



# Alamogordo City Commission

## NOTICE OF MEETING

### Regular Meeting Agenda

February 27, 2018 - 6:30 PM  
City Hall, City Commission Chambers  
1376 E. Ninth St.

Richard Boss ..... Mayor  
Al Hernandez ..... Mayor Pro-Tem, District 5  
Jason Baldwin ..... District 1  
Nadia Sikes ..... District 2  
Susan Payne ..... District 3  
Jenny Turnbull ..... District 4  
Vacant ..... District 6

Maggie Paluch ..... City Manager  
Petria Schreiber ..... City Attorney  
Rachel Hughs ..... City Clerk

#### MISSION STATEMENT as Adopted by the City Commission on March 24, 1995.

*The City of Alamogordo is a Municipal Corporation that exists solely for the purpose of providing the best possible services to our customers, the citizens of Alamogordo. We are committed to providing these services with honesty, integrity, compassion, fairness, and a commitment to excellence.*

*We are committed to the long-term financial stability and responsible growth of the City and all decisions will be driven by our commitment to provide the best services possible in a financially sound and responsible manner given the economic realities facing the City.*

*In accordance with Section 10-15-1.D, NMSA 1978 (2010 Cumulative Supplement), this agenda has been posted on the bulletin board located in the east/west lobby of the City Hall and in the glass case located outside the north entrance of the City Hall, distributed to the appropriate news media, and posted on the City website: <http://ci.alamogordo.nm.us> within the required time frame. As a courtesy, the entire Agenda Packet has also been posted on the City of Alamogordo website: <http://ci.alamogordo.nm.us>*

*The Mayor and City Commission request that all cell phones be turned off or set to vibrate. Members of the audience are requested to step outside the Commission Chambers to respond to or to conduct a phone conversation. The Alamogordo Commission Chambers is wheelchair accessible. Other special assistance for disabled attendees must be requested 48 hours in advance by contacting the City Clerk's Office at 575-439-4205.*

#### CALL TO ORDER & ROLL CALL

*Announce the presence of a Quorum.*

#### INVOCATION & PLEDGE OF ALLEGIANCE

#### APPROVAL OF AGENDA

#### PRESENTATIONS

1. Presentation highlighting ongoing activities of Gerald Champion Regional Medical Center. (*Jim Heckert, CEO of GCRMC*)

2. Annual update on Main Street. *(Camdon Wilde, Director of Main Street)*

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**PUBLIC COMMENT**

*Residents must sign up with the City Clerk to address the City Commission. Comments are limited to 3 Minutes, and there will be a maximum of 21 Minutes allowed for Public Comment.*

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**CITY MANAGER'S REPORT**

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**REMARKS AND INQUIRIES BY THE CITY COMMISSION**

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**CONSENT AGENDA** (Roll Call Vote Required for an Ordinance or Resolution)

*All matters listed under the Consent Agenda are considered to be routine by the City Commission and will be enacted by one motion. There will not be separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.*

3. Approve the minutes for the February 13, 2018 Regular meeting. *(Rachel Hughs, City Clerk)*

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**ITEMS REMOVED FROM CONSENT AGENDA**

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**NEW BUSINESS**

4. Consider, and act upon, first publication of Ordinance No. 1559 amending sections 29-01-100 and 29-01-110, Chapter 29 of the CODE pertaining to White Sands Beautification District. *(City Planner, Darron Williams)* **(Roll Call Vote Required)**
5. Consider, and act upon, first publication of Ordinance 1564 approving a Local Economic Development Project for secured financial assistance proposed by Thomas L. Cardella & Associates, Inc. *(Petria Schreiber, City Attorney)* **(Roll Call Vote Required)**
6. Appointments to Boards and Committees. *(Richard Boss, Mayor)*

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**ADJOURNMENT**



# AGENDA REPORT

## CITY OF ALAMOGORDO

### CITY COMMISSION

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**Meeting Date:** 02/27/2018

**Report Date:** 02/15/2018

**Report No:** 1.

**Submitted By:**

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**Subject:** Presentation highlighting ongoing activities of Gerald Champion Regional Medical Center. (*Jim Heckert, CEO of GCRMC*)

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**Fiscal Impact:**

Amount Budgeted:

Fund:

Additional Fiscal Impact:

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**Recommendation:** Presentation only.

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**Background:**

RECEIVED  
FEB 14 2018  
CITY CLERK



City of Alamogordo City Commission Meeting

AGENDA REQUEST FORM

Date: 2/13/2018

Date of Meeting:

2/27/2018

Name:

Robert "Jim" Heckert

Address:

2669 N Scenic Ave

Alamogordo NM ZIP 88310

Phone Number:

575 443-7850

E-Mail Address:

Lewis @ GCRM

Item requested will be for: (Please check one)

☐ Information only

☐ Action Item

☐ Discussion/Action

☐ Public Hearing

☐ Report

☐ Other: \_\_\_\_\_

Brief description of topic to be discussed:

Please attach one original of any documents pertaining to the topic -

We do not allow handouts at the meeting

Attached is presentation that highlights  
ongoing activities of GCRM. Takes 20  
minutes.

Signature

RJ Heckert

Please return to:

Rachel Hughes  
Nancy Jacobs, ~~CMG~~, City Clerk  
City of Alamogordo  
1376 E. 9<sup>th</sup> Street  
Alamogordo, NM 88310

Phone: (575) 439-4205

Fax: (575) 439-4396

E-mail: niacobs@ci.alamogordo.nm.us

Revised 3/15/2016



**Exceptional healthcare is closer than you think**



**Gerald Champion  
Regional Medical Center**  
*Our Family Caring For Yours*

# EXCEPTIONAL CARE, QUALITY AND SUPPORT

Our Family Caring for Yours



Our **strategic partnerships and collaborations** allow our medical staff to stay at the forefront of advancement and education and bring cutting-edge health care to South Central New Mexico

Our **responsiveness to the needs and wishes of the local community** brings life to our community and economy through investment of time and resources to help local individuals and organizations thrive.



Our **commitment to delivering high-quality, cost-effective health care** locally has been our mission for nearly 70 years

*Exceptional healthcare is closer than you think*

# GERALD CHAMPION REGIONAL MEDICAL CENTER

Caring for the community for nearly 70 years

**1949**

Gerald Champion and others were determined to have local health care and raised funds to open the 26 Bed hospital

Growth and expansion  
to meet community needs in  
South Central New Mexico

**Today**

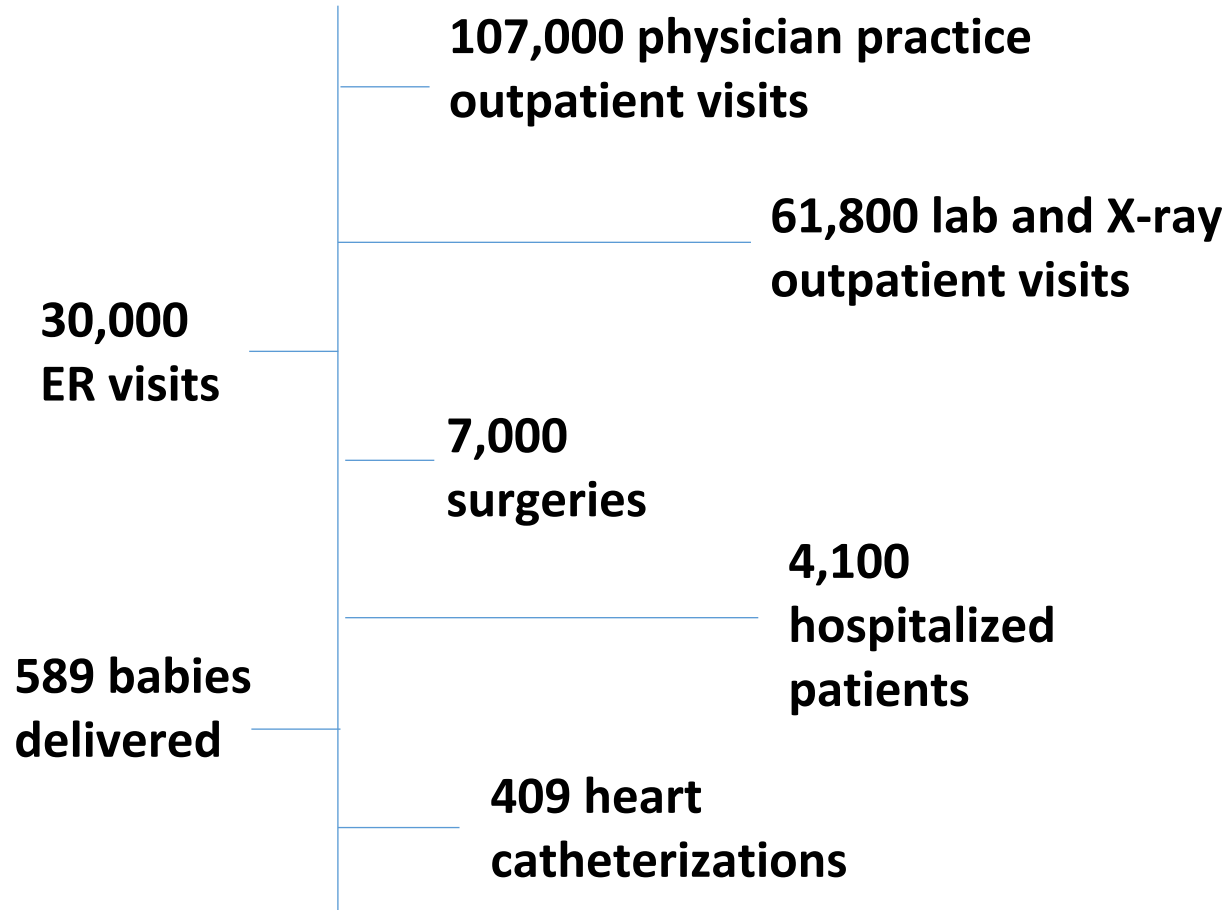
Non-profit hospital supported by a network of partners with 100 beds (50 acute, 38 behavioral medicine and 12 rehab beds)

*Exceptional healthcare is closer than you think*

# GERALD CHAMPION REGIONAL MEDICAL CENTER

Delivering high-quality care to the community

**FY 2017**



*Exceptional healthcare is closer than you think*



# THE GCRMC TEAM

Our Family Caring for Yours



**1,000 employees | 220 medical staff members | 25 healthcare specialties**  
**160 GCRMC Auxiliary volunteers | 16 volunteer chaplains**

*Exceptional healthcare is closer than you think*

# GERALD CHAMPION LEADERSHIP

Guiding our community growth

## Board of Directors

12 board members, with an average tenure of 20 years, offer health care, financial and entrepreneurial experience.

## Hospital Leadership

- Board Chairman: Norm Arnold
- CEO: Jim Heckert
- CFO: Bashar Naser
- VPPCS/CNO: Robert Middleton
- CMO: Lee Saltzgaber, MD
- VPPP: Albert Esparsen
- Chief of Staff: Nasser Alqassem MD



Jim Heckert, Robert Middleton and Bashar Naser prepared relief supplies to send to Hurricane Harvey victims in Texas.



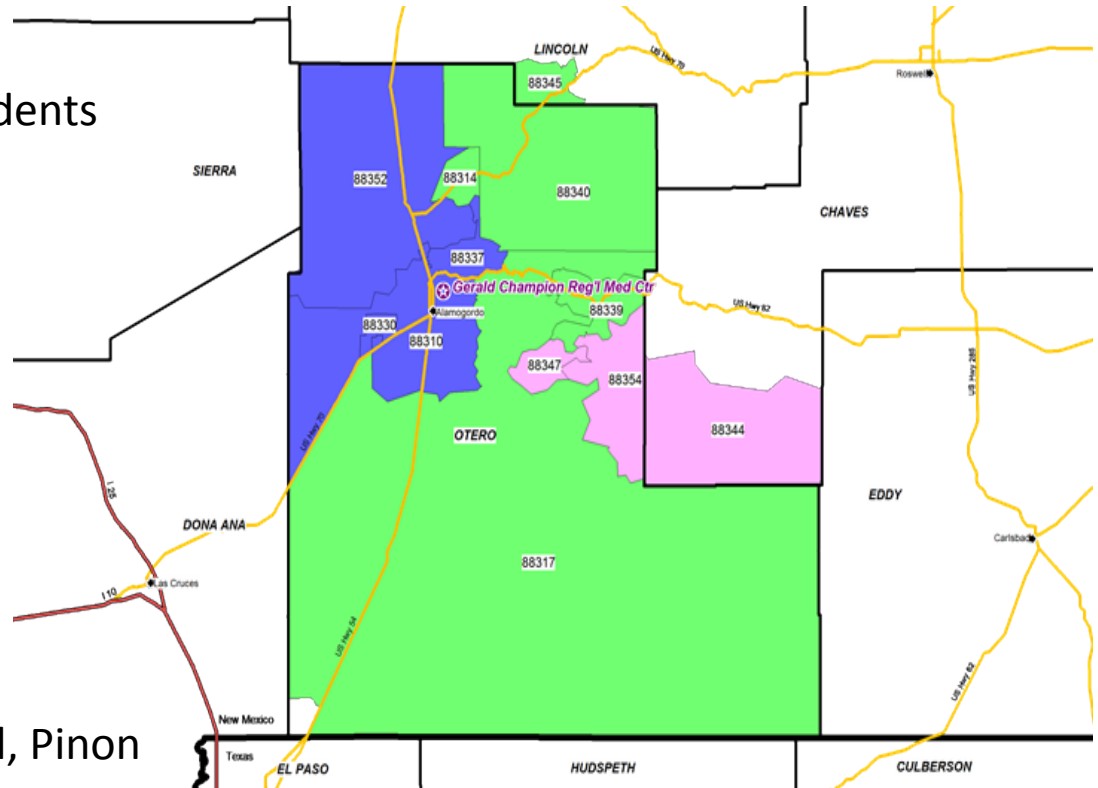
# THE HEALTHCARE HUB FOR LINCOLN & OTERO COUNTIES

Patients turn to GCRMC for primary and specialty care

## Service Area

Providing care for 72,000 residents in Otero and Lincoln Counties

- **Primary:** Alamogordo, Holloman, Tularosa, La Luz
- **Secondary:** Ruidoso, Cloudcroft, Mescalero, Bent
- **Tertiary:** Sacramento, Weed, Pinon



# INVESTING IN THE COMMUNITY

Growing to make exceptional healthcare available locally



**Over \$100 million  
in capital investments since 1999**

- Community Health Needs Assessment helps guide new initiatives, including:
  - Champion Urgent Care
  - Expanded behavioral health services
  - Wellness Works occupational health services
  - New Financial Assistance Program
- Physician recruitment is an ongoing priority
  - 10 new providers recruited in 2017 (primary care, pediatrics, sleep medicine, employee health and two OB/GYNs)
  - 11 new specialties since 2008

*Exceptional healthcare is closer than you think*

# STRATEGIC PARTNERSHIPS

Supporting excellence in clinical services and expanded access to specialty care

Collaborations help GCRMC maintain robust services and high quality

- GCRMC was the 1<sup>st</sup> hospital to secure a *Shared Facility Agreement* with Holloman AFB and the Department of Defense in 1999
- Affiliations with 19 accredited institutions
- Educational agreements with 50 colleges
- Teleneurology with UNM
- Surgical residents from UNM School of Medicine in Albuquerque
- Partnership with The Hospitals of Providence in El Paso to open 24/7 Cardiac Cath services
- Future: medical students from Burrell College of Osteopathic Medicine and Family Medicine Residency in partnership w/ from Memorial Medical Center in Las Cruces



# GCRMC ORGANIZATION

More than a hospital, a continuum of outpatient and inpatient services

- Main hospital facility, MOB, outpatient surgery center, 9 physician clinics
- New Champion Urgent Care
- 25 specialties on main campus and 10 locations in Alamogordo and Ruidoso
- Since 1999, the hospital has invested more the \$100M in capital to expand and enhance services. Recent upgrades:
  - Upgraded Radiology (MRI, CT, PET CT, 100% digital)
  - Improved patient services (new nurse call system, video safety, food delivery, 78 new high tech beds, enhanced safety and infection control measures)
  - New \$15M Electronic Medical Records system
  - New construction: behavioral medicine unit & urgent care clinic
- Accredited by DNV GL for quality of care and patient safety

# SOPHISTICATED SERVICES

Improving residents' access to quality healthcare locally

## KEY SERVICES

### Emergency and Urgent Care

- Champion Urgent Care opened in December 2017
  - Open daily for convenient, non-emergent care
- ER is a Level III Trauma Center
  - Treats 32,000 patients annually
- **Quality path:** National Chest Pain, Stroke Urgent Care accreditation

### Wound Care

- Coordinated outpatient wound care services
- Two hyperbaric chambers for faster healing
- Physician-directed, personalized treatment plans
- **94% healing rate**



Champion Urgent Care Ribbon Cutting

# SOPHISTICATED SERVICES

Improving residents' access to quality healthcare locally

## Champion Orthopaedics

- Full-service care for surgery, sports medicine and osteoporosis treatment
- The Joint Center is a top joint replacement destination in New Mexico
- **Quality path:** National accreditation for excellence in hip and knee replacements

## Comprehensive Cardiology

- Continuum of lifesaving heart care
- Alamogordo Cardiology, **in partnership with Southwest Heart cardiologists**, offers preventive care, disease management and inpatient treatment
- 24/7 Cardiac Cath lab, **in collaboration with The Hospitals of Providence, El Paso**, makes early intervention heart care a reality for many patients
  - 1000<sup>th</sup> patient projected in January
- Remote EKG equipment for ambulances for faster diagnosis and treatment
- **Quality path:** Chest Pain and Cath Lab accreditations



# SOPHISTICATED SERVICES

Improving residents' access to quality healthcare locally



Guillermo Robles, DO, specializes in Obstetrics & Gynecology at White Sands Women's Healthcare

## Behavioral Medicine

- Expanded to 38-bed unit addressing a shortage of adult inpatient mental health treatment
- New extended outpatient unit opens this February

## Women and Babies

- White Sands Women's Healthcare offers comprehensive women's care at 2 convenient locations
- GCRMC focuses on providing optimal care for moms and nearly 600 babies
- Central fetal monitoring and a special care nursery for the expected and unexpected.
- **Quality path:** Initiated 3 year process for designation as a Baby-Friendly hospital



## SOPHISTICATED SERVICES

Improving residents' access to quality healthcare locally

### Champion Cancer Center

- Comparable to larger out-of-town facilities for more convenient and comfortable treatment locally
- Board-certified oncology and hematology physicians provide personalized therapy



### Rehabilitation Center of Alamogordo

- 12-bed inpatient rehab unit provides individualized recovery treatment
- **80% of patients return home after treatment**
- **Quality path: Accredited** by the International Commission on Accreditation of Rehabilitation Facilities (CARF) in 2018, endorsing the hospital's commitment to high standards

*Exceptional healthcare is closer than you think*

## OUR ECONOMIC IMPACT

GCRMC is part of the economic lifeblood of the community

Largest private employer in the area with **1,000+ employees** and...

- **\$63.7 million** total payroll (adding 40 jobs a year since 2013)
- **\$3.8 million** in payroll and other taxes
- **\$1.77 million** in rent to local property owners
- **\$2.17 million** paid in utilities
- **\$7.5 million** in charity and uncompensated care last year
- **\$100,000** spent with local and regional media for advertising

# **\$79 million to our community in FY 2017**

# WE SUPPORT THE COMMUNITY

Caring for the community extends beyond the walls of our facilities

- Employees have donated **\$1 million** to Thrive in Southern NM (& United Way) in the past 15 years
- 150 employees volunteer countless hours to local organizations each year
- **\$1.5 million** in corporate donations to local organizations helping children, families and seniors
- Home for the American Cancer Society Resource Center
- Community education and programming
  - Pre- and post-natal education
  - Physician-led health talks
  - Caregiver support groups
  - Quarterly blood drives
  - Meeting space for other support groups
- Foundation provides scholarships to local students



# WHEN YOU CHOOSE GCRMC

Exceptional healthcare is right here

When you choose Gerald Champion for your health care:



You receive **advanced**, high quality, **cost-effective health care** in your own community.

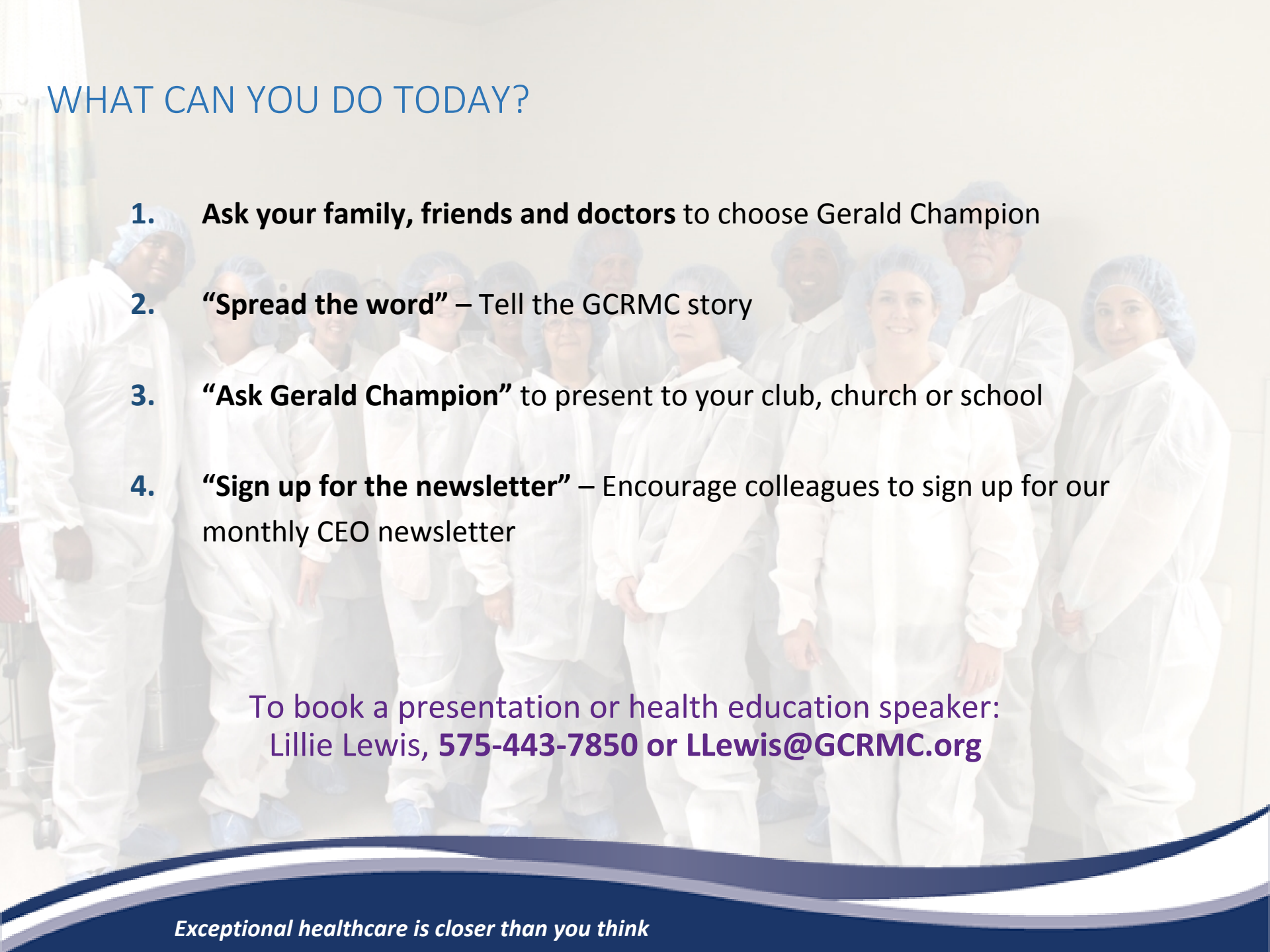
You can be confident we are **committed to caring for you** like family.



You **support the 1,000 employees** who live, work and give back to our community.

*Exceptional healthcare is closer than you think*

# WHAT CAN YOU DO TODAY?

- 
1. **Ask your family, friends and doctors** to choose Gerald Champion
  2. **“Spread the word”** – Tell the GCRMC story
  3. **“Ask Gerald Champion”** to present to your club, church or school
  4. **“Sign up for the newsletter”** – Encourage colleagues to sign up for our monthly CEO newsletter

To book a presentation or health education speaker:  
Lillie Lewis, **575-443-7850** or **LLewis@GCRMC.org**

# AGENDA REPORT

## CITY OF ALAMOGORDO

### CITY COMMISSION

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**Meeting Date:** 02/27/2018

**Report Date:** 02/20/2018

**Report No:** 2.

**Submitted By:** Shelbe Abbott

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**Subject:** Annual update on Main Street. (*Camdon Wilde, Director of Main Street*)

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**Fiscal Impact:**

Amount Budgeted:

Fund:

Additional Fiscal Impact:

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**Recommendation:** Presentation only.

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**Background:** Annual update on Main Street by Camdon Wilde.





