1 day) suspension. In one case, officers were directed to training. In another, the Department recommended termination, but the officer resigned before termination proceedings were completed. We discuss our perspective and recommendations related to the Department’s “philosophy of discipline” in greater detail, below.



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.

2020II-004

Department-initiated internal complaint related to an employee's illegal conduct with a female who the officer had previously transported during an arrest.

Transport Officer	Code of Conduct - Truthfulness	Sustained
Transport Officer	Code of Conduct - Criminal Conduct	Sustained
Transport Officer	Code of Conduct - Consorting	Sustained
Transport Officer	Code of Conduct - Conduct Unbecoming	Sustained

2022EIC1-004

Public-initiated complaint related to a traffic stop. Complainant alleged that an officer was discourteous and threatened to arrest her.

Officer	Code of Conduct - Conduct Toward Public	Unfounded
Officer	Code of Conduct - Unsatisfactory Performance	Not Sustained
Officer	Physical Arrest	Exonerated

2021EICI-006

Public-initiated complaint related to a noise complaint. A complainant alleged that an LCPD officer used excessive force, arrested him without cause, and was rude.

Officer 1	Court Attendance	Sustained
Officer 1	Recording Devices	Sustained
Officer 2	Recording Devices	Sustained
Officer 1	Code of Conduct - Conduct Toward Public	Exonerated
Officer 1	Physical Arrest - Authority	Exonerated
Officer 2	Prisoner Transport	Exonerated
Officer 3	Prisoner Transport	Exonerated
Officer 2	Prisoner Transport	Sustained
Officer 1	Use of Force	Exonerated

2021EICI-010

Public-initiated complaint related to a traffic accident investigation. The complainant alleged that the officer was not impartial and was rude. During the investigation, LCPD discovered misconduct related to report writing.

Officer	Police Reports	Sustained
---------	----------------	-----------

2021II-012

Department-initiated complaint related to possible domestic violence between an officer and his partner, a former LCPD employee. In the course of the investigation, LCPD discovered the misconduct of another employee who had shared confidential case information.

Detective	Code of Conduct - Security & Confidentiality	Sustained
Detective	Recording Devices	Sustained
Officer	Code of Conduct - General Standards	Unfounded
Officer	Code of Conduct - Criminal Conduct	Unfounded
Officer	Code of Conduct - Cruel, Unlawful, Improper Treatment	Unfounded

2021II-013

Department-initiated investigation related to an off-duty officer's DWI and his conduct during the administrative investigation.

Officer	Complaint Investigation	Sustained
Officer	Code of Conduct Criminal Conduct Prohibited	Sustained
Officer	Code of Conduct - Conduct Unbecoming	Sustained

2021EIC1-015

Public-initiated complaint related to the impound of a vehicle. Complainant alleged that the officers were discourteous.

Officer 1	Code of Conduct - Conduct Toward Public	Unfounded
Officer 1	Code of Conduct - Unsatisfactory Performance	Unfounded
Officer 1	Towing and Impounding	Exonerated
Officer 2	Code of Conduct - Conduct Toward Public	Unfounded
Officer 2	Code of Conduct - Unsatisfactory Performance	Unfounded
Officer 2	Towing and Impounding	Exonerated

2021EIC1-016

Public-initiated complaint related to two calls for service. In the first, the complainant alleged that an officer failed to cite the at-fault driver after a traffic collision. In the second, the complainant alleged that officers mishandled an investigation. This was the last case in which LCPD did not issue a formal disposition for a preliminary inquiry.

Officer 1 ¹⁰	Traffic Enforcement - Warnings	No Finding
Officer 2	Juvenile Interviews	No Finding
Officer 2	Crime Scene Investigation	No Finding

2021II-016

Department-initiated complaint related to negligent discharge of a firearm by a non-sworn employee. During the investigation, LCPD discovered misconduct related to report writing and failure to activate body-worn camera.

Police Service Aide	Code of Conduct - Criminal Conduct	Sustained
Officer	Recording Devices	Sustained
Officer	Police Reports	Sustained

2021EIC1-017

Public-initiated complaint related to two unique encounters with LCPD where the complainant alleged that officers were biased against him and were rude during a phone call. During the investigation, LCPD discovered peripheral misconduct related to report writing.

Sergeant	Code of Conduct - Unsatisfactory Performance	Unfounded
Officer 1	Domestic Family Disturbance	Unfounded
Officer 2	Domestic Family Disturbance - Reports	Sustained
Officer 3	Domestic Family Disturbance - Reports	Sustained

2021EIC1-018

Public-initiated complaint related to a call for service. Allegations included employees failing to activate their recording device and mishandling the call.

¹⁰ Where there was more than one employee of the same rank in the same case, we numbered the rank (e.g., Officer 1 and Officer 2) to show the allegations and findings related to each employee. If there is no number, the employee listed was accused of all listed allegations.

Officer 1	Unsatisfactory Work Performance	Exonerated
Officer 2	Unsatisfactory Work Performance	Exonerated
Officer 1	Recording Devices	Exonerated

2021EIC1-019

Public-initiated complaint related to the complainant's arrest for DWI.
Complainant alleged that the officers failed to book her property after arrest.

Officer 1	Evidence	Unfounded
Officer 2	Evidence	Unfounded

2021EIC1-020

Public-initiated complaint related to an officer's communication with the complainant's daughter during a call for service.

Officer	Domestic Family Disturbance	Exonerated
---------	-----------------------------	------------

2021II-022

Department-initiated complaint related to a use of force and subsequent arrest of a subject during a call for service.

Officer	Court Attendance	Training Referral
Officer	Police Reports	Training Referral
Officer	Physical Arrests	Exonerated

2021EIC1-022

Public-initiated complaint related to an officer's response to a mental health-related call for service. The complainant alleged that the officer was unprofessional, used excessive force, and had sexually harassed the subject of the call.

Officer	Code of Conduct - Conduct Toward Public	Exonerated
Officer	Physical Arrests	Exonerated
Officer	Use of Force	Exonerated

2021EIC1-025

Agenda Item #3.1.

Public-initiated complaint resulting from a domestic family disturbance call. Complainants alleged that officers entered the home without a warrant, used excessive force and lied to Child Protective Services regarding their child.

Officer 1	Domestic Family Disturbance	Exonerated
Officer 1	Use of Force	Exonerated
Officer 2	Domestic Family Disturbance	Exonerated
Officer 2	Use of Force	Exonerated
Officer 3	Domestic Family Disturbance	Exonerated
Officer 3	Use of Force	Exonerated

Review, Findings & Recommendations

Since 2001, OIR Group's members have had 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.¹¹

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.

¹¹ 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

As we reported in January, we again found LCPD's internal affairs practices to be robust and effective. And the Department has shown its responsiveness to the auditing process by effectively implementing most of our recommendations in a short six-month timeframe.¹²

Here, we comment on newly discovered or recurring areas where LCPD systems and approaches might better align with the most effective practices.

Complaint Intake Form Modifications

In our January 2022 report, we identified aspects of the complaint intake form that we asked the Department to re-consider due to their potentially chilling effect on public feedback. Specifically, we asked LCPD to consider changes to two elements of the pre-printed avowals to which complainants are asked to attest with their signature. As we reported in January, the Department modified its complaint form to remove the first piece of such language, which read as follows:

I understand that I may be asked to submit to a polygraph examination and provide a formal statement to the Professional Standards Unit of the Las Cruces Police Department.

However, we noted that this second section is still included in the complaint form:

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

¹² The timeline of some cases may have overlapped with our first Report, meaning that that investigation was completed, or was nearly completed, prior to publication of our Report and related recommendations. For example, we reviewed one case where the Department had not yet implemented the process of creating formal findings for Preliminary Inquiry cases because that case was completed prior to publication of the recommendation.

knowledge. I understand that if I knowingly make false accusations, I may be subject to a criminal prosecution or civil penalties.

The Department committed to reviewing this language and further modifying the complaint form. We will continue to work with the Department to create a complaint form that in no way dissuades the public from reporting a complaint.

Following Investigation Protocol

In January, we reported that the Department did not always fully follow its investigative protocol for reviewing formal complaints. In this review period, we noted areas of continued challenge with this.

As we detail in this section, we first noted that LCPD does not always conduct its own interviews of complainant or potential witnesses. Second, we noted that LCPD was sometimes combining unrelated complaints from one complainant into one investigation, an issue that it quickly resolved within this same period. Finally, we noted that in some cases, LCPD did not thoroughly investigate all allegations. We discuss those process challenges in this section and offer recommendations.

In this period, we again noted that LCPD did not always conduct its own interviews of complainants or potential witnesses, relying instead on the complaint form only. We again recommended that, going forward, LCPD conduct a more formal interview of at least the complainant where possible. This is likely to result in a more complete investigation overall and may provide additional evidence to ensure that the investigation is thorough, fair, and accurate.

In one case (see 2021EIC1-017), we noted that the Department “collapsed” two unique complaints by the same complainant into one case/investigation. While this initially seems practical, it can create process issues for the investigation itself (e.g., different officers, different fact patterns, etc.), for internal tracking (e.g., case counts and classification) and in transparency for the complainant (see our discussion of close-out letters below). LCPD immediately corrected this process concern as evidenced by cases 2022EIC1-

004 and 2021EIC1-015, where the investigator initiated unique investigations for two complaints submitted by the same complainant.

Finally, we noted two cases where the investigators did not thoroughly investigate all allegations. For example, in case 2020II-004, a complicated case of alleged domestic violence involving various Department personnel, we noted that the investigator focused more on exploring the interpersonal relationships between involved personnel than on fully investigating all evidence of the alleged domestic violence. In case 2021EIC1-025, where the complainants alleged excessive force and a potential head injury, the investigator did not seek any evidence, such as the complainant's medical clearance paperwork, to thoroughly investigate the alleged injury.

We recommended that investigators remain focused on the administrative allegations and on collecting any evidence that could prove or disprove them. Further, we recommend that LCPD should carefully review all available evidence to ensure a thorough investigation.

In their response to the cases listed herein, LCPD responded that "formal protocols will be adhered to on all investigations as recommended." We will continue to provide feedback on Department's adherence to effective investigative protocols.

Timeliness

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. This time, they mostly occurred when LCPD was unable to "close out" an investigation due to the subject officer(s) being on leave (military, sick, or personal), which resulted in delays in their administrative interviews or disciplinary review. We also were pleased to find that, where possible, LCPD included rationale for the delays in their investigative memos as we previously recommended.

We noted an additional challenge with timeliness in this period: the internal delay resulted in concern for the complainant. For example, in case 2020II-004, where the complainant alleged that she had been assaulted by an officer,

the complainant contacted the Department and stated that she was upset to see the accused officer “driving around like nothing happened.” LCPD immediately sent an investigative update via email.

We recommend that LCPD send update letters to complainants when an investigation’s timeframe is extended beyond a 180-day period; LCPD agreed and will do so going forward.

Transparency for Complainants

OIR Group has commended the Department for its detailed close-out letters to complainants that go beyond form letters. And we offer additional considerations to increase transparency for complainants.

In this review period, we noted that some close-out letters were inadvertently misleading (see 2021EIC1-010, 2021EIC1-017, 2021EIC1-010, and 2021EIC1-025). Most often, this occurred when the investigation revealed additional procedural allegations, such as incomplete report writing, that were sustained, while the original allegations made by the complainant were exonerated, unfounded, or not sustained. For example, in 2021EIC1-017, the letter stated that the officer had “violated department rules and regulations.” This had the potential to mislead the complainant into thinking his original assertions had been corroborated by the evidence. But that was not the case. While the officer did violate policy related to report writing, this was not the subject of the complainant’s initial allegations; the complainant alleged biased behavior, an allegation that the Department determined was unfounded.

We have already discussed the preferability of including more information in these close-out letters. After discussion with OIR Group, LCPD has modified its close-out letter to reflect a more complete picture of the investigative process for complainants. We look forward to reviewing future close-out letters.

Further, we saw a potential opportunity to increase transparency for complainants using body-worn camera footage. In several cases, the complainant’s allegations were clearly disproven after watching the body-worn camera footage. For example, in case 2021EIC1-019, where the complainant alleged that officers did not properly book her property, the body-worn camera demonstrated a careful inventory of property during the booking process. Similarly, the body-worn camera footage in case 2021EIC1-022, where the

complainant alleged discourtesy, excessive force, and sexual harassment, showed that the officers acted professionally and appropriately in responding to a mental health call for service.

Here, we see an opportunity to go beyond the close-out letter; we advocate that law enforcement agencies offer complainants the opportunity to view video evidence, especially when that evidence proves determinative. We recommended that LCPD should consider in appropriate cases offering the complainant the opportunity to view video evidence, especially when such evidence is determinative; LCPD is considering this recommendation.

Finally, we reviewed cases that may be candidates for an informal resolution, such as mediation or restorative justice. For example, in watching the video footage for case 2021EIC1-010, it appeared as if the complainant was primarily looking for her concerns to be more patiently considered by the responding officer. This case would be a good candidate for mediation.

Restorative justice and mediation are, we believe, a worthy goal to keep in mind for the Department when considering its options for addressing such cases. LCPD should consider devising a mediation program for the resolution of some complaints that are less about problematic misconduct than gaps in communication or perspective. When we recommended this in our related memo, LCPD responded, “the mediation program for resolution suggested is a good recommendation, we currently are developing a program as part of the supervisor complaint intake process where supervisors will be trained on how to better resolve citizen issues utilizing customer service principles.”

Philosophy of Discipline

In several cases reviewed in this period, we found the disciplinary outcomes to be noticeably lenient. We encourage the Department to remain open to an ongoing assessment of its “philosophy of discipline” as it pertains to consequences in sustained cases.

For example, in investigating case 2021II-016, the Department identified repeated procedural issues with an officer’s use of his recording device (the Department called this behavior a “willful disregard” for policies regarding use of the body-worn camera) and a pattern of practice related to this officer’s lack

of diligence regarding other important administrative functions of policing, such as accurate report writing. Yet the Department issued a low-level suspension, discipline that we found was not commensurate with the officer's repeated pattern of misconduct.

And, in case 2021II-013, we questioned the resulting low-level discipline because the sustained allegations – related to integrity and honesty -- were of particular concern. In this case, an off-duty officer was found to be DWI after a field test (though criminal charges were never filed). The investigation also revealed that the officer was not truthful in two instances. In recommending discipline, the Department argued that the officer was “hard-working” and had not had past performance issues. This resulted in a low-level suspension.

In this case, we found that the problematic off-duty conduct (DWI) arguably warranted a more severe consequence in and of itself. Beyond that, though, the sustained allegations of dishonesty or intentional deception, even if they were a first-time offense, are of particular concern because an officer's honesty and integrity are essential parts of the job, especially when an officer is called upon to testify in court.

Our intent in commenting on discipline is not to advocate for an overly punitive system of discipline. Rather, our commentary is meant to ensure that discipline serves a meaningful and effective corrective purpose. An overly “lenient” disciplinary response runs the risk of diminishing the influence of the process on future officer performance. This being said, we would not advocate for *significant* increases in discipline in the aforementioned cases. And ultimately the sufficiency of discipline ultimately turns on whether it is accompanied by a substantive debrief or training that equips the officer to improve performance in the relevant way, which the Department has committed to do.

LCPD responded that “additional internal checks and balances will be implemented prior to completing the investigation to address all aspects of an officer's performance. Training and counseling components as part of the disciplinary process will be formally documented where appropriate.” LCPD also reported that it is currently developing a discipline system with a “Chart of Sanctions” to ensure discipline is taken in a prompt, fair, and consistent manner.

We will continue to assess the disciplinary outcomes of cases going forward in an effort to encourage appropriate accountability for misconduct.

Policy and Training

In this period, LCPD has had substantive accomplishments to training, including the addition of a Sergeant to the Training Division, management training for senior leadership to develop their management skills, Internal Affairs training for supervisors who may investigate “supervisory matter” level cases, and Department-wide training on topics such as search and seizure, domestic violence and harassment, and legal/risk liability.

And, during our reviews, we noted areas where LCPD might consider additional training and/or policy updates. 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.

Officer Professionalism

In some cases reviewed during this period, we observed occasional officer professionalism issues that may warrant additional attention from the Department. This was not because they were egregious, but because they showed the officers in a less favorable light than they mostly appeared.

For example, in case 2020EIC1-018, we observed instances of impatient banter with the complainant and repeated profanities as the officers chatted with each other during lulls in the process. In 2021EIC1-006, an officer who responded to the scene to interview witnesses to a use of force used profane language when interacting with the witnesses. And, we observed poor communication skills in case 2021EIC1-022, where the officer seemed brusque and inflexible in a way that “raised the temperature” of the encounter and precluded any further possibility of de-escalation.

None of these interactions devolved into outright rudeness, unprofessionalism, or misconduct, but we mention them, in part, because they were in contrast with the professionalism and composure that LCPD officers largely maintain in the hours of footage that we observe in our auditing work. We also recognize that casual conversations among officers (and many other professional groups) have a different tone and should be held to a different standard than direct interactions with members of the public.

Where LCPD members and other police personnel differ from professionals, though, is that recordings have become routinized in their “workplaces,” and that these recordings can easily have evidentiary significance in a variety of contexts. Reminders about the value of composure and controlled language are always worth reinforcing, particularly when the issues arise in the context of an administrative review.

We recommend that LCPD identify and address issues of officer professionalism that arise in the context of the investigative review process, even if they do not rise to the level of formal policy violations.

The Department responded that this topic will be covered in its upcoming, Department-wide “Code of Conduct” training. Further, when the issues arise during an administrative investigation, the Department has instructed that the investigator follow-up with section supervisors to ensure that supervisors are providing counseling to the involved officers.

Transport of Subjects

In this period, we reviewed two cases (2021II-022 and 2021EIC1-006) in which subjects were transported for medical care or to Detention after a use of force incident. In both cases, the subject was transported by the officer who used force, despite other officers being on-scene and available to transport the subject. This practice is not ideal for two reasons: continued engagement between an officer and the subject of force might heighten tensions (we observed this in case 2021EIC1-006 as the subject continued to berate the officer from the back of the police vehicle during transport), and the involved officer should be held back to provide a statement regarding the force to a supervisor.

When practicable, LCPD should encourage officers to take advantage of their staffing options and separate in-custody persons from the most directly involved officers after a use of force incident. LCPD responded that it will consider this as staffing allows.

Reports and Other Procedural Allegations

As we mentioned in our discussion of allegation types above, we noted an increase in the number of allegations involving law enforcement procedures; most often, these involved the inaccuracy and/or incompleteness of police reports, as well as failures to appear in court or to properly upload and tag body-worn camera footage. These were typically discovered while investigating other, unrelated allegations and, in most cases, sustained by the Department.

As a result, the involved officers were counseled on their report-writing, the importance of attending court dates, the policy related to body-worn camera footage, and other procedures that are of utmost importance to law enforcement.

At this time, we hypothesize that the increase in the count of procedural allegations is due to LCPD's careful investigative process, which uncovers this misconduct (versus an upward trend in procedural misconduct as a whole Department-wide). We will continue to monitor this trend in collaboration with the Department and, if needed, recommend Department-wide training on procedural issues.

Application of Policy to All Personnel

In January, we reported that non-sworn personnel appeared to be confused about whether all Department policies applied to them. We observed this again in our review of case 2021II-0016. In this case, there was confusion related to the reporting and tracking of a negligent discharge by a non-sworn employee.

According to LCPD, the policy regarding reporting a negligent discharge, General Order 143, specifically stated: “this General Order applies to commissioned employees.” Because the involved non-sworn was a *non-commissioned* employee, he and his chain of command believed the policy did not apply to him. As a result, the negligent discharge incident itself was never entered into LCPD’s internal force tracking software program, BlueTeam, or reported to the Professional Standards Bureau, despite the employee’s self-report and several supervisors knowing about the incident.

LCPD has since corrected this specific policy and reported that all other applicable policies have been updated to indicate that they apply to all employees.

Use of Force Considerations

Several of the cases that we reviewed in this period included use(s) of force and/or allegations of excessive use of force. The use of force review process is a separate internal process that is conducted by the involved officers’ chain of command, not Internal Affairs. However, based on our decades of collective experience reviewing force cases, we were compelled to make recommendations related to uses of force when we observed areas for improvement.

To its credit, the Department was open and responsive to our recommendations. LCPD reported that it is currently expanding its use of force review process to better evaluate force and the performance of officers in the field. The Department has created 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. This team will evaluate 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 BlueTeam / chain of command review.

We are impressed with this initiative and look forward to learning more about it and its accomplishments as it progresses.

Additionally, we learned that the Department is currently reviewing and updating its Conducted Electrical Weapon (“CEW,” or more commonly referred to as a “Taser”) and Equipment policies to ensure that these reflect the most effective uses of the Taser. In our memo related to case 2021EIC1-025, we recommended that the Department evaluate (and, we recommended, restrict) the use of the Taser in “drive stun mode.”¹³ And, we recommended the Department impose a requirement for officers to warn of Taser use where practicable, and document the warning or lack thereof. We will review the new policies when they are available.

Positive Findings

Update to “Preliminary Inquiry” Process

When we began our case reviews a year ago, we noted that some cases were closed out after what LCPD called a “Preliminary Inquiry.” This preliminary inquiry, which includes an assessment of the initially available evidence, is conducted by Internal Affairs, and serves to better assign the case for further investigation – or a prompt resolution of the case.

Prior to our reviews, LCPD closed out preliminary inquiries with no further investigation if the preliminary inquiry revealed that no misconduct occurred.¹⁴

¹³ “Drive stun,” referred to in LCPD General Orders as “contact mode,” is when an officer places the Taser directly against the body rather than deploying the electrical probes that conduct electricity. This is used entirely for pain compliance because this mode of operation does not incapacitate muscles like the probes do.

¹⁴ Preliminary Inquiry is defined in General Order 160.07.A. Complaint Investigation, Investigative Procedures, Preliminary Inquiry as follows:

1. Internal Affairs will review each complaint to determine its merit. Prior to initiating an official administrative investigation and notification of the affected employee, a preliminary inquiry may be made to identify the

We suggested that LCPD assign dispositions to these types of cases, rather than leaving them without formal finding. And, accordingly, LCPD now does so.

By assigning a formal disposition, LCPD can log a formal record of the case outcome. And all parties, including the officer(s) and complainant(s), are made aware that no misconduct occurred.

Supervisor Professionalism

We observed several cases in which supervisors' professionalism were commendable. For example, in case 2021EIC1-022, both the supervisor who responded to the scene of the call and the supervisor who took the complaint responded with empathy, encouragement, and professionalism.

involved employee, to verify the reliability of the source or authenticity of the complaint, or to clarify the allegations.

2. A preliminary inquiry may not be necessary for certain types of complaints [...]
3. In some cases, the preliminary inquiry of the complaint will determine that the action(s) of the employee were in compliance with policy or that the complaint against the employee is one that, even if true, would not be a violation of law or department policy. In these situations, a formal administrative investigation is not needed, and the complaint can be closed out upon the Chief of Police's approval.
4. If the preliminary inquiry determines that a specific allegation, if true, would constitute violation of policy and/or procedure, a formal administrative investigation will be initiated in accordance with this general order.

Customer Service Metrics

Our scope of work requires that we compare the complaint case counts against LCPD's total number of interactions with the public. As we reported in our first report, the resulting data shows that of all interactions with the public, very few resulted in complaints. In this period, LCPD responded to 54,552 calls for service.¹⁵ If we take the sum of all complaints, we find that complaints make up 0.06% of all calls for service.

And, going forward, the Department will also have a more accurate way to measure effective "customer service" and community feedback; during this period, the Department implementing a real-time customer service application to track its performance in the field. Developed by SPIDR Tech, the application allows LCPD to communicate with the public and receive feedback on various aspects of their operations, from texting anticipated response times to 9-1-1 calls and sending text updates and notifications to collecting "customer satisfaction" metrics once a call is completed. If a customer is dissatisfied or requests additional follow-up, the Department can choose to send a supervisor to revisit the call; this might include taking information for a complaint or simply providing an additional point of contact and communication such as clarification of the officer's actions.

The software compiles this data into dashboards for evaluation by Department leadership. The Department plans to use this data to track customer satisfaction beyond the complaint / commendation process.

¹⁵ 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.

Litigation Case Review

OIR Group also received and reviewed two cases from the Las Cruces City Attorney that were closed during our review period. Our memos related to each case with a detailed case summary and recommendations, are attached as **Appendix B**.

The litigation matters involved a total of 2 claimants and 3 named Las Cruces police officers.

Case #1

The Plaintiff alleged that during a traffic stop on September 22, 2018, a Las Cruces police officer searched him without consent, used excessive force that resulted in injuries, and that LCPD failed to properly investigate and document the incident. The case was dismissed.

The Plaintiff was charged with felony possession of a firearm, resisting a peace officer, assault on a peace officer, probation violation, possession of a controlled substance, and tampering with evidence. These criminal charges were dismissed.

The matter resulted in an internal Use of Force Review where the force used was found to be reasonable. The Plaintiff did not file a related administrative complaint and LCPD did not initiate an Internal Affairs investigation of the matter.

Case #2

This case was related to an officer-involved shooting that occurred in December of 2016; the Plaintiff alleged that the deceased was wrongfully killed by LCPD and that LCPD and the City were negligent in failing to provide adequate de-escalation, crisis intervention and mental health training for the officers.

The case resulted in a settlement for the deceased's minor children.

This matter resulted in an investigation by the joint Officer-Involved Shooting Task Force, which found the officers' actions to be justified. LCPD Internal Affairs also conducted an Internal Investigation of the matter; the Department framed one allegation of "Use of Deadly Force (General Order 255.04)" for each officer. The officers were exonerated.

Demographics and Findings

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

- Of the three named officers, two are white, one is Hispanic.
- According to LCPD, one of the officers is currently on administrative leave pending a criminal trial for an unrelated incident that occurred in early 2020. The other two are still employees of LCPD.
- On the claimant side, one claimant is white and one is Hispanic.
- One case occurred in the zip code 88001 and the other in 88005.

In both cases, we were pleased to note that the Department had initiated some form of internal review of the incident to track any potential related misconduct. In the first, the Department conducted a use of force review; in the second, Internal Affairs conducted a formal investigation and exonerated the officers. As we have commented in the past, litigation can serve as a valuable feedback loop for Departments to mitigate risk by identifying any officer accountability issues and by using lessons learned from the litigation to potentially improve LCPD's future response through training or other remediation when faced with similar circumstances.

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 will continue to monitor developments related to the community's interest in civilian oversight and engage with stakeholders regarding this and other important public safety topics.

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 IA Case Memos



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

TO: City of Las Cruces
FROM: OIR Group
DATE: April 25, 2022
RE: Review of Administrative Investigation – #2022EIC1-004¹

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 March 28, 2022.

Case Summary

A complainant alleged that an off-duty LCPD officer was rude, “snatched” documents from her hand, was “extremely hateful” when he stated, “shut up, shut up, you’re being eccentric,” and placed his hand on his firearm in a threatening manner during a traffic stop.

The complaint stemmed from a traffic stop on September 10, 2021. A woman (the complainant) was driving her son to school; her son was in the passenger seat. An off-duty LCPD officer going home at the end of his shift pulled her over in his marked police vehicle. He approached the passenger side door, which the son opened. The officer

¹ This case is related to LCPD case #21-101909.

asked the woman why she was in a hurry, said she was tailgating him, and advised her that she had merged into a bike lane. He asked for her license, registration and insurance, which the woman handed to her son, who handed it to the officer.

The officer ran the information through the Mesilla Valley Regional Dispatch Authority (MRVDA) and learned that the woman had four outstanding warrants for traffic violations.

He walked back to the vehicle and informed the woman of the warrants. He advised her that he could “pick her up” and have the vehicle towed. He instructed the woman to attend to the warrants in municipal court immediately. He also stated that the woman was acting “erratic” and that he could give her additional traffic citations.

He warned that next time he saw the vehicle, and if she had not managed the warrants, he would arrest her, which would be “inconvenient” and “suck” for her son. The woman stated that her son was in trouble at school, and the officer encouraged the son to “do better.” He said, “have a good day” and ended the encounter.

LCPD’s Investigation and Analysis

LCPD’s Internal Affairs conducted a preliminary investigation of the incident and framed three allegations against the officer:

1. General Order 103. Code of Conduct – Conduct Toward the Public

This General Order outlines conduct with the public, including being respectful, controlling tempers, and exercising the “utmost patience and discretion and shall not engage in argumentative discussion even in the face of extreme provocation.”

2. General Order 103. Code of Conduct – Unsatisfactory Performance

This General Order states that unsatisfactory performance includes lack of knowledge and proper application of laws and procedures and “unwillingness or inability to perform assigned tasks.”

3. General Order 231.03.A. Physical Arrests – Authority to Arrest

This General Order gives officers authority to arrest persons when an officer has knowledge of or holds a warrant commanding the arrest of the named person.

After reviewing the body-worn camera footage of this incident, the IA investigator determined that the officer did not violate any of the General Orders listed. The

allegations were unfounded, not sustained, and exonerated, respectively.² No further investigation was conducted.

Additionally, the investigator recommended that LCPD conduct Department-wide remedial training on arrest warrants. That training was delivered on March 16, 2022, during the Department's Bi-annual Legal Update training.

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 investigation to be complete.

In a prior memo, we recommended that the Department consider in appropriate cases offering the complainant the opportunity to view video evidence, especially when such evidence is determinative.³ This case may be another appropriate opportunity to consider this remediation.

We would also like to use this opportunity to commend the lieutenant who spoke with the complainant over the phone for her patience and professionalism during the complaint intake 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 work on a process allowing the complainant to view video evidence when appropriate.

² For reference, these dispositions are defined as follows:

- Unfounded: the act alleged apparently did not occur.
- Not sustained: there is not sufficient evidence to clearly prove or disprove the allegation.
- Exonerated: the employee's conduct was lawful, justified and proper.

³ See our memo related to IA# 2021EIC1-019.



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

TO: City of Las Cruces
FROM: OIR Group
DATE: February 3, 2022
RE: Review of Administrative Investigation – IA #2020II-004¹

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 January 5, 2022.

Case Summary

LCPD responded to a call for service at an LCPD Transport Officer's apartment. A woman alleged that the officer had coerced her to his home, purchased and served her alcohol, and possibly drugged her.

This case was related to an incident during which the LCPD officer in question transported the woman when she was arrested for allegations of domestic violence.

¹ This case is related to LCPD case #2020-038385.

The woman advised that during this transport the officer learned her date of birth and that she was 20-years old.

Months later, the officer encountered the woman, still 20-years old, at a local gas station, where she initiated a conversation with him. The woman mentioned that she cleaned houses and needed work. The officer asked for the woman's phone number to schedule a house cleaning.

Approximately two weeks later, the officer requested, via text message and then a phone call, that the woman clean his apartment. After a discussion regarding price, the apartment location, and supplies, the officer asked the woman if she wanted him to buy her alcohol. She agreed.

When she arrived at his apartment, the woman noticed that the blinds were drawn and the apartment was not, in fact, very dirty. Nonetheless, she began to clean. The officer then offered her a shot of vodka which he poured from a large, gallon-size container. The woman drank at least one shot. She then left the apartment, claiming that she needed to smoke marijuana. The woman stated that she threw up while she was outside.

The woman returned to the apartment. The officer offered her another shot of vodka and said that he would not pay her the agreed-upon amount for her cleaning services if she did not take it. She drank the shot and stated that she immediately did not feel well and became scared. Because she was scared and ill, she went to the bathroom, locked the door, and called her boyfriend to pick her up.

The officer began to record the incident on his cellular phone, repeatedly saying that it was for his protection because he had been accused of similar behavior in the past. He knocked on the door several times and loudly asked if the woman was okay, if she was being held against her will, or if she was calling the police. The woman responded that she was fine and cleaning the bathroom.

While in the bathroom, the woman called her boyfriend and brother. She asked them to come help her. When her boyfriend and brother arrived at the apartment complex, they took the woman, whose speech was slurred and movement impaired, down the apartment stairs. The woman began to experience an anxiety attack and exhibit other medical concerns.

In the meantime, the woman's brother called LCPD. LCPD officers and medical personnel arrived. Later, a LCPD supervisor arrived at the scene. Due to her physical

and mental state, the woman was eventually transported to the hospital, where the supervisor responded to take her statement.²

Sometime thereafter, the officer took an extended and unrelated leave from his job.