# FEBRUARY 2018 ORGANIZATION UPDATE

Cam Wilde, Executive Director



CURRENT BOARD OF DIRECTORS ROSTER

PRESIDENT

Claudia Powell

Welcome Home Realty

VICE PRESIDENT

Keri Mack

Flickinger Films

SECRETARY

Laurie Anderson

OCEDC

TREASURER

Crystal Boylan

Welcome Home Realty

Josette Herrell

Tularosa Basin Historical Society

Pennie Espiritu

Le Spirit Design

Claudia Loya

Elite Memories

Amanda Angell

John D. Wheeler & Associates

Anthony Cowger

Rachel's

Ex-Officio

Pamela Lee

Ex-Officio

Terry Marquardt

# FEBRUARY 2018 WINTER CONFERENCE RESULTS



## 2017 FAÇADE SQUAD PROJECT — 10<sup>TH</sup> & NEW YORK

**\$5K → \$22.7K**

### GRANT

New Mexico Resiliency Alliance /  
The McCune Foundation

### Grant Match

Locally donated supplies  
Local services discounts  
Alamogordo MainStreet staff services  
New Mexico MainStreet services  
(market value)



# BEFORE



# AFTER













## ALAMOGORDO MAINSTREET 2017 EVENTS



## 2018 EVENT SCHEDULE

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**March 16**

Downtown Nites — St. Patricks

**April 20**

SHOP IT UP! Late Shopping

**May 12**

ATOMIC CITY COSPLAY

**June 15**

SHOP IT UP! Late Shopping

**July 7**

CRAZY DAYS Sidewalk Sale

**August 17**

Downtown Nites — Rockabilly

**September 16**

SHOP IT UP! Late Shopping

**October 19**

Downtown Nites — Dia de Muertos

**November 24**

Small Business Saturday

**December 1**

Olde Fashioned Christmas

## **2018 ORGANIZATIONAL INITIATIVES**

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- **BOARD DEVELOPMENT**
- **INDEPENDENT FAÇADE SQUAD PROGRAM**
- **MAXIMUM NUMBER OF NM MAINSTREET SERVICE REQUESTS**
- **MRA PLAN**
- **ECONOMIC VITALITY/CREATIVE ECONOMY ASSET**

## **2017 STATS**

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- **\$114,100 — BUILDING IMPROVEMENT PRIVATE INVESTMENTS**
- **1,100+ VOLUNTEER HOURS**
- **\$47,345 IN SERVICES FROM NM MAINSTREET**



## CHALLENGES

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- UNDER-UTILIZED/VACANT/BLIGHTED PROPERTIES
- DISTRICT BUSINESS RETENTION
- HISTORIC BUILDINGS SUFFERING DESTRUCTION BY NEGLIGENCE



QUESTIONS? How else can we help or inform?



# AGENDA REPORT

## CITY OF ALAMOGORDO

### CITY COMMISSION

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**Meeting Date:** 02/27/2018

**Report Date:** 02/23/2018

**Report No:** 3.

**Submitted By:** Rachel Hughs

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**Subject:** Approve the minutes for the February 13, 2018 Regular meeting. *(Rachel Hughs, City Clerk)*

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**Fiscal Impact:**

Amount Budgeted:

Fund:

Additional Fiscal Impact:

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**Recommendation:** Approve the minutes.

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**Background:** This is required by the Open Meetings Act.

**CITY OF ALAMOGORDO, NEW MEXICO  
CITY COMMISSION REGULAR MEETING MINUTES  
6:30 P.M., COMMISSION CHAMBERS  
February 13, 2018**

**RICHARD BOSS, MAYOR  
JASON BALDWIN, COMMISSIONER  
NADIA SIKES, COMMISSIONER  
JENNY TURNBULL, COMMISSIONER  
SUSAN PAYNE, COMMISSIONER**

**AL HERNANDEZ, MAYOR PRO-TEM  
MAGGIE PALUCH, CITY MANAGER  
PETRIA SCHREIBER, CITY ATTORNEY  
RACHEL HUGHS, CITY CLERK**

**CALL TO ORDER / ROLL CALL / INVOCATION / PLEDGE OF ALLEGIANCE**

Mayor Boss called the meeting to order at 6:29 p.m. Roll Call was taken by the City Clerk. City Clerk Hughs announced there was a quorum present. Invocation was given by Pastor Dr. Bob Reno and the Pledge of Allegiance was led by Mayor Pro-Tem Hernandez.

**APPROVAL OF AGENDA**

**Commissioner Turnbull moved to approve the agenda.**

**Mayor Pro-Tem Hernandez seconded the motion. Motion carried with a vote of 6-0-0.**

**PRESENTATIONS**

**1. Lt. Colonel Booth from the US Army Corps of Engineers to provide an update on the McKinley Channel Flood Control Project. *(Lt. Colonel Booth, US Army Corps of Engineers)***

Lt. Colonel Booth said he was here to give an update since the last update in September 2017. The project went back into a re-design or design update and he promised to come back since they have an updated cost estimate. He said the bottom line for his update is that they believe they have reduced the delta between the construction costs and the funds on hand. He said when he briefed the Commission before it was somewhere around \$10 million and now it is down to just a few million dollars at this point with a re-design on the project. He showed his agenda for the presentation and then gave a brief history of the project. He went over some of the cost challenges they've had. He described the course of action for the revised design and showed the status of this revised design. He said with the funds they have right now there is about 1000 feet that they will most likely not be able to construct or line with funds available and so what they have done is they are going to move forward with the contract with the base portion of the bid, which would be everything except for that 1000 feet. He said they would put two bid options into the contract that would allow them if they got good bids, to basically award that portion of the contract. However they've got pretty good cost estimates, they are pretty sure that mostly likely would not be awardable but it just depends when it goes out. He discussed what they will do, on the federal side, to try and compensate for the few million dollar shortfall. He said the next step down would be, if they were able to find federal funds on that few million dollars, the potential for make up of the cost share between the 75 percent federal and 25 percent non-federal and that would be required of the City. He said there is potential that they wouldn't be able to do the re-programming and there is potential they would not get additional federal funds and that would leave them with a few million dollars delta between the construction costs and what is available. He said at that point and time the City may need to make a decision on leaving that section unlined or completing that internal to the City. He thinks that they have a couple of good options ahead of that, but that does remain as a potential situation. He said they look to move forward with the design and they would advertise that in August of 2018 after they have completed the plan in July and they would expect an award around September. He said he has been talking in generalities in numbers, the reason being when he talks construction cost range is they do have an exact estimate at 60 percent design, however, that is what they call the Independent Government Estimate (IGE) and since this could potentially go out for

industry for bid, he has to talk in generalities on the numbers. He said his staff would talk with the City staff on the specifics, so that the right numbers are available for City consideration.

Mayor Boss said he still has a problem with the ratio. He said the cost of the construction has obviously gone up, but so has the cost of replacing a residence along that channel that was damaged or completely destroyed. He asked how they got so far apart with these ratios. Lt. Colonel Booth said he can take the question back to his staff to educate the Commission more on the specifics and they can get an official comment back to shows how that delta occurs. He said maybe it is the increasing value that they cannot take into estimate, but if you could imagine what the federal government did around 1995 is that they were no longer going to take increased infrastructure in an area into consideration if you are in a floodplain because if you think about it, someone could build or increase the value of the area by building infrastructure in a floodplain and thus justify a flood control project through increased infrastructure versus trying to protect it. However, he thinks his question is more of the actual value of the infrastructure that may have already been in place at that time frame. Mayor Boss said pretty much, it just seems that there is such a large disparity between the 2 and what it is now, the less than one. He said if you are only considering construction costs, there are probably additional houses that have been built there plus the price of residential dwellings has gone up. He said he can't get his head around the formula. Lt. Colonel Booth said he would not try and do that in this venue. He said he believes they have talked about giving the Commission that answer before, when he was here before. He apologized for not getting that answer and said this would be taken back to staff and they will maintain communication with staff and get an answer on it.

Mayor Boss said we are hearing that we are going to have a big infrastructure bill, at the federal level, and we are going to spend trillions of dollars. He asked if there is any way that type of funding would apply to this. Lt. Colonel Booth answered he can't guarantee that. He said they have seen drafts that indicate there are some opportunities out there for flood control projects to be completed under some of these funds, however, they are still draft. He said that maybe a potential other venue for funds and they will keep the staff informed over the next few months as that gets clarified.

Mayor Boss thanked Lt. Colonel Booth for the work they have done. He said it looks better than it did the last time Lt. Colonel Booth was here and he appreciates that.

## **PUBLIC COMMENT**

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### **Gene Downer commented on the following:**

Mr. Downer gave a pat on the back to April D. Jones. Ms. Jones works at the reception desk here at the City and she is efficient, friendly, and knowledgeable and always makes his tasks and requests easier. He also gave a pat on the back to Airport Manager Talbert for his idea of moving the historic jet into Alameda Park. He then talked about abandoned buildings and the need for the City to beef up efforts in abolishing and cleaning up properties.

## **CITY MANAGER'S REPORT**

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### **City Manager Paluch made the following remarks:**

1. She reminded everyone of the Plaque Dedication Ceremony for Officer Dominguez is on February 17, 2018 at 11:00 a.m. at the Fallen Officers Memorial. She said a possible quorum for Commissioners was posted.
2. She gave an update on re-painting of City Hall and the sign in front. The project will advertise on February 4, 2018 with bids due on March 8, 2018. She explained what is to be involved in the project.
3. She said there was a slight delay in the 2017 Street Maintenance Project, while awaiting some estimated quantity corrections from the consultant. The project advertised on February 11, 2018 and bids are due in late March.
4. She said the plans and specs for the Griggs Retention Basin are going through some minor updating. The Army Corps of Engineers has approved the design and will be sending the design documents to the EDA for their review and approval. She said they are still looking through some final



environmental and historical preservation clearances, due to the Federal funding aspects of this project the plan performance period is approximately 180 days with an estimate of \$1.8 million in project costs and the intention is to advertise in late April, early May of 2018, contingent upon approval from funding and regulatory agencies.

5. She said staff met on-site, two weeks ago, with the new consultant from UP for the North Scenic Extension project. She said no update on the Inter-Governmental Agreements. She said those are being prepared by UP. She said once those documents are signed by UP and the City, the consultant will complete the design and the project can be advertised for bidding. She said the best estimate is advertising in late summer 2018.

6. She said staff and representatives from OCEDC have been working hard on securing a large scale project for this community. She said the project is a call center that will bring in over 200 jobs into Alamogordo. The potential site is located within the White Sands Mall and the company is requesting \$1.2 million in local LEDA funding in exchange for guaranteeing 100 jobs at \$9 an hour and one Executive Level position at \$25 an hour. The Participation Agreement is currently with the Company for review. Once they review and hopefully approve, it will come back to the City and we should see a benefit of over 200 jobs in our community.

7. She said the Kids Kingdom project is being procured through the Cooperative Agreement (CES). She said Exerplay is the vendor the City is working with, and the project includes: two playground structures, two shade structures, swings, engineered wood mulch, two picnic shelters with grills and tables, perimeter wall seating and concrete flat work. The City is waiting on pricing on the perimeter wall seating and the concrete work. Once the pricing is received and verified the project can move forward with the execution of the agreement. She said staff is anticipating final pricing will be received this month. The project is tentatively scheduled to start in April 2018 with a tentative completion date of November 2018.

8. She showed pictures of Valentine treats for the Zoo animals. She said all of this to promote the City's animal enrichment.

9. She welcomed Mr. Dustin Johnson as the City's new Assistant City Attorney.

#### **REMARKS AND INQUIRIES BY THE CITY COMMISSION**

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##### **Commissioner Payne made the following comments:**

She said she has received tons of great compliments on the First Street realignment. She said they did a great job.

#### **CONSENT AGENDA**

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**2. Approve the minutes for the January 30, 2018 Regular meeting. (Rachel Hughs, City Clerk)**

**3. Approve the Investment Report for the quarter ending December 31, 2017, in accordance with the City of Alamogordo Investment Ordinance. (Julianne Hall, Finance Director)**

**4. Approve an application for participation in the FY2018 Community DWI Program. (Roger Schoolcraft, Acting Police Chief)**

**5. Approve the DFA Quarterly Report for the period ending December 31, 2017. (Julianne Hall, Finance Director)**

**6. Approve Resolution No. 2018-07 requesting written approval from the Local Government Division of the Department of Finance & Administration, State of New Mexico for the revised budget figures computed as of February 13, 2018. (Kathy Gilsdorf, Budget Analyst) (Roll Call Vote required)**

**Mayor Pro-Tem Hernandez moved to approve items 2,3,4,5,6 of the consent calendar.**

**Commissioner Baldwin seconded the motion.**

**Roll call vote was taken.**

**Motion carried with a vote of 6-0-0.**

**NEW BUSINESS**

**7. Consider, and act upon, award of Public Works Bid No. 2017-017 to Mesa Verde Enterprises, Inc., related to the Effluent Storage Pond P-13 Improvements Desert Lakes Golf Course, in an amount not to exceed \$253,129.48, including NMGR. (Bob Johnson, Engineering Manager)**

Engineering Manager Johnson explained what the work will consist of, for ponds one through three. He said the project was advertised on December 17, 2017 and bids were open January 18, 2018 at 2:00 p.m. He said three responsive bids were received by Mesa Verde Enterprises, Las Luz Dirt and Paving, and Advance Environmental Solutions. He said the first two bidders are local. He said the attached bid tabulation pretty much spells how these bids came out.

**Mayor Pro-Tem Hernandez moved to approve.**

**Commissioner Turnbull seconded the motion.**

**Motion carried with a vote of 5-0-1. Commissioner Baldwin abstained.**

**8. Consider, and act upon, Change Order No. 5, Public Works Bid No. 2017-001, to Smithco Construction, Inc. related to the 1-MGD Brackish Water Treatment Facility project, in an amount not to exceed \$12,039.20, including NMGR. (Bob Johnson, Engineering Manager)**

Engineering Manager Johnson said this change order consists of two items only, trenching and four inch communication conduit installation based on some Century Link requirements while increasing the material testing allowance by \$5,000. He explained the reasons for the change order.

Mayor Pro-Tem Hernandez asked Engineering Manager Johnson where they are at as far as the percentage of completion on this project. He answered approximately 58 percent complete. Mayor Pro-Tem Hernandez said he was a little concerned, not with this change order itself, but where they are at with the contract and the budgeted amount. Engineering Manager Johnson stated, as am I. Mayor Boss asked Engineering Manager Johnson how much reserve they still have. He answered excluding the item before you; they have approximately \$172,000 left in contingency. He added that assuming the Commission approves this item tonight there will be just under \$160,000 left in contingency. He said at 58 percent completion we have used 65 percent of the contingency. He said on the lighter side, he can with reasonable certainty say that two of the largest items between change orders 2 and 4, they had two \$100,000 cost increases for increasing the quantity of solid waste removal, at this stage this constitutes the bulk of chewing into the contingency. The rest of the items are 5 figures or less. At this stage the raw water line, the finished water line, a lot of the utilities extending out to the evaporation pond have been completed. He said the last change order that he brought before the Commission in December involved trenching for primary power, which was a much longer run than the item before you tonight. We encountered no buried solid waste. The item before you is one of the last remaining deep trenches, it is approximately 200ish feet. We don't anticipate it but we have the second \$100,000 add-on for the buried solid waste contingency, there is about \$46,000 of that which has not been used. Staff is fairly confident that between 30,000 and 35,000 of that \$45,000 is remaining, will be remaining to go back into the contingency when it is all said and done. We have this small trenching effort that's not only deep; the rest of the trenching is fairly shallow. We have a couple of manholes to put in and a few light posts. We are hopeful that we will have \$30,000 to \$35,000 of that contingency coming back into our side.

Mayor Boss said for a project of this size, that is probably not that unusual to have that much. He said that is why we have that contingency obviously. Mayor Pro-Tem Hernandez said well it isn't but because of the unforeseen in this area, that is where a lot of this is coming from. Mayor Boss said what I am hearing is that we are pretty much through the unforeseen. Engineering Manager Johnson said that is correct and you have to remember that this project is on a site that is about 18 acres in size. He said it is the first and only of its kind for this State.

Mayor Pro-Tem Hernandez asked if Engineering Manager Johnson foresees anything else, or if they have identified anything else that he may be bringing to the Commission that could put this over. He answered they have one in the distant background, but it will involve a City requested change and an exterior paint color, but it is less than \$5,000. He said that is the only known item we have at this time.

**Mayor Pro-Tem Hernandez moved to approve.  
Commissioner Sikes seconded the motion.  
Motion carried with a vote of 6-0-0.**

**9. Consider, and act upon, GRIP (Gross Receipts Investment Program) application by Solid Cap Properties for the construction of Hobby Lobby. (*Petria Schreiber, City Attorney*)**

City Attorney Schreiber turned it over to Paralegal Williams.

Paralegal Williams said you will notice in the packet that there are two applications. She said we discovered recently that this application had been submitted in April and then was returned to him and we are not sure why, so we asked him to update his numbers and send it to the City again. She said this is for the construction of Hobby Lobby. She said he anticipates that the building will cost \$3.5 million, but we are not certain how much of that he is going to be able to get back at this point based upon the fact that the contractor who is building is from Utah and if they don't pay gross receipts tax then he does not get any of that back. She said we will have to determine that, so it will be, if they pay gross receipts tax, somewhere in the neighborhood of \$68,000 that will be returned. She said if he only gets the return on the portion that National Construction did, which was the foundation and the paving, somewhere in the neighborhood of \$16,000 to \$20,000. She said anticipated jobs are excellent and they are anticipating their gross receipts tax somewhere in the neighborhood of \$5 million a year. She said at this point we are just asking for the Commission's approval of this application, and then we will move forward in determining what the outcome is going to be.

**Mayor Pro-Tem Hernandez moved to approve.  
Commissioner Baldwin seconded the motion.  
Motion carried with a vote of 6-0-0.**

**10. Consider, and act upon, Resolution 2018-08 to approve the Rules of Conduct for City Commission Meetings. (*Petria Schreiber, City Attorney*) (Roll Call Vote Required)**

City Attorney Schreiber said this is what exactly what they talked about at the last meeting when they presented this. She said there was some discussion at that meeting about including contact information for the Commissioners or the website. She said ultimately when she sat down with the City Manager and Assistant City Manager they did decide to leave that out because the purpose of this document is only to inform someone of how these meetings are run and what is expected of both, the Commission and the public, as well as any speakers. She said in order to find this document, you would already have to be on our website or you would have to be standing in City Hall and asking for it, so they thought that might be a little redundant, but that is something they could work on. She said these are the rules that they talked about last time; nothing has been changed in the document.

Mayor Boss said he had a comment on rule 14, under public comment item D time limits, "Except on Written Communication, members of the public may be required to limit their remarks to a period of time specified by the Presiding Officer prior to opening discussion." He said the three minutes that we have now, the Commission agreed to it, everyone sitting up here right now, correct. The Commission acknowledged their agreement. Mayor Boss said he does not see why the presiding officer should have that, why can't the commission decide by vote how much time they give a speaker. Mayor Pro-Tem Hernandez said it is done by the Commission, but the Mayor is just their representative. Mayor Boss said that is how he has always seen it, but it seems like it is misinterpreted and he is the one that is enforcing the three minute limitation. Mayor Pro-Tem Hernandez said he is the presiding officer and he is the one that is going to put it out there for the Commission. Mayor Boss asked if anyone feels that he is enforcing the three minute rule and if anyone would like to change that.

Commissioner Payne said she has looked around at other Cities do and 3 minutes is pretty standard. She thinks that the Commission is right in line with what other municipalities are doing.

**Paul Sanchez commented on the following:**

Mr. Sanchez referred to item 6 in the rules. He read the item and said this is not the order of business that we currently have and has not been for probably over a year now. He said he would simply submit that if we take a good read at it, the Commission might want to re-order that. He was concerned with striking the words "continue if needed" from the public comment section, simply because there are times that the public would like to comment after issues has been done. He said there are times that Mr. Espiritu has waited around to speak, and because of your graciousness you did allow him to speak, but it had been after public comment had been removed. As you can see from your current agenda it is not at the end of the meeting.

Mayor Boss asked City Attorney Schreiber for comments. She said this is completely for the Commission how they would like to run the meetings, so this vote would be whatever the Commission would like it to be. Mayor Boss asked if there was a problem with the way the Commission has been presenting up to this time. City Attorney Schreiber said she does not find any problems with the way they are conducting meetings at this point.

Commissioner Baldwin said he was going to make a motion to approve it, but a very valid point there. He made a motion to approve with the change that the rule number 6 reflects the current order of their agenda. He read "the order of business will be approved at each organizational meeting of the City Commission." He said which means prior to approving the agenda they can make any changes or moves or add public comment. He said they can move anything around, so this is not the way it has to be done at every single meeting. He said that is how he reads that.

**Commissioner Baldwin moved to approve with amendments.**

**Mayor Pro-Tem Hernandez seconded the motion.**

**Roll call vote was taken.**

**Motion carried with a vote of 6-0-0.**

**11. Consider, and act upon, first publication of Ordinance No.1562. An ordinance amending City of Alamogordo Code of Ordinance Appendix B, Employee Manual Section 5-6. Recreational Facilities Benefit and Section 7-1. Drug-Free and Alcohol-Free Workplace. (Katie Josselyn, HR Director) (Roll Call Vote Required)**

HR Director Josselyn presented two changes to the employee manual. She said the first change is related to a MOU (Memorandum of Understanding), providing documentation and clarification to an employee and retiree discounts that the City entered into with G&L Golf on January 17, 2018. She said the following amendments were made to their recreational facility benefits section of the employee manual. The annual membership for a golf membership at the golf course was clarified at 25 percent off, and one day golfing at the junior rate was also clarified and we indicated that that particular discount is not available to retirees. She said the 15 percent off of an entree at the 19<sup>th</sup> Hole was clarified that a City ID card was required and it is only for Monday through Friday during lunch, and this is also not available to retirees. She said they also added a disclaimer to the bottom of that section that says discounts are subject to change without prior notice and to contact Human Resources for the most current list of discounts. She said the second change is required because the Department of Transportation made amendments to the drug testing regulations, effective January 1, 2018. She learned of this change amidst of changing the full body of the employee manual which was approved in January. She said they need to get those changes made to the drug testing section of the policy. She thinks that policy was very old, so they updated some sections with the more current things that are going on in the drug scene. She said the opiates category that was used throughout the drug testing policy was changed to opioids to include hydrocodone and oxycodone drugs. She said there was also a change to the method of how the tests are handled. She said that was not in our manual, so that did not require a change to our manual, but that change will be handled by our drug testing contractor.

Commissioner Sikes commented that she and Mayor Boss have had the opportunity to sit on the prescription drug, opioid, prevention Committee. She said every time they go to these meetings they

learn really interesting information. She said currently, the new drug of choice is gabapentin, and rather than have to update this in the future, should we look into possibly updating this now. She said it is a drug that according to the powers that be within our Committee are saying it is being abused. HR Director Josselyn said the language within our policy is dictated by the DOT regulations. Commissioner Sikes said then when they make a change then we would then make our change.

Mayor Pro-Tem Hernandez asked if these tests are for levels, not for non-use of those drugs. He said for instance, Doctor's would drug test for levels. He said they used to do 30 day prescriptions on these, and then they went to 15 day prescription. He said most physicians now will only give you a three day prescription and if you still need it after that then you go back. He said what they actually do is a level test, and if your levels are above what a three day prescription would normally be then they won't give it to you. HR Director Josselyn said she is not sure, there are cut off levels in the DOT regulations. She said they have actual nanogram measurements, but she is not sure how that equates to the number of days, but there are cut-off levels. Mayor-Pro-Tem Hernandez said although the drugs are as bad as they are, they are still needed by some people and as long as they are within the levels, if there is levels.

City Attorney Schreiber said they do not check the level to make sure that it is not higher than that three day prescription. She said what HR Director Josselyn is talking about is that we have cut-off levels so that it does not alert to a false positive. She said those are minimum levels, that are a very common drug testing practice, but we do not get involved with the employee and say you have a three day prescription or a ten day prescription, how much have you actually taken. She said a lot of this is about is the drug present in the system and if it is, then is there a valid prescription. She said some drugs, like illegal narcotics will never have a valid prescription. Mayor Pro-Tem Hernandez said he wanted to make sure that we were not cutting them out because some people still need them. HR Director Josselyn said part of that drug testing process, if they have a test result that is non-negative, then they will send it to a Medical Review Officer and this Officer calls the employee and talks through with them why that test might be positive and they talk about prescriptions and that kind of things. She said if they are able to reconcile that to a prescription then the Medical Review Officer comes back with a negative result, so those things are considered in the process.

Mayor Pro-Tem Hernandez asked if they were based on the Federal Regulations. HR Director Josselyn answered correct.

Mayor Boss said it wasn't people that were abusing drugs like the kids and "druggies" out there that were dying. He said it was the older people because they were overdosing because two or three Doctor's were giving the same pill and they were taking too many. and it is amazing how quickly that the reaction has been to like you said they are only giving three pills now instead of here you have a bottle and another doctor give them another bottle and it has brought the rate down. It is actually working very well. Mayor Pro-Tem Hernandez said now they are actually selling them. Mayor Boss asked if the older people are selling the drugs that they have stocked up. Mayor Pro-Tem Hernandez said no, they are actually going and getting them and selling them because they can get up to \$50 a pill on them, sometimes even more if someone is really desperate.

**Mayor Pro-Tem Hernandez moved to approve.**

**Commissioner Payne seconded the motion.**

**Roll call vote was taken.**

**Motion carried with a vote of 6-0-0.**

## **12. Appointments to Boards and Committees. (*Richard Boss, Mayor*)**

Mayor Boss did not appoint anyone.