LCPD's Investigation and Analysis

LCPD's Internal Affairs conducted an Internal Investigation (II) formal investigation of the complaint. IA framed the following allegations against the accused officer:

1. **General Order 103.17.A-C – Code of Conduct – Truthfulness**

This General Order section details the standards for truthfulness for all personnel in all investigations.

2. **General Order 103.28 – Code of Conduct – Conduct Unbecoming**

This General Order section states that “employees shall not conduct themselves in a manner which would bring discredit upon themselves” or engage in any criminal acts that would impair the operations or efficiency of the department. This included conduct off-duty.

3. **General Order 103.08 – Code of Conduct – Criminal Conduct Prohibited**

This General Order section states that “employees shall not engage in any conduct, on- or off-duty, regardless of their whereabouts, which is in violation of the law.”

4. **General Order 103.19 – Code of Conduct – Consorting Prohibited**

This General Order section states that “employees shall avoid associating with persons who are known to engage in criminal behavior except in the discharge of their official duties.”

IA determined that the officer had violated the four above sections of General Order 103 when he hired the woman, an arrestee whom he had previously transported in his official duties, to clean his house, purchased and served alcohol to a minor, engaged in conduct that discredited himself and the Department, and was not forthright and honest during the investigation. The four allegations were sustained.

² According to LCPD, the woman did not submit to a toxicology test despite alleging that she had been drugged.

A Lieutenant reviewed the officer's personnel package. The Lieutenant recommended that the LCPD Department Director terminate the officer. The officer eventually resigned before the termination proceedings could be completed.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file. Based on this review, OIR found that the investigation was thorough, appropriately scoped, and that the outcome is consistent with LCPD's Code of Conduct and based on the evidence collected by Internal Affairs.

OIR Group has commented in the past about delays in investigation; the investigation and close-out of this case was also significantly delayed.³ In this case, the incident occurred on April 11, 2020. A one-time, 180-day extension was granted until October 18, 2020, but completion of the case was further delayed until July of 2021 because the involved officer was on extended leave.⁴

The majority of the investigation, including interview of the complainant and a preliminary interview of the accused officer, was completed shortly after the incident date, but the full interview of the accused officer was significantly delayed due to his leave. During his interview and again in his Loudermill Hearing, the officer claimed that he was experiencing memory loss and could not recall details of the incident. While OIR Group concurs with the Department's ultimate conclusion that the officer was purposefully vague and untruthful, had omitted key details during the interview, and continued to be deceptive in his Loudermill Hearing, the extended delay gave potential credence to the officer's claim of "memory loss."

In this case, the leave taken by the officer made him unavailable for an interview to no fault of the Department. However, the delay also caused concern for the complainant. In June of 2020, the complainant contacted the Department stating that she had observed the officer "driving around like nothing happened." The Department immediately responded with an investigation update via email. While the delay was unavoidable due to the officer being on leave and unavailable for a full interview, we encourage the Department to update complainants on a regular basis when investigations are significantly extended.

³ Please see OIR Group memo related to IA #2021II-017 for a detailed discussion of timeliness in investigations.

⁴ The initial extension was granted due to pandemic-related restrictions and the assigned Detective and involved officers being on extended leave.

RECOMMENDATION 1

LCPD should routinely send update letters to complainants when an investigation's timeframe is extended beyond a 180-day period.

As detailed in the case summary, the woman contacted her boyfriend and brother while at the officer's home; while these individuals responded to provide support at the scene, including helping the woman leave the apartment, LCPD also noted that they created additional challenges at the scene, including threatening the accused officer. Later, while at the hospital, the woman asked to call her mother. In reviewing the available body-worn camera footage and incident report of the responding supervising sergeant, OIR Group noted that the supervisor stated that the woman could contact "whoever you need to call" only after he had completed an interview, saying "I need to hold off on that [phone call]."

LCPD advised OIR Group that the circumstances related to this specific call, including a desire to quickly determine if the accused officer's apartment contained evidence of criminal acts, prompted the supervisor to record the victim's statement to preserve the integrity of the investigation before she communicated with others or others arrived to the scene. While this makes sense on some level, it does not completely dispel our initial impression that the well-being of a crime victim should have been prioritized more overtly.⁵

OIR Group acknowledges that there is a fine balance between investigative efficiency and allowing a victim to contact outside support, and we encourage LCPD to continue training supervisors on this type of incident.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The review is thorough and accurate and we are in agreement with the recommendations. LCPD is in the process of setting up a system to notify complainants when investigations are exceeding the 180-day period.

⁵ Perhaps even couching it differently, as a "request with explanation" rather than a requirement, would have been a viable and preferable option.



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

TO: City of Las Cruces
FROM: OIR Group
DATE: April 13, 2022
RE: Review of Administrative Investigation – #2021EIC1-006¹

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 March 19, 2022.

Case Summary

A complainant alleged that an LCPD officer used excessive force, arrested him without cause, and was rude during a call for service. The complainant, who was arrested during the incident, also alleged that an unknown officer called him “a fool” during the booking process.

The complaint stemmed from an incident in February 2021 related to a noise complaint. An LCPD officer stated that he heard a call for service responded to the location, which

¹ This case is related to LCPD case #21-013366. This case is also related to a Civil Claim filed on behalf of the complainant on May 6, 2021.

was known to him from prior calls.² He heard and observed a party in the backyard of a residence. He entered the backyard through a gate and met a man (the complainant), who stated that the officer could not be in the backyard and refused to provide identification. The man exited the backyard and the officer followed him.

The man re-entered the backyard and the officer followed. The man again stated that the officer could not lawfully be in the backyard. The officer responded that he was there for the noise complaint and continued to ask for ID, which the complainant refused to provide. The officer told the man that he would be arrested for “concealing identity” and the man responded, “charge me.” The officer instructed him to turn around but the man refused.

The officer then grabbed the man’s wrist and again instructed the man to turn around. The man refused and struggled. In the ensuing movements, the officer’s body-worn camera fell off. The officer pushed the man away and requested backup. The officer then reached for the man again and attempted to perform a wristlock as the man struggled to break away.

Meanwhile, several other people approached and yelled, “you can’t even be back here!” and “get back” and “videotape this!”

The officer and man moved behind an open gate. According to the officer, the man punched the officer in the face. The officer stepped back and deployed his Taser to subdue the man, but it was ineffective. The officer again deployed the Taser. This time, the man fell to the ground and the officer straddled him. The man refused to submit his hands; the officer used his Taser again. The man complied and was handcuffed.

Two additional LCPD officers arrived at the location.

The officer placed the man on his side and then seated him upright. The man stated, “you didn’t have to do that.” The officer responded, “yes, I did because you punched me in the face.” The man responded, repeatedly, “I punched you in the face?” and “oh my god,” in an incredulous way. The officer took the man to his patrol vehicle.

Many additional officers responded to the scene.

² According to the officer, he personally had responded to noise complaints at the address on previous occasions. LCPD could not locate records to show that this officer had responded to prior calls for service at that location but other LCPD officers had. According to those officers, in past instances, the residents were hostile toward the officers and had escorted the officers off the property. The officers noted that future officers should request back-up before responding to this address.

After speaking to his supervisor and taking photographs of his face, the officer transported the man to the hospital for medical clearance. Later, the man was transported to the Dona Ana County Detention Center for booking.

While the man was in the holding area, another LCPD officer who was not involved in the call entered. That officer called the man, “a fool.”

The man was charged with concealing identity and resisting a peace officer. The officer failed to appear in court when subpoenaed for this case. As a result, the charges were dismissed. The man filed a civil claim with the City, which is still pending.

LCPD’s Investigation and Analysis

LCPD’s Internal Affairs conducted a preliminary investigation of the incident, as is their standard practice, and initially determined that no formal investigation was needed. However, after further review of the body-worn camera evidence, Internal Affairs determined that a formal investigation was warranted.

IA framed the following allegations against the officer:

1. General Order 103.05. A-B Code of Conduct – Conduct Toward the Public

This General order outlines conduct with the public, including being respectful, controlling tempers, and exercising the “utmost patience and discretion and shall not engage in argumentative discussion even in the face of extreme provocation.” This General Order also prohibits the use of violent or profane language.

2. General Order 231.03.A.2 Physical Arrests – Authority to Arrest

This General Order gives officers authority to arrest persons who commit an arrestable offense in the officer’s presence.

3. General Order 233.01.B Prisoner Transport – Treatment of Prisoners

This General Order states that employees “will not ridicule, mock [...] or belittle any prisoner.”

4. General Order 255.02.A.1 Use of Force – Procedures – Applying Force

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

5. **General Order 142.01 Court – Court Attendance.**

This General Order section stated that employees who are subpoenaed to court shall appear unless other arrangements were made.

6. **General Order 151.01.E – Recording Devices - Procedure**

This General Order section states that “employees shall activate their body-worn camera whenever responding to a call for service or at the initiation of any law enforcement of investigative encounter and a member of the public.”

The IA investigator determined that the officer violated the General Orders listed in allegations 5 and 6; these were sustained. The remaining allegations were exonerated because IA determined that the officer acted in a lawful way. A lieutenant reviewed the employee’s personnel package and recommended that the employee receive a verbal reprimand, which was given by his supervisor.

Additionally, the investigator framed two allegations against an LCPD officer who responded to the Detention Facility:

1. **General Order 233.01.B Prisoner Transport – Treatment of Prisoners**

This General Order states that employees “will not ridicule, mock [...] or belittle any prisoner.”

2. **General Order 151.01.E – Recording Devices - Procedure**

This General Order section states that “employees shall activate their body-worn camera whenever responding to a call for service or at the initiation of any law enforcement of investigative encounter and a member of the public.”

The IA investigator determined that the officer violated this General Order when he was observed on body-worn camera footage calling the man a “fool” and failed to activate his own body-worn camera. The allegations were sustained.

A lieutenant reviewed the employee’s personnel package and recommended that the employee receive a verbal reprimand, which was given by his supervisor. The lieutenant also wrote that that he and the officer’s direct supervisor will monitor the officer’s future performance for any indication of repeated behavior. We commend this language and recommend that LCPD consider including this standard when issuing low-level discipline such as a verbal reprimand.

Finally, IA framed an allegation against an officer who the investigator originally believed had called the complainant a “fool.” Because the officer did not use that language, the allegation was exonerated.³

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file. Based on this review, we have the following additional observations.

Officer Safety & Tactical Decisions

We noted potential operational and officer safety concerns in this incident that were not addressed by IA. We highlight these here not as a critique of the thoroughness of this IA investigation, but rather as an opportunity for the Department to identify and address operational concerns.

The first of these concerns is that the officer self-dispatched alone to a location where, based on his own prior experience at the address and the experience of his fellow officers, the residents displayed uncooperative and, at times, hostile behavior.⁴

The second issue was the officer’s choice to *re-enter* the backyard once the man had escorted him out of the backyard. This action seemed to escalate an already tense situation in a yard full of partygoers, creating an unsafe situation for the single officer.

³ A more accurate disposition for this allegation would be “unfounded,” which is defined as “the alleged act did not occur,” whereas “exonerated” means that the act *did* occur, but the employee’s conduct was lawful, justified, and proper.

⁴ We acknowledge that staffing concerns often result in single-officer responses. On this evening, the reporting party suggested to dispatch that responding officers take back-up because the partygoers tended to be “rowdy,” though dispatch did not communicate this information to the officer. We note that LCPD uses the Mesilla Valley Regional Dispatch Authority, which is not under the Department’s command. We recommend that the Department discuss this case and the implications resulting in the failure of the dispatcher to communicate the information to responding officers and to request that MVRDA dispatch supervisors advise the involved dispatcher of the importance of communicating all information from reporting parties/9-1-1 calls to responding officers.

Third was the officer's choice to threaten to arrest the man for failure to show an ID and then go hands-on with the man, rather than attempt de-escalation techniques, such as using distance, finding cover (e.g., moving around the gate) or waiting for back-up. As detailed in the Department's **General Order 255**, "Use of Force," "an officer's approach to an individual can influence whether a situation escalates, resulting in the use of force." We acknowledge the fine balance between enforcement, use of de-escalation and officer safety, and note the Department's recent commitment to retrain all personnel in de-escalation.⁵

Finally, we noted that the officer attempted a wristlock / control hold but it was not effective. We encourage LCPD to re-train this officer specifically and consider more frequent Department-wide, hands-on tactical training relating to these force options.

RECOMMENDATION 1

LCPD should counsel and/or train the officer regarding tactical and officer safety concerns such as requesting back-up, communication, de-escalation, and control holds.

RECOMMENDATION 2

With Las Cruces experiencing a significant increase in calls for service related to noise complaints in 2021,⁶ if appropriate, LCPD might consider conducting a Department-wide training on responding to noise complaints using this incident as an example.⁷

Additional Allegation

We observed that another officer not named in this investigation used profane language when communicating with an agitated witness after the incident. Specifically, the officer repeated "step the [profanity] back" several times when a male witness moved toward

⁵ As evidence of the commitment to de-escalation, LCPD shared that all Department personnel will attend a refresher training for de-escalation and communication techniques called "Interaction Principles for De-Escalation Success" by May 15 this year.

⁶ "Las Cruces mulls changes to noise ordinance after receiving 737 complaints in six months." Las Cruces Sun News, September 17, 2021.

⁷ The Department advised that this specific incident was debriefed during a daily shift briefing ("roll call") where officers were advised to call for back-up for future calls to this address.

him, a potential violation of **General Order 103.05**, “Conduct Toward the Public,” detailed above. This interaction seemingly escalated tension at the location.

RECOMMENDATION 3

We recommend that LCPD consider counseling this officer for the use of profane language.⁸

Transport After Use of Force

Finally, OIR Group observed that the officer who used force also transported the man to the hospital. LCPD recognizes that this is not a best practice but reported that countervailing Department concerns regarding subject transport were present during the time of the incident.

We recommend that, when feasible, an uninvolved officer transport the subject in a use of force, especially when the subject is intent on continued engagement with the officer.

RECOMMENDATION 4

When feasible, LCPD should assign an uninvolved officer to transport a suspect who was the subject of a use of force.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The review is thorough and accurate and we are in agreement with the recommendations. Our department strives to be professional in all our encounters with citizens. The recommendation of remaining professional even when not in close contact with citizens but still being recorded will be covered in our Code of Conduct training. Following up with officers involved in such incidents as recommended already exists to some extent, but department wide training is a better option as recommended. IA will follow-up with section supervisors to ensure that supervisors are aware and following up.

⁸ We acknowledge that this incident had many moving parts and that LCPD *did* discover, investigate, and address several additional concerns.



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

TO: City of Las Cruces
FROM: OIR Group
DATE: March 30, 2022
RE: Review of Administrative Investigation – IA2021EIC1-010

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 March 14, 2022.

Case Summary

LCPD received a written complaint from a woman who had been involved in a traffic collision. She alleged that the responding LCPD officer did not complete an impartial investigation by not providing the complainant equal time to state her case; moreover, she claimed that he was discourteous.

LCPD conducted an investigation of the allegations and determined that the officer did not commit misconduct in dealing with the complainant. However, during LCPD's review, it did determine that the responding officer had violated General Order 141.02 ("Police Reports – Accuracy and Thoroughness") by failing to include relevant information in his report: he had omitted any reference to the child that was in the back seat of the complainant's vehicle.

OIR Group Review

OIR Group's independent review of the reports and body camera footage available in this matter found no support for the allegation that the officer failed to conduct an impartial investigation and was discourteous to the complainant. We also consider it creditable that the Department was willing to go beyond the allegations raised by the complainant when additional issues emerged during the review process.

While endorsing the outcome and the Department's "extra effort," we take this opportunity to suggest the interaction between the responding officer and the complainant could have been the starting point for additional constructive intervention. The complainant was certainly persistent in her discourse toward the officer, but not to the point of being abusive or beyond reason. The officer's approach was initially cordial but as the complainant continued to challenge the officer's decision to cite her, it was apparent that his level of frustration grew while his patience for her questions waned.

The officer could have benefited from a "coaching" from an LCPD official with a special skill set in dealing with similar individuals. A joint review of the recording could be a forum for accentuating the strengths and potential for improvements within the officer's handling of the interaction. Every complaint provides a potential learning experience and LCPD should take advantage of opportunities for helpful critiques when they arise.

Additionally, this incident could well have been a candidate for informal resolution such as mediation or restorative justice. From the video of the account, it appears as if the complainant was primarily looking for her concerns to be more patiently considered. The perspective strikes us as reasonable one – just as we acknowledge that the side of a busy street is not always the ideal forum for such patience. These are circumstances that lend themselves to the intervention of a neutral facilitator who could help promote a better understanding on both sides. This seems like a worthy goal to keep in mind for the Department when considering its options for addressing such cases.