## **13. Adjourn into Executive Session in compliance with Section 10-15-1(H), NMSA 1978 (as amended), to discuss Threatened or Pending Litigation; specifically a case update on all cases being handled by the Self Insurers Fund and ongoing Personnel Matters. (Roll Call Required)**



**Commissioner Turnbull moved to adjourn at 7:29 p.m.**  
**Mayor Pro-Tem Hernandez seconded the motion.**  
**Motion carried with a vote of 6-0-0.**

ADJOURNMENT

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*Mayor Richard Boss*

*ATTEST:*

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*City Clerk Rachel Hughs*

(Prepared by Eric Barraza, Deputy Clerk)  
Approved at the Regular Meeting held on February 27, 2018.

# AGENDA REPORT

## CITY OF ALAMOGORDO

### CITY COMMISSION

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**Meeting Date:** 02/27/2018

**Report Date:** 02/22/2018

**Report No:** 4.

**Submitted By:** Shelbe Abbott

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**Subject:** Consider, and act upon, first publication of Ordinance No. 1559 amending sections 29-01-100 and 29-01-110, Chapter 29 of the CODE pertaining to White Sands Beautification District. (*City Planner, Darron Williams*) **(Roll Call Vote Required)**

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**Fiscal Impact:**

Amount Budgeted:

Fund:

Additional Fiscal Impact:

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**Recommendation:**

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**Background:** Corrections made to Ordinance No. 1532.

**ORDINANCE NO. 1559****AMENDING SECTIONS 29-01-100 AND 29-01-110, CHAPTER 29 OF THE  
CODE PERTAINING TO WHITE SANDS BEAUTIFICATION DISTRICT**

**BE IT THEREFORE ORDAINED** by the City Commission of the City of Alamogordo, New Mexico that sections 29-01-100 and 29-01-110, Chapter 29, of the *Code of Ordinances* be amended to read as follows:

**CHAPTER 29 - ZONING****ARTICLE 29-01 - WHITE SANDS BEAUTIFICATION DISTRICT****SECTION ONE:****29-01-100. White Sands Beautification District**

- (a) *Zoning District Map Amendment.* The official City of Alamogordo Zoning District Map is amended by the addition of the White Sands Corridor Overlay District ("White Sands District") classification to the properties in the vicinity to the White Sands Boulevard. The extent and limits of the White Sands corridor overlay district are generally depicted in the White Sands corridor maps appended to this ordinance. In the event of a discrepancy between the White Sands corridor map and the official Zoning District Map, the latter shall control. When the requirements of the White Sands Corridor Overlay District are in conflict with those of the underlying district, the more restrictive limitation or requirement controls. The underlying zoning district classification of properties within the White Sands Corridor Overlay District is unchanged by this map amendment.
- (b) *General Provisions.* The purposes of the White Sands District are:
- (1) The beautification of the White Sands District through a citizen-based, volunteer, grassroots effort; and
  - (2) The establishment of a Master Plan to guide the City's efforts towards beautification, anti-blight and economic development of the White Sands District; and
  - (3) The development of regulations for the White Sands District consistent with the Master Plan;
  - (4) The identification and utilization of available funding, donations and grants for the beautification of the White Sands District consistent with the approved Master Plan and regulations enacted pursuant to it; and
  - (5) The review, approval and/or denial of improvement projects within the White Sands District consistent with the Master Plan and regulations enacted pursuant to it; and

- (6) The review, approval and/or denial of all applications for new construction, exterior alteration and change of use in the White Sands District consistent with the Master Plan and regulations enacted pursuant to the master plan.
- (c) *Minimum Maintenance Requirements.* All buildings and structures in the White Sands Corridor Overlay District shall be preserved against decay and deterioration and free from certain structural defects in the following manner, by the owner thereof or such other person or persons who may have the legal custody and control thereof. The owner or other person having legal custody and control thereof shall repair such building or structure if it is found to have any of the defects identified in the approved Master Plan and regulations enacted pursuant to it requiring such repair.
- (d) *Compliance with general and specific design standards required.* All development located within the White Sands District shall comply with all applicable general development standards consistent with the approved Master Plan and regulations enacted pursuant to it.
- (e) *General design standards for the White Sands corridor overlay district.* In any review of proposed additions or alterations to structures located in the White Sands Corridor Overlay District, the standards of the approved Master Plan and regulations enacted pursuant to it shall be complied with. Such standards shall include, but not limited to the following:
- (1) Architectural Style, including:
    - a. Materials; and
    - b. Color; and
    - c. Roof form, slope and shape.
  - (2) Streetscape standards.
  - (3) Signs; murals.
  - (4) Walk areas.
  - (5) Size, mass and shape.
  - (6) Walls and fences.
  - (7) Remodeling and alteration.

Persons requesting approval of any application for the construction, or remodeling or alteration of nonconforming structures located in the White Sands District shall not be required to bring the total structure into conformance with the standards for the White Sands District. However, the portion of the building that is remodeled or altered shall conform to those standards. "Related to and compatible with" means existing together with unity and coherence.

## SECTION TWO:

**29-01-110. White Sands Beautification Committee**

- (a) *Designation.* There is hereby created a White Sands Boulevard review board, which shall be referred to as the "White Sands Beautification Committee," which will be responsible for reviewing and approving improvement projects within the White Sands District that require demolition, building, and sign permits, and that make modifications to the exterior appearance of buildings, signing ~~signage~~, landscaping and parking. In order to insure compliance with the design standards and guidelines adopted for the White Sands District.
- (b) *Delegation.* The governing body and the planning commission hereby delegate their authority to the White Sands Beautification Committee as described in this section, except those powers retained by the governing body and the planning commission in the Alamogordo Municipal Code.
- (c) *Powers and Duties.* The White Sands Beautification Committee, will meet on a regular basis as directed by the chair, but in no event will meetings be conducted less frequently than quarterly, unless there are no agenda items, and at such other times as the chair may determine, shall have the powers and duties specified in this section:
- (1) To study and investigate the White Sands corridor, for the purpose of the formulation of a master plan, and shall make such surveys as it deems necessary for the formulation of such a master plan for the city; and in this connection the White Sands Beautification Committee shall have power and authority to hold public hearings for the formulation of such master plan;
  - (2) Propose amendments to regulations governing the White Sands District;
  - (3) Review current ordinances applicable to master plan and Intent of white sands beautification committee and recommend additions, changes, or deletions, in part or whole, with the goal to streamline regulatory guidance and improve process efficiency;
  - (4) Advise and assist officials, committees and commissions of the municipal government in making recommendations to the governing body relating to the White Sands Corridor;
  - (5) Perform other acts as requested by the governing body; provided that such acts relate specifically to this section;
  - (6) Apply for, accept, administer and comply with the requirements regarding an appropriation of funds or a gift, grant or donation of property or money;
  - (7) Develop funding programs for the improvement of the exterior appearance of properties in the district through grants or loans;



(8) Fund the rehabilitation of properties in the district, but only as may be specifically approved by the City Commission in a plan and budget; and

(9) Undertake improvements designed to increase the safety or attractiveness of the district to businesses which may wish to locate there or to visitors to the district, including, but not limited to, litter cleanup and control, and landscaping.

(d) *Membership and Appointment*

(1) *Composition and Membership.* The White Sands Beautification Committee shall consist of

(a) Six members appointed by the city commissioners with each commissioner appointing one (1) member;

(b) A committee chair appointed by the city's mayor; and

(c) The chair of the city's planning and zoning commission.

(2) *Term.* The six (6) members appointed by the city commissioners shall serve two-year overlapping terms with three (3) members serving a two (2) year term and three (3) members serving a three (3) year term. The chairperson of the Planning and Zoning Commission shall serve during the period he or she occupies the position of chair of the Planning and Zoning Commission as an ex-officio, or non-voting, member. Members shall serve until their successors have been appointed and qualified. These terms are for initial implementation; thereafter, each of the six (6) members shall serve a two (2) year term. The committee chair shall serve a three (3) year term. Members and the committee chair may be reappointed.

(e) *Adoption of Bylaws.* The Committee may adopt its own bylaws.

(f) *Ad Hoc Subcommittees*

(1) *Delegation.* The Committee may delegate its authority to ad hoc subcommittees as specifically provided in this article, except for those powers retained by the governing body, the planning commission and the committee.

(2) *Powers and Duties.* Ad hoc subcommittees shall gather information for, make recommendations to, and otherwise assist the White Sands Beautification Committee in accomplishing its powers and duties, as the Committee deems appropriate.

(g) *Staff Support.* The objective and thrust of the Beautification Committee is to function as a citizen-based, grassroots effort that is independent of regular staff involvement. However, at the request of the chair, the Planning and Zoning Department will have primary and lead responsibility for coordinating with the chair of the

beautification committee on an as-needed basis. Staff support can also be accessed by the chair through contacts with the City Manager.

**PASSED, APPROVED, and ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2018.

CITY OF ALAMOGORDO, NEW MEXICO  
a New Mexico municipal corporation

By: \_\_\_\_\_  
Richard A. Boss, Mayor

ATTEST:

\_\_\_\_\_  
Rachel Hughs, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Petria Schreiber, City Attorney

# AGENDA REPORT

## CITY OF ALAMOGORDO

### CITY COMMISSION

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**Meeting Date:** 02/27/2018

**Report Date:** 02/22/2018

**Report No:** 5.

**Submitted By:** Kitty Williams

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**Subject:** Consider, and act upon, first publication of Ordinance 1564 approving a Local Economic Development Project for secured financial assistance proposed by Thomas L. Cardella & Associates, Inc. (*Petria Schreiber, City Attorney*) **(Roll Call Vote Required)**

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**Fiscal Impact:** \$1,200,000

Amount Budgeted: \$0.00

Fund: 105-0407-450.57-28 Incentives (Fund 105 Economic Development)

Additional Fiscal Impact:

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**Recommendation:** Approve for first publication.

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**Background:** Consider and act upon first publication of Ordinance 1564 approving a Local Economic Development Project for secured financial assistance proposed by Thomas L. Cardella & Associates, Inc.



# LEDA

## PROJECT APPLICATION

*The purpose of the Plan is to identify the project area and to present the plan and the uses to which the proceeds of the LEDA funds will be put if issued. This Plan is presented to demonstrate to the City of Alamogordo (COA), what the public benefits of this project are and to help the Otero County Economic Development Council (OCEDC) and the COA evaluate its merit in comparison to other projects submitted. The applicant and its agent will endeavor to provide the OCEDC/COA any additional information reasonably requested.*

### **APPLICANT INFORMATION**

|                                      |                                        |                                                   |                              |
|--------------------------------------|----------------------------------------|---------------------------------------------------|------------------------------|
| Legal Name                           | Thomas L. Cardella & Associates, Inc.  |                                                   |                              |
| Trade Name (dba)                     | TLC & Associates                       |                                                   |                              |
| Project Name if different from above | Project Score                          |                                                   |                              |
| Address                              | 4515 20 <sup>th</sup> Ave Suite B      |                                                   |                              |
| City, State, Zip                     | Cedar Rapids, IA 52404                 |                                                   |                              |
| Phone                                | 319-730-4000                           |                                                   |                              |
| Fax                                  | 319-730-4100                           |                                                   |                              |
| Primary Contact Person               | Thomas Cardella                        |                                                   |                              |
| Federal Tax ID #                     | 20-8457872                             |                                                   |                              |
| NM State Tax and Rev. #              | 03-392789-00-8                         |                                                   |                              |
| City/County Business License #       | Applying for                           |                                                   |                              |
| NAICS Code(s)                        | 561422                                 |                                                   |                              |
| This business is organized as a:     | <input type="checkbox"/> C-Corporation | <input checked="" type="checkbox"/> S-Corporation | <input type="checkbox"/> LLC |
|                                      | <input type="checkbox"/> Partnership   | <input type="checkbox"/> Proprietorship           |                              |

Please attach copies of (where applicable):

☒ Incorporation Papers: State of Iowa, Business #341581, effective 2/16/07, code 490 Domestic Profit

☒ By-laws. Privately held company.

☒ Resumes of all principals (owners, partners, directors or officers) Thomas L. Cardella, principal and owner founded TLC & Associates in 2007. Thomas L. Cardella & Associates is one of the largest call companies in the United States, and is 100% employee owned. TLC&A is ranked 12th largest call center company on a global basis. TLC ranked #285 on the



2011 INC 500 list. Former Chairman and CEO of Precision Response Corporation, serving 2003-2005 in Plantation, Florida. Thomas reported directly to Barry Diller, Chairman of Interactive Corp. Tasked with orchestrating a turn-around for P.R.C., Thomas took P.R.C. from losing \$60 mil a year in 2003, to a 14.7% ebitda in 2004. This was accomplished by focusing on client satisfaction, exceeding K.P.I.s., and increasing client R.O.I. President and Founder of Access Direct from 1994-2003. Access Direct founded in 1995 grew to be ranked #8 on Inc Magazines list of fastest growing companies in the year 2000. Comprised of eleven call centers and 2100 employees, Access Direct was sold to IAC/Interactive Corporation (Expedia, Ticketmaster, Home Shopping Network, Match.com, Lending Tree, etc) in the year 2000. Education: University of Iowa - Henry B. Tippie College of Business, Executive Master of Business Administration 1992-1995

### **A) Project Information:**

#### **A1. Description of Proposed Development, its product and its timeline.**

Renovate former Sears location and adjacent spaces at the White Sands Mall to provide for a 15,000 sq. ft. call center which will employ 210 – 240 people, depending on final floor schematic, with is determined by utility lines, and a drop off between two of the adjacent spaces.

#### **A2. Provide a detailed scope of work that is specific to the funding request/award and what the funds will be used for.**

Funds will be utilized for electrical and telephony infrastructure, information technology infrastructure, and needed furniture and fixtures.

#### **A3. Business Plan or detailed information such as:**

- **Executive Summary; Business description and history**

TLC Associates is a 100% employee-owned company, offering a unique combination of experience and expertise in the ability to manage a variety of inbound, outbound, email and web chat programs. TLC & Associates delivers high quality service on behalf of the leading banking and insurance brands. TLC Associates' team maximizes your profitability in lead generation, policy sales, collections and cancellations, account management, credit protection, loyalty programs, loan servicing, pre-qualification, card activation and general customer service. TLC Associates' teams are licensed in all 50 states, are fully PCI compliant and provide a highly secure environment, as proven by our SSAE 16 certification.

- **Construction Schedule**

- **Target Close Date** This is a 5-year lease, beginning June 1<sup>st</sup>, 2018 with 2 additional 5-year options for

renewal. Lease contingent upon receiving COA LEDA funding.

- General Contract Signed upon LEDA approval.
- Construction Start upon LEDA approval.
- Construction End May 2018
- New Facility Operational Date    projected opening  
June 2018

## **B) Financial Information**

B1. Financial statements with independent audits, if available, or Tax returns, for the past three years. Company is an S Corporation and all financial documents are not available for public review. However, Tom Cardella did provide three year company financials and projections in a closed door meeting with the committee members at 11:00 a.m., on January 23<sup>rd</sup>, 2018, and NMSU Alamogordo campus.

B2. City/County business license number/proof or statement that registration will pursued or secured. Currently applying for.

B4. Does the amount requested reasonably represent the money needed to complete the project? Yes.

B4. If a gap exists, please define/explain options being pursued or solution to fund that gap. TLC Associates will fund any gaps, but LEDA funds discussed will be more than adequate.

B5. Provide schedule of funding commitments and any term/commitment letters.

B6. What is the equity investment from the applicant?

B7. What is the collateral/security to be pledged to the funds awarded? TLC Associates will secure a performance bound equal to the LEDA amount of funding.

| Funding Type | Source | Amount |
|--------------|--------|--------|
|--------------|--------|--------|

|                                                          |            |                 |
|----------------------------------------------------------|------------|-----------------|
| Equity Investment                                        |            |                 |
| City funding                                             | LEDA Funds | \$1,200,000.00  |
| Bank Loans                                               |            |                 |
| Cash down and % it represents of the total project costs |            |                 |
| Other Loans                                              |            |                 |
| Other Sources                                            |            |                 |
|                                                          | TOTAL      | \$ 1,200,000.00 |

### **C) History and Background**

C1. Explain the commitment to build, operate, and/or manage the project? TLC will sign lease and hire approximately 100 employees.

C2. Any officers ever filed for bankruptcy? No

C3. List Current officers and directors. Thomas L. Cardella is the Company President and Founder.

C4. Applicant or any of its officers ever defaulted on any loans or financial obligation? No.

C5. Does the applicant have any loans or other financial obligations on which payments are not current? No.

### **D) Community Aspects**

D1. At the community level, what are the infrastructure needs, not yet in place or in process that will affect this project's application?

D2. What specific incentives are being REQUESTED from the COA (e.g. Local Economic Development Funds (LEDA) parcel of land, building lease, waiver of fees, utility access/extension)?

Specifically needed are COA LEDA funds will be utilized for electrical and telephony infrastructure, information technology infrastructure, and needed furniture and fixtures. If not provided, the project will terminate.

---

### **E) Job Creation/Performance**

E1. Outline the number and types of jobs to be created.

Front line employees base wage of \$9.85 to \$10.05 per hour, plus benefits and bonuses, based upon program.

Supervisors, Administrative, Quality Assurance, Trainers approximate starting wage of \$25,000 annually, with benefits. Some may be higher depending on experience. About 22-28 projected.

Program Managers 2-3 positions, wages \$35-40,000 annually with benefits  
20-8457872

Site Director \$60-80,000 depending on experience with benefits

E2. Outline the proposed pay scale and payroll proposed by the entity

See above, E1. Annual payroll expected to exceed \$4-5 million annually, not including program bonuses for sales type programs.

E3. Outline the benefits offered to the employees, including but not limited to health care and retirement?

PTO, Medical, Dental, Health Savings Plan, and other benefits

E4. Outline any efforts being made or proposed by the applicant to employment opportunities to people within the local employment pool

Company will use local resources, i.e., NM Department of Workforce Solutions, iTsQuest Staffing, job fairs (with the assistance of OCEDC).

|                                                                                                 |                        |
|-------------------------------------------------------------------------------------------------|------------------------|
| <b><i>All job positions are expected to be local hires (L). (Trained by existing staff)</i></b> | Number of Jobs Created |
|-------------------------------------------------------------------------------------------------|------------------------|

| Job Title or Type         | Estimated Pay Scale | At Start-up       | Beginning of Year 1 | Beginning of Year 3 |
|---------------------------|---------------------|-------------------|---------------------|---------------------|
| Site Director             | \$60-80k DOE        | \$60-80k DOE      | 1                   | 1                   |
| Program Managers          | \$35-40k DOE        | \$35-40k DOE      | 1                   | 3                   |
| Supervisors, QA, Trainers | \$25k + DOE         | \$25k + DOE       | 12 - 15             | 22 - 28             |
| Customer Representatives  |                     | \$9.85 hr + bonus | 100                 | 240                 |
|                           |                     |                   |                     |                     |
|                           |                     |                   |                     |                     |
|                           |                     |                   |                     |                     |
|                           |                     |                   |                     |                     |
| Total No. of Jobs Created |                     |                   | 100                 | 240                 |
|                           |                     |                   |                     |                     |

Please indicate in the above chart which jobs will be:

- Fill locally (L)

**F) Impacts (environmental, fiscal, economic, etc.)**

F1. Outline any impacts to the environment, positively or negatively

None

F2. Status of permitting/regulatory matters needed for project

None

*Any supplemental documents that are submitted to support the application are to be included with this application and noted as "exhibit 1, 2" etc.*



*A review of the application and its contents will be completed by OCEDC and COA; applicant will be advised of any missing or supplemental information needed.*

## **OTERO COUNTY ECONOMIC DEVELOPMENT COUNCIL AUTHORIZATION FOR EXAMINATION AND RELEASE OF INFORMATION**

\_\_\_COMPANY\_\_\_. hereby grants permission to the Otero County Economic Development Council and the City of Alamogordo to conduct a review, full disclosure, and release of any and all information authorized pursuant to federal and state law. The purpose for obtaining and examining the information is to construct a record of the company's personal and professional history to ensure it meet the requirements the Otero County Economic Development Council has established for recipients of LEDA funds. The company understand the investigation will be conducted as required by the Otero County Economic Development Council, the City of Alamogordo, New Mexico Economic Development Department, the New Mexico Department of Public Safety, or their contractors, and the results of the investigation will only be supplied to the Otero County Economic Development Council.

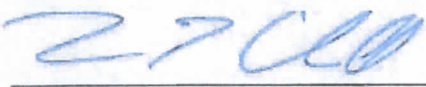
\_\_\_COMPANY\_\_\_. hereby grants the Otero County Economic Development Council permission to obtain any information in its background pertaining to any credit (to include obtaining a copy of my credit report), education, investigation, arrest and/or conviction of it or its principals in any criminal or civil matter. The company also authorizes an employee of the Otero County Economic Development Council, as its authorized representative, to obtain from the New Mexico Taxation and Revenue Department and/or the Department of Workforce Solutions any tax information that is in any way related to a company \_\_\_COMPANY\_\_\_. owns or has invested in. \_\_\_COMPANY\_\_\_. hereby directs you to release such information upon the request of this bearer. \_\_\_COMPANY\_\_\_. hereby releases you as custodian of such records for any criminal justice, law enforcement or court agency, including its officers and employees, or related personnel, both individually and collectively, from any and all liability for damages of whatever kind, that may at any time result to the Otero County Economic Development Council, City of Alamogordo, or the State of New Mexico because of compliance with this authorization and request to release information; or any attempt to comply with it.

1. The information reviewed, disclosed, and/or released may be used by the Otero County Economic Development Council for any lawful purpose and/or to determine the company's suitability to receive funds from the City of Alamogordo and/or the State of New Mexico.
2. \_\_\_COMPANY\_\_\_. hereby releases the providers and users of the information collected pursuant to this authorization from any liability under state or federal privacy laws and further release the Otero County Economic Development Council, the City of Alamogordo, New Mexico Economic Development Department, the New Mexico Department of Public Safety, its contractors, agents, and/or employees from any liability which may be incurred as a result of the collection and use of information.