Finally, the letter sent to the complainant advising her of the results of the investigation could have been more precise. While the letter indicated that the investigation found that the responding officer had violated policy, it did not advise her of the nature of the violation. As a result, the unknowing complainant could well have concluded that the officer had been found to have been improperly partial or rude, which were the essences of her complaint.

RECOMMENDATION 1

LCPD should consider using each “discourtesy” complaint as an opportunity for “coaching” and should schedule a meeting to go over the questioned encounter between the involved officer and LCPD personnel trained in dealing with a questioning public.

RECOMMENDATION 2

LCPD should consider devising a mediation program for the resolution of some complaints that are less about problematic misconduct than gaps in communication or perspective.

RECOMMENDATION 3

LCPD should ensure that closing letters to complainants identify with specificity the nature of any founded allegation.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The review is thorough and accurate and we are in agreement with the recommendations. Each complaint is indeed an opportunity for coaching, we will follow up with supervisors after complaints so they can review the incident and provide coaching. The mediation program for resolution suggested is a good recommendation, we currently are developing a program as part of the supervisor complaint intake process where supervisors will be trained on how to better resolve citizen issues utilizing customer service principles.



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

TO: City of Las Cruces
FROM: OIR Group
DATE: February 17, 2022
RE: Review of Administrative Investigation – IA #2021II-012

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 January 20, 2022.

Case Summary

In April of 2021, a supervisor from another law enforcement agency learned about a possible domestic battery incident during a phone call with his friend, the victim, who was a former LCPD employee. The victim sent him photographs of herself that showed significant injuries to her face, including two black eyes. According to the supervisor, in that phone call the victim stated that the injuries were the result of physical abuse by her boyfriend, a current LCPD officer, during a vacation that the couple took to a cabin several months prior. According to the reporting supervisor, the victim did not want to report the incident.

Approximately two months later, the supervisor decided to share the incident and photographs with an LCPD officer who was also a friend of the victim. This officer

reported it to an LCPD lieutenant, who reported it to the Chief of Police. Around that same time, an LCPD detective heard about the incident from a mutual friend of the victim. This friend stated that the victim herself would not share the photographs or incident with members of LCPD because of the victim's prior employment with the Department. Concerned that the photographs were consistent with domestic battery at the hands of a current LCPD employee, this detective reported the incident to his supervisor, an LCPD sergeant.

This LCPD sergeant showed the photographs to *another* LCPD detective and requested that the detective conduct a domestic violence investigation. This detective became emotional upon seeing the photographs because, when the victim was employed by LCPD, they were partners and the two had worked on domestic violence issues together.

But, concerned for her welfare, the second detective called the victim directly. He said that he did so as her friend and former partner to check on her. During that phone call, the victim denied being abused. The detective then provided the victim confidential information related to the case and began to question the victim about the incident.

Around that time, the Chief also initiated an internal, administrative investigation of the accused officer. The accused officer was placed on administrative leave. During the internal investigation, LCPD learned that the second detective had called the victim; the detective then also became a subject in the administrative investigation.

The New Mexico State Police initiated a criminal investigation.¹

During the parallel administrative and criminal investigations, the victim and accused officer both denied the allegation of domestic abuse. The victim stated that the injuries were a result of falling from a hot tub on the vacation cabin's deck while intoxicated. The accused officer submitted to a polygraph test to confirm that he was being truthful.

LCPD's Investigation and Analysis

LCPD's Internal Affairs conducted an Internal Investigation (II) formal investigation of the complaint. IA framed the following allegations against the accused officer:

1. **General Order 103.04. – Code of Conduct – General Standards of Conduct**

¹ A criminal investigation was conducted by the New Mexico State Police. The completed investigation was presented to the District Attorney, who declined to prosecute due to insufficient evidence. OIR Group reviewed that case file only as it served to inform the administrative investigation.

This General Order states that employees shall not engage in any conduct, on- or off-duty, which is unbecoming to their duties, position, or to the Department. This includes conduct in both their private and professional life.

2. ***General Order 103.08 – Code of Conduct – Criminal Conduct Prohibited***

This General Order section states that “employees shall not engage in any conduct, on- or off-duty, regardless of their whereabouts, which is in violation of the law.”

3. ***General Order 103.11. – Code of Conduct – Cruel, Unlawful of Improper Treatment***

This General Order section states that employees shall not treat any person cruelly, use excessive physical force, or otherwise mistreat a person.

The IA investigator determined that these three allegations were unfounded because the officer successfully passed a polygraph test where he was directly asked about the alleged abuse, the victim denied being abused, and the explanation given for the victim’s injuries was “plausible” given the weather conditions and general structure of the hot tub and cabin deck. The IA investigator also questioned the informing supervisor’s motives, truthfulness, and his long delay in reporting the incident.

Additionally, the investigator framed the following allegations against the LCPD detective who called the victim:

4. ***General Order 103.18 – Code of Conduct – Security and Confidentiality***

This General Order section states that “operations and official business of the Department are confidential” and that employees shall not release this information to anyone not authorized to receive it.

5. ***General Order 151.01 – Recording Devices - Procedure***

This General Order section requires personnel to activate their body-worn cameras “whenever responding to a call for service or at the initiation of any law enforcement or investigative encounter with a member of the public.”

The IA investigator determined that the detective violated the two above sections when his initial “friendly” phone call with the victim turned into an investigation encounter, which he failed to record, and he disclosed official and confidential Department business. The allegations were sustained.

A lieutenant reviewed the detective's personnel package. The lieutenant recommended that the LCPD Department Director give the detective a verbal reprimand, which was issued by his supervisor.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file. Based on this review, OIR found that the investigation was appropriately scoped and that the outcome is fair based on the evidence collected by Internal Affairs.

During the course of several discussions, OIR Group learned of the complexities and challenges involved in investigating this case, namely because of the varied interpersonal relationships of the involved personnel. The Department shared that it sought to discover any possible evidence related to the allegations by conducting an extremely thorough investigation, especially with respect to the parties interviewed and some evidence collected. We acknowledge the complex challenges presented by this case and the numerous personnel involved.

However, OIR Group noted that the investigation, while extremely thorough in reaching all possible witnesses, at times focused more about the interpersonal relationships of current and former Department personnel, and in a way that seemingly overshadowed the particulars of what occurred during the relevant incident. At times, the interviews (both directed questions and response narratives) were less about the allegation of domestic violence and more about the personal lives of these personnel. While some of this was relevant (insofar as it went to individual people's reliability or motivations), much of it was not. And it certainly reinforced the notion that the number of unusual personal entanglements was an argument in favor of a third-party investigation (as we discuss again below).

We noted that LCPD carefully analyzed some details that might "explain" the incident. For example, LCPD investigated the weather where the cabin was located to know if the cabin deck would be slippery enough to cause the victim to fall. And LCPD sought detailed evidence dating back to 2015 to learn whether the reporting supervisor had a history of false allegations.

Conversely, we also found that the investigation could have done more regarding assessing the evidence of domestic violence itself. Specifically, we found that LCPD did not sufficiently analyze one piece of very relevant evidence: photographs of the victim's injuries. LCPD did not consult an uninvolved domestic violence expert to review

the photographs of the victim's injuries, one key piece of evidence of possible domestic violence.² While this may not have been dispositive, it would have been an objective and potentially useful way to pursue the difficult question of what had happened.

Allegations of this nature can be sensitive, emotional, and complicated, especially in a tight-knit Department. Considering the relationships between the alleged victim and accused officer and the involvement of a supervisor from another law enforcement agency as the informant, it may have behooved the Department to have also assigned the administrative investigation to an outside independent entity.

RECOMMENDATION 1

In cases where there is potential conflict between Department (or former Department) employees of this nature, the Department should consider assigning both the criminal and administrative investigations to outside independent entities.

OIR Group further advises that, regardless of the topic or nature, investigators remain focused on the administrative allegations and evidence that could prove or disprove them. LCPD should also carefully review all available evidence, especially in sensitive matters such as this, to ensure a thorough investigation.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. LCPD will take the recommendations into consideration. This case was very complicated involving serious allegations and several individuals. It was criminally investigated by an outside agency to eliminate conflict between current and former Department employees.

² We did note that some witnesses, such as the later-accused detective, who were well-versed in specifics of investigating domestic violence, opined that the victim's injuries in the photographs were consistent with domestic violence and not a fall.



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

TO: City of Las Cruces
FROM: OIR Group
DATE: May 19, 2022
RE: Review of Administrative Investigation – #2021II-013¹

Introduction

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

OIR Group received the above-referenced case file on April 22, 2022.

Case Summary

On the early morning of June 16, 2021, a Dona Ana County Sheriff deputy responded to a call for a suspicious vehicle parked near closed businesses. The deputy made contact with the driver of the vehicle, who he later learned was an off-duty Las Cruces Police Department police officer. The deputy reported that he could smell alcohol on the officer's breath and that his eyes were watery and bloodshot. The officer initially stated that he drove to the location to "cool off" from a domestic dispute with his ex-girlfriend. The deputy conducted a field sobriety test and instructed the officer to sit on the curb. The officer then stated that he had walked, not driven, to the location.

¹ This case is related to DASO case #21-035876.

The deputy requested a field breath test and the officer refused. The deputy advised the officer of the potential consequences of refusing a breath test, including revocation of his driver's license and arrest. The officer stated that he understood and still refused. The deputy arrested the officer for Driving While Intoxicated (DWI) and completed driver's license revocation paperwork.

An LCPD supervisor was informed of the arrest and met the officer at the Dona Ana County Main Station. The LCPD supervisor took the officer's credentials. The officer was transported and booked at the Dona Ana County Detention Center.

The officer was placed on administrative leave. One month later, the court declined to prosecute the officer, citing that there was "insufficient evidence of impairment," and LCPD returned the officer to full duty.

During his first administrative interview, the officer made several statements that were inconsistent with the evidence and was not forthcoming with all information related to the incident.

LCPD's Investigation and Analysis

LCPD's Internal Affairs conducted a formal Internal Investigation (II) of the complaint. IA framed the following allegations against the officer:

1. **General Order 160.07 – Complaint Investigation – Employee Requirements**
This General Order section states that "employees are required to answer questions, submit to tests, or render materials and relevant statements ... in administrative investigation." Failure to comply "constitutes insubordination and may subject the employee to further discipline."
2. **General Order 103.08 – Code of Conduct – Criminal Conduct Prohibited**
This General Order section states that "employees shall not engage in any conduct, on- or off-duty, regardless of their whereabouts, which is in violation of the law."
3. **General Order 103.28 – Code of Conduct – Conduct Unbecoming**
This General Order section states that "employees shall not conduct themselves in a manner that would bring discredit upon themselves, the department, or any employee of the department" and specifically notes that this applies to conduct on- and off-duty.

All three allegations were sustained. A lieutenant reviewed the officer's personnel file and recommended that the officer serve a low-level suspension, which he did.

OIR Group Review

LCPD provided OIR Group the case file, including all evidence from the Dona Ana County Sheriff. OIR Group reviewed all documents and digital evidence in the case file. Based on this review, we found the investigation to be extremely thorough and complete. We commend the IA investigator for his careful review of this incident, which included re-interviewing the accused officer when evidence from witnesses and reports did not align with the officer's original statement.

We have the following additional observations.

First, the investigation revealed that the officer was not truthful during the initial interaction with the deputies (for example, he stated that he walked to the location when he clearly had driven) and also withheld information during his first administrative interview in an effort to minimize the incident. The disciplinary memo considered that the officer had "brought discredit upon himself by eventually lying" and that he had "held back relevant statements," but eventually recommended low-level discipline, citing that the officer was "hard-working" and "has never had any significant or ongoing performance issues."

While an officer's performance history certainly should be considered in recommending discipline, the absence of prior performance issues should not be the exclusive rationale for the disciplinary outcome. In this case, the problematic off-duty conduct arguably warrants a more severe consequence in and of itself (particularly since he avoided any of the corrective measures that a criminal conviction might have produced). Beyond that, though, the sustained allegations of dishonesty or intentional deception, even if they were a first-time offense, are of particular concern because an officer's honesty and integrity are essential parts of the job, especially when an officer is called upon to testify in court. We therefore question the resulting low-level discipline in this case.

This is not the first time that we have commented on the perceived leniency of discipline issued for sustained allegations (see, most recently, our memo related to case 2021 EIC1-017). In previous memos, we recommended that the Department carefully consider its philosophy of discipline, not with an intent to be overly punitive, but to ensure that the discipline serves its intended corrective purpose. The Department responded that it "will continue to assess discipline to ensure it serves a meaningful

corrective purpose.” We, too, will continue to assess the disciplinary outcomes of cases going forward in an effort to encourage appropriate accountability for misconduct.

RECOMMENDATION 1

LCPD should continue to review its philosophy of discipline to ensure that it serves a meaningful and corrective purpose.

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. LCPD is currently developing a discipline system with a Chart of Sanctions to ensure discipline is taken in a prompt, fair, and consistent manner.



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

TO: City of Las Cruces
FROM: OIR Group
DATE: April 22, 2022
RE: Review of Administrative Investigation – IA # 2021 EIC1 - 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 March 28, 2022.

Case Summary

The complainant in this case was a mother who called to complain about the impounding of a car in conjunction with a theft case involving her juvenile son. She was frustrated, in part because she had been led to believe that she'd be allowed to drive the car away from the scene where officers had originally conducted a stop of her (unlicensed) son and two companions. As it turned out, the car was registered to another person and lacked any current insurance, and the officers made the decision to impound it. She described the officers as "hateful" and felt like she was not treated with the proper levels of courtesy and respect.¹

¹ The woman registered her complaint in the form of a phone call with a Department lieutenant; she also raised a separate complaint about another traffic stop that the Department investigated under a different file number. (See #2022 EIC1-004).

The Department was able to resolve this case at the “Preliminary Inquiry” level, based on the body-worn camera recordings of both officers and the written report of the encounter. It found that allegations of improper conduct were not supported by the evidence, and that the officers had been justified – and in fact obligated under the circumstances – to impound the car rather than releasing it to the complainant at the scene.

OIR Group Review

LCPD provided OIR Group with the relevant investigation materials, including reports, other documentation, and body-worn camera footage. We concur with the outcome of the case.

It was not disputed that the officers had a legitimate basis for stopping the car and ultimately issuing citations to the woman’s son and his two juvenile companions; the evidence was clear that they had just been involved in a shoplifting incident at a local pizza restaurant.² It is also true that the complainant was correct as to one of the bases for her complaint: one of the officers had indeed indicated a willingness to allow her to avoid the impound by taking the car herself when she responded to the scene. But that seemingly well-intentioned gesture was superseded by the new information about the status of the car.

While the complainant’s disappointment was understandable, the officers’ discretion was removed once it became clear that there was no applicable insurance and that the woman herself was not the registered owner.³ Nor were the other exchanges between the officers and complainant reflective of hostility or a lack of professionalism on their part.

In short, the complaint does not seem to have been supported by the evidence, and the LCPD handling of it was appropriate.

² The involved officers treated the young people with an age-appropriate mildness and consideration that was noteworthy.

³ In contrast to her subsequent complaint, which was shared a few weeks later, she seemed somewhat understanding of the situation in real time.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The review is thorough and accurate.



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

TO: City of Las Cruces
FROM: OIR Group
DATE: December 13, 2021
RE: Review of Administrative Investigation – IA2021EIC1-016

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 November 18, 2021.

Case Summary

LCPD received a written complaint with two separate allegations from the same person. The complainant alleged that following a traffic accident, LCPD committed misconduct when a responding officer to a non-injury accident failed to cite the at-fault driver. The complaint further alleged that on a different date, LCPD committed misconduct regarding the way in which a detective interrogated employees at a fast-food restaurant, some of whom were minors.

With regard to the first allegation, LCPD reviewed the body-worn camera footage and police reports to make its determination. It found that the decision whether to cite the driver of the other vehicle or issue a verbal warning was within the responding officer's discretion; accordingly, it found that no policies had been violated.

Regarding the second allegation, LCPD reviewed the body-worn camera footage and police reports and determined that the detective at issue had committed no violations of policy in the way he interviewed the restaurant employees while conducting a homicide investigation.