3. COMPANY understands that it may revoke this authorization in writing at any time.

*\* PLEASE INCLUDE A PHOTO COPY OF THE INDIVIDUAL'S PHOTO ID.*

FULL NAME: Thomas L Cardella

SIGNATURE: 

TITLE: President

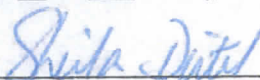
COMPANY: Thomas L Cardella & Associates, Inc

SSN: 506-70-7151

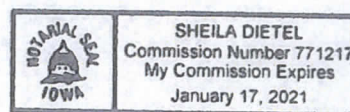
DOB: 02/28/1962

DATE: 02/05/2018

Scribed and sworn to me on this 2nd day of  
February 2018, of Linn County, of the state of Iowa

Signed 

My Commission expires: 01/17/2021



Notary Public

**Estimated Costs for a 216 – 240  
Seat Call Center in Alamogordo, NM**

| <b><u>Description</u></b>                                                                                                                                                      | <b><u>Projected Estimated Costs</u></b> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|
| Electrical Infrastructure <ul style="list-style-type: none"><li>• Fiber</li><li>• Power/Cabling</li><li>• Wireless Interface</li></ul>                                         | \$120,000 - \$130,000                   |
| Information Technology Infrastructure <ul style="list-style-type: none"><li>• Rack</li><li>• Power/Cabling</li><li>• Switches</li><li>• Routers</li><li>• Servers</li></ul>    | \$130,000 - \$150,000                   |
| Data Center Infrastructure <ul style="list-style-type: none"><li>• Rack</li><li>• Power/Cabling</li><li>• Switches</li><li>• Routers</li><li>• Servers</li><li>• SQL</li></ul> | \$250,000 - \$260,000                   |
| Call Center Desk Top Infrastructure <ul style="list-style-type: none"><li>• Computers</li><li>• Monitors</li><li>• Wireless hardware (Computers)</li></ul>                     | \$240,000 - \$260,000                   |
| Software Licensing & Security <ul style="list-style-type: none"><li>• Cloud based Switch/CRM</li><li>• IT Security</li></ul>                                                   | \$336,000 - \$403,200                   |
| Furniture and Fixtures                                                                                                                                                         | \$150,000 - \$175,000                   |
| Total Estimated Costs                                                                                                                                                          | \$1,226,000 - \$1,378,000               |

This form is filed by each taxpayer to the Department of Workforce Solutions and is the form needed by the reporting applicant for job numbers. Self - reporting documents or statements are not accepted.

|                                                                                                                                                                                                                                  |  |                                 |  |                                  |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|---------------------------------|--|----------------------------------|--|
| <b>EMPLOYER'S QUARTERLY WAGE AND CONTRIBUTION REPORT</b><br>ES903A                                                                                                                                                               |  | DO NOT WRITE IN THIS SPACE      |  | DATE RECEIVED                    |  |
| <b>SCHEDULE A</b>                                                                                                                                                                                                                |  |                                 |  |                                  |  |
| WORKFORCE SOLUTIONS DEPARTMENT, P O BOX 2281, ALBUQUERQUE, NM 87103-2281 *PHONE (505) 844-2000<br>RETURNS THIS REPORT AND TAX DUE BY THE END OF THE MONTH FOLLOWING THE CLOSE OF THE CALENDAR QUARTER. IF NO WAGES, SHOW "NONE." |  |                                 |  |                                  |  |
| EMPLOYER'S NUMBER                                                                                                                                                                                                                |  | TOTAL TAX RATE                  |  |                                  |  |
| QUARTER ENDING                                                                                                                                                                                                                   |  | DUE DATE                        |  |                                  |  |
| FEDERAL IRS NUMBER                                                                                                                                                                                                               |  | FIDED CODE                      |  |                                  |  |
| CR IDENTIFICATION NUMBER                                                                                                                                                                                                         |  |                                 |  |                                  |  |
| 1. TOTAL WAGES (TOTAL COLUMN 12)..... \$                                                                                                                                                                                         |  |                                 |  |                                  |  |
| 2. DEDUCT EXCESS WAGES (TOTAL COLUMN 13)..... \$                                                                                                                                                                                 |  |                                 |  |                                  |  |
| 3. TAXABLE WAGES (ITEM 1 LESS ITEM 2)..... \$                                                                                                                                                                                    |  |                                 |  |                                  |  |
| 4. TOTAL TAX DUE (TAXABLE WAGES X TOTAL TAX RATE)..... \$                                                                                                                                                                        |  |                                 |  |                                  |  |
| 5. INTEREST DUE (1% PER MONTH AFTER DUE DATE)..... \$                                                                                                                                                                            |  |                                 |  |                                  |  |
| 6. LATE REPORT PENALTY (ADD \$50.00)..... \$                                                                                                                                                                                     |  |                                 |  |                                  |  |
| 7. LATE PAYMENT PENALTY (ADD 5% OF TAX DUE OR \$25.00, WHICHEVER IS GREATER)..... \$                                                                                                                                             |  |                                 |  |                                  |  |
| 8. AMOUNT OF NM DOL REMITTANCE..... \$                                                                                                                                                                                           |  |                                 |  |                                  |  |
| 9. INDICATE IF WAGES WERE SUBMITTED VIA (CIRCLE ONE)<br>WEB FILING OR DISKETTE                      WEB                      DISKETTE                                                                                            |  |                                 |  |                                  |  |
| <b>SCHEDULE B</b>                                                                                                                                                                                                                |  |                                 |  |                                  |  |
| 10. EMPLOYEE SOCIAL SECURITY NUMBER                                                                                                                                                                                              |  | 11. NAME OF EMPLOYEE            |  | 12. GROSS WAGES FOR THIS QUARTER |  |
| 13. THIS QUARTER'S EXCESS WAGES                                                                                                                                                                                                  |  | 14. STATE INCOME TAX WITHHELD * |  | 15. WC FEE DUE *                 |  |
| 16. STATE INCOME TAX WITHHELD *                                                                                                                                                                                                  |  | 17. WC FEE DUE *                |  | 18. TOTAL TAX DUE                |  |
| 19. TOTAL TAX DUE                                                                                                                                                                                                                |  | 20. TOTAL TAX DUE               |  | 21. TOTAL TAX DUE                |  |
| 22. TOTAL TAX DUE                                                                                                                                                                                                                |  | 23. TOTAL TAX DUE               |  | 24. TOTAL TAX DUE                |  |
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| 31. TOTAL TAX DUE                                                                                                                                                                                                                |  | 32. TOTAL TAX DUE               |  | 33. TOTAL TAX DUE                |  |
| 34. TOTAL TAX DUE                                                                                                                                                                                                                |  | 35. TOTAL TAX DUE               |  | 36. TOTAL TAX DUE                |  |
| 37. TOTAL TAX DUE                                                                                                                                                                                                                |  | 38. TOTAL TAX DUE               |  | 39. TOTAL TAX DUE                |  |
| 40. TOTAL TAX DUE                                                                                                                                                                                                                |  | 41. TOTAL TAX DUE               |  | 42. TOTAL TAX DUE                |  |
| 43. TOTAL TAX DUE                                                                                                                                                                                                                |  | 44. TOTAL TAX DUE               |  | 45. TOTAL TAX DUE                |  |
| 46. TOTAL TAX DUE                                                                                                                                                                                                                |  | 47. TOTAL TAX DUE               |  | 48. TOTAL TAX DUE                |  |
| 49. TOTAL TAX DUE                                                                                                                                                                                                                |  | 50. TOTAL TAX DUE               |  | 51. TOTAL TAX DUE                |  |
| 52. TOTAL TAX DUE                                                                                                                                                                                                                |  | 53. TOTAL TAX DUE               |  | 54. TOTAL TAX DUE                |  |
| 55. TOTAL TAX DUE                                                                                                                                                                                                                |  | 56. TOTAL TAX DUE               |  | 57. TOTAL TAX DUE                |  |
| 58. TOTAL TAX DUE                                                                                                                                                                                                                |  | 59. TOTAL TAX DUE               |  | 60. TOTAL TAX DUE                |  |
| 61. TOTAL TAX DUE                                                                                                                                                                                                                |  | 62. TOTAL TAX DUE               |  | 63. TOTAL TAX DUE                |  |
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| 67. TOTAL TAX DUE                                                                                                                                                                                                                |  | 68. TOTAL TAX DUE               |  | 69. TOTAL TAX DUE                |  |
| 70. TOTAL TAX DUE                                                                                                                                                                                                                |  | 71. TOTAL TAX DUE               |  | 72. TOTAL TAX DUE                |  |
| 73. TOTAL TAX DUE                                                                                                                                                                                                                |  | 74. TOTAL TAX DUE               |  | 75. TOTAL TAX DUE                |  |
| 76. TOTAL TAX DUE                                                                                                                                                                                                                |  | 77. TOTAL TAX DUE               |  | 78. TOTAL TAX DUE                |  |
| 79. TOTAL TAX DUE                                                                                                                                                                                                                |  | 80. TOTAL TAX DUE               |  | 81. TOTAL TAX DUE                |  |
| 82. TOTAL TAX DUE                                                                                                                                                                                                                |  | 83. TOTAL TAX DUE               |  | 84. TOTAL TAX DUE                |  |
| 85. TOTAL TAX DUE                                                                                                                                                                                                                |  | 86. TOTAL TAX DUE               |  | 87. TOTAL TAX DUE                |  |
| 88. TOTAL TAX DUE                                                                                                                                                                                                                |  | 89. TOTAL TAX DUE               |  | 90. TOTAL TAX DUE                |  |
| 91. TOTAL TAX DUE                                                                                                                                                                                                                |  | 92. TOTAL TAX DUE               |  | 93. TOTAL TAX DUE                |  |
| 94. TOTAL TAX DUE                                                                                                                                                                                                                |  | 95. TOTAL TAX DUE               |  | 96. TOTAL TAX DUE                |  |
| 97. TOTAL TAX DUE                                                                                                                                                                                                                |  | 98. TOTAL TAX DUE               |  | 99. TOTAL TAX DUE                |  |
| 100. TOTAL TAX DUE                                                                                                                                                                                                               |  | 101. TOTAL TAX DUE              |  | 102. TOTAL TAX DUE               |  |



Thomas L Cardella has been in the call center industry for 29 years. While receiving his Executive MBA at The University of Iowa, Mr. Cardella wrote a business plan to begin his first call center company, Access Direct.

Founded in 1995, Access Direct grew to over 2000 employees in 5 years, and was ranked as the 12<sup>th</sup> largest call center company in the nation.

In the year 2000, Mr. Cardella sold Access Direct to InterActive Corp, which also owns such companies as Match.com, Lending Tree, Evite, Ask, TicketMaster, Home Shopping Network, Expedia, and others.

In 1998, Mr. Cardella won the Ernst and Young Entrepreneur of the Year award for the Midwest Region. In 1999, Mr. Cardella won the Small Business Administration Award for Entrepreneurial Success. In the year 2000, Inc Magazine ranked Access Direct as the 8<sup>th</sup> fastest growing, privately held company in the United States.

Mr. Cardella was appointed Chairman and Chief Executive Officer of Precision Response Corporation (PRC), by parent company InterActiveCorp (IAC), in 2003. With 15,000 employees worldwide, PRC ranked as the 3rd largest inbound service agency in the nation. Mr. Cardella reported directly to InterActive Corp Chairman, Barry Diller.

After a brief retirement, Mr. Cardella decided to launch a new company, in which he would be the sole investor. The goal, being to create a very different kind of call center. He wanted to build a company that defied the traditional approach to call centers: large corporations, international locations with non English speaking staff, and a focus on inbound or customer service. He saw the opportunity to improve the return on investment clients receive when outsourcing by delivering the highest quality service in a sales-focused environment. And he has accomplished that by bringing a new concept to call centers: an employee owned model, where hard working, talented employees deliver top notch contacts, often exceeding client goals for both conversion and service.

In 2007, Mr. Cardella launched his latest call center company, TLC Associates. In eleven years the company has grown to 1200 Iowa based employees, and will handle over 20 million phone calls for Fortune 500 clients in 2015. Such clients include John Deere, Verizon, U.S. Bank, Dow Jones Group, and several others.

In 2017, TLC Associates opened a call center in Santa Domingo, Dominican Republic, expanded their footprint in El Paso, TX, and announced the re-opening of a former call center in Las Cruces, NM.

TLC Associates also announced that they would be adding between 800 and 1000 employees in the Texas and New Mexico area (also dubbed the TLC Associates S.W. Region) in the first six months of 2018, as well as establishing their S.W. Corporate Management HUB in Las Cruces, N.M.

TLC & Associates was ranked #285 on the Inc 500 list of Fastest Growing Companies in 2011. It should be noted, that TLC & A was eligible to be ranked in 2010, but missed the deadline due. TLC & A would have ranked #69 in 2010.

TLCA has consistently been ranked as one of the top 15 largest call center outsourcers/business process outsources, by TMCnet *Customer Magazine's* Annual Top 50 Teleservices Agencies Ranking.



## **Company Overview**

July 2017

Private and Confidential



## **DISCLAIMER**

These materials are confidential and proprietary to TLC Associates and no part of the materials should be reproduced, published in any form by any means, electronic or mechanical including photocopy or any information storage or retrieval system, not should the material be disclosed to third parties without the express written authorization of TLC Associates.

## **Engagement Lead**

Tom Moroney  
Chief Commercial Officer  
M: 954 612 6951  
E: [thomas.moroney@tlcassociates.com](mailto:thomas.moroney@tlcassociates.com)

## Welcome to TLC

---

- Founded in 2007
- Ranked globally 12<sup>th</sup> largest call center
- Fully engaged leadership team
- 100% employee-owned business
- Scalable global platform
- Integrated omni-channel multimedia solutions
- Quality and Results focused service delivery
- Enhanced ROI





## TLC Associates Executive Team



**Tom Cardella**  
*Founder & President*  
 TLC Associates

- 20+ years of experience in helping companies manage all facets of the customer lifecycle.
- Two successful start-ups over the past two decades, former CEO of PRC/Alorica.
- Ernst & Young Entrepreneur of the Year
- Global experience in BPO industry.
- Earned an excellent reputation for driving sales and higher client ROI.

- 20+ years of executive level experience with companies like American Express, PRC, and Donnelly Communications.
- Experience includes contact center strategy, turnarounds,, technology and overall business strategic planning and customer lifecycle management.
- Skilled at developing winning solutions.
- Extensive international experience.



**Tom Moroney**  
*CCO*  
 TLC Associates





## We Serve Fortune 500

---

### Retail/Consumer Goods



J.CREW

bloomingdale's

Office  
DEPOT

### Health/Wellness



Anthem. 

WellCare

HEALTHY  
DIRECTIONS 

### Communications



Vonage



 CenturyLink

### Financial Services



 PNC



usbank.

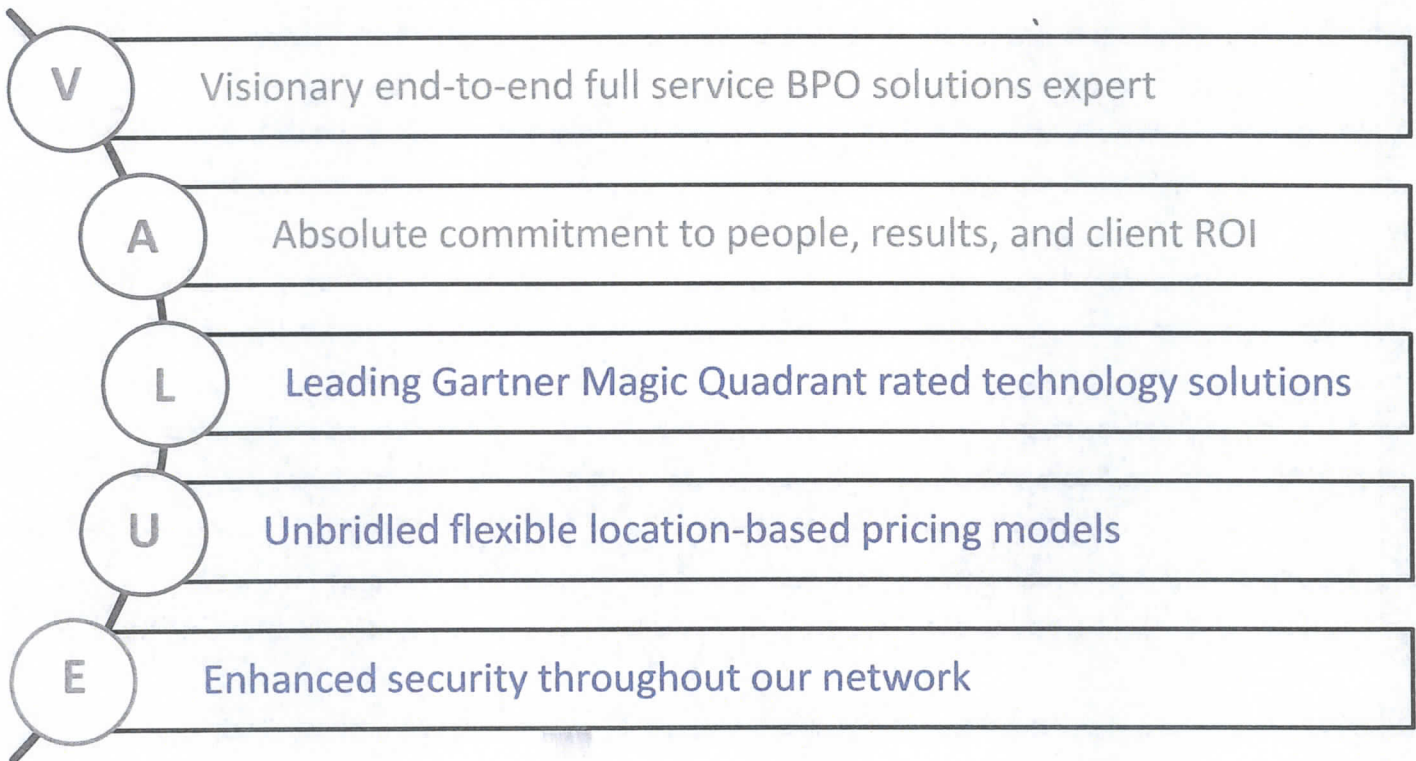
Bank of America 

## Our Brand Promise



## Supporting our Brand Promise

---



## Our Commitment to People drives Results

- Employee owned company
- Tenured workforce
- Average age is >34
- Low levels of attrition
- Professional development
- Clear and objective goals
- Timely feedback on performance
- Accountable to each other
- Intimacy with metrics

|                                                                                     |                                    |
|-------------------------------------------------------------------------------------|------------------------------------|
|  | I caught you doing something good! |
|  | Client calibration kudos           |
|  | Perfect attendance                 |
|  | Quarterly top 25% performers       |
|  | Employee referrals                 |
|  | Client sponsored incentives        |
|  | Employee of the Month              |

## Our Approach to Relationships

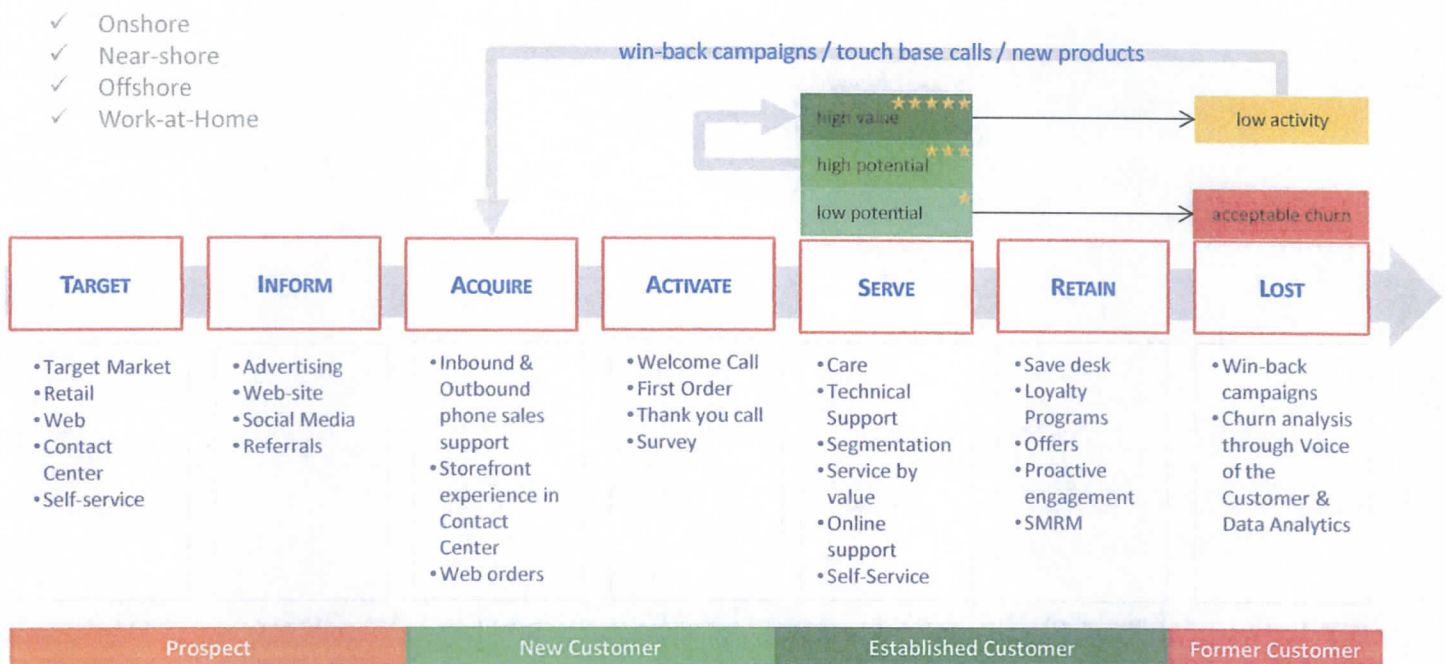
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- ✓ Treat the client as a boss
- ✓ Remember the client has a boss, too
- ✓ Go see the client
- ✓ Don't make excuses to the client
- ✓ Take the client's phone calls
- ✓ Provide the client with proactive feedback
- ✓ Solicit feedback from the client
- ✓ Do the client's job
- ✓ Enhance product delivered to the client
- ✓ Allow the client easy access to staff
- ✓ Understand the client's perspective
- ✓ Establish a climate of mutual respect

The Cornerstone Philosophy of TLCA  
Promoted Through All Levels of the Organization



# Fully Supporting Customer Lifecycle

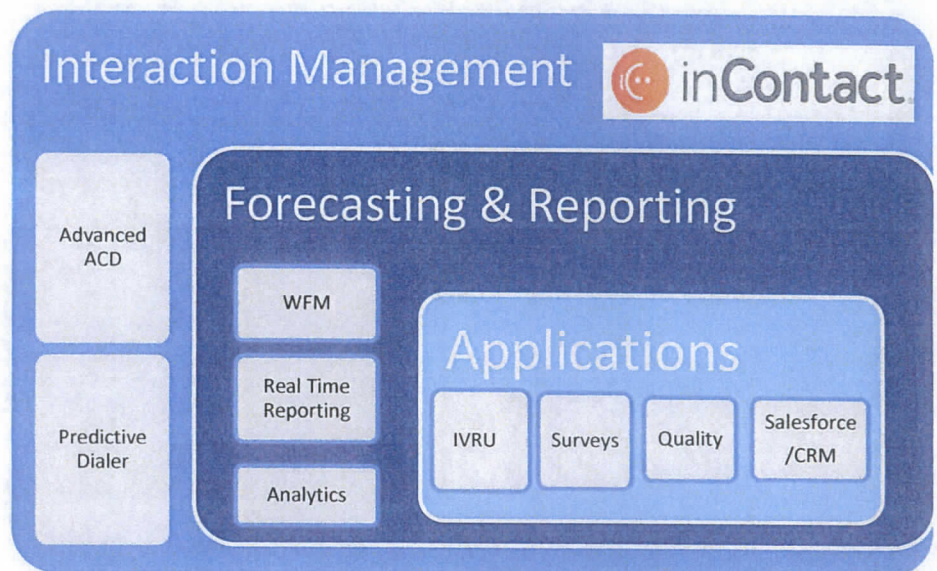




## Technology

### Scalable Innovation to Provide Best-In-Class Solutions

- Seamlessly integrated
- Scalable to fit your needs
- Extendable to clients
- Integrates all channels
- Data security



## Global Footprint

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## Global Footprint – Key Info

| Country            | USA                                                                                | Dominican Republic                                                                       | India                                                                                            | Philippines                                                                                                  |
|--------------------|------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
| # of Locations     | 5                                                                                  | 2                                                                                        | 7                                                                                                | 1                                                                                                            |
| Primary Location   | Cedar Rapids, Iowa                                                                 | Santiago                                                                                 | Noida (New Delhi)                                                                                | Greater Manila                                                                                               |
| Current Headcounts | 1,095                                                                              | 582                                                                                      | 11,000                                                                                           | 45                                                                                                           |
| Years In Service   | 10                                                                                 | 10                                                                                       | 17                                                                                               | 1                                                                                                            |
| Available Capacity | 500                                                                                | 180                                                                                      | 1,000                                                                                            | 400                                                                                                          |
| Languages          | English                                                                            | English, Spanish & French                                                                | English                                                                                          | English                                                                                                      |
| Value Proposition  | <p>Competitive US-Based Pricing</p> <p>Consistent Higher ROI for TLC Customers</p> | <p>Hispanic Market Support</p> <p>Cultural Affinity to USA</p> <p>Near-shore Pricing</p> | <p>Lowest Cost Operations</p> <p>ISO, PCI Certified</p> <p>Credit and Collections (licensed)</p> | <p>Offshore Pricing</p> <p>Strong local management team with 15 years' experience supporting Fortune 100</p> |



## Data Security

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### People

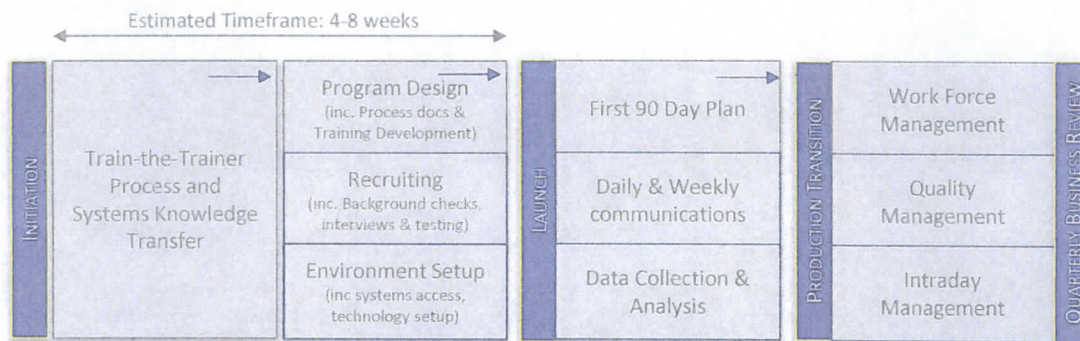
- Paperless environment
- Card access
- No cell phones
- Limited access to systems
- Cameras
- Background checks
- Web access limited to job

### Technology

- 24x7 Monitoring
- Offsite back-up
- Fire detection
- Multiple power grids
- UPS
- On-site generators
- Redundant telecom



# Approach to Transfer of Knowledge



Disciplined approach to ensure the successful transfer of client specific IP and a deep understanding of their Brand Promise

- Robust project planning
- Managing effective communication
- Identifying team members to achieve greatness together
- Delivering a great training experience
- Moving rapidly along the learning curve
- Delivering a strong return on investment



## Performance Benchmarking #1

---

- Affinity Marketing Company, 7 year relationship
  - TLC's Charter: Drive new memberships through conversion of inbound calls. We sell Loyalty and Customer Engagement Solutions that enhance the lives of consumers across the world.