OIR Group Review

Allegation Involving LCPD's Handling of Traffic Collision

With regard to the first allegation, OIR Group's independent review of the reports and body camera footage available in this matter found no support for the allegation that the officer abused his authority in failing to cite the driver. New Mexico law and LCPD policy allows police wide discretion on when and whether to cite individuals involved in non-injury traffic collisions. The body camera footage that was available showed the officer performing professionally in his interactions with both parties. The complainant expressed no concern at the time about how the officer was handling the situation. OIR Group concurs with the finding that the officer was well within his discretion in determining not to issue a citation to the at-fault driver.

Allegation Relating to Conduct of Detective's Interrogation of Restaurant Employees

OIR Group reviewed the reports and body-worn camera footage of the investigative visit to the restaurant that had been the basis of the other complaint. Earlier on the day in dispute, the detective had arrested an individual under suspicion of homicide at the restaurant. He later received information that the individual's cell phone had been handed off to another employee prior to the arrest. The follow-up visit was to attempt to locate the cell phone.

While we agree with the conclusion that the detective's response at the restaurant did not rise to the level of misconduct, there are aspects of his handling of the incident that could have been better. The detective's frustration over the perceived lack of cooperation from the managers was exhibited at several points during the visit. For example, when a restaurant supervisor simply raised her voice, the detective responded: "You are gonna' yell, you are gonna' get arrested for obstruction of justice". On two different occasions, the detective was heard on the phone to other LCPD personnel stating that the incident had "turned into a giant sh** show."

As bothersome as the management's perceived recalcitrance may have been, the detective seemingly could and should have deployed a strategy other than obvious

exasperation and threat of arrest. A show of more patience and understanding from the officer could have de-escalated the situation and reduced the friction that was apparent all throughout the operation.

On the other hand, there were other aspects of the detective's response that were admirable, particularly his interviews of the employees. In particular, the detective's interview with an employee effectively provided the initial information that led to the discovery of the cell phone. As a result, he was able to learn the identity of another employee who was in likely possession of the phone.

When the detective interviewed that employee, a minor, he appropriately read him his Miranda rights:

You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, one will be provided for you.

However, the detective failed to obtain an acknowledgement that the juvenile understood his rights and still wished to speak to him. The following questions, standard following every Miranda warning was not provided to the juvenile:

Do you understand the rights I have just read to you? With these rights in mind, do you wish to speak to me?

As a result, the statements and (possible evidence) produced as a result of that interview may have been found to have not been voluntarily obtained if challenged in court. Particularly when the interrogation involves a juvenile, it is incumbent upon law enforcement to ensure any statement provided is voluntary. A full and complete reading of the Miranda warnings and *then* questioning the individual about his understanding of rights and his willingness to speak to the officer will go far towards meeting that responsibility.

Every police operation is subject to review as a learning opportunity. Whenever LCPD receives a complaint, it should review the incident not only to learn whether the involved employees performed consistent with policy but also to examine whether there were any aspects of that performance that could be improved (as well as point out aspects of the operation that went well). Here, it would have been helpful for that type of constructive review to occur.

RECOMMENDATION 1

LCPD should identify performance issues – both positive and negative – that emerge from the complaint review process, even if specific policy violations are not implicated, and should engage in appropriate follow-up with the involved employee.

RECOMMENDATION 2

The involved detective should have been debriefed about his performance relating to the interrogation of the restaurant employees, especially the failure to follow the reading of Miranda rights with questions indicating an understanding of those rights and a willingness to speak to the detective.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The review is thorough and accurate, LCPD is in agreement with the recommendations. Follow-up will be conducted with involved officers to discuss performance issues-both positive and negative. Additional training will be conducted if necessary.



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

TO: City of Las Cruces
FROM: OIR Group
DATE: March 31, 2022
RE: Review of Administrative Investigation – #2021II-016¹

Introduction

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

OIR Group received the above-referenced case file on March 3, 2022.

Case Summary

In January 2021, a non-sworn LCPD employee called dispatch to report that he had negligently discharged his personal firearm while in his apartment playing a first-person shooter video game. The bullet traveled through his television set, through a joint wall with the neighboring apartment, through the neighbor's couch, and eventually out to a staircase. The non-sworn employee checked on his neighbors and learned that no one was injured. The employee then secured his firearm and waited for officers to respond.

¹ This case is related to LCPD case #21-005641.

Around the same time, the neighbor also called dispatch to report that a non-sworn LCPD employee had fired the gun.

Two LCPD officers arrived. When the first responding officer learned that an LCPD employee was the suspect, he contacted a sergeant who advised a lieutenant of the incident. The sergeant then responded to the scene.

The officers secured the firearm as evidence, collected evidence and information to file a criminal complaint, and advised the non-sworn employee that he would receive a criminal summons to appear in court for this incident via mail.

In August 2021, LCPD received a notification from the Las Cruces Municipal Court that the Court had issued a warrant for the non-sworn employee for failure to appear. An IA investigator learned that, due to a reporting error on the criminal complaint paperwork submitted by the responding officer, the non-sworn employee had never received his summons. LCPD requested and the Court approved a motion to quash the warrant and reissue the summons to the correct address.

When they learned of the warrant, IA placed the non-sworn employee on administrative leave and initiated a formal Internal Investigation of the incident.

In the course of the investigation, the IA investigator noted that the reporting officer had made other errors on the related report and had failed to properly upload and label body-worn camera footage related to this and other incidents.

IA also noted a policy flaw that they have since corrected, as discussed later.

LCPD's Investigation and Analysis

LCPD's Internal Affairs conducted a formal Internal Investigation (II) of the complaint. IA framed the following allegations against the non-sworn employee:

1. **General Order 103.08 – Code of Conduct – Criminal Conduct Prohibited**

This General Order section states that “employees shall not engage in any conduct, on- or off-duty, regardless of their whereabouts, which is in violation of the law.”

The IA investigator determined that this allegation was sustained because, per his own admission, he negligently discharged his personal firearm while playing a video game.

IA determined that this amounted to criminal conduct as it violated **City Ordinance 19-164**, “Prohibited Use of Weapons and Firearms.”²

A lieutenant reviewed the employee’s personnel and recommended that the non-sworn employee serve a low-level suspension, which he did.

Additionally, the investigator framed two allegations against the LCPD officer who responded to the scene:

1. ***General Order 141.02.A – Police Reports – Accuracy and Thoroughness***

This General Order section states that “reports shall include all pertinent information and be submitted in the correct form” and “must be factual, accurate, logical, clear, concise, complete and unbiased.”

2. ***General Order 151.02 – Recording Devices – Disposition of Recordings***

This General Order section requires personnel to enter all audio, image, and video recordings into the correct system prior to going on days off. Further, it requires all officer to properly tag the case with a category, case number, and location on or before their next duty day.

The IA investigator determined that the officer violated the first section because his report contained erroneous information that ultimately resulted in the non-sworn employee not receiving his summons. The officer violated the second section when he failed to properly tag/label over 150 body-worn camera videos, upload body-worn camera videos in a timely fashion, and properly dock his body-worn camera device regularly. The allegations were sustained.

A lieutenant reviewed the officer’s personnel package. The lieutenant recommended that the officer serve a low-level suspension, which he did upon his return from military leave.

² IA also noted that, because this employee was “non-commissioned,” the policy regarding use and negligent discharge of a firearm (**General Order 143**), which at the time of the incident was only applicable to commissioned personnel, did not apply to this case. As such, IA did not frame allegations related to that General Order. We elaborate on this policy gap and corrective action by LCPD later in this memo.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file. Based on this review, we found the investigation to be fair, thorough and complete. We have the following additional observations.

We again comment that the discipline issued in this case seemed lenient. In particular, we noted that the responding officer showed what the Department called a “willful disregard” for policies regarding body-worn camera video upload and labeling. Further, we noted a pattern of practice related to this officer’s lack of diligence regarding important administrative functions of policing, such as accurate report writing.

As we stated in previous memos,³ the purpose is not to create an overly punitive system of discipline. Rather, our recommendation is meant to ensure that discipline serves a meaningful corrective purpose.

RECOMMENDATION 1

LCPD should continue to consider its “philosophy of discipline” as it pertains to consequences in sustained cases.

Second, we noted a significant policy flaw related to reporting requirements in this incident that the Department has since corrected. The IA investigator noted that the negligent discharge incident itself was never entered into LCPD’s internal force tracking software program, BlueTeam, or reported to the Professional Standards Bureau. As such, Internal Affairs only became aware of the negligent discharge incident when the Department received the failure to appear warrant for the officer, despite the employee’s self-report and several supervisors knowing about the incident.

According to LCPD, this was because the policy regarding reporting a negligent discharge, **General Order 143**, which includes the requirement to enter the incident into BlueTeam and triggers an automatic Supervisor Matter/IA review, did not apply to him as a non-commissioned employee. Indeed, this policy specifically stated: “this General Order applies to commissioned employees.”

LCPD reported that this and other applicable policies have since been updated to apply to *all* employees. LCPD provided a Department-wide training on this topic in its bi-

³ See the OIR Group memos re: 2021EIC1-010 and 2021II-022 for a more detailed discussion of this concern.

annual “Legal Update” and trained supervisors on reporting requirements in its lieutenant and sergeant training.

RECOMMENDATION 2

LCPD should periodically review all General Orders and policies to ensure that, where intended, the policies apply to *all* personnel.

RECOMMENDATION 3

LCPD should ensure that these updated policies are uploaded to the Department and City’s websites.⁴

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The review is thorough and accurate and we are in agreement with the recommendations. LCPD will continue to access discipline to ensure it serves a meaningful corrective purpose. All policies are being reviewed yearly and personnel has been advised when policies pertain to all staff. City and Department websites are up to date with the latest policies.

⁴ OIR Group noted that the version of **General Order 143** on the City’s “Munidocs” website was last updated in 2018.



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

TO: City of Las Cruces
FROM: OIR Group
DATE: March 31, 2022
RE: Review of Administrative Investigation – #2021EIC1-017

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.

OIR Group received the above-referenced case file on March 3, 2022.

Case Summary

This investigation was initiated in response to a complaint by a man who was unhappy with two separate encounters involving LCPD, which occurred approximately six weeks apart. In the first, he alleged that he had been wrongfully arrested for violation of a restraining order that required him to stay away from the home of his former partner. In the second, he claimed that LCPD had responded in an unsatisfactory manner when he called for assistance weeks later for what he considered to be antagonistic behavior on the part of his ex-wife. His unifying contention was that the Department had a sexist response to the disputes with his ex-wife and sided with her unfairly in both instances.

LCPD reviewed these allegations and was able to refute them during the "Preliminary Inquiry" phase of its investigative process. The body-worn camera and other recordings sufficed to establish that the officers had handled both incidents appropriately in the Department's view.

The initial call for service had involved an encounter with the man and his former wife that devolved into conflict. Under circumstances that were disputed, she somehow ended up with his cell phone, and later he apparently went to the woman's residence to retrieve it – in violation of the restraining order that required him to stay away from that location. They allegedly clashed again at the scene, and she called the police as he left. He was soon taken into custody at his residence by Sheriff's Office personnel, and then turned over to responding officers from LCPD.

The man agreed to speak with the arresting officers. He was upset, and his version of events was somewhat convoluted and internally contradictory. The handling officers had decided that there was probable cause to arrest for violation of the restraining order, based on the woman's representations and the flawed nature of the man's own account. A sergeant confirmed this when he spoke with the man in his holding cell at the station.

Upon review of the police report and relevant recordings, the investigator determined that the complaint's assertion of a wrongful arrest was "without merit." However, a peripheral issue emerged during the investigation. It was discovered during the review process that one of the officers on the original call and the sergeant who spoke with the newly arrested complainant at the station had failed to complete a report that documented their respective involvement. This was identified as a violation of Department policy, and the allegations were sustained for both the officer and the sergeant.

As for the second issue, the man was upset about his attempt to report alleged misconduct by his ex-wife in a phone call to LCPD. His reason was that she had come to his workplace (a restaurant) in what he believed was an attempt to improperly harass him. His subsequent complaint was that the officer who spoke with him was rude, and that a requested follow-up call with a supervisor never occurred.

Body-worn camera recordings captured two relevant events: the initial call, and a sergeant's two subsequent – and unsuccessful – attempts to reach the man by phone a short time later. (He left a message.) The latter two recordings established the sergeant's appropriate diligence and appeared to belie the man's claim that no one had tried to reach him. The first recording was brief, because of the complainant's somewhat hasty shift into annoyance when the officer attempted to get some additional details. (He seemed to suspect the officer was intending to make him a focal point of

scrutiny instead of the victim in the encounter.) It was the complainant who ended the call abruptly, and the officer's actions did not rise to the level of anything sanctionable.¹

OIR Group Review

LCPD provided OIR Group with the relevant investigation materials, including reports, other documentation, and body-worn camera footage. We agree with the case outcomes as to the individual allegations, and have the following additional observations:

Notification Letter:

The Department provided the complainant with a letter at the conclusion of the case, and it informed him that “the officer(s) violated departmental rules and regulations.” However well-intentioned and technically accurate this characterization was, it had the potential to mislead to man into thinking his original assertions had been corroborated by the evidence. This was not the situation. And even the Department's listing of the actual violated policy (that pertained to the report-writing obligation), while helpful, probably did not serve to dispel any confusion. We identified an identical issue in another recent case², and we reinforce our recommendation there that the Department revisit this practice.

Disciplinary Consequences:

We found the Department's disposition of the sustained allegations for failing to write reports to be noticeably lenient. It is a phenomenon we have noted with concern before, and we wish to emphasize that our intent is not to be punitive or hostile. Instead, we think that the “messaging” and standard setting established by the consequence for sustained violations are elements of effective discipline, and that overly “light” responses run the risk of diminishing the influence of the process on future officer performance.

¹ That said, the officer's demeanor did border on “testy” when he was challenged by the complainant. His responses were delivered in a tone that certainly did nothing to ameliorate any skepticism the man may have brought to the call in the first place. It is our understanding that the complainant is someone with whom the Department has considerable – and sometimes frustrating – familiarity. But this is all the more reason for the people who engage with him to maintain their high levels of professionalism.

² See the OIR Group memo re IA2021EIC1-010.

This is not to say that we would advocate for a *significant* increase for either of these officers. We also recognize that, but for the investigator's diligence in flagging the issues during the complaint review, the shortcomings were mild enough to have been handled as "Supervisory Matters" that generally merit the lowest levels of intervention.

Here, though, both of the involved employees had aggravating factors that in our view warranted a stronger indication of the agency's disapproval. The patrol officer, for example, is apparently a repeat offender in this arena – a reality that makes progressive discipline all the more warranted.³ And the sergeant, though lacking any relevant history in his own past, was of course a supervisor, and someone who presumably should be held to a higher standard than the outcome here would reflect.

We encourage the Department to remain open to an ongoing assessment of its "philosophy of discipline" as it pertains to consequences in sustained cases.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The review is thorough and accurate and we are in agreement with the recommendations. LCPD will continue to access discipline to ensure it serves a meaningful corrective purpose. Modifications to notification letters are currently being made to provide as much information as possible to the complainant.

³ In fact, this case was resolved concurrently with another that happened in the same approximate time period, and which also involved a (somewhat more substantial) neglect of basic ministerial duties. See IA # 2021 E.I. C1 – 017.



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

TO: City of Las Cruces
FROM: OIR Group
DATE: January 5, 2022
RE: Review of Administrative Investigation – IA # 2021EIC1-018

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.

OIR Group received the above-referenced case file on December 8, 2021.

Case Summary

This case originated with a complaint from an adult female resident of the City, who was dissatisfied in various ways by the response of two LCPD officers who took her into protective custody after a call for service. The woman had requested officers to assist her in removing someone from her apartment whom she no longer wished to have as a roommate. When that encounter deteriorated into her arming herself with two knives and briefly confronting the man, the officers detained and handcuffed her. They ended up bringing her to a behavioral health hospital for admittance.

Officers first encountered the woman in the parking area that was approximately 100 yards from her apartment. Attempts by the officers to clarify ambiguity over the man's status in the home (in terms of how long and under what conditions he had been living there) created immediate friction with the woman. She ended up walking away from

them, but not before making a vague reference to harming the man if the police were not going to assist her on her terms.

This caused the officers to linger in the area for a few moments to discuss their options, only to be summoned by the woman as she stepped back outside and told them to “come on in.” They walked the short distance to the apartment and found the door was open – and that the woman was holding two knives as she stood several feet away from her seated male roommate.

At gunpoint, the officers ordered her to drop the knife and get on her knees; she readily complied. One officer escorted her to the patrol car in handcuffs while the other spoke with the man. He said he did not wish to press charges while expressing concerns about her mental well-being. The officer left him at the scene, though they encouraged him to make other living arrangements for himself.

The officers decided to bring her to the hospital out of concern that her erratic and threatening behavior constituted a “danger to self or others” that warranted custodial care. The woman was indeed admitted.

It was a week later that she left her complaint with the Department in the form of two phone messages, asserting that the officers had mishandled the call, and saying that one of them had failed to properly deploy his body-worn camera to record her interactions with the police.

LCPD’s Investigation and Analysis

The investigation was assigned to an Internal Affairs detective, who looked at reports, body-worn camera recordings, and other evidence as part of his “preliminary inquiry” into the incident. (The case memo does not specify as to any attempts to conduct a supplemental interview with the complainant, though one of her messages does acknowledge a reply voicemail from the Department.)

This material was considered sufficient to refute the different allegations. Both cameras clearly were operational and deployed in keeping with LCPD policy.¹ And the recordings also show the woman’s level of agitation, shifting moods, and – importantly – armed threats against the man with whom she was conflict over his presence in her apartment.

¹ The complainant focused repeatedly (in the moment and in her complaint) on one officer’s description of his own BWC as an “inanimate object.” His point, seemingly, was to dismiss her tactic of addressing the camera directly, but she interpreted (or chose to interpret) it as a claim that the camera was broken or otherwise not recording.

Accordingly, the Department found that both officers acted appropriately and that the woman's claims of policy violations should be exonerated.

OIR Group Review

LCPD provided OIR Group with the relevant investigation materials, including reports, other documentation, body-worn camera footage, photographs. Though in the past we have questioned different aspects of LCPD's "preliminary inquiry" model of case resolution (and prompted adjustments by the Department), this seems to have been an appropriate example of the concept's use. The recordings confirmed the relevant facts and were sufficient to refute the woman's allegations of misconduct.

The evidence in the case also revealed occasional elements that warranted additional attention from the Department. This was not because they were egregious, but because they showed the officers in a less favorable light than they mostly appeared. These included instances of impatient banter with the woman, and repeated profanities as they chatted with each other during lulls in the process.

With regard to the minor moments of frustration, we mention them in part because they were in contrast with the professionalism and composure that the officers largely maintained. And we recognize that casual conversations among officers (and many other professional groups) have a different tone and should be held to a different standard than direct interactions with members of the public. Where LCPD members and other police personnel differ from professionals, though, is that recordings have become routinized in their "workplaces," and that these recordings can easily have evidentiary significance in a variety of contexts. Reminders about the value of composure and controlled language are always worth reinforcing, particularly when the issues arise in the context of an administrative review.

RECOMMENDATION 1

LCPD should identify and address issues of officer professionalism that arise in the context of the investigative review process, even if they do not rise to the level of formal policy violations.

RECOMMENDATION 2

To that end, the involved officers should be debriefed about the encounter by sitting with them and going over the pluses and minuses of their performance on this call.

LCPD Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The review is thorough and accurate and we are in agreement with the recommendations. Our department strives to be professional in all our encounters with citizens. The recommendation of remaining professional even when not in close contact with citizens but still being recorded will be covered in our Code of Conduct training. Following up with officers involved in such incidents as recommended already exists to some extent. IA will follow-up with section supervisors to ensure that supervisors are aware and following up.



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

TO: City of Las Cruces
FROM: OIR Group
DATE: February 22, 2022
RE: Review of Administrative Investigation – IA# 2021EIC1-019¹

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 February 2, 2022.

Case Summary

In October of 2021, LCPD received a complaint from a female who was arrested by two LCPD officers for Driving While Intoxicated (DWI). The female alleged that when she recovered her property from the Dona Ana County Detention Center, some of her property was missing, including a necklace, earrings, a SENTRI (passport) card, and a driver's license.

¹ This case is related to LCPD case #20-110783.

LCPD's Investigation and Analysis

LCPD's Internal Affairs conducted a preliminary investigation of this matter. IA framed the following allegation against both accused officers:

1. **General Order 300.10. – Evidence/Property possessed by employees:**

This General Order states that employees shall properly submit items of evidence as soon as practical but always prior to going off-duty, and that employees shall not retain any evidence for their personal use or possession, nor delay submission of property to evidence

The IA investigator determined that this allegation was unfounded because the body-worn camera footage showed the officers collect and properly book this evidence when the complainant was booked into the Detention Center. After communicating with the District Attorney's Office, the investigator also determined that the complainant's driver's license was revoked due to the DWI arrest and that, therefore, it would not have been returned to her.

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. Based on this review, OIR found that the investigation was appropriately scoped, was thorough and that the outcome is fair based on the evidence collected by Internal Affairs.

In reviewing body-worn camera footage, OIR Group noted that the officers actually tried to coordinate easy retrieval of the female's property "because [the female had] a flight to catch" the next day. The arresting officer asked her partner officer to bring the female's purse and backpack to booking so that the female could have them sooner. But the partner officer stated that it would be faster to retrieve those larger items from the tow yard because the Detention Center would not accept larger items. The officers made a concerted effort to make properly retrieval easier for the female.

OIR Group has commended Internal Affairs for detailed close-out letters to complainants that go beyond form letters. In this case, we found that the close-out letter could have included more details about the critical steps undertaken during the investigation, such as the review of the video evidence that demonstrated the inventory

of property during the booking process. Moreover, we advocate that law enforcement agencies offer complainants the opportunity to view such video evidence, especially when, as here, that evidence proves determinative.²

RECOMMENDATION 1

LCPD should consider in appropriate cases offering the complainant the opportunity to view video evidence, especially when such evidence is determinative.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The review is thorough and accurate, and we are in agreement with the recommendations. In such cases, IA will make an effort to provide video evidence to complainants if they wish. This transparency will improve our relationship with citizens.

² In this case, if the complainant had accepted an invitation to review the video evidence, she may have then decided to pursue her lost property concerns with the Detention Center.



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

TO: City of Las Cruces
FROM: OIR Group
DATE: April 12, 2022
RE: Review of Administrative Investigation – #2021EIC1-020

Introduction

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

OIR Group received the above-referenced case file on March 28, 2022.

Case Summary

In December 2021, the complainant traveled to LCPD's station to complain about an incident that had resulted in her and her daughter's arrest for battery. Specifically, the complainant alleged that when her daughter had subsequently called to request that domestic violence charges be placed on her father, the officer told the daughter that the father was the victim and that "she was a nobody." The complainant expressed concern about the way in which the officer spoke to her daughter over the phone.

LCPD's Investigation and Analysis

LCPD reviewed the allegation as a preliminary inquiry, reviewed the police report, body-worn camera video of the officers' response, and the tape-recorded phone call made by the daughter to the responding officer.

Based on that review, the investigator determined that there was no concerning conduct in the way the officer communicated with the daughter when she called to register her concerns. The review went beyond the scope of the allegation and also found no issues with the performance of the officer relating to the initial call for service and the on-scene interviews.

He therefore recommended a finding of EXONERATED which was endorsed by the chain of command.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file. Based on this review, we agree with the outcomes as to the complainant's allegations.

The responding officer's body-worn camera captured the on-scene interview of the daughter, and a review of it revealed nothing untoward in the way the officer conducted the interview or otherwise handled the event. The outcome of the scene investigation – namely, the arrest of both the complainant and her daughter for domestic violence battery – seems to have been justified, despite the complainant's dissatisfaction with it.

It was based on the LCPD response team's thoughtful evaluation of the evidence, which included consideration of the relevant injuries of the parties and a discrepancy in the daughter and mother's account of events which varied from the versions provided by the father and two uninvolved eyewitnesses.

As for the subsequent recorded telephone call that prompted part of the complaint, a review of it did not support the allegation that the officer called the daughter a "nobody". Instead, the officer attempted to patiently explain why no charges would be lodged against the father. Again, there was no evidence to indicate that the officer's conduct on that call was discourteous or otherwise problematic, in spite of the woman's assertions to the contrary.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The review is thorough and accurate and we are in agreement with the recommendations. In such cases, IA will make an effort to provide video evidence to complainants if they wish. This transparency will improve our relationship with citizens.



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

TO: City of Las Cruces
FROM: OIR Group
DATE: March 2, 2022
RE: Review of Administrative Investigation – IA # 2021 II - 022

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 February 3, 2022.

Case Summary

This investigation was generated internally by LCPD management, several months after the underlying incident. It related to potential shortcomings in the performance of an officer who responded to a domestic disturbance call out.

The call originated in a 911 "hang up" that prompted officers to respond to the relevant residence. Two different officers arrived separately, and they encountered a woman, her male domestic partner, and a small child.

As the first officer arrived, the child emerged from the open front door of the home. He did not appear to be upset, but said that his parents were fighting. Shortly thereafter, the male adult appeared. He acknowledged that he had been arguing with his girlfriend, though he too was calm and minimized the level of conflict. He also stated clearly that

he did not want the officer to make entry into the home, though he did agree to summon the woman so that the officer could speak with her.

At that point, the man exited the home past the first officer and began to walk away from both the residence and the second officer, who was standing outside. The second officer attempted to speak with him, but the man continued toward the driveway and then entered the interior of his truck, which was parked in the driveway. Though he was not actively uncooperative, he also made it clear that he was not submitting to the officers or conceding that they had a basis to take enforcement action.

The man retrieved something from inside his truck and then came back out again. At that point, the second officer decided to detain the man and to handcuff him in light of his lack of cooperation. He ordered the man to turn around. After initially complying and putting his hands behind his back, the man tensed up when one handcuff had been placed on him and attempted to pull away, swearing at the officer's attempts to take control of him in front of his child.

The first officer, who had been speaking with the woman, heard the commotion and came out to assist his partner. After a brief struggle, they took the man to the ground and were able to complete the handcuffing process. The man was then put into the back of the second officer's radio car and eventually booked for resisting the officers and other charges.

The incident subsequently moved through the normal LCPD internal review protocols, including written reports by the involved officers and subsequent supervisory assessments of what had occurred (including a review of the body-worn camera recordings). At one point in this process, a Department manager flagged a concern over whether there had been a legitimate basis for detaining the man based on what the relevant officer knew at the time. This, in turn, predicated the legitimacy of the use of force that resulted from the man's resistance. The Deputy Chief ordered an Internal Affairs review.

The investigator was able to make a determination without conducting formal interviews. This is because of the sufficiency of the available records in the case (including the video recordings), and the relevant statements that the officers had already made in their recordings and written work product. The investigation concluded that the subject officer had in fact been legally justified in his decision to detain the man.

At the same time, the additional scrutiny that the case received led to the identification of two shortcomings in the subject officer's performance. One was the adequacy of his

written report – the minimal details of which had contributed to supervisory questions about what had happened. The other was his subsequent failure to appear in court for a hearing related to the case in question, which led to the dismissal of the charges against the man who had been arrested.

Both of these matters were found to be worthy of some intervention, but there were mitigating circumstances that led the Department to the position that neither rose to the level of a formal policy violation. Accordingly, the officer was given a referral for tailored training on the two specific topics.

OIR Group Review

LCPD provided OIR Group with the relevant investigation materials, including reports, other documentation, and body-worn camera footage. We concurred that there was a sufficient basis to exonerate the officer without formalizing the case and requiring administrative interviews. The key finding was that the officers did have a sufficient basis for determining that an investigative detention was warranted, and that handcuffing him was an appropriate step in light of his insistence on moving around the premises and disregarding the officer's lower-level efforts at managing the situation. The investigative memo addressed the issue in a thorough and thoughtful manner.

We also found it commendable that the Department approached its review "holistically," in the sense of identifying issues that were outside the narrower original concern that initiated the investigation. The recognition that the officer would benefit from further attention to his report writing skills and court attendance protocols was constructive, and we assume the tailored training response ordered by LCPD management was beneficial. More generally, we heartily support the willingness to take advantage of additional opportunities for intervention when they arise in the context of an investigation. We encourage LCPD to "keep up the good work" in this regard.

While agreeing with the case outcome and peripheral measures described above, we had two additional observations: one substantive and one procedural.

The substantive matter related to a moment, captured on video, in which the officers were preparing to leave the scene in their respective cars and go to the hospital, where the subject was medically checked. The first officer on scene – who had been focused on speaking with the woman and was not involved in the initial conflict with the subject – offered to take responsibility for the transport of the man so as to minimize the potential

for additional antagonism during the drive. The second officer declined, and ended up taking the subject himself.

While no significant problems arose, the first (and more senior) officer's preemptive impulse struck us as a wise one, and one worth following when possible. (Notably, the sergeant on scene did not himself promote the switch or seemingly engage with the issue.) In the aftermath of a contentious encounter, and particularly a use of force, the notion of defusing further tension by swapping out duties in this manner is one the Department should encourage among its personnel.

RECOMMENDATION 1

When practicable, LCPD should encourage officers to take advantage of their staffing options and separate in-custody persons from the most directly involved officers after a use of force incident.

The procedural matter pertained to the long delay between the incident itself and the subsequent investigation. It is to the Department's credit that it puts individual uses of force through multiple levels of review, and that the due diligence of the Deputy Chief prompted constructive further inquiry into the underlying events. But some of the value in the process is lost when months pass with no activity. While there are many legitimate reasons – such as resource limitations, the press of other business, or the unavailability of key personnel – for such gaps in time, we take this opportunity to reiterate that timeliness is an important component of an effective discipline process.

RECOMMENDATION 2

LCPD should strive to complete all phases of its internal review processes in a reasonably timely fashion – particularly when individual officer accountability is at issue.

LCPD Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The review is thorough and accurate and we are in agreement with the recommendations. We will discuss this issue about separating in-custody persons after a contentious encounter from officers involved when staffing options allow. Additionally, we continue to make process adjustments to improve the timeliness of all investigations.



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

TO: City of Las Cruces
FROM: OIR Group
DATE: May 6, 2022
RE: Review of Administrative Investigation – IA # 2021 EIC1- 022

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 April 13, 2022.

Case Summary

This case arose from a call for service outside a home. The complainant was the aunt of an adult male who has mental health challenges and had come to the location in spite of being formally unwelcome due to past encounters with her and her husband. On this occasion the husband called the police in the midst of his wife and the nephew engaged in an argument; however, the woman ended up taking exception to aspects of the officer's subsequent handling of the event. She complained four days later, alleging that the officer had been unprofessional, that he had been overly aggressive in detaining him, and that the pat down of the nephew had been sexually harassing.

The Department was able to resolve this case at the "Preliminary Inquiry" level, based on the body-worn camera recording and the officer's report. The video established that the man had been uncooperative when the officer originally approached him, that there

had been a brief struggle as the officer tried to take a rock from the man's hand,¹ that the officer detained him in the back of his vehicle after first patting him down for weapons, and that he was eventually released from custody at the scene after the arrival of another family member and a sergeant. The disputed elements of the officer's handling of the stop were assessed by the investigator and determined to be consistent with Department expectations, in spite of how they were characterized or interpreted by the complainant.

OIR Group Review

LCPD provided OIR Group with the relevant investigation materials, including reports, other documentation, and body-worn camera footage. We concur with the outcome of the case. We do have additional observations.

Supervisor Performance

We watched body-worn camera recordings that were taken by two supervisors involved in this complaint. Both made a favorable impression.

The first was a video recording by the sergeant who responded to the scene based on the complainant's request as her nephew was being detained. His demeanor was steady, respectful, and patient. He did a fine job of communicating the Department's perspective regarding the underlying dynamic: namely, that the nephew's many prior encounters with LCPD had presumably framed aspects of the officer's approach, and that the conflict between the woman and her husband over the nephew's status made for a challenging situation for law enforcement to navigate.² Ultimately, he orchestrated an effective resolution to the incident.

The second was the video that the lieutenant made to document her intake interview with the complainant, who came in person to the station to express her concerns. She, too, brought a helpful demeanor to the exchange. She listened carefully, responded with empathy and encouragement to discussion of the nephew's difficulties, and offered explanation where applicable without trying to convince the woman that she was wrong.

¹ The man reportedly had a practice of collecting and painting rocks.

² The woman repeatedly acknowledged that LCPD was "between a rock and hard place" in trying to satisfy both her and her husband, who were decidedly at odds about the nephew's conduct and presence at the location.