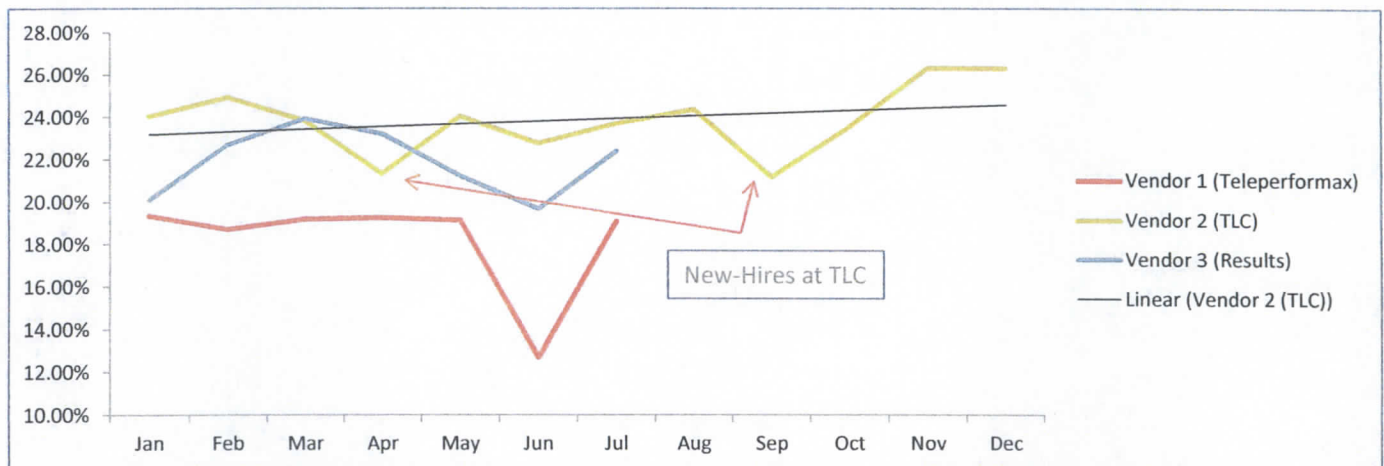
- 2016 Performance on Discount Membership Program

|                 | Q1     | Q2      | Q3     | Q4     |
|-----------------|--------|---------|--------|--------|
| Conversion Goal | 27.75% | 27.62%  | 28.23% | 28.71% |
| Conversion Rate | 26.71% | 29.39%  | 27.50% | 28.43% |
| Goal Attainment | 96.32% | 106.58% | 97.41% | 99.03% |

- Impact of TLC's performance
  - 99.9% Goal Attainment for 2016
  - All other US based vendors were displaced and work was consolidated at TLC

## Performance Benchmarking #2

- Major Card Issuer (40MM Customer Base), 1 ½ Year Relationship
  - TLC's Charter: Activate new accounts and up-sell additional products during activation call.
  - During the first 7 months of 2016, we competed against industry peers.
- 2016 Performance on Credit Card Activation with Up-sell



- Impact of TLC's performance
  - Card Issuer consolidated work at TLC

## Client References

---

### Active Clients

- Affinion Group
  - Kerry Gay, Vice President
  - E: [kgay@affinion.com](mailto:kgay@affinion.com)
  - T: 203 956 8860
  
- Wells Fargo
  - Brian Suddreth, Director
  - E: [brian.suddreth@wellsfargo.com](mailto:brian.suddreth@wellsfargo.com)
  - T: 704-427-7255

### Former Client

- Office Depot
  - Tim McGrath, Senior Vice President
  - E: [tim.mcgrath@officedepot.com](mailto:tim.mcgrath@officedepot.com)
  - T: 561-438-0720

**From:** Tim McGrath [tim.mcgrath@officedepot.com]  
**Sent:** Friday, April 05, 2013 7:49 AM  
**To:** Thomas Cardella  
**Subject:** Thanks

I wanted to drop you a note to thank you for the great support you have provided Office Depot these past few years. As you know we sell products that have become somewhat of a commodity so the relationship side of the business is not as important to the smaller customers as price, convenience, etc.

TLC has done everything we have asked of them and at a high level. As you wind down our business I want to make sure I reach out and offer my assistance with a high recommendation to any potential clients you may want me to talk to. I can attest to the great people, processes, and results your company achieved while working for Office Depot. I would be proud to be a part of your "Recommendation" list for TLC. You and your company have earned it.

Again, thanks for all that TLC has done for Office Depot and I wish you all the best in the future. Make sure you let me know when you want your new potential clients to know what a pleasure it is working with TLC.

***Tim McGrath***  
V.P. Customer Service  
Office Depot Business Solutions Division  
6600 North Military Trail  
Boca Raton, Florida 33496  
T+ 561-438-0720 (mail code C375)  
[tim.mcgrath@officedepot.com](mailto:tim.mcgrath@officedepot.com)



# Our Differentiators

## RESULTS

We are obsessively focused on results and exceeding our agreed upon KPIs. We insist on keen awareness throughout every interval so that we can maximize performance while helping our clients enhance the brand experience for every customer interaction. Our team members are motivated to achieve results each and every day. We welcome the opportunity to engage in champion challengers, confident in our ability to outperform other service providers, maximizing ROI.

## PEOPLE

Our people are our most important asset. We celebrate our mid-western work ethic. It's an unwavering belief that hard work and perseverance, rooted in quiet humility, pays off in the long run. Our workforce is tenured, disciplined, rewarded and admired by our clients. We are an employee owned business and we support career development for all associates. Virtually all promotions are from within our company. We celebrate our people.

## CULTURE

TLC hires according to cultural fit first and foremost. We have established what our company culture is, and fitting into that culture is the most important thing managers look for when hiring. This promotes the culture and happy employees, which ultimately leads to happy customers. You can't beat having team members who are pleasant and friendly to each other, and are both good at and love what they are doing. No program, activity or set of rules tops having happy and fulfilled employees who feel that what they are doing matters.

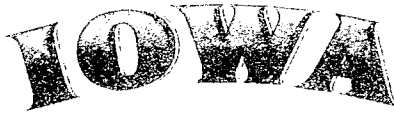
## CLIENT ADVOCACY

Managing client relationships is an awesome responsibility. We are aware that every action we take or do not take reflects on our clients. The results that we drive directly impact their reputations, compensation, and careers. We must be their strongest advocate, resilient in the face of adversity and, above all, honest and forthright in every communication. The ability to communicate well, considering potential impacts, is a must. We have to be good listeners but also have the ability to redirect, as needed.

## EXPERIENCE MATTERS

Our leadership and operations management team bring wide-ranging global experience in contact center and customer relationship management. We have supported America's best brands. Our management team has engaged with and provided execution support for some of the largest Fortune 100 companies, many of them JD Powers Customer Service award winners. We combine our experience of developing brand strategies to excel in service delivery and driving results.





No: W00681704  
Date: 06/18/2010

## SECRETARY OF STATE

490 DP-341581  
THOMAS L. CARDELLA & ASSOCIATES, INC.

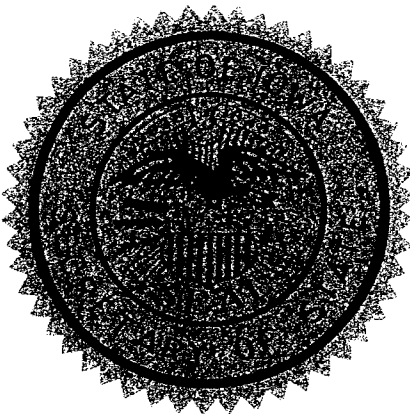
### ACKNOWLEDGEMENT OF DOCUMENT FILED

The Secretary of State acknowledges receipt of the following document:

Articles of Amendment

The document was filed on Jun 17 2010 11:14AM, to be effective as of Jun 17 2010 11:14AM.

The amount of \$50.00 was received in full payment of the filing fee.



*Michael A. Mauro*

MICHAEL A. MAURO SECRETARY OF STATE



341581

ARTICLES OF AMENDMENT TO ARTICLES OF INCORPORATION  
OF

THOMAS L. CARDELLA & ASSOCIATES, INC.

TO: THE SECRETARY OF STATE OF THE STATE OF IOWA:

Pursuant to Section 1006 of the Iowa Business Act (the "Act"), the undersigned corporation adopts the following Articles of Amendment to its Articles of Incorporation.

1. The name of the corporation is: THOMAS L. CARDELLA & ASSOCIATES, INC.
2. Article II of the Articles of Incorporation of the Corporation is amended to read:  
  
*"The corporation shall have authority to issue Ten Million (10,000,000) shares of Class A Voting Stock and Ten Million (10,000,000) shares of Class B Non-Voting Stock, all which shares shall have a par value of \$.0001. At the time this amendment shall become effective, each currently outstanding share of the stock of the corporation that was outstanding as of March 1, 2007 shall be reclassified as Class A Voting Stock and each currently outstanding share of the stock of the corporation that was not yet outstanding as of March 1, 2007 shall be reclassified as Class B Non-Voting Stock."*
3. The date of adoption of the amendment was June 2, 2010.
4. At the time of the adoption of the Amendment there were seven million eight hundred ninety-seven thousand eighty-four (7,897,084) shares of the stock of the corporation outstanding. Seven million forty-nine thousand seventeen (7,049,017) shares of the stock of the corporation were voted in favor of the adoption of the Amendment. No other capital stock of the corporation of any other class was entitled to vote upon the adoption of the Amendment.
5. The amendment was approved in the manner required by the Act and by the Articles of Incorporation.

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Dated this 16 day of June, 2010.

THOMAS L. CARDELLA &  
ASSOCIATES, INC.

By: 27 [Signature]  
Thomas L. Cardella, President

FILED  
IOWA  
SECRETARY OF STATE

6-17-10

11:44 AM

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**ARTICLES OF INCORPORATION**  
**OF**  
**THOMAS L. CARDELLA & ASSOCIATES, INC.**

The undersigned, acting as incorporator of Thomas L. Cardella & Associates, Inc. (the "corporation") organized under the Iowa Business Corporation Act (the "Act"), hereby adopts the following Articles of Incorporation for such corporation.

**ARTICLE I**

The name of this corporation is:

Thomas L. Cardella & Associates, Inc.

**ARTICLE II**

The aggregate number of shares the corporation shall have authority to issue is 10,000,000 common shares, \$.0001 par value.

**ARTICLE III**

The name and street address of the initial registered agent and office of the corporation is Thomas L. Cardella, 383 Collins Road NE, Ste. 102, Cedar Rapids, IA 52402.

**ARTICLE IV**

The name and address of each person to serve as an initial director is: Thomas L. Cardella, 383 Collins Road NE, Ste. 102, Cedar Rapids, IA 52402.

**ARTICLE V**

The name and address of the incorporator is: Thomas L. Cardella, 383 Collins Road NE, Ste. 102, Cedar Rapids, IA 52402.

②  
13239

ARTICLE VI

The Bylaws of this corporation may contain restrictions on the transfer of shares of stock of the corporation.

ARTICLE VII

The liability of a director of the corporation to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director is hereby eliminated to the fullest extent permitted by the Act, except liability for any of the following:

1. The amount of a financial benefit received by a director to which the director is not entitled;
2. An intentional infliction of harm on the corporation or the shareholders;
3. A violation of Section 490.833 of the Act; or
4. An intentional violation of criminal law.

ARTICLE VIII

The corporation may indemnify directors and officers of the corporation to the full extent permitted by the Act, except liability for any of the following:

1. Receipt of a financial benefit to which the person is not entitled;
2. An intentional infliction of harm on the corporation or its shareholders;
3. A violation of section 490.833 of the Act; or
4. An intentional violation of criminal law.

Dated this 16<sup>th</sup> day of February, 2007.

FILED  
IOWA  
SECRETARY OF STATE

2-16-07  
3:51pm

W517970



THOMAS L. CARDELLA, Incorporator





BYLAWS  
OF  
THOMAS L. CARDELLA & ASSOCIATES, INC.

ARTICLE I

OFFICES

The principal office of the corporation in the State of Iowa shall be located in the City of Cedar Rapids, County of Linn. The corporation may have such other offices, either within or without the State of Iowa, as the Board of Directors may designate or as the business of the corporation may require from time to time.

The registered office of the corporation required by the Iowa Business Corporation Act, as amended (the "Act"), to be continuously maintained in the State of Iowa shall be initially as provided in the Articles of Incorporation, subject to change from time to time by resolution of the Board of Directors or by the registered agent in the manner specified in the Act.

ARTICLE II

SHAREHOLDERS

Section 1. Annual Meeting. The annual meeting of the shareholders shall be held in each calendar year on the first Tuesday of March at the hour of 10:00 a.m., provided the Board of Directors may fix some other date that is within thirty (30) days before or after said date and may fix some time other than said above time for such meeting, for the purpose of electing Directors and for the transaction of such other business as may come before the meeting. If the day designated above or fixed by the Board of Directors for the annual meeting shall be a legal holiday in the State where held, such meeting shall be held on the next succeeding business day. If the election of Directors shall not be held on the day designated herein for any annual meeting of the shareholders, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the shareholders as soon thereafter as may be convenient.

Section 2. Special Meetings. Special meetings of the shareholders, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President or by the Board of Directors, and shall be called by the President at the written request of the holders of not less than ten percent (10%) of all of the outstanding shares of the corporation entitled to vote at the meeting.

Section 3. Place of Shareholders' Meeting. The Board of Directors may designate any place, either within or without the State of Iowa, as the place of meeting of any annual meeting or for any special meeting called by the Board of Directors. If no designation is made, the place of meeting shall be the principal office of the corporation in the State of Iowa.

Section 4. Conduct of Meeting. The order of business and conduct at any annual meeting or any special meeting shall be determined by the chairperson of such meeting. The chairperson shall be appointed by the Board of Directors.

Section 5. Notice of Meeting. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally, by mail, or by electronic transmission by or at the direction of the President, the Secretary, or the officer calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the shareholder at his or her address as it appears on the corporation's current record of shareholders, with postage thereon prepaid. Electronically transmitted notice is communicated when transmitted to a shareholder in a manner authorized by the shareholder and in a comprehensible form.

Section 6. Fixing Record Date. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive a distribution, or in order to make a determination of shareholders for any other proper purposes, the Board of Directors may fix a future date, not more than seventy (70) days before the meeting or action requiring determination of shareholders, as the record date. If no record date is fixed for the determination of shareholders, the date on which notice of the meeting is mailed, or the date of action by the Board of Directors, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this Section, such determination shall apply to any adjournment thereof that is for not more than one hundred twenty (120) days.

Section 7. Voting List. The officer or agent having charge of the current record of shareholders of the corporation shall make, at least ten (10) days before each meeting of shareholders, a complete list of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, arranged by voting group, if any (and within each voting group, by class or series) with the address of and the number of shares held by each. For a period of ten (10) days prior to such meeting, the list shall be kept on file at the principal office of the corporation or the place identified in the meeting notice in the city where the meeting will be held and shall be subject to inspection, on written demand, by any shareholder, or a shareholder's agent or attorney, at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder, or a shareholder's agent or attorney, at any time during the meeting or any adjournment. The original stock transfer books shall be prima facie evidence as to who are the shareholders entitled to examine such list or transfer books or to vote at any meeting of shareholders.

Section 8. Quorum. A majority of the votes entitled to be cast on a matter by a voting group constitutes a quorum of that voting group for action on that matter. If less than a majority of such votes are represented at a meeting, a majority of the votes so represented may adjourn the meeting from time to time without further notice if the new date, time and place is announced at the meeting before adjournment. If a new record date is or must be fixed notice of the adjourned meeting must be given. At any adjourned meeting, for which a new record date is not or need not be set, at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. The shareholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of votes entitled to be cast leaving less than a quorum.



Section 9. Proxies. At all meetings of shareholders, a shareholder may vote by proxy executed in writing or by electronic transmission by the shareholder or by his or her duly authorized attorney-in-fact. Such proxy shall be filed with the Secretary of the corporation before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy. A proxy shall be revocable unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest.

Section 10. Voting of Shares. Subject to the provisions of Section 11 of this Article, each outstanding share, regardless of class, shall be entitled to one vote upon each matter submitted to vote at a meeting of shareholders, except to the extent the Articles of Incorporation provide otherwise.

Section 11. Voting of Shares by Certain Holders. Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent or proxy as the bylaws of such corporation may prescribe or, in the absence of such provision, as the Board of Directors of such corporation may determine.

Shares held by an administrator, executor, guardian or conservator may be voted by such fiduciary, either in person or by proxy, without a transfer of such shares into the name of the fiduciary. Shares standing in the name of a trustee may be voted by the trustee, either in person or by proxy, but no trustee shall be entitled to vote shares held by the trustee without a transfer of such shares into the trustee's name.

Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into the receiver's name if authority so to do be contained in an appropriate order of the Court by which such receiver was appointed.

A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter, the pledgee shall be entitled to vote the shares so transferred.

Redeemable shares are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

Section 12. Voting Requirements. If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the Articles of Incorporation or the Act require a greater number of affirmative votes. Unless otherwise provided in the Articles of Incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

Section 13. Action Without Meeting by Shareholders. Any action required to be taken at a meeting of the shareholders, or any other action which may be taken at a meeting of the shareholders, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding shares having at least ninety percent (90%) (or such other minimum amount allowed by Iowa law) of the votes entitled to be cast with respect to the subject matter thereof. Such action without a meeting shall be taken by delivering to the corporation one or more written consents

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bearing the signature of and date of signature of each signing shareholder. The record date for the action by shareholders is the date the first shareholder signs a consent to the action.

Section 14. Voting by Ballot. Voting by shareholders on any question or in any election may be by voice vote unless the presiding officer shall order or any shareholder shall demand that voting be by ballot.

Section 15. Voting Group. The term "voting group" means all shares of one or more classes or series that under the Articles of Incorporation or the Act are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the Articles or the Act to vote generally on the matter are for that purpose a single voting group.

### ARTICLE III

#### BOARD OF DIRECTORS

Section 1. General Powers. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation shall be managed under the direction of its Board of Directors.

Section 2. Number, Tenure and Qualifications. The number of Directors of the corporation shall be at least one (1) and no greater than five (5). The Board of Directors shall have authority to fix or change the number of directors within that range. At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect Directors. Each Director shall hold office until the next annual meeting of shareholders and until the Director's successor shall have been elected and qualified, unless removed at a meeting called expressly for that purpose by a vote of the holders of a majority of the shares then entitled to vote at an election of that director or the unanimous written consent to removal signed by all shareholders entitled to vote thereon. Upon issuance of shares, shareholders of the corporation shall have the exclusive right to change the range of the variable-range sized board, change the number of directors on a fixed-sized board, or change from the variable sized board to a fixed sized board, or vice versa.

Section 3. Regular Meetings. A regular meeting of the Board of Directors shall be held without other notice than this Bylaw immediately after, and at the same place as, the annual meeting of shareholders. The Board of Directors may provide, by resolution, the time and place, either within or without the State of Iowa, for the holding of additional regular meetings without other notice than such resolution.

Section 4. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the President or any one (1) Director. The person or persons authorized to call special meetings of the Board of Directors may fix any place, either within or without the State of Iowa, as the place for holding any special meeting of the Board of Directors called by them.

Section 5. Notice. Notice of any special meeting shall be given at least five (5) days prior thereto by written notice delivered personally or mailed to each Director at his or her business address or residence, or sent by telegram, facsimile transfer, or electronic transmission. Electronically transmitted notices communicated when transmitted to a director in a manner authorized by the director and in a comprehensible form. Written notice is effective at the earliest of the following: (a) when

received; (b) three days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed; (c) on the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee; (d) the next delivery day after the written notice is delivered to a courier service or telegraph company. Any Director may waive notice of any meeting. The attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transactions of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Section 6. Quorum. A majority of the number of Directors fixed by Section 2 of this Article III shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, but if less than such majority is present at a meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

Section 7. Manner of Acting. The act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. A Director shall be considered present at a meeting of the Board of Directors or of a committee designated by the Board if the Director participates in such meeting by conference telephone or similar communications equipment by means of which all persons participating in the meeting can simultaneously hear each other.

Section 8. Vacancies. Any vacancy occurring in the Board of Directors and any directorship to be filled by reason of an increase in the number of Directors may be filled by the affirmative vote of a majority of the Directors then in office, even if less than a quorum of the Board of Directors, except that where any vacancy is caused by the removal of a Director or Directors from office by the shareholders, such vacancy shall be filled by the shareholders provided that if the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy. A Director so elected shall be elected for the unexpired term of the Director's predecessor in office or the full term of such new directorship.

Section 9. Compensation. The Board of Directors, by the affirmative vote of a majority of Directors then in office, and irrespective of any personal interest of any of its members, shall have authority to establish reasonable compensation of all Directors for services to the corporation as Directors, officers or otherwise. By resolution of the Board of Directors, the Directors may be paid their expenses, if any, of attendance at each meeting of the Board.

Section 10. Presumption of Assent. A Director of the corporation who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be deemed to have assented to the action taken unless the director objects at the beginning of the meeting or promptly upon the director's arrival to holding it or transacting business at the meeting, the director's dissent or abstention from the action taken is entered in the minutes of the meeting or the director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

Section 11. Action Without Meeting by Directors. Any action required by the Act to be taken at a meeting of Directors of the corporation, or any action which may be taken at a meeting of the Directors or of a committee of Directors, may be taken without a meeting if each Director or committee member, as the case may be, signs and delivers a consent describing the action so taken, shall be signed



by all of the Directors or all of the members of the committee of Directors, as the case may be. Action taken without a meeting shall be effective when the last consent is signed and delivered unless the consent specifies a different effective date.

Section 12. Committees. The Board of Directors from time to time by resolution adopted by a majority of the full Board of Directors may appoint from its members a committee or committees, temporary or permanent, and, to the extent permitted by law and these Bylaws, may designate the duties, powers and authorities of such committee. The Board of Directors, by resolution adopted by a majority of the full Board, may designate from among its members an executive committee that, to the extent provided in such resolution, shall have and may exercise all of the authority of the Board of Directors, but no such committee shall have the authority of the Board of Directors in reference to amending the articles of incorporation, adopting a plan of merger or consolidation, recommending to the shareholders the sale, lease, exchange or other disposition of all or substantially all of the property or assets of the corporation otherwise than in the usual and ordinary course of its business, recommending to the shareholders a voluntary dissolution of the corporation or revocation thereof, or amending the bylaws of the corporation. The designation of an executive committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed by law.

Section 13. Director Conflict of Interest. The terms of these Bylaws shall be subject to the director conflict of interest provisions of Section 490.832 and other applicable sections of the Act regarding the quorum and voting requirements of directors and shareholders.

Section 14. Indemnification of Directors and Officers. The corporation shall indemnify any Director or officer of the corporation, any former Director or officer and any such person who at the request of the corporation is serving or has served as a director, officer, employee, agent or trustee of another corporation, partnership, joint venture, trust or other enterprise, and the heirs, executors and administrators of such person, against all expense, liability and loss (including attorneys' fees, judgments, fines, taxes, penalties, and amounts paid in settlement) actually and reasonably incurred by the indemnitee as to action in the person's official capacity and as to action in another capacity while holding the office, to the full extent permitted from time to time by applicable law, subject however to the remaining provisions of this Article. The obligation of the corporation hereunder shall be subject to the terms and conditions of a plan of indemnification adopted by a majority of the Board of Directors. Any such plan may limit or condition the obligation of the corporation hereunder, may grant contract rights to indemnitees, may limit indemnification to persons serving in specified offices, may provide procedural and substantive rights to indemnitees and may be amended, modified or terminated by a majority of the Board of Directors. A plan of indemnification may obligate the corporation to indemnification which is less than the full extent permitted by applicable law and may contemplate future change in applicable law.

If the Board of Directors adopts a plan of indemnification within thirty (30) days from the date of adoption of this Article, the indemnification provided hereunder shall be no broader than the terms of such plan. Indemnification under this Article shall be applicable to all actions regardless of the date or dates of any alleged transactions or occurrences giving rise to such actions unless the plan of indemnification provides to the contrary. No amendment, modification or termination of a plan of indemnification shall affect any right of indemnification arising out of a transaction or occurrence entered into or occurring prior to the effective date of such change in the plan. In the event the Board of Directors terminates a plan of indemnification without adopting another plan, indemnification under this Article shall be to the full extent allowed by applicable law until another plan has been adopted by the Board of Directors.

Indemnification under this Article or a plan of indemnification shall not restrict the power of the corporation to provide for indemnification in any other manner and shall not obligate the corporation to acquire and maintain insurance or to otherwise provide funds to meet its obligations hereunder.

Notwithstanding the indemnification provided above or any plan of indemnification to the contrary, the corporation shall indemnify a Director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the Director was a party because the Director is or was a director of the corporation, against reasonable expenses incurred by the Director in connection with the proceeding.

#### ARTICLE IV

##### OFFICERS

Section 1. Number. The officers of the corporation shall be appointed by the Board of Directors and shall include a President, such number of Vice Presidents as determined by the Board of Directors, a Secretary, a Treasurer, and such other officers as the Board of Directors may determine, including a Chair of the Board, Chief Executive Officer and Chief Financial Officer. Assistant officers may be appointed by the President or the Board of Directors for a period of one (1) year. Any two (2) or more offices may be held by the same person.

Section 2. Appointment and Term of Office. The officers of the corporation to be appointed by the Board of Directors shall be appointed annually by the Board of Directors at the first meeting of the Board of Directors held after each annual meeting of the shareholders. If the appointment of officers shall not be made at such meeting, such appointment shall be made as soon thereafter as may be convenient. Vacancies may be filled or new offices created and filled at any meeting of the Board of Directors. Each officer shall hold office until the officer's successor shall have been duly appointed and shall have qualified or until the officer's death or resignation or the officer shall have been removed in the manner hereinafter provided. Each assistant officer appointed by the President shall hold office for not to exceed one (1) year unless subsequently appointed to such office by the Board of Directors or more than six (6) months have lapsed since the person served as such assistant officer. Appointment of an officer or agent shall not of itself create contract rights.

Section 3. Removal; Office Abolished. Any officer or agent may be removed by the Board of Directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. The President may remove any officer. The term of an officer shall terminate when the office to which appointed has been abolished by the Board of Directors.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

Section 5. Chair of the Board. The Chair of the Board shall be a Director. The Directors may appoint one of the Directors to serve as Chair. The Chair shall have the power to call special meetings of the shareholders, to call special meetings of the Board of Directors and, if present, to preside at all meetings of the shareholders and all meetings of the Board of Directors. The Chair shall perform all



duties incident to the office of Chair of the Board and all such other duties as may from time to time be assigned to the Chair consistent with duties assigned to such position.

Section 6. Chief Executive Officer. The Board of Directors may elect a person to serve as the Chief Executive Officer of the corporation. The Chief Executive Officer shall have the responsibility for general and active supervision and direction over the business and affairs of the corporation and over its several officers, agents and employees, subject, however, to the direction of the Board. The Chief Executive Officer shall have the power to call special meetings of the shareholders, to call special meetings of the Board of Directors and, if the Chair is not present, to preside at all meetings of the shareholders and all meetings of the Board of Directors. The Chief Executive Officer shall also have such other powers and duties as the Board may from time to time by resolution determine. The Chief Executive Officer shall have the authority to sign deeds, mortgages, bonds, contracts or other instruments except in cases where the signing and execution thereof shall be (a) expressly delegated by the Board of Directors or by these bylaws to some other officer or agent of the corporation, (b) expressly limited by these bylaws or resolution of the Board of Directors, or (c) required by law to be otherwise signed or executed.

Section 7. President. The President shall be the principal executive officer of the corporation and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the corporation. If the Chair and the Chief Executive Officer are not present, the President shall preside at all meetings of the shareholders and of the Board of Directors. The President may sign, with the Secretary or any other proper officer of the corporation thereunto authorized by the Board of Directors, certificates for shares of the corporation, any deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the corporation, or shall be required by law to be otherwise signed or executed. In general, the President shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time. The President shall possess all responsibilities not otherwise delegated by the Bylaws or the Board of Directors.

Section 8. The Vice President(s). In the absence of the President or in the event of the President's inability or refusal to act, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated or, in the absence of any designation, then in the order of their appointment) shall perform the duties of the President and, when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Any Vice President may sign with the Secretary or an Assistant Secretary, or any other proper officer of the corporation thereunto authorized by the Board of Directors, certificates for shares of the corporation, deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the corporation or shall be required by law to be otherwise signed or executed. A Vice President shall perform such other duties as from time to time may be assigned by the President or by the Board of Directors. Nothing provided in these Bylaws shall require the appointment of one or more Vice-Presidents.

Section 9. The Secretary. The Secretary shall: (a) keep the minutes of the proceedings of the shareholders and of the Board of Directors in one (1) or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the corporate records and of the seal of the corporation, if any, and see that the seal of

the corporation, if said corporation has a seal, is affixed to all documents, the execution of which on behalf of the corporation under its seal is duly authorized; (d) keep a register of the post office address of each shareholder which shall be furnished to the Secretary by such shareholder; (e) sign with the President, or a Vice President, certificates for shares of the corporation, the issuance of which shall have been authorized by resolution of the Board of Directors; (f) have general charge of the stock transfer books of the corporation; (g) authenticate the records of the corporation; and (h) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to the Secretary by the President or by the Board of Directors.

Section 10. The Treasurer and Chief Financial Officer. If the Board of Directors names a Chief Financial Officer of the corporation, such person shall also be the Treasurer of the corporation. The Treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of the corporation; receive and give receipts for moneys due and payable to the corporation from any source whatsoever, and deposit all such moneys in the name of the corporation in such banks, trust companies or other depositories as shall be selected by the Board of Directors; and (b) in general perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to the Treasurer by the Chief Executive Officer, the President or by the Board of Directors.

Section 11. Assistant Secretaries. The Assistant Secretaries, when authorized by the Board of Directors, or appointed by the President, may sign with the President or a Vice President certificates for shares of the corporation, the issuance of which shall have been authorized by a resolution of the Board of Directors. The Assistant Secretaries, in general, shall perform such duties as shall be assigned to them by the Secretary, or by the President or the Board of Directors.

Section 12. Other Assistants and Acting Officers. The Board of Directors or the President shall have the power to appoint any person to act as assistant to any officer, or to perform the duties of such officer whenever for any reason it is impracticable for such officer to act personally, and such assistant or acting officer so appointed shall have the power to perform all the duties of the office to which appointed to be assistant, or as to which so appointed to act, except as such power may be otherwise defined or restricted by the Board of Directors.

Section 13. Salaries. The salaries of the officers shall be fixed from time to time by the Board of Directors and no officer shall be prevented from receiving such salary by reason of the fact that the officer is also a Director of the corporation.

## ARTICLE V

### CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 1. Contracts. The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

Section 2. Loans. No loans shall be contracted on behalf of the corporation and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

Section 3. Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation shall be signed by

such officer or officers, agent or agents of the corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 4. Deposits. All funds of the corporation not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the Board of Directors may select.

Section 5. Execution of Instrument. Subject always to the specific directions of the Board of Directors, all deeds, mortgages, other instruments affecting title to real estate, and leases for a period of more than five (5) years, made by the corporation shall be executed in its name by the Chief Executive Officer, the President or a Vice President and by the Secretary or an Assistant Secretary. No person holding two or more offices may execute any such deed, mortgage or instrument in such person's capacity as the holder of both such offices, unless such person is specifically authorized by the Board of Directors to so execute the document or such person holds all offices last appointed by the Board of Directors. All other written contracts and agreements to which the corporation shall be party shall be executed in its name by the President or a Vice President or such other officer authorized by the Board of Directors.

## ARTICLE VI

### CERTIFICATES FOR SHARES AND THEIR TRANSFER

Section 1. Certificates for Shares. Subject to the provisions of Section 625 of the Iowa Business Corporation Act, certificates representing shares of the corporation shall be in such form as may be determined by the Board of Directors. Such certificates shall be signed by the President or a Vice President and the Secretary or an Assistant Secretary of the corporation. The signatures of the President or Vice President and the Secretary or Assistant Secretary upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent or registered by a registrar, other than the corporation itself or an employee of the corporation. All certificates for shares shall be consecutively numbered or otherwise identified. The name of the person to whom the shares represented thereby are issued with the number of shares and date of issue shall be entered on the books of the corporation. All certificates rendered to the corporation for transfer shall be cancelled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and cancelled, except that in case of a lost, destroyed or mutilated certificate a new one may be issued therefor upon such terms and indemnity to the corporation as the Board of Directors may prescribe.

Section 2. Legends. All certificates shall conspicuously set forth such matter as is required by Sections 625 and 627 of the Act.

Section 3. Transfers of Shares. Subject to the rights conferred by the Uniform Commercial Code, transfers of shares of the corporation shall be made only on the books of the corporation by the holder of record thereof or by the holder's legal representative, who shall furnish proper evidence of authority to transfer, or the holder's attorney thereunto authorized by power of attorney duly executed and filed with the Secretary of the corporation, and only on surrender for cancellation of the certificate for such shares. Except as otherwise provided by law, the person in whose name shares stand on the books of the corporation shall be deemed the owner thereof for all purposes as regards the corporation.



## ARTICLE VII

### VOTING OF SHARES OWNED BY CORPORATION

Subject always to the specific directions of the Board of Directors, any share or shares of stock issued by any other corporation and owned or controlled by the corporation may be voted at any shareholders' meeting of such other corporation by the President of the corporation if present, or in the President's absence by any Vice President of the corporation who may be present. Whenever, in the judgment of the President, or in the President's absence, of any Vice President, it is desirable for the corporation to execute a proxy or give a shareholders' consent in respect to any share or shares of stock issued by any other corporation and owned by the corporation, such proxy or consent shall be executed in the name of the corporation by the President or one of the Vice Presidents of the corporation and shall be attested by the Secretary or an Assistant Secretary of the corporation without necessity of any authorization by the Board of Directors. Any person or persons designated in the manner above stated as the proxy or proxies of the corporation shall have full right, power and authority to vote the share or shares of stock issued by such other corporation and owned by the corporation, the same as such share or shares might be voted by the corporation.

## ARTICLE VIII

### WAIVER OF NOTICE

Whenever any notice is required to be given to any shareholder or Director of the corporation under the provisions of these Bylaws or under the provisions of the Articles of Incorporation or under the provisions of the Iowa Business Corporation Act, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the date and time stated therein, shall be deemed equivalent to the giving of such notice.

## ARTICLE IX

### AMENDMENTS

Except as otherwise provided in the Iowa Business Corporation Act or as otherwise provided by action of the shareholders of the corporation, these Bylaws may be altered, amended or repealed and new Bylaws may be adopted at any meeting of the Board of Directors of the corporation by a majority vote of the Directors present at the meeting.

## ARTICLE X

### FISCAL YEAR

The fiscal year of the corporation shall begin on the 1<sup>st</sup> day of January in each year and end on the 31<sup>st</sup> day of December in each year.

ARTICLE XI

CORPORATE SEAL

The corporation shall have no corporate seal.

# F&M BANK

*"The Right Choice"*

200 FIRST STREET, S.W., CEDAR RAPIDS, IOWA 52404

December 19, 2017

Mr. Mike Espiritu, IOM  
Otero County Economic Development Council  
2400 N. Scenic Drive  
Alamogordo, NM

RE: Thomas L Cardella & Associates, Inc.

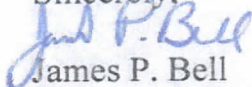
Dear Mr. Espiritu,

The purpose of this letter is to introduce you to our good customer, Thomas L Cardella & Associates, Inc. The company has banked with F & M Bank since December 8, 2008. In that time, the company has handled its' business relationship, including depository and lending services, with F & M Bank in a most satisfactory manner.

Thomas L Cardella & Associates, Inc. is in good standing with F & M Bank and has been a strong supporter of the Cedar Rapids community. Please give our good customer, Thomas L Cardella & Associates, Inc. your utmost consideration as they set up operations in your community.

Please don't hesitate to call me with any questions you may have.

Sincerely,



James P. Bell  
Senior Vice President





## Independent Auditor's Report

Board of Directors  
Thomas L. Cardella & Associates, Inc.  
Cedar Rapids, Iowa

We have audited the accompanying financial statements of Thomas L. Cardella & Associates, Inc., which comprise the balance sheets as of December 31, 2016 and 2015, and the related statements of income, stockholders' deficit, and cash flows for the years then ended, and the related notes to the financial statements.

### Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with the auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our qualified audit opinion.

BerganKDV, Ltd.

602 Main Street  
Suite 100  
P.O. Box 489  
Cedar Falls, IA  
50613-0026  
T 319.268.1715  
F 319.268.1720

2720 1st Avenue NE  
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P.O. Box 10200  
Cedar Rapids, IA  
52402-0200  
T 319.294.8000  
F 319.294.5003

2530 Corridor Way  
Suite 301  
P.O. Box 5267  
Coralville, IA  
52241-0267  
T 319.248.0367  
F 319.248.0582

9207 Northpark Drive  
Johnston, IA  
50131-2933  
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F 952.563.6801

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56302-3713  
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F 320.251.1784

100 East Park Avenue  
Suite 300  
P.O. Box 2100  
Waterloo, IA  
50704-2100  
T 319.234.6885  
F 319.234.6287

[bergankdv.com](http://bergankdv.com)

**Basis for Qualified Opinion**

As more fully described in Note 1 to the financial statements, the Company has a stock-based compensation plan that should be accounted for using a fair value based method to conform with accounting principles generally accepted in the United States of America. The effects on the financial statements are not reasonably determinable.

**Qualified Opinion**

In our opinion, except for the effects of not recognizing stock-based compensation as described in the Basis for Qualified Opinion paragraph, the financial statements referred to in the first paragraph present fairly, in all material respects, the financial position of Thomas L. Cardella & Associates, Inc. as of December 31, 2016 and 2015, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

**Report on Supplementary Information**

Our audits were conducted for the purpose of forming an opinion on the financial statements as a whole. The supplementary information on pages 15 and 16 is presented for purposes of additional analysis and is not a required part of the financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the financial statements as a whole.

*Bergan KDV, Ltd.*

Cedar Rapids, Iowa  
June 29, 2017



## Laurie Anderson

---

**From:** Petria Schreiber <pschreiber@ci.alamogordo.nm.us>  
**Sent:** Thursday, February 01, 2018 8:44 PM  
**To:** Thomas Cardella; Darron Williams; Spencer Goettsch  
**Cc:** Laurie Anderson; Brian Cesar; Ron Hammerberg; 'Joshua A. Beug'; Ashley Haahes  
**Subject:** RE: TLC Associates

Hi Tom,

We need to finalize the agreement, including the amount requested before we can move forward. The entire agreement will have to go before commission, as a whole, so we need to know the amounts to get that done.

Please let me know if you have any additional questions.

**From:** Thomas Cardella [mailto:Thomas.Cardella@TLCAssociates.com]  
**Sent:** Thursday, February 1, 2018 9:59 AM  
**To:** Darron Williams <dwilliams@ci.alamogordo.nm.us>; Spencer Goettsch <sgoettsch@firstiowa.com>  
**Cc:** Petria Schreiber <pschreiber@ci.alamogordo.nm.us>; Laurie Anderson <l.anderson@ocedc.com>; Brian Cesar <bcesar@ci.alamogordo.nm.us>; Ron Hammerberg <rhammerberg@firstiowa.com>; 'Joshua A. Beug' <jbeug@tbtc.net>; Ashley Haahes <Ashley.Haahes@TLCAssociates.com>  
**Subject:** RE: TLC Associates

Everyone,

To secure the performance bond, Ron Hammerberg (our Insurance Agent) will need the agreement between TLC Associates, and Alamogordo.

In our discussions, the agreement was that TLC would employ 100 FTEs within two years, in exchange for X dollars.

My assumption is that if we provide Ron with the verbiage that we used for the first public reading, that should suffice, since the public reading will be the agreement.

Please let us know how we can move forward with obtaining that information.

Also, as an fyi, Laurie received a copy of the lease this morning, along with an initial layout of the proposed facility.

Thank you,

Tom Cardella

Thomas L Cardella  
Founder and President  
TLC Associates  
[www.tlcassociates.com](http://www.tlcassociates.com)  
(m) 319-551-1199

---

**From:** Darron Williams [<mailto:dwilliams@ci.alamogordo.nm.us>]  
**Sent:** Wednesday, January 31, 2018 8:43 AM  
**To:** Spencer Goettsch  
**Cc:** Petria Schreiber; Laurie Anderson; Thomas Cardella; Brian Cesar  
**Subject:** RE: TLC Associates

Good morning,  
I am out of the office today and tomorrow. I'll get your answers to you on Friday. However, that said, we won't need to actually complete the bond in its entirety until a couple of business days prior to signing actual documents. If my calendar math is accurate, that gives us about three to four weeks from now.

Sincerely,  
Darron

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---

**From:** Spencer Goettsch <[sgoettsch@firstiowa.com](mailto:sgoettsch@firstiowa.com)>  
**Sent:** Wednesday, January 31, 2018 7:33:55 AM  
**To:** Darron Williams  
**Cc:** Laurie Anderson  
**Subject:** RE: TLC Associates

Thanks Darron. I received Petria's email this morning confirming her acceptance of the SF25 Performance Bond. Now that we've established which form you're looking for I need to specify criteria:

- 1) What is the overall obligation that you want the surety to guarantee?
- 2) Is there (or is there going to be) a specific contract between TLC & Assoc and the City of Alamogordo outlining the specific terms of this obligation?
- 3) What is the required bond amount?

Thank you.

*Spencer Goettsch*  
**First Iowa Insurance Agency, Inc.**  
**"We think of You First."**  
**Office (319) 393-5262**  
**Fax (319) 393-3161**  
4101 Glass Road NE  
Cedar Rapids, Iowa 52402  
[sgoettsch@firstiowa.com](mailto:sgoettsch@firstiowa.com)

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---

**From:** Darron Williams [<mailto:dwilliams@ci.alamogordo.nm.us>]  
**Sent:** Tuesday, January 30, 2018 4:23 PM  
**To:** Spencer Goettsch <[sgoettsch@firstiowa.com](mailto:sgoettsch@firstiowa.com)>  
**Cc:** Ron Hammerberg <[hammerberg@firstiowa.com](mailto:hammerberg@firstiowa.com)>; [thomas.cardella@tlcassociates.com](mailto:thomas.cardella@tlcassociates.com); Laurie Anderson <[l.anderson@ocedc.com](mailto:l.anderson@ocedc.com)>  
**Subject:** RE: TLC Associates

Good afternoon,

Yes, I did receive the form and thought I had replied, my apologies. The form is acceptable to our finance department and I am waiting for similar answer from our legal department. I should have the answer by close of business today. I do not foresee it being a concern, but need to wait for the one last response.

Sincerely,  
Darron  
575-439-4231

---

**From:** Spencer Goettsch [<mailto:sgoettsch@firstiowa.com>]  
**Sent:** Tuesday, January 30, 2018 3:04 PM  
**To:** Darron Williams <[dwilliams@ci.alamogordo.nm.us](mailto:dwilliams@ci.alamogordo.nm.us)>  
**Cc:** Ron Hammerberg <[rhammerberg@firstiowa.com](mailto:rhammerberg@firstiowa.com)>  
**Subject:** RE: TLC Associates

Darron,

Can you verify that you received the attached SF25 form last week? We have not received verification from anyone in your Finance Department that this is the correct Performance Bond form that they are looking for.

Call or email to let us know. Thank you.

*Spencer Goettsch*  
**First Iowa Insurance Agency, Inc.**  
**"We think of You First."**  
**Office (319) 393-5262**  
**Fax (319) 393-3161**  
4101 Glass Road NE  
Cedar Rapids, Iowa 52402  
[sgoettsch@firstiowa.com](mailto:sgoettsch@firstiowa.com)

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---

**From:** Spencer Goettsch  
**Sent:** Wednesday, January 24, 2018 2:08 PM  
**To:** 'Darron Williams' <[dwilliams@ci.alamogordo.nm.us](mailto:dwilliams@ci.alamogordo.nm.us)>  
**Cc:** Ron Hammerberg <[rhammerberg@firstiowa.com](mailto:rhammerberg@firstiowa.com)>  
**Subject:** RE: TLC Associates

Thanks for taking my call today Darron. Attached is the SF25 Standard Performance Bond Form. There are more specialized Performance Bond Forms that mainly address completion of construction projects, so my assumption is the SF25 is what you are requiring of TLC Associates. If you would please have your financial people take a look and verify this is the form they want I would greatly appreciate it.

Thanks!

*Spencer Goettsch*  
**First Iowa Insurance Agency, Inc.**  
**"We think of You First."**  
**Office (319) 393-5262**  
**Fax (319) 393-3161**  
4101 Glass Road NE



Cedar Rapids, Iowa 52402  
[sgoettsch@firstiowa.com](mailto:sgoettsch@firstiowa.com)

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---

**From:** Darron Williams [<mailto:dwilliams@ci.alamogordo.nm.us>]  
**Sent:** Wednesday, January 24, 2018 12:26 PM  
**To:** Spencer Goettsch <[sgoettsch@firstiowa.com](mailto:sgoettsch@firstiowa.com)>  
**Subject:** FW: TLC Associates

Mr. Spencer,

Good afternoon. I am the City of Alamogordo's point of contact for all things economic development, to include your client's project we are currently working. I called and left a message with Jen with my contact info as well.

However, if I may, what your client is in need of is a Performance Bond for the amount of what is being asked of in the way of LEDA funds, or similar level of security. At last conversation, the value looking to be secured in at or near \$1.1M.

I look forward to working with you in support of our mutual client, please do not hesitate to call me with questions.

Sincerely,

Darron Williams  
City Planner  
City of Alamogordo  
Ofc 575-439-4231  
Cell 575-415-0379  
[dwilliams@ci.alamogordo.nm.us](mailto:dwilliams@ci.alamogordo.nm.us)



Planning and Zoning...  
"The City's future starts here."

---

**From:** Spencer Goettsch [<mailto:sgoettsch@firstiowa.com>]  
**Sent:** Wednesday, January 24, 2018 10:09 AM  
**To:** Rachel Hughes <[rhughes@ci.alamogordo.nm.us](mailto:rhughes@ci.alamogordo.nm.us)>  
**Subject:** TLC Associates

Good morning Rachel. TLC Associates is our client and they've asked us to help them obtain the necessary documentation to secure LEDA funds for Otero County. Is there a specific bond form that you are looking for or do you have a copy of what you've accepted from other businesses in the past? Section (d) (1) mentions *a lien, mortgage or other indenture* to provide security to the city/county.

Can you help clarify what you're looking for so we can get you exactly what you need?

Thank you!

*Spencer Goettsch*

**First Iowa Insurance Agency, Inc.**

**"We think of You First."**

**Office (319) 393-5262**

**Fax (319) 393-3161**

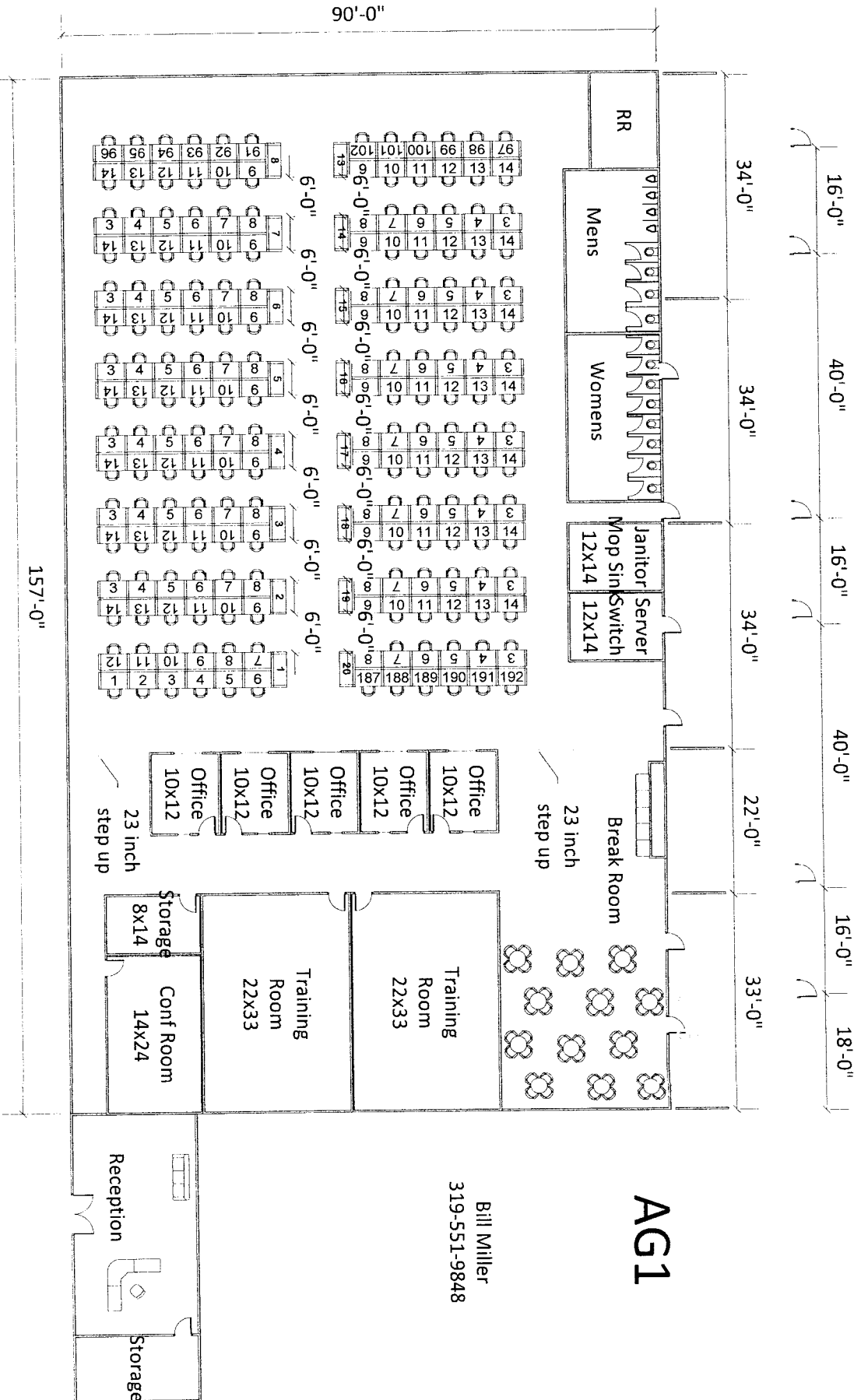
4101 Glass Road NE

Cedar Rapids, Iowa 52402

[sgoettsch@firstiowa.com](mailto:sgoettsch@firstiowa.com)

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90'-0"



# LEASE AGREEMENT

*Solid CAP Properties, LLC.  
White Sands Mall*

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# LEASE AGREEMENT

*Solid CAP Properties, LLC.  
White Sands Mall*

This Lease Agreement (the "Lease"), dated \_\_\_\_\_ for reference purposes only, is made by and between **Solid CAP Properties, LLC** ("Landlord"), and **TLC & Associates** ("Tenant").

## **Section 1. Terms and Conditions.**

The following terms constitute certain conditions of this Lease ("Terms and Conditions") which are set forth in this Section for ease of reference. Each subsequent reference in this Lease to any of the Terms and Conditions shall incorporate such terms as if the same were fully and completely stated therein. As used in this Lease, Terms and Conditions shall have the following meanings, respectively:

- 1.1 **Demised Premises:** The Demised Premises identified as space **A2 through A7**, containing approximately **15,240** square feet in size, see Exhibit "A" attached hereto.
- 1.2 **Shopping Center:** The project development commonly known as the White Sands Mall and located at and known by the street address of 3199 North White Sands Blvd., City of Alamogordo, Municipality of Alamogordo and State of New Mexico, which development is shown on Exhibit "A".
- 1.3 **Lease Term:** 5 years with two five year options to extend
- 1.4 **Commencement Date:** June 1, 2018
- 1.5 **Expiration Date:** May 31, 2023
- 1.6 **Basic Rent:** Years 1-5    **\$13,335.00 per month**  
Option 1    Years 6-10    **\$14,287.00 per month**  
Option 2    Years 11-16    **\$15,239.00 per month**
- 1.7 **Cost of Living Increase:**
  - 1.7.1    Basic Rent: N/A
  - 1.7.2    Promotional Fund: N/A
- 1.8 **Rental Commencement Date:**
  - 1.8.1    Basic Rent and/or Percentage Rent shall commence on June 1, 2018.
  - 1.8.2    All other charges shall commence on June 1, 2018 or 1<sup>st</sup> day of business, whichever occurs first.
- 1.9 **Percentage Rent Rate:**    **Intentionally Deleted**
- 1.10 **Tax Charge:** To be paid by Landlord. Tenant shall pay prorata share of property tax increases after base year of 2018.

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1.11 **Insurance Charge:** Paid by Landlord

1.12 **Common Area Charges:**

1.12.1 **Exterior Common Area:** Paid by Landlord

1.12.2 **Enclosed Mall Common Area:** Paid by Landlord

1.13 **Tenant's Pro-Rata Share:** Tenant's Pro Rata Share of any costs and expenses shall be the total of such costs and expenses multiplied by a fraction, the numerator of which shall be the square footage of the Tenant's Demised Premises and the denominator which shall be the gross leasable floor area of all buildings in the Shopping Center, whether or not occupied. Provided, however, that if any tenants in said buildings have obtained written approval from Landlord to pay their taxes directly to any taxing authority, or to carry their own insurance, their square footage shall not be deemed a part of the floor area for the purposes of prorating said Taxes or Insurance adjustments.

1.14 **Anchor Tenants:** For purposes of calculating the Tenant's Pro-Rata Share of Enclosed Mall Common Area, the Anchor Tenants are JCPenney, Beall's, and their successors or assigns.

1.15 **Security Deposit:** N/A

1.16 **Promotional Fund Charge:** N/A

1.17 **Use:** Call Center

1.18 **Payment Address:** Rental and other payments are to be made payable to the Landlord and mailed to:  
Solid CAP Properties, LLC.  
White Sands Mall  
3199 N. White Sands Blvd.  
Alamogordo, NM 88310

1.19 **Tenant's Notice Address:** TLC & Associates  
4515 20<sup>th</sup> Avenue, SW, Suite B  
Cedar Rapids, IA 52404

Contact Name: Thomas Cardella

**Contact Phone:** 319 730-4001

**Email:** [thomas.cardella@tlcassociates.com](mailto:thomas.cardella@tlcassociates.com)



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1.20 **Landlord's Notice Address:** Solid CAP Properties, LLC a New Mexico limited liability company  
3199 North White Sands Blvd.  
Alamogordo, NM 88310

1.21 **Gross Sales Report Address:** Solid CAP Properties, LLC a New Mexico limited liability company  
3199 North White Sands Blvd.  
Alamogordo, NM 88310

1.22 **Exhibits.** The following Exhibits are attached hereto and made a part hereof:

- 1.22.1 Exhibit A – Site Plan of the Shopping Center
- 1.22.2 Exhibit B – Mall Sign Policy
- 1.22.3 Exhibit C- Designated Parking Area
- 1.22.4 Exhibit D- Demised Premises

## **Section 2. Demised Premises.**

**2.1 Letting.** Landlord hereby demises and leases to Tenant, and Tenant hereby takes from Landlord, on the terms and conditions herein set forth, the Demised Premises as described in Section 1.1 and shown in Exhibit "A". Landlord shall provide 175 paved parking spaces (in designated area) as shown in Exhibit C and sufficient to comply with the provisions of the zoning ordinance of the City of Alamogordo as well as permit Tenant to use such parking area as shall be provided by Landlord in common with other Tenants of Landlord in said Shopping Center.

**2.2 LANDLORD RESPONSIBILITIES.** Landlord to construct premises as delineated in Exhibit "A" with one exception. Landlord SHALL NOT be responsible to provide any electrical improvements to the Demised Premises. Landlord shall deliver Internet to the premises. Landlord shall provide four (4) female and two (2) male handicap restrooms to the Demised Premises. All construction shall be completed in a professional manner and in compliance with local codes.

**2.3 TENANT RESPONSIBILITIES.** Tenant shall provide all FF&E, Internet, phone, PA System, and electrical service improvements to the Demised Premises. These improvements shall be completed in a professional manner and in compliance with local codes.

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## **Section 3. Lease Term**

The term of this lease shall be for the period designated in Section 1.3 commencing on the Commencement Date and ending on the Expiration Date, unless the Lease Term is sooner terminated as provided in this Lease.

## **Section 4. Basic Rent and Percentage Rent.**

**4.1 Basic Rent.** Except as otherwise set forth herein, Tenant shall, during the Lease Term, pay Landlord Basic Rent at the rate specified in Section 1.6. Basic Rent shall be paid in equal monthly installments in advance on or before the first day of each and every calendar month during the Lease Term, it being agreed that the foregoing covenant to pay rent is independent of any other covenant or condition herein contained.

**4.2 Payment.** Tenant shall cause payment of rent or any additional rent, or amounts or charges described in this Lease to be received by Landlord in lawful money of the United States without offset or deduction on or before the day on which it is due. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of all rent and other payments shall be made to Landlord at the address set forth in Section 1.18 or to such other persons or place as lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Landlord's rights to the balance due, regardless of Landlord's endorsement of any check so stating.

**4.3 Late Payment.** If payment is not received within five (5) days, when the same is due and payable, there shall be an administrative charge of ten percent (10%) of the overdue balance. In the event that any check, draft, or other instrument of payment given by Tenant to Landlord is dishonored for any reason, Tenant agrees to pay to Landlord the sum of \$25.00 in addition to any late charges which may be due.

**4.4 Cost of Living Increase.** The minimum monthly rent shall be subject to increase (but in no event decrease) as set forth in Section 1.7. The base for computing the increase is the Consumer Price Index ("CPI"), All Urban Consumers, U.S. City Average, All Items, 1982-1984 = 100 as published by the United States Department of Labor, or if such index is no longer in use, then such replacement index which is most comparable to the foregoing index as to which the parties shall agree. The CPI for any adjustment date occurring during the Lease Term, or Extension Term as the case may be, shall be the CPI for the calendar month which is two (2) months immediately prior to the calendar month in which the particular adjustment date occurs. Notwithstanding the foregoing Tenant pays no CPI increases for original term of Lease.

**4.5 Percentage Rent.** Not Applicable

**4.6 Gross Receipts:** Not Applicable



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4.7 Audit/Right to Examine Books: Not Applicable

## **Section 5. Real Estate Taxes, Insurance, and Common Area Maintenance Charges.**

Included in base rent

5.1 Real Estate Taxes. Landlord shall timely and fully pay all real estate taxes levied against the Shopping Center. Tenant shall pay Landlord its share of expenses as set forth in Section 1.10.

Real Estate Taxes shall include all real estate taxes and assessments, whether special or general and including any road improvement districts, water improvement district, and any other utility installation hookup, tie in or similar charges or assessments that are levied upon and/or assessed against the Demised Premises or the Shopping Center and/or payable during or with respect to the Lease Term and the costs of professional consultants and/or counsel to analyze tax bills and prosecute any protests, refunds and appeals; provided, that all such payments shall be paid on a cash basis without regard to whether such real estate taxes apply to a period before or after the Lease Term and without regard to whether the Tenant was in possession of the Demised Premises during the time covered by the particular tax statement

5.2 Insurance. Landlord shall timely and fully pay the property and liability and other necessary insurance premiums as required of Landlord to insure the Shopping Center.

5.3 Common Area Maintenance. Landlord shall timely and fully pay the Operating Costs of the Common Facilities.

5.3.1 Exterior Common Area. The term "Exterior Common Area" refers to all areas within the exterior boundaries of the Shopping Center which are now or hereafter made available for general use, convenience and benefit of Landlord and other persons entitled to occupy space in the Shopping Center, which areas shall include but not be limited to parking areas, driveways, open or enclosed malls, sidewalks, landscaped and planted areas, and roofs. The Landlord shall keep or cause to be kept the Exterior Common Area in a neat, clean, and orderly condition, properly lighted and landscaped, and shall repair any damage to the facilities thereof. It is understood and agreed that the expenses associated with the Exterior Common Area as used herein shall be construed to include, but not be limited to, all sums expended in connection and with the Exterior Common Area for all general and repairs; relocation of facilities; resurfacing; painting; striping; restriping; cleaning; snow removal; sweeping and janitorial services; maintenance and repair of sidewalks, curbs and Shopping Center signs, landscaping, irrigation or sprinkling systems; planting and landscaping; lighting and other utilities; directional signs and other markers and bumpers; all roof repairs maintenance and replacement; painting or renovations of the exterior portion of all or any part of the improvements constructed on the Shopping Center; maintenance and repair of any protection systems, lighting systems, storm drainage systems and any other utility systems; all cost or expense incurred by reason of any repairs or modifications to the Shopping Center and/or its improvements and/or for repair on installation of equipment for energy or safety purposes; personnel to implement such services

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including, if Landlord deems necessary, the cost of a maintenance supervisor and/or the cost of security guards; all costs and expenses pertaining to a security alarm system for the tenants and/or Shopping Center; all costs, expenses, taxes and/or surcharges levied or imposed upon or against the Exterior Common Areas, parking spaces or areas, the Shopping Center and/or Landlord and governmental agency having jurisdiction over the Shopping Center; all costs incurred by Landlord in connection with complying with applicable federal, state, county, borough or municipal laws, ordinances, rules, regulations, directives, orders and/or requirements now or hereafter in force with respect to the Shopping Center and/or its Exterior Common Area; reserves for future maintenance and repair work and reserves for replacement of existing capital improvements in the Exterior Common Area which Tenant authorizes Landlord to use as Landlord deems necessary; personal property taxes on the improvements located on the Exterior Common Area; fees and expenses incurred in managing the Exterior Common Area; fees incurred in the performance, management, and supervision of the Exterior Common Area maintenance services and obligations and/or administering the accounting, bookkeeping and collection of the expenses in connection with the Exterior Common Area (such fees not to exceed fifteen percent (15%) of the pro rata share); and public liability and property damage insurance covering the Exterior Common Area in amounts as required by Landlord. Landlord may cause any or all of said services to be provided by an independent contractor or contractors.

5.3.2 Enclosed Mall Common Area. The Enclosed Mall Common Area is the portion of the Shopping Center which is constructed so that climatic control may be provided therein. The following will apply only to tenants having an entrance onto the Enclosed Mall Common Area. Enclosed Mall Common Area operation and maintenance expenses refers to expenses in connection with the Enclosed Mall Common Area including, but not limited to, the following: capital improvements; reserve for future maintenance, energy, conservation equipment; life safety equipment and maintenance supervisor; utility expenses for lighting and operation of air conditioning and heating equipment; all costs, expenses, taxes and/or surcharges levied or imposed upon or against the Enclosed Mall Common Area, the Shopping Center and/or Landlord and all payments to or for public transit or carpooling facilities or as otherwise required by any governmental agency having jurisdiction over the Shopping Center; all costs incurred by Landlord in connection with complying with applicable federal, state, county, borough or municipal laws, ordinances, rules, regulations, directives, orders and/or requirements now or hereafter in force with respect to the Shopping Center and/or its Enclosed Mall Common Area; plus the costs and expenses incurred by Landlord (including the cost of new equipment and alterations) if Landlord is required by applicable federal, state, county, borough, or municipal laws, ordinances, rules, regulations, directives, orders or requirements now or hereafter in force, to convert or replace any HVAC or utility system or equipment serving the Enclosed Mall Common Area, including but not limited to systems or equipment using the chlorofluorocarbon known as "freon"; personal property taxes on necessary improvements and equipment; premiums on public liability and property taxes on necessary improvements and equipment; maintenance, repair and replacement of mechanical equipment, including automatic doors; purchase and repair of cleaning equipment and lighting fixtures (including replacement of tubes and bulbs), air

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conditioning and heating equipment; fire sprinkler systems, security alarm systems and all other items of equipment used exclusively in connection with the Enclosed Mall Common Area; planting and landscaping improvements; repair, maintenance and cleaning of the Enclosed Mall Common Area structure including floors, ceilings roof, skylights and windows; personnel to implement such services, including, if Landlord deems necessary, the cost of security guards; fees and expenses incurred in managing the Enclosed Mall Common Area; fees incurred in the performance, management, and supervision of the Enclosed Mall Common Area maintenance services and obligations and/or administering the accounting, bookkeeping and collection of the expenses in connection with the Enclosed Mall Common Area (such fees not to exceed fifteen percent (15%) of the pro rata share); and public liability and property damage insurance covering the Enclosed Mall Common Area in amounts as required by Landlord. Landlord may cause any or all of said services to be provided by an independent contractor or contractors. Anything contained hereinabove to the contrary notwithstanding, all expenses in connection with the original construction and installation of the Enclosed Mall shall be without cost to the Tenant; all other items except as herein enumerated shall be treated as mall operation and maintenance expenses and prorated and paid as provided herein.

5.4 Annual Reconciliation of Charges. On an annual basis, commencing and ending on such dates as may be designated by Landlord, Landlord shall furnish Tenant a written statement covering the accounting period just expired, showing a general breakdown of the total real estate taxes, insurance, and operating costs, the calculated amount of Tenant's Tax Charge, Insurance Charge and Common Area Charges for such accounting period and the payment made by Tenant with respect to such accounting period. If Tenant's Tax Charge, Insurance Charge or Common Area Charges exceeds Tenant's payment with respect to such accounting period, Tenant shall pay Landlord the deficiency within thirty (30) days after the furnishing of said statement: and if said payment exceeds Tenant's Tax Charge, Insurance Charge, and Common Area Charges, Landlord shall pay the Tenant the deficiency within thirty (30) days after the furnishing of said statement. In addition, the Tax Charge, Insurance Charge, and Common Area Charges, provided to be paid in Sections 1.10, 1.11, and 1.12 shall be adjusted on an annual basis and a catch-up billing for the accounting period shall be charged if necessary.

**Section 6. Additional Consideration for Execution of Lease.** Not Applicable

**Section 7. Merchant's Association.** Not Applicable

**Section 8. Use.**

8.1 Use. The Demised Premises are leased to the Tenant for the purpose of conducting a business as set forth in Section 1.17 and for no other purpose. Said use shall be considered to be



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a material inducement to Landlord's execution of this Lease. Tenant acknowledges that Landlord and other tenants may be substantially damaged by Tenant's failure to conduct its business in a manner consistent with said use or by its use of the Demised Premises for any other than the stated purpose. Tenant shall not permit any new stands, taxi stands or any other stands of business to be operated in front of the Demised Premises.

8.2 Prohibited Uses. Tenant agrees that the said Tenant's business shall be established and conducted throughout the term hereof in a first class manner and that Tenant will not use the Demised Premises for, or carry on or permit upon said Premises, any offensive, noisy or dangerous trade, business, manufacture or permit any auction sale to be held or conducted in or about said Premises and Tenant further agrees that the Demised Premises shall not be used or be permitted to be used in whole or in part in violation of any of the laws, ordinances, regulations or rules of any public authority at any time applicable thereto. Tenant may not sell, serve or permit the use of alcoholic beverages upon the Demised Premises.

8.3 Hazardous Substance. The term Hazardous Substance as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Demised Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Shopping Center, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Landlord to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Notwithstanding the foregoing, Tenant may use any ordinary and customary materials reasonably required to be used in the normal course of business, so long as such use is in compliance with all county, state, and government regulations.

8.3.1 Tenant Remediation. Tenant shall not cause or permit any Hazardous Substances to be spilled or released in, on, under, or about the Shopping Center (including through the plumbing or sanitary sewer system) and shall promptly, at Tenant's expense, take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Shopping Center or neighboring properties, that was caused or materially contributed to by Tenant, or pertaining to or involving any Hazardous Substance brought onto the Shopping Center during the term of this Lease, by or for Tenant, or any third party.

8.3.2 Tenant Indemnification. Tenant shall indemnify, defend and hold Landlord, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Shopping Center by or for Tenant, or any third party (provided, however, that Tenant shall have no liability under this lease with respect to underground migration of Hazardous Substance under the Demised Premises from areas outside of the Shopping Center). Tenant's obligations shall

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include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Tenant, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Landlord and Tenant shall release Tenant from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Landlord in writing at the time of such agreement.

8.3.3. Landlord Indemnification. Landlord and its successors and assigns shall indemnify, defend, reimburse and hold Tenant, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which existed as a result of Hazardous Substances on the Shopping Center premises prior to the Commencement Date or which are caused by the gross negligence or willful misconduct of Landlord, its agents or employees.

8.4 Law Compliance. The Tenant shall at his sole cost and expense comply with all of the requirements of all public authorities now in force, or which may hereafter be in force, pertaining to the Demised Premises.

**Section 9. Utilities.** The Tenant shall pay for all utilities, including electricity, gas, trash, power, telephone service, Internet service, janitorial services and all other services supplied to the said Demised Premises. If any such services are not separately metered to Tenant, Tenant shall pay a reasonable proportion to be determined by Landlord of all charges jointly metered with other premises.

**Section 10. Repairs and Maintenance of Demised Premises.** Tenant shall at all times keep the Demised Premises, including maintenance of entrances and all partitions, doors, windows, fixtures, equipment and appurtenances thereof (including lighting and plumbing fixtures) in good order, condition and repair (including reasonably periodic painting as deemed necessary by Landlord), damage by unavoidable casualty excepted, except for structural portions of the Demised Premises, which shall be maintained by Landlord, but if Landlord is required to make repairs to structural portions by reason of Tenant's negligent or intentional acts or omission to act, Landlord may add the cost of such repairs to the rent which shall thereafter become due.

10.1 HVAC. It is also agreed that the Tenant will maintain and repair the heating, ventilating, and air conditioning units which service the Demised Premises, including replacement of component parts, and furthermore Tenant shall provide monthly but in no instance less frequently than every three months, maintenance for said heating and air conditioning equipment, evidenced by submitting to the Landlord for his approval an equipment service contract from a qualified heating and air conditioning contractor for said maintenance. Notwithstanding the foregoing Landlord shall ensure that all HVAC systems are in good working condition prior to occupancy by Tenant, thereafter 180 days from the date of occupancy.



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10.2 Remedy. If Tenant refuses or neglects to repair property as required hereunder to the reasonable satisfaction of Landlord as soon as reasonably possible after written demand, Landlord may make such repairs without liability to Tenant for any loss or damage that may accrue to Tenant's merchandise, fixtures, or other property or to Tenant's business by reason thereof, and upon completion thereof, Tenant shall pay Landlord's costs for making such repairs plus twenty percent (20%) for overhead upon presentation of bill therefor, as additional rent.

**Section 11. Surrender at End of Term.** Tenant agrees on the last day of said term or sooner termination of this Lease to surrender unto Landlord all and singular said Demised Premises, with said appurtenances in the same condition as when received, reasonable use and wear thereof and damage by fire, act of God or by the elements excepted, and to remove all of Tenant's signs from said Demised Premises.

**Section 12. Alterations and Improvements.** Tenant shall not make, or suffer to be made, any alterations of the said Demised Premises, or any part thereof, without first having obtained the written consent of the Landlord. Any additions to, or alterations of, the said Demised Premises, except unattached moveable furniture and trade fixtures, shall become at once part of the realty and belong to the Landlord. Tenant shall keep the Demised Premises and the property in which the Demised Premises are situated free from any liens arising out of any work performed, materials furnished, or obligations incurred by the Tenant.

**Section 13. Removal of Tenant Property at End of Term.** Conditioned upon Tenant being in full and complete performance of all of the provisions of this Lease, Tenant may remove all unattached personal property it may own located on the Demised Premises and the same shall be removed by Tenant at the expiration or termination of this Lease, or any renewal hereof, provided that the same may be removed without damage to the building, and if damage is caused by such removal, Tenant agrees to repair such damage at his own cost forthwith. Any items permanently attached to the Demised Premises by Tenant which cannot be removed without damage to the Demised Premises shall become the property of Landlord upon termination of this Lease.

**Section 14. Assignment and Subletting.** In the event Tenant proposes to assign or sublet the Demised Premises, Tenant shall give written notice of its intention to do so to Landlord at least thirty (30) days prior to the effective date of any such proposed assignment or subletting, specifying in such notice whether the Tenant proposes to assign or sublet, the proposed effective date thereof, identification of the proposed assignee or sublessee with a description of the proposed assignee's or sublessee's business and personal history. Such notice shall be accompanied by current financial statements prepared by a certified public accountant and shall be accompanied by a copy of the proposed assignment documents, or sublease, or if not available, a letter of commitment or letter of intent setting forth all terms and provisions of the assignment or sublease. Landlord will notify Tenant of its approval or disapproval of the proposed assignment or sublease within a reasonable time, in no event earlier than fifteen (15) days or longer than ninety (90) days, after receipt of such notice and all required documentation

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as aforesaid. The approval of any assignment or subletting shall be deemed approval only as to the assignment or subletting specified in the notice on the terms and conditions as set forth therein. In no event shall Tenant sublet less than the entire portion of the Demised Premises. For purposes hereof, the term "sublet" or "subletting" includes without limitation any proposed concession, license, hypothecation or mortgage in or to the Demised Premises or any portion thereof or any portion of the Tenant's leasehold interest under this Lease. Landlord shall not unreasonably withhold its approval of Tenant's assignment of this Lease or subletting of the Demised Premises. The factors viewed in determining the reasonableness of Landlord's approval or disapproval of an assignment or subletting and the conditions which may be imposed by the Landlord as part of its consenting thereto shall be as follows:

14.1 Review. Landlord shall have the ability to review, in exercising its reasonable business judgment, the following factors:

14.1.1 The business history of the proposed assignee or subtenant;

14.1.2 The financial worth of the proposed assignee or subtenant shown by certified financial statement prepared in accordance with generally accepted accounting principles consistently applied within ninety (90) days prior to the date of notice of Landlord of the proposed assignment or subletting.

14.1.3 Whether the quality of the merchandising operation then being conducted on the Demised Premises will be adversely affected by the assignment or subletting, and

14.1.4 The character, moral stability and reputation of the proposed assignee or subtenant and that same are at least equal to those of Tenant on the same date the Lease is executed.

14.2 Fees. Tenant shall reimburse Landlord for reasonable attorney's fees and other costs incurred by Landlord in reviewing and processing the assignment of subletting documentation.

14.3 Good Faith. So long as Landlord exercises its good faith efforts in approving or disapproving of a proposed assignment or subletting, Landlord shall not be liable for damages to

Tenant or any other third party, whether or not Landlord's ultimate decision regarding such approval is subsequently determined to be unreasonably withheld.

14.4 Bonus Rent. In the event Tenant shall assign or sublet its interest in the Demised Premises in accordance with the terms of this Lease, then the rent payable hereunder shall be increased effective as of the date of such assignment or subletting to the amount of rent or other consideration (regardless of how described or computed) payable by the subtenant or assignee, to Tenant, directly or indirectly, in excess of the rent payable under the Lease. The rent charged by

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Tenant under assignment or subletting shall be the fair market rental value of the Demised Premises. In the event, by reason of such assignment or subletting the assignee or subtenant agrees to pay a higher percentage rent to Tenant, directly or indirectly, Tenant shall pay to Landlord such higher percentage rent received. In addition to the foregoing, Tenant agrees that in the event Tenant shall assign its interest in this Lease or sublet the Demised Premises, Tenant shall pay to Landlord immediately following its receipt thereof all consideration received by or payable to Tenant, directly or indirectly, (other than rent which is handled as provided above) for such assignment or subletting, however described.

14.5 Termination. If the Tenant requests Landlord's consent to any assignment or subletting of the Demised Premises, or any portion thereof, Landlord shall have the right, to be exercised by giving written notice to Tenant within ninety (90) days of receipt by Landlord of all documents and information concerning such assignment or subletting as required herein, to terminate this Lease. Landlord's right to terminate this Lease as a result of any proposed assignment or subletting shall not terminate as a result of Landlord's consent or failure to consent to any one or more assignments or sublettings or attempts thereof.

**Section 15. Taxes Resulting from Tenant's Property or Improvements.** Tenant shall be liable for all taxes levied against personal property and trade fixtures or improvements placed by Tenant in or about the herein described Demised Premises. If any such taxes on Tenant's personal property or trade fixtures or improvements are levied against Landlord or Landlord's property, and if Landlord pays the same, which Landlord shall have the right to do regardless of the validity of such levy, or if the assessed value of the Landlord's Premises is increased by the inclusion therein of a value placed upon such personal property or improvements of Tenant, and if Landlord pays the taxes based on such increased assessment, which the Landlord shall have the right to do regardless of the validity thereof, Tenant, upon demand, shall, as the case may be, repay to Landlord the taxes so levied against Landlord or the proportion of such taxes resulting from such increase in the assessment.