The efforts of these supervisors reflected the positive contributions that police managers can make in defusing tension in the field and promoting confidence in the legitimacy of the complaint process. We found their respective performances noteworthy in the best of ways.

Officer Communication Skills

As stated above, we agreed with the LCPD findings as to whether the officer had violated any of the policies that were relevant in light of the allegations. He had a basis for detaining the man, faced immediate resistance, and accomplished the ensuing handcuffing and pat down search in a quick and reasonable manner. While the speed with which the situation became confrontational was clearly bothersome to the complainant, the video shows justification for the specific actions that generated her complaint.

To us, though, an additional and relevant point seemed to be less about the bottom-line legitimacy of the officer's detention and pat down, and more about the effectiveness of his approach – both at the outset of the call and subsequently. From the moment he got out of his car, the officer seemed brusque and inflexible in a way that “raised the temperature” of the encounter and precluded any further possibility of de-escalation.³ Similarly, his later discussions with the detained nephew, his frustrated aunt, and his later-arriving second aunt reflected exasperation and a hasty perception of impasse.⁴

The officer's frustration may well have been hard earned (in part based on past experiences with the same parties), and it should be noted that he never devolved into outright rudeness or unprofessionalism. Still, the effective handling of this kind of dynamic (in which repeated calls for service are complicated by mental health issues as well as family discord) is a challenge that young officers should be guided to meet when opportunities to do so present themselves. LCPD may not have taken full advantage of that opportunity in this case.

³ The rock that the man held was understandably concerning, but he never brandished it or appeared aggressive in any way.

⁴ He essentially cut off communication with the complainant after her initial refusal to step out of the street at his request, choosing to characterize it in his report as not wanting to speak with him, and described her as “yelling and screaming” in a way that seemed exaggerated.

RECOMMENDATION 1

LCPD should consider using relevant incidents that emerge in the complaint process as a forum for individual or Department-wide training regarding options for effectively addressing those individuals or locations that generate frequent calls for service and seem likely to recur.

RECOMMENDATION 2

Consistent with Recommendation 1, LCPD should debrief the involved officer with an eye toward improving demeanor and tone in future circumstances.

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: May 12, 2022
RE: Review of Administrative Investigation – #2021EIC1-025¹

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 April 13, 2022.

Case Summary

Two complainants, a husband and wife, alleged that LCPD officers used excessive force -- including punching, a strike with a flashlight to the back of the head, and use of the Taser -- illegally entered and searched their home, failed to read them their Miranda Rights, and made false accusations to Child Protective Services (CPS) during a call for service.²

¹ This case is related to LCPD case #21-28398.

² Each complainant submitted a separate complaint form on June 16, 2021, with a similar narrative and allegations.

The complaint stemmed from a call for service for a possible domestic violence incident on the evening of March 18, 2021. The reporting party stated that a man had struck a woman, his wife, in the face and that the two were arguing loudly, and that they had entered their trailer home. When Officer 1 arrived and approached the home, he heard a man yelling and a woman screaming inside. When he knocked on the door and identified himself as a police officer, the home went quiet.

Meanwhile, Officers 2 and 3 arrived. The officers knocked several more times and, hearing no response, decided to break down the door. Officer 3 unsuccessfully attempted to kick down the door. He then walked to his vehicle to retrieve a sledgehammer, which he used to open the door. While he was away, Officer 1 continued knocking and yelling, “come out, it’s the police department.”

From the doorway’s threshold, the officers again identified themselves and instructed “come to the front door now!” Within the trailer home, a man emerged from the right side of the home yelling, “what the f***” as a woman came from the left side, yelling that the officers had broken her door. Both demanded a warrant.

The woman moved to the threshold and attempted to close the door while pushing at the officers. The man approached, reached across the woman, and also attempted to close the door.

As officers commanded the two to “move back,” Officer 2 unholstered his Taser with his right hand and grabbed the man’s shirt with his left hand. At the same time, the man pushed the woman’s left shoulder to move her away from the door. The woman, however, pushed herself between the man and Officer 2. A struggle ensued in the tight doorway as the man attempted to pull away and the woman continued to insert herself between the man and Officer 2. All three moved into the home.

Officer 1 moved into the home to assist Officer 2. Officers 1 and 2 grabbed the man’s arms as he continued to fight. The woman fell to the ground and this momentum allowed the man to free his right hand, which he used to swing at Officer 1. Officer 1 delivered two strikes to the man’s face and one knee strike to the man’s hip. The man dropped to the ground, holding himself upright on his elbows. Officer 1 grabbed the back of the man’s neck and, according to LCPD, performed a “lateral head displacement” to control the man. The man continued to fight the officers.

Officer 2 placed his Taser between the man’s upper shoulder blades and deployed one round in “drive stun” mode.³

³ “Drive stun,” referred to in LCPD General Orders as “contact mode,” is when an officer places the Taser directly against the body rather than deploying the electrical probes that conduct

Meanwhile, the woman again tried to intervene. The woman grabbed the man's shirt and moved toward Officer 1 as if to push him away. Officer 1 pushed the woman away as Officer 3 entered the home to assist. The woman fell partly on top of the man. Officer 3 grabbed the woman by her legs and dragged her off of the man. He then picked up the woman, who was yelling, "you broke my arm!" and carried her to the exterior elevated porch of the home.

Officers 1 and 2 eventually handcuffed the man's left arm. He refused to give up his right arm. Officer 2 warned that he would use the Taser again, and the man submitted. However, he remained uncooperative refusing to roll over, stand up, and sit in the police vehicle.

Meanwhile, the woman continued to complain of pain to her shoulder, stating that it was dislocated.

Throughout the duration of this incident, the couple's six-year-old son was standing in the room watching. Officer 3 helped the woman into the home to join her son. She sat on the bed and the boy sat next to her.

Officer 3 collected information from the woman, who alternated between gesticulating with her arms and complaining of pain to her shoulder. When Officer 3 asked about blood on her lips and mouth, she denied that the man had struck her and asserted that she would have fought back if he had.

A supervisor who had responded to the scene called the LCPD Criminal Investigation Section (CIS) to investigate the possible assault on a peace officer. CIS determined that there was insufficient evidence for the charge.

Meanwhile, officers transported the man to the hospital for medical clearance. He was cleared and transported to the Dona Ana Detention Center, where he was booked for battery against a household member and resisting/obstructing a peace officer.

The officers also filed a criminal summons for the woman for battery against a household member.

LCPD's Investigation and Analysis

LCPD's Internal Affairs conducted a preliminary investigation of the incident and framed two allegations against three officers:

electricity. This is used entirely for pain compliance because this mode of operation does not incapacitate muscles like the probes do.

1. General Order 203.01. Domestic Family Disturbance

Among other guidelines for responding to domestic disturbances, this General Order allows officers to enter a private residence without a warrant where there is reasonable cause to believe that the person inside requires immediate aid to preserve their safety.

2. General Order 255.02. Use of Force

This General Order outlines when use of force is appropriate and includes a section, referenced in this investigation, regarding the requirement to summon emergency medical personnel to treat or render first aid as soon as reasonable.

After reviewing the body-worn camera footage of this incident and the related Use of Force internal review, the IA investigator determined that the officers' conduct was lawful and justified. The officers were 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. The conclusions reached for the two allegations that LCPD framed as listed above – those related to use of excessive force and entering/searching the residence -- were valid.

However, we found that the investigation did not frame and explicitly investigate all the allegations raised by the complainants, including the allegation of injury to the man's head and false statements made to CPS. And, by closing the investigation at the preliminary inquiry level instead of elevating it to a formal investigation (where, presumably, more evidence would have been collected), LCPD missed an opportunity to fully investigate these allegations. In short, this investigation left too many “missing pieces” and questions unanswered. We found that this investigation was not sufficiently complete and thorough.

We also identified ancillary concerns related to the uses of force.

Review of Preliminary Inquiry

On their respective complaint forms, the man and woman made additional allegations that were not framed in this investigation. In addition to the allegations framed (see above) the complainants alleged that:

- Officers did not read her Miranda Rights (woman)
- Officers used a flashlight to strike the back of the man's head, resulting in a possible brain hematoma (man)
- Officers inappropriately called Child Protective Services (man) and LCPD made false accusations to CPS (woman)

We advise that investigators frame and investigate all allegations as reported by complainants. We recommended this in prior memos and LCPD accepted our recommendation for future cases; the investigation of this case preceded that recommendation.

We also noted that the close-out letter was only addressed to the woman and only listed one of the framed allegations (that of excessive use of force). While the man and woman both listed the same mailing address, it would have been more complete to address the letter to both or send each a letter regarding their individual complaint. We have already discussed the preferability of including more information in these close-out letters; LCPD has modified its close-out letter to reflect a more complete picture of the investigative process for complainants. We look forward to evaluating these new letters in future cases.

Finally, we noted that the circumstances of this case and the resultant allegations seemed to be at (or even over) the limit for suitable disposition at the preliminary inquiry level, as opposed to its moving into the formal investigation process. The Department's policy (**General Order 160**) states:

3. In some cases, the preliminary inquiry of the complaint will determine that the action(s) of the employee were in compliance with policy or that the complaint against the employee is one that, even if true, would not be a violation of law or department policy. In these situations, a formal administrative investigation is not needed and the complaint can be closed out upon the Chief of Police's approval.

4. If the preliminary inquiry determines that a specific allegation, if true, would constitute violation of policy and/or procedure, a formal administrative investigation will be initiated in accordance with this general order.

Here, the available evidence, including video and the Department's related internal force review investigation, suggested that the allegations occurred, but were lawful, justified and did not violate Department policy (though, as noted above, not all

allegations were considered). As such, the case was closed out at the initial stage of “preliminary inquiry” and no further investigation was conducted.

However, we found the allegations, especially the allegations of excessive force resulting in alleged injuries, to be of a sufficiently serious nature to consider initiating a formal investigation. This would have prompted a more thorough investigation, including interviews with the complainants and collection of medical records, both which would have better informed the outcome.

While the preliminary inquiry is a useful process to initially classify all complaints, and can suffice to effectively resolve minor issues when the evidence is clear, we caution the Department not to over-utilize it – particularly in cases such as this involving multiple allegations of a serious nature.

RECOMMENDATION 1

LCPD should more carefully consider use of the “preliminary inquiry: no further investigation needed” category when cases involve allegations of a serious nature that are not definitively refuted by the initially available evidence.

Use of Force Considerations

We noted two issues in this case related to the uses of force themselves. We note that the force review process is a separate internal process conducted by the involved officers’ chain of command, not Internal Affairs.

The first was related to the use of the Taser in drive stun mode. The use of a Taser in drive stun (or, what the Department calls “contact mode”) for pain compliance is currently allowable per the Department’s Conducted Electrical Weapons policy (General Order 256). But best practices suggest that Tasers should not be used merely for pain compliance; they are neither generally intended for this purpose nor consistently effective in this mode. Instead, drive stun mode should only be deployed to complete the incapacitation circuit when one of the two probes has not sufficiently attached to the subject’s body. Accordingly, many agencies either prohibit the use of drive stun mode for pain compliance or limit its use to situations where the officer needs to create distance from the subject.

In reading the Department’s policy for this review, we also noted that the current policy does not require that officers issue a warning prior to deployment of the Taser, nor

requires that officers document the warning or lack thereof.⁴ This language is commonly included in modern Taser/CEW policies. While the Department's Use of Force policy includes language regarding providing verbal warnings, we encourage the Department to also include this language specifically in its CEW policy. We recommend language such as:

Prior to use of the device, and when feasible, an officer shall provide a verbal warning and permit the subject reasonable time to comply with the officer's order. Verbal warnings combined with spark testing or laser aiming can be effective in gaining compliance without an application of electrical stimulation.

The verbal warning or the reasons it was not given shall be documented by the officer firing the device.

LCPD reported that it is currently in the process of evaluating its CEW and Equipment policies to ensure that these reflect the most effective uses of the Taser. As it considers updates, we recommend that the Department evaluate the use of drive stun mode and impose a requirement for officers to warn of Taser use where practicable, and document the warning or lack thereof.

RECOMMENDATION 3

As it considers updates to their Conducted Electrical Weapons policy, General Order 256, LCPD should: 1) consider whether to eliminate or restrict the use of the Taser in drive stun mode as a pain compliance weapon; 2) add language that requires that officers provide a verbal warning prior to deployment of the Taser; and 3) add a requirement to document the warning or reason that a warning was not given.

We also noted concerns related to the use of two physical force options: strikes to the head and the "lateral head displacement" technique.

These were particularly concerning in light of the suspect's (unverified) assertion of injury – a "possible brain hematoma" -- to his head; while it was not investigated here to

⁴ In this case, officers did warn the suspect that he would be "Tased" if he did not comply.

confirm the alleged injury, we speculate that this injury, if true, could have been a result of either of these physical force techniques.⁵

First, Officer 1 delivered two “custody strikes” (which the force review corrected to be called “defensive strikes”) to the left side of the suspect’s face/head. It is unclear if Officer 1 delivered his strikes with his closed fist or with the palm of his hand. In the force review, these strikes were determined to be reasonable because they were used in self-defense against an “unarmed attack.”

When necessary, we advocate for palm strikes to avoid injuries to civilians and officers alike, and aimed at the center mass. Further, head strikes of any kind are not advised, again due to the potential for injury.

Second, Officer 1 used a “lateral head displacement” when the man refused to give up his arms and continued to struggle with the officers. In the force review, this technique was determined to be within Department policy because it was used to “stabilize” a combative suspect. According to LCPD Training, a “lateral head displacement,” when performed correctly, is intended to gain compliance from a suspect who is holding his/her arms underneath the body and resisting handcuffing. In this case, we observed that the officer seemed to place downward pressure on the neck while the man was in a prone position; according to LCPD, this is not the correct way to implement the technique.

While we understand the purpose of this pain compliance technique and its benefits over other ways of achieving compliance (e.g., repeated strikes to the body), we urge the Department to evaluate it carefully. In general, we discourage use of techniques that place a suspect in a position that may increase the risk of positional asphyxia. “Positional asphyxia” occurs when someone’s position prevents the person from breathing adequately.⁶ People may die from positional asphyxia accidentally when the

⁵ As we noted above, the investigation did not frame an explicit allegation for this claim of injury. Because of this, and because this investigation was closed out as a preliminary investigation, IA did not collect medical records to confirm the man’s assertion.

⁶ California recently enacted legislation prohibiting law enforcement agencies from authorizing techniques or transport methods that involve a substantial risk of positional asphyxia, prompting agencies state-wide to modify their force, prisoner transport, and other related policies. We noted that LCPD’s Prisoner Transport policy (General Order 233), updated in 2019, very briefly discusses the danger of positional asphyxia as a result of “hog-tying” a prisoner, which is prohibited; positional asphyxia is not mentioned elsewhere.

mouth and nose are blocked or where the chest may be unable to fully expand. In the law enforcement context, position asphyxia may occur when a subject is positioned face-down and with downward pressure on the neck.

LCPD reported that it is currently expanding its use of force review process to better evaluate force and the performance of officers in the field. The Department has created 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. This team will evaluate 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 BlueTeams / chain of command review.

We are impressed with this initiative and look forward to learning more about it and its accomplishments as it progresses. In the meantime, we recommend that this team evaluate the propriety of strikes to the head and the lateral head displacement technique with an eye toward their potential to cause injury and, in the case of the lateral head displacement, increase the risk of positional asphyxia.

RECOMMENDATION 4

The new LCPD force review cadre should evaluate the use of head strikes and the “lateral head displacement” technique in recognition of their potential to cause unintended injury and increase the risk of positional asphyxia.

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. As noted by OIR, this investigation preceded the recommendations made about our preliminary inquiry process. Our process has since been improved implementing these recommendations. Additional recommendations made in this review involving reviews of use of force tactics and our Conducted Electrical Weapons policy are currently in progress.

Appendix B: OIR Group Litigation Case Memos



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

TO: City of Las Cruces
FROM: OIR Group
DATE: March 23, 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 February 28, 2022.

Review Summary

In this period, OIR Group received one case from the Las Cruces City Attorney's Office. The case involved one Plaintiff and one named Las Cruces police officer. The Plaintiff alleged that during a traffic stop on September 22, 2018, a Las Cruces police officer searched him without consent, used excessive force that resulted in injuries, and that LCPD failed to properly investigate and document the incident. The case was dismissed.