**Section 16. Non-Liability of Landlord for Damages.** This Lease is made upon the express condition that Landlord is to be free from all liability and claim for damages by reason of any injury to any person or persons, including Tenant, from any cause or causes whatsoever while in, upon or in any way connected with the same Premises or the sidewalks adjacent thereto during the term of this Lease or any extension hereof or any occupancy hereunder. Tenant hereby covenants and agrees to indemnify and hold harmless Landlord from all liability, loss, cost and obligations on account or arising out of any such injuries or losses however occurring.

**Section 17. Liability Insurance.** Tenant further agrees to take out and keep in force during the life hereof at Tenant's expense public liability insurance in companies and through brokers licensed to do insurance business in the State where the Demised Premises are located to protect against any liability to the public incident to the use of or resulting from any accident, occurring in or around said Premises, including elevators, if any, in the amount of \$500,000.00 to indemnify against the claim of one person and \$1,000,000.00 against the claims of two or more



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persons; and property damage insurance in limits of \$100,000.00 The said policy shall insure the contingent liability of Landlord, list Landlord as Additional Insured, and said policy, or a certificate of insurance, is to be placed with Landlord. Tenant shall obtain a written obligation on the part of the insurance carrier to notify Landlord in writing prior to any cancellation thereof, and Tenant agrees, if Tenant does not keep such insurance in force and effect, the Landlord may take out the necessary insurance and pay the premium and the payment thereof shall be deemed to be part of the rental and payable as such on the next day upon which rent becomes due. In addition, any establishment serving liquor, beer, wine or any alcoholic beverage whatsoever, must carry and give evidence to the new Landlord of Liquor Legal Liability coverage, and the Landlord is to be an added insured.

**Section 18. Insurance Hazards.** No use shall be made or permitted to be made of the said Demised Premises, nor acts done, which will increase the existing rate of insurance upon the building in which said Demised Premises may be located, or cause a cancellation of any insurance policy covering said building, or any part thereof, nor shall the Tenant sell, or permit to be kept, used or sold, in or about the Demised Premises, any article which may be prohibited by the standard form of fire insurance policies. The Tenant shall, at his sole cost and expense, comply with any and all requirements pertaining to the Demised Premises of any insurance organization or company necessary for the maintenance of reasonable fire and public liability insurance covering said building and appurtenances.

**Section 19. Waste, Quiet Conduct.** The Tenant shall not commit, or suffer to be committed, any waste upon the said Premises or any public or private nuisance, or any other act or thing which may disturb the quiet enjoyment of any other tenant, if any there be in the building in which the Demised Premises may be located.

**Section 20. Entry by Landlord.** The Tenant shall permit the Landlord and his agents to enter into and upon said Demised Premises at all reasonable times for the purpose of inspecting the same or for the purpose of maintaining the building in which the said Demised Premises are situated, or for the purpose of making repairs, alterations, or additions to any other portion of said building, and with such material as Landlord may deem necessary therefor, or for the purpose of posting notices of non-liability for alterations, additions, or repairs or for the purpose of placing upon the property in which the said Demised Premises are located any usual or ordinary "For Sale" signs, without any rebate of rent to the Tenant for any loss of occupation or quiet enjoyment of the Demised Premises thereby occasioned; and shall permit the Landlord, at any time within sixty (60) days prior to the expiration of this Lease, to place upon said Demised Premises any usual or ordinary "To Let" or "To Lease" signs, and to allow prospective tenants or purchasers or applicants to enter and examine said Demised Premises during said last sixty (60) days, or in the event of any emergency Tenant waives any claim to damages, including loss of business, from such entry.

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**Section 21. Landlord to be Held Harmless from Litigation.** Tenant agrees that if Landlord is involuntarily made a party defendant to any litigation concerning this Lease or the Demised Premises or the premises of which the Demised Premises are a part by reason of any act or omission of Tenant and not because of any act or omission of Landlord, then Tenant shall hold harmless the Landlord from all liability by reason thereof, including reasonable attorney's fees incurred by Landlord in such litigation and all court costs.

**Section 22. Holding Over.** Any holding over after the expiration of said term, with the consent of the Landlord, shall be construed to be a tenancy from month to month at a rental of one hundred and twenty five percent (125%) of the then current monthly rental rate, payable monthly in advance, and shall otherwise be on the terms and conditions herein specified, so far as applicable.

**Section 23. Insolvency, Receiver.** Either the appointment of a receiver to take possession of all or substantially all of the assets of Tenant, or a general assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant under any insolvency or bankruptcy act shall constitute a breach of this Lease by Tenant, and the Landlord may at his option terminate this Lease for such breach.

**Section 24. Notices.** Any notice, demand or communication under, or in connection with, this Lease may be served upon Landlord by personal service, or by mailing the same by registered mail, and/or certified mail in the United States Post Office, postage prepaid, and return receipt requested, and directed to Landlord at the address set forth in Section 1.20 and may likewise be served to Tenant at the address set forth in Section 1.19 or the Demised Premises. Either Landlord or Tenant may change such address by notifying the other party in writing as to such new address as Tenant or Landlord may desire used and which address shall continue as the address until further written notice.

**Section 25. Time is of the Essence.** Time is hereby expressly declared to be of the essence of this Lease and all of the covenants, agreements, conditions and obligations herein contained.

**Section 26. Non-Waiver of Breach.** The waiver of Landlord of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

**Section 27. Effect of Exercise of Privilege by Landlord.** The exercise of any right or option or privilege hereunder by Landlord shall not exclude Landlord from exercising any and all other rights, privileges and options hereunder and Landlord's failure to exercise any right, option, or

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privilege hereunder shall not be deemed a waiver of said right, option or privilege nor shall it relieve Tenant from Tenant's obligation to perform each and every covenant and condition on Tenant's part to be performed hereunder nor from damages or other remedy for failure to perform or meet the obligations of this Lease.

**Section 28. Right to Effect Tenancies.** Landlord reserves the absolute right to effect such other tenancies in the Shopping Center as Landlord, in its sole business judgment, determines best promotes the interests of the Shopping Center. Landlord does not represent, and Tenant does not rely on the possibility, that any specific tenant, kind of tenant, or number of tenants will occupy space in the Shopping Center during the term of the Lease.

**Section 29. Warranties and Representations.** Landlord and Landlord's real estate brokers make no warranty or representation with respect to any other tenants or users which may or may not construct improvements or occupy or conduct business within the Shopping Center, and Tenant hereby acknowledges and agrees that it is not relying and has not relied on any warranty or representation relating thereto in entering into the Lease.

**Section 30. Landlord Enforcement.** Landlord is not required to enforce the terms of the Lease against any other tenant of the Shopping Center. Tenant acknowledges that each and every Lease in the Shopping Center is different and that negotiations and circumstances regarding the formation of each Lease, as well as operations thereunder, will vary.

**Section 31. Vacating or Abandonment of Demised Premises.** The Tenant shall not vacate or abandon the Demised Premises at any time during the term and if Tenant shall abandon, vacate or surrender said Demised Premises, or be dispossessed by process of law, or otherwise, any personal property belonging to the Tenant and left on the Demised Premises shall be deemed to be abandoned, at the option of the Landlord, except such property as may be mortgaged to Landlord, if any.

**Section 32. Surrender of Lease Not Merger.** The voluntary or other surrender of this Lease by the Tenant, or mutual cancellation thereof, shall not work as a merger and shall, at the option of the Landlord, terminate all or any existing subleases or subtenancies, or may, at the option of the Landlord, operate as an assignment to him of any or all such subleases or subtenancies.

**Section 33. Destruction of Premises.** In the event of a partial destruction of said Premises during the said term, from any cause, the Landlord shall forthwith repair the same, provided such repairs can be made within one hundred and twenty (120) days under the laws and regulations of State, County or Municipal authorities, and materials and labor are available for such repairs, but such partial destruction shall in no way annul or void this Lease, except that the Tenant shall be entitled to a proportionate deduction of rent while such repairs are being made, such proportionate deduction to be based upon the extent to which the making of such repairs shall interfere with the business carried on by Tenant in said Premises. If such repairs cannot be made



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in one hundred and twenty (120) days, the Landlord may, at his option, make same within a reasonable time, this Lease continuing in full force and effect and the rent to be proportionately rebated as aforesaid in this paragraph provided. In the event that the Landlord does not so elect to make such repairs within such time, this Lease may be terminated at the option of either party.

In the event that the building in which the Demised Premises may be situated be destroyed to the extent of more than thirty-three and one-third percent (33-1/3%) of the replacement cost thereof, the Landlord may elect to terminate this Lease. A total destruction of the building in which the Demised Premises are situated shall terminate this Lease.

In the event of any dispute between the Landlord and the Tenant relative to the provisions of this paragraph, they shall each select an arbitrator, the two arbitrators so selected shall select a third arbitrator and the three arbitrators so selected shall hear and determine the controversy and their decision thereon shall be final and binding on both the Landlord and Tenant, who shall bear the cost of such arbitration between them.

**Section 34. Condemnation.** If any part of the Demised Premises shall be taken or condemned for a public or quasi-public use, and a part thereof remains which is susceptible of occupation hereunder, this Lease shall, as to the part so taken, terminate as of the date title shall vest in the condemnor, and the rent payable hereunder shall be adjusted so that the Tenant shall be required to pay for the remainder of the term only such portion of such rent as the value of the part remaining after the condemnation bears to the value of the entire Premises at the date of condemnation; but in such event Landlord shall have the option to terminate this Lease as of the date when title to the part so condemned vests in the condemnor. If all of the Demised Premises, or such part thereof be taken or condemned so that there does not remain a portion susceptible for occupation hereunder, this Lease shall thereupon terminate. If a part or all of the Demised Premises be taken or condemned, all compensation awarded upon such condemnation shall go to Landlord and Tenant shall have no claim thereto, and the Tenant hereby irrevocably assigns and transfers to the Landlord any right to compensation or damages to which the Tenant may become entitled during the term hereof by reason of the condemnation of all or a part of the Demised Premises.

**Section 35. Remedies of Landlord on Default.** This Lease is made upon the express condition that if default be made in the payment of the rent above reserved, or any part thereof, or if Tenant fails or neglects to perform, meet or observe any of Tenant's obligations hereunder or if Tenant shall abandon or vacate said Demised Premises, in addition to all other available legal rights or remedies, Landlord or the legal representative of Landlord at any time thereafter without notice of demand, may lawfully declare said term ended, and re-enter said Demised Premises or any part thereof, with or without process of law, and expel, remove and put out Tenant or any person or persons occupying said Demised Premises, and may remove all personal property therefrom, and store the same in a public warehouse at the cost of and on the account of Tenant, using such force as may be necessary to again repossess and enjoy the said Demised Premises as before this demise, without prejudice to any remedies which might otherwise be used for arrears of rent or



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preceding breach of covenant or condition, and without liability to any person for damages sustained by reason of such removal. Landlord may likewise at Landlord's option, but at the cost of Tenant, and in addition to any other remedies which Landlord may have upon such default or failure or neglect and without notice to Tenant petition the Superior Court of the State for, and be entitled as a matter of right to, the appointment of a receiver and said Court may appoint such receiver and vest in him such powers and authority as may be necessary or proper to fully protect all the rights herein granted or reserved to Landlord. Any such receiver may take possession of any personal property belonging to Tenant and used in the conduct of the business then being carried by the Tenant in the said Demised Premises, and may use the same in conducting such business on the Demised Premises, without compensation to the Tenant.

Should Landlord elect to re-enter, as herein provided, or should he take possession pursuant to legal proceedings pursuant to any notice provided for by law, he may in addition to any other remedies Landlord may have upon such default, failure or neglect, either terminate this Lease or he may from time to time, without terminating this Lease, re-let said Demised Premises, or any part thereof, for such term or terms and at such rental or rentals and upon such other terms and conditions as Landlord in his sole discretion may deem advisable with the right to make alterations and repairs to said Demised Premises. Rentals received by Landlord from such reletting shall be applied: first, to the payment of any indebtedness, other than rent, due hereunder from Tenant to Landlord; second, to the payment of rent due and unpaid hereunder; third, to the payment of any costs of such re-letting, including commissions; fourth, to the payment of the cost of any alterations and repairs to the Demised Premises; and the residue, if any shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder. Should such rentals received during any month be less than that agreed to be paid during that month by Tenant hereunder, then Tenant shall pay such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of said Demised Premises by Landlord shall be construed as an election on his part to terminate this Lease unless written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such re-letting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach. Should Landlord at any time terminate this Lease for any breach, in addition to any other remedy he may have, he may recover from Tenant all damages he may incur by reason of such breach, including the cost of recovering the Demised Premises and including the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease for the remainder of the stated term, all of which amounts shall be immediately due and payable from Tenant. No notice of the exercise of any election given Landlord herein need be given.

35.1 Attorney's Fees on Default. In the event that Landlord brings an action against Tenant for the recovery of any rent due under the provisions of this Lease, or because of the breach of any other covenant herein contained, on the part of the Tenant to be kept or performed, or to enforce any of the terms hereof, or commences a summary action under the Unlawful Detainer Act of the state where the Demised Premises are located for the forfeiture of this Lease



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and the possession of said Demised Premises, or either of them, or if Tenant brings an action against Landlord, Tenant agrees to pay to Landlord such attorney's fees and expenses as the court may deem reasonable, and the right to such attorney's fees and expenses shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment, and if prosecuted to judgment, such fees shall be included in said judgment.

**Section 36. Signs.** The Tenant shall not place or permit to be placed any protecting sign, marquee or awning on the front of the said Demised Premises, nor place any signs upon the stairs, hallways, vestibules and entrance doors, where such are used in common with Landlord or other tenants, nor upon the windows or the sidewalks adjacent to said Demised Premises, without the written consent of the Landlord, except as specifically provided otherwise herein. The Tenant, upon request of the Landlord, shall immediately remove any sign or decoration which the Tenant has placed or permitted to be placed in, on, or about the front of the Demised Premises and remove the same. The Landlord has reserved the exclusive right to the exterior sidewalls, rear wall and roof of said Premises, and the Tenant shall not place or permit to be placed upon the sidewalls, rear wall or roof, any sign, advertisement or notice without the written consent of the Landlord. See attached Exhibit "B."

**Section 37. Street, Sidewalks, Walkways and Entrances.** No space attached or appurtenant to or connected with the Demised Premises lying in, upon or under any public street or highway or any other public or quasi-public property is included in this demise and the Landlord shall not be liable for, nor shall this Lease be affected by any interference with or taking of the whole or any part thereof, nor shall there be any abatement of rent to any such taking or interference. Tenant shall not use or permit any use of the sidewalks, walkways on the Demised Premises, or street in front of, or entrances to, or exits from, or vestibules in said Premises, except for ordinary and usual ingress and egress to and from said Premises.

**Section 38. Subordination.** Tenant agrees at any time or from time to time upon request of Landlord to execute and deliver any instruments necessary to cause this Lease to be subordinate to any mortgage, deed of trust or other instrument of security now, which in the future may be, or which is about to be placed on said Premises and Tenant hereby appoints Landlord and Tenant's attorney in fact, irrevocably, to execute and deliver such instruments.

**Section 39. Manner of Conducting Business.** Tenant shall continuously during the entire term hereof, conduct and carry on his business in the Demised Premises and shall keep said Demised Premises open for business and cause said business to be conducted thereon during each and every business day for such number of hours each day as is customary for businesses of like character to be open for business as determined by Landlord; provided however, that this provision shall not apply if the Demised Premises shall be closed and the business of Tenant therein shall be temporarily shut down on account of strikes, lock-outs, or causes beyond the control of the Tenant, or for not more than three (3) days out of respect to the memory of any deceased officer or employee of Tenant.

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**Section 40. Binding on Successors.** The covenants and conditions herein contained shall, subject to the provisions as to assignments, apply to and bind the heirs, successors, executors, administrators and assigns of all the parties hereto; and all the parties hereto shall be jointly and severally liable hereunder.

**Section 41. Relocation of Demised Premises.** Landlord shall have the right to relocate the Demised Premises to another part of the Shopping Center in which the Demised Premises are located in accordance with the following:

**41.1 Written Notice.** Landlord shall notify Tenant in writing of its intent to relocate Tenant's Demised Premises at least One hundred eighty (180) days in advance. Tenant shall have thirty (30) days in which to provide Landlord with its written notice of its acceptance of said relocation. If, in Tenant's sole business judgment, the proposed relocated premises is not suitable for Tenant's business. Tenant may reject said relocation by providing written notice thereof. Within fifteen (15) days, of Landlord's receipt of Tenant's rejection of the proposed relocate Tenant or, in the alternative, terminate Tenant's Lease. If Landlord shall elect to terminate Tenant's Lease, Tenant shall be given One hundred twenty (120) days within which to vacate the Demised Premises. Tenant shall be responsible for rent and all charges in accordance with this Lease up to the date of vacating the Demised Premises.

**41.2 New Premises.** The new premises shall be substantially the same in size as the Demised Premises unless otherwise mutually agreed to by Landlord and Tenant. The new premises shall be substantially constructed in accordance with the Tenant improvements that existed in the old Premises at Landlord's sole cost and expense. This shall include all ceilings, walls, partitions, electrical systems, plumbing, restrooms and floor coverings, if any, that existed in the previous Premises. If Tenant desires to upgrade any of the Tenant improvements over that which existed in Tenant's previous Premises or change the interior layout which results in additional costs, such upgrades or additional costs shall be at Tenant's sole cost and expense.

**41.3 Relocation.** The physical relocation of Tenant's trade fixtures and inventory shall take place on a weekend and shall be completely accomplished (if possible) before the Monday following the weekend in which the relocation takes place. If the physical relocation has not been completed in that time, rent shall abate in full from the time the physical relocation should have been completed to the time it is completed. All costs incurred by Tenant in moving and relocating its trade fixtures and inventory of the new premises shall be paid by Landlord, in sum not to exceed Two Thousand (\$2,000) dollars. Landlord shall not have the right to relocate the Demised Premises more than one (1) time during the term.

**41.4 Rent Adjustment.** If the Premises are smaller than the Premises as they existed before the relocation, rent shall be reduced to a sum computed by multiplying the rent provided for in this agreement by a fraction, the numerator of which shall be the total number of square feet in the relocated Premises, and the denominator of which shall be the total number of square feet in the Premises before relocation.

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41.5 Amendment. The parties shall immediately execute an amendment to this Lease stating the relocation of the Premises and the reduction of rent, if any.

**Section 42. Continued Occupancy.** Not Applicable

**Section 43. Integration.** It is understood that there are no oral or written agreements or representations between the parties hereto affecting the Lease, and that the Lease as amended supersedes, cancels and merges any and all previous verbal or written negotiations, arrangements, representations, brochures, displays, models, photographs, renderings, floor plans, elevations, projections, estimates, agreements and understandings, if any, made by or between Landlord and Tenant, and their agents, with respect to the subject matter thereof, and none such shall be used to interpret, construe, supplement, or contradict the Lease. The Lease, and all amendments hereto, is and shall be considered to be the only agreement between the parties and their representatives and agents. There are no other representations or warranties between the parties and any and all reliance with respect to representations shall be solely based upon the representations and agreements contained in the Lease.

**Section 44. Captions/Entire Agreement.** The titles or headings to the paragraphs of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part thereof. This Lease contains the entire agreement between the parties and cannot be amended or modified except by a written agreement executed by the party to be charged with any amendment or modification.

**Section 45. No Partnership.** It is understood and agreed that the fixing of a portion of the rental on a percentage of the sales of the business to be done by Tenant does not create a partnership or joint venture relationship between the parties hereto; that Landlord assumes no liability hereunder for the operation of the business of Tenant; and that the provisions with reference to rents herein are for the sole purpose of fixing and determining the total rents to be paid by Tenant to Landlord.

**Section 46. Applicable Law.** This Lease shall be governed by the laws of the State of New Mexico.

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**Section 47. Dispute Resolution.** In the event that a dispute arises under this Lease, the venue for resolution of any dispute shall be Otero County, New Mexico.

**Section 48. Broker Fee.** Landlord and Tenant agree there is no brokerage involvement in this transaction.

**Section 49. Contingency.** **ALL PARTIES SOLELY AND EXPRESSLY AGREE IF LEDA** funds for Tenant Improvement are not approved by Otero County, both parties will consider the lease **NULL & VOID** , and will part mutually with no further obligations or considerations.

Executed on: \_\_\_\_\_

By: Solid CAP Properties, LLC. - Landlord

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Fred Griffith  
Owner/Member

Tenant: **TLC & Associates**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Thomas Cardella  
CEO, Founder and President

**LEASE AGREEMENT**  
*Solid CAP Properties, LLC.*  
*White Sands Mall*  
**EXHIBIT “A”**



# LEASE AGREEMENT

*Solid CAP Properties, LLC.*

*White Sands Mall*

## EXHIBIT “B”

### MALL SIGN POLICY

These criteria have been established for the purpose of assuring an outstanding shopping center and for the mutual benefit of all tenants. Conformance will be strictly enforced, and any nonconforming or unapproved signs must be brought into conformance at the expense of the Tenant.

1. General Requirements:

- a) Each Tenant shall submit or cause to be submitted to Landlord for approval before any fabrication detailed drawings indicating the location, size, layout, design and color of the proposed signs, including all lettering and/or graphics.
- b) Tenant shall obtain at its expense permits for signs and their installation and signs shall conform to all local building and electrical codes, meet UL specifications and conform with all applicable city sign regulations and ordinances.
- c) All signs shall be constructed and installed at the Tenant's expense.
- d) Electrical services to all signs shall be on the Tenant's meter.
- e) No animated, flashing or audible signs will be permitted.
- f) Exposed lamps and/or tubing will not be permitted. All cabinets, conductors, transformers and other equipment shall be concealed.
- g) No pylon type signs will be permitted for individual tenants.
- h) All signs must be of permanent material.
- i) Signs for stores of 30,000 square feet or more shall be negotiated on an individual basis.

2. Interior Signs:

- a) All signs will be composed of individual channel type letters and/or numbers and will be limited to Tenant's trade name. Landlord reserves the right to make exceptions to this rule for national or regional chains that already have established sign criteria.

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## EXHIBIT "B" CONTINUED

- b) All individual letters, numbers or logo shall be internally illuminated by neon tubes or lamps.
  - c) All neon lighted letters shall be double tubed with transformers not to exceed 30 M.A. rating.
  - d) All signs shall not exceed 15" in height. Overall length of signs shall not exceed 2/3 of the leased frontage.
  - e) The bottom edge of all signs shall be located no lower than 8'0" above finished floor lines.
  - f) No box or cabinet signs shall be permitted. No painted signs on the front of show windows are permitted. No paper signs, stickers, banners or flags are permitted without prior written permission from Landlord.
3. Exterior Signs:
- a) Signs will have individual illuminated letters mounted to a raceway. Letters to be 5" deep pan channel with plexiglass faces and neon illumination. Color of signs to be approved by Landlord.
  - b) All signs shall not exceed 24" in height. Overall length of signs shall not exceed 3/5 of the leased frontage.
  - c) No sign shall project beyond the top or bottom edge of the sign strip area. No sign shall set on or hang below the canopy edge.
  - d) All electrical must be concealed in raceway. Raceway must be painted to match building.
  - e) Tenant is required to paint the remote exposed raceway to match the color of the surrounding area and to make any repairs or patch existing holes in the sign fascia.
  - f) No box or cabinet signs shall be permitted. No painted signs on the exterior surface of any building are permitted. No roof top signs are permitted.
  - g) Variance from the above restrictions will not be allowed without the prior written consent of Landlord.



## **Inbound Business-to-Consumer**

### **A Study in High-end Retail Sales & Service**

Managing Multiple Metrics to Achieve Optimal  
Balance Between Call Center Productivity,  
Customer Experience and ROI



This case study illustrates an inbound business-to-consumer program for a client in the retail industry where our team was responsible for handling calls for merchandise sales, order inquiries and customer service questions. We began our relationship with this high-end retailer of men's and women's clothing in October 2008 as one of two outsourced service providers providing inbound sales and customer care. In addition to outsourcing a portion of their inbound volume, they operate an in-house call center. In order to grow our portion of this business, we needed to not only beat out the incumbent vendor, but also prove that as an

outsourcer we could compete on all levels with their in-house facility.

■ The client felt they could boost ROI on their spend for outsourced customer care, provided overall quality was not jeopardized in any way. ■

The company was very concerned about quality and maintaining a high level of customer service from their

vendor providers. Their brand integrity was key to their success and they were unwilling to compromise that for any reason. However, they were not entirely happy with the incumbent vendor and were looking to maximize efficiency with their inbound calling programs. They felt they could boost ROI on their spend for outsourced customer care, provided overall quality was not jeopardized in any way.

## Program Overview

### Success Rated on Multiple Metrics

Calls came to us from a variety of sources: catalog promotions, web orders that required additional telephone support, and calls from their brick and mortar stores when an item that was not in stock there had to be ordered via the call center and then shipped to the customer. In addition to maintaining a high level of customer service, our goal for every telephone interaction was to sell additional items that would be appropriate given what the customer was ordering—up-selling on the telephone was key. The client also wanted us to promote the store-branded credit card to the caller as a way to pay for the transaction. The client had determined that over time, store-branded credit card shoppers spent more and were more loyal to the brand