The Plaintiff was charged with felony possession of a firearm, resisting a peace officer, assault on a peace officer, probation violation, possession of a controlled substance, and tampering with evidence. These charges were dismissed.

The matter resulted in an internal Use of Force Review where the force used was found to be reasonable. The Plaintiff did not file a related complaint and LCPD did not initiate an Internal Affairs investigation of the matter.

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

- The Plaintiff is Hispanic.
- The named officer is white and currently on administrative leave pending a criminal trial for an unrelated incident that occurred in early 2020.
- The case occurred in the zip code 88005.

Recommendation

As we wrote in our previous litigation review, litigation can serve as a valuable feedback loop for Departments to mitigate risk by offering corrective action. We recommend that the Department always initiate an internal investigation for these matters and fully frame and investigate all potential allegations.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The review is thorough and accurate and we are in agreement with the recommendations. LCPD has implemented changes to initiate internal investigations for all cases involving litigation.



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

TO: City of Las Cruces
FROM: OIR Group
DATE: April 28, 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 April 15, 2022.

Review Summary

In this period, OIR Group received one case from the Las Cruces City Attorney's Office. The case involved one Plaintiff and her minor children and two named Las Cruces officers. This case was related to an officer-involved shooting that occurred in December of 2016; the Plaintiff alleged that the deceased was wrongfully killed by LCPD and that LCPD and the City were negligent in failing to provide adequate de-escalation, crisis intervention and mental health training for the officers. The case was dismissed.

Additionally, the court approved a settlement for the deceased's minor children: a structured annuity totaling \$37,924 made in future periodic payments to the children.

No charges were associated with this claim.

Agenda Item #3.1.

The matter resulted in an investigation by the joint Officer-Involved Shooting Task Force, which found the officers' actions to be justified. LCPD Internal Affairs also conducted an Internal Investigation of the matter; the Department framed one allegation of "Use of Deadly Force (General Order 255.04)" for each officer. The officers were exonerated.

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

- The Plaintiff is white.
- The two named officers are white and Hispanic.
- The case occurred in the zip code 88001.

Appendix C: OIR Group Member Biographies

Michael Gennaco

Michael Gennaco served from 2001 to 2014 as the Chief Attorney of Los Angeles County's Office of Independent Review and is a founding member of OIR Group. He graduated from Dartmouth College and Stanford Law School. Before joining OIR, Mr. Gennaco was Chief of the Civil Rights Section at the United States Attorney's Office for the Central District of California. He also served for ten years as a trial attorney with the Civil Rights Division at the Justice Department in Washington, D.C., first with the Voting Section and then with the Criminal Section.

While at the Civil Rights Division and the United States Attorney's Office, Mr. Gennaco supervised over 20 federal grand jury investigations into police misconduct, most of them involving force and in-custody death investigations. He also conducted a number of successful civil rights prosecutions against police officers for excessive force, including officers of the Los Angeles Police Department, the Los Angeles Sheriff's Department, and federal immigration detention officers. In addition, Mr. Gennaco conducted hate crime prosecutions, including the prosecution of Buford Furrow, a white supremacist who killed a Filipino-American postal carrier and grievously shot children at the Jewish Community Center in Los Angeles, and prosecuted human traffickers, such as the eight individuals responsible for enslaving seventy Thai workers for years in El Monte, California. Mr. Gennaco received high recognition for his work including the esteemed Attorney General's award.

As an oversight practitioner, Mr. Gennaco has performed, with the assistance of OIR Group attorneys, a number of monitoring tasks, audits and reviews for a federal judge, special masters, and other governmental entities. He is a recognized expert in law enforcement reform and accountability systems and regularly teaches Constitutional policing classes sponsored by the State of California's Commission on Peace Officer Standards and Training.

Under Mr. Gennaco's leadership, OIR Group has become a valuable resource for numerous California cities grappling with officer-involved shootings and other critical incidents in an effort to bridge the gap between the police and the communities they serve and to utilize those incidents as learning tools. Upon request, Mr. Gennaco submitted testimony to the President's 21st Century Task Force on Policing.

Mr. Gennaco's knowledge of best practices and his longstanding commitments to police accountability are hallmarks of a distinguished career. In keeping with his accomplishments and reputation, he was honored in 2011 by the National Association

Agenda Item #3.1.

for the Civilian Oversight of Law Enforcement (“NACOLE”) as recipient of its highest recognition: the Flame award for outstanding contributions to the field.

- Principal and founder of OIR Group
- With OIR since 2001
- Licensed attorney with all necessary qualifications to perform functions as set out in Scope of Services
- Educational background: BA: Dartmouth College, JD: Stanford Law School

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

Stephen Connolly

Stephen Connolly is a Principal of OIR Group, an attorney, and a longtime practitioner in the police oversight field. His experience dates back to 2001, when he served as an original member of Los Angeles County's Office of Independent Review; in that role, he monitored hundreds of internal investigations and disciplinary determinations involving the Los Angeles County Sheriff's Department. He was also the first Executive Director of the Orange County Office of Independent Review from 2008 to 2016. His two decades of work with law enforcement agencies throughout California and in several other states has taken a variety of forms, including real-time monitoring, investigation, auditing, policy review, and extensive public outreach and reporting.

For several years he has also provided training to law enforcement on a variety of subjects related to supervision, risk management, and effective internal review. Certified as an instructor by California's Commission on Peace Officer Standards and Training ("POST"), he teaches several mandatory training blocks each year to lieutenant-level police managers from throughout the state.

Mr. Connolly is currently serving as one of the Independent Police Auditors in the California cities of Palo Alto, Anaheim, and Davis. He is also part of the court-appointed monitoring team that is overseeing implementation of multiple police reforms in the Stockton Unified School District.

He graduated from Holy Cross College and Loyola Law School.

- Principal of OIR Group
- With OIR since 2001
- Licensed attorney with all necessary qualifications to perform functions as set out in Scope of Services

Julie Ruhlin

Julie Ruhlin is a Principal of OIR Group. From 2011 to 2014, Ms. Ruhlin served as Deputy Chief for the Office of Independent Review in Los Angeles County. In addition to her regular responsibilities monitoring internal affairs and critical incident investigations at the Sheriff's Department and making independent recommendations regarding disciplinary determinations, she worked closely with the Training Bureau, preparing a special report to the Board on issues surrounding the Department's Training Academy. She also focused on issues within the County's jails, including the investigation and review of inmate suicides and other deaths in custody, and worked with Department leaders to develop a mechanism for executive-level review of uses of force within the jails. Ms. Ruhlin recently worked with Mr. Gennaco to prepare a report examining the Internal Affairs functions of the Denver Sheriff's Department.

Ms. Ruhlin joined OIR in 2006 after working with Merrick Bobb at the Police Assessment Resource Center in Los Angeles, where she was responsible for investigating and drafting special reports to the County Board of Supervisors regarding policy and training deficiencies within the Sheriff's Department. Prior to working with PARC, her private law practice focused on civil rights and criminal defense. She graduated from American University and the University of Southern California School of Law.

- Principal of OIR Group
- With OIR since 2006
- Licensed attorney with all necessary qualifications to perform functions as set out in Scope of Services
- Educational background: BA: American University, JD: USC Law School
- Experience in Auditing and Oversight: 15 years
- Work history
 - Independent Police Auditor for Cities of Anaheim, Davis, and Portland (Oregon)
 - Independent reviews of over twenty law enforcement jurisdictions
 - Independent investigations for Merced County Sheriff's Department

Teresa Magula

Teresa Magula is a member of OIR Group and a former Special Investigator for the Los Angeles Police Department's Office of Inspector General responsible for investigating of misconduct allegations. She is an expert on use of force policy and the response to high-profile, large-scale events. Most relevant, Ms. Magula was the lead investigator in the OIG's review of the events of the 2001 "May Day" incident in MacArthur Park; in this capacity, she collected and evaluated event data from various sources, such as surveillance and body worn camera footage, radio communications and media stories, interviewed stakeholders, victims, and involved officers, and attended community meetings.

Ms. Magula has a broad range of experience, including as a Senior Consultant with Deloitte Consulting, LLP where she specialized in data system implementation, audits, and reviews. Ms. Magula served on the Los Angeles Mayor's Performance Management Unit, where she was the liaison between City public safety agencies and the Mayor's Office and worked with the Santa Monica Commission on the Status of Women and Girls. She received a master's degree in Public Policy from UCLA's Luskin School and has expertise in database management and statistical analysis. She also is a native Spanish speaker.

- Member of OIR Group
- With OIR since 2017
- Possesses all necessary qualifications to perform auditing functions as set out in Scope of Services; will work under the direction of OIR Group attorneys
- Educational background: BA: UCLA; Master of Public Policy: UCLA School of Public Affairs
- Work history
 - Independent reviews of Santa Ana, Burbank and Davis Police Departments
 - Reviews of large-scale civil unrest for various jurisdictions
 - Monitor for Stockton Unified School District
 - Investigation of critical incidents, use of force cases, and misconduct allegations for the LAPD Office of Inspector General

Samara Marion

Samara Marion is an attorney and former Director of Policy for the San Francisco Department of Police Accountability (DPA), a civilian-run agency that investigates misconduct complaints involving the San Francisco Police Department. During her two decades of work at DPA, Ms. Marion wrote and negotiated new SFPD police procedures on a variety of topics including use of force, officer-involved shootings, bias-free policing, language access, domestic violence, juvenile policing protocols and children of arrested parents.

Before joining the DPA, Samara Marion was a Santa Cruz County public defender for fifteen years where she represented indigent clients at the trial and appellate level in juvenile, adult, and capital cases. She has also taught at Santa Clara University School of Law and Stanford Law School. She received her J.D. from University of California, Davis, a J.S.M from Stanford University, and a B.A. from University of California, Santa Cruz.

- Member of OIR Group
- With OIR since 2020
- Attorney with over two decades of work in law enforcement oversight

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

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)

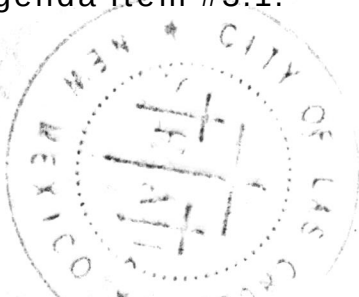
THAT a contract is hereby awarded to OIR Group, LLC of Playa del Rey, California for Police Auditor Services for an initial term of one (1) year period with the option to renew for four (4) additional one (1) year terms, in an amount not to exceed \$75,000.00 plus gross receipts tax as applicable, as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

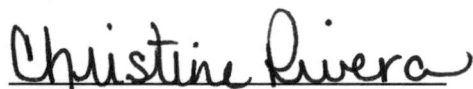
Agenda Item #3.1.



APPROVED


Mayor

ATTEST:


Christine Rivera
City Clerk

Moved by: Tessa Abeyta-Stuve

Seconded by: Gill Sorg

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

NAYS



21-128

City Council Action and Executive Summary

Type of Action:

☒ Resolution☐ Ordinance☐ TIDD Resolution

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

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

PURPOSE(S) OF ACTION:

To award a contract.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

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

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

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

SUPPORT INFORMATION:

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

ANNUAL BUDGET APPROVAL:

☒ Yes

☐ No

☐ N/A

BUDGET / FISCAL IMPACT:

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

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

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

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

- ☐ Yes
- ☐ No
- ☒ N/A

OPTIONS / ALTERNATIVES:

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



PROFESSIONAL SERVICES AGREEMENT

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

1. PROJECT DESCRIPTION

Police Auditor Services

2. SCOPE OF SERVICES

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

3. APPROPRIATIONS

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

4. COMPENSATION

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

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

5. DEVOTION OF ADEQUATE TIME

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

6. TERM AND SCHEDULE

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

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

7. EXTENSIONS, CHANGES, AND AMENDMENTS

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

8. CHANGES AND EXTRA SERVICES BY THE CITY

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

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

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

10. DELAYS

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

11. TERMINATION

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

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

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

12. RECORDS AND AUDITS

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

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

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

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

14. INDEPENDENT CONTRACTOR

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

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

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

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

15. NO JOINT VENTURE OR PARTNERSHIP

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

16. ASSIGNMENT

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

17. INSURANCE

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

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

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

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

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

18. INDEMNITY AND LIMITATION

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

19. APPLICABLE LAW

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

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

20. BREACH

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

21. DISPUTE RESOLUTION

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

22. NOTIFICATION

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

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

With Copies to: City Attorney
 Purchasing Manager

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

23. SCOPE OF AGREEMENT

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

24. SEVERABILITY

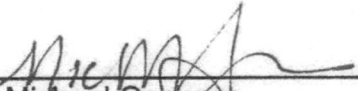
The parties agree that each provision of this Agreement is severable and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and this Agreement shall be construed in all respects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

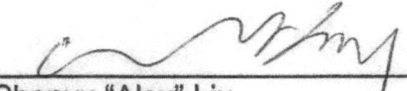
25. CONFLICT OF INTEREST

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

OIR GROUP, LLC

CITY OF LAS CRUCES

BY: 
Michael Gennaco
Principal

BY: 
Chenyu "Alex" Liu
Purchasing Manager

February 23 2021
Date

3/4/2021
Date

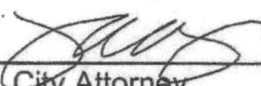
APPROVED AS TO FORM
 for JVB 01/20/2021
City Attorney

EXHIBIT A

SERVICES

Police Auditor duties to be performed by CONTRACTOR include:

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

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

- a. Code of Conduct / Code of Ethics
- b. Recording Devices
- c. Physical Arrests
- d. Search & Seizure
- e. Use of Force
- f. Bias-based Policing
- g. Vehicle Pursuits

2. **Audits of Police Operations:** CONTRACTOR shall review and report on policies, procedures, and training issues growing from a complaint investigation and make recommendations for improvement to increase police accountability and transparency in the complaint process.
3. **Evaluation of Tort Claim Notices and/or Noticed Civil Actions:** CONTRACTOR shall review and report on all tort claim notices and/or noticed civil actions. The information contained in the report shall include information related to matters that have been litigated or disposed and are no longer pending and shall include, but not be limited to, offender and victim demographics, location of incidents, criminal charges associated with the

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

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

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

Reporting Requirements:

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

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

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

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

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

Written semi-annual reports and presentations must include:

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

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

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

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

EXHIBIT B

SCHEDULE

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

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/7/2021

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

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

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

COVERAGES

CERTIFICATE NUMBER: CL2092110880

REVISION NUMBER:

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

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

© 1988-2014 ACORD CORPORATION. All rights reserved.

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

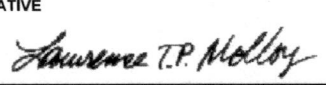
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

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

CANCELLATION

City of Las Cruces Attn: Viola M. Perea, CIA, CFE City Auditor/Legal Department/Internal Audit Office	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
6. Representations	16
7. Other Insurance	16
8. Transfer Of Rights Of Recovery Against Others To Us	17
F. OPTIONAL ADDITIONAL INSURED COVERAGES	18
Additional Insureds	18
G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS	20



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



Council Work Session Summary

Meeting: Work Session - Aug 22 2022

TITLE: PROGRESS REPORT ON REALIZE LAS CRUCES

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

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

In March of 2021, the City of Las Cruces entered into a contract with Freese and Nichols, Inc., (F&N) to amend the City of Las Cruces Development Codes, also known as Realize Las Cruces. The project is anticipated to take two years to complete and consists of three phases. The first phase consisted of code user interviews, a virtual open house, and the gathering, review, and analysis of applicable codes and policies. The resulting deliverable for phase one was the Code Diagnostic which outlined structural modifications to the existing code and recommended various content changes. The findings of that report were shared with City Council during a work session in August of 2021.

Phase two of Realize Las Cruces consists of the drafting and initial review of individual chapters of the the code. Phase two is approximately two-thirds finished and staff and the F&N consultants would like to update the City Council of the progress thus far and the next steps.

PLAN(S):

City Council Strategic Plan, Department Strategic Business Plan, Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

P&Z



Council Work Session Summary

Meeting: Work Session - Aug 22 2022

TITLE: AUTOMATED SPEED ENFORCEMENT.

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

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Overview of Automated Speed Enforcement, also known as Speed Cameras, as an option to supplement law enforcement efforts to combat speed violators in the City. Staff will present information regarding automated enforcement cameras, their various capabilities, and how the system works.

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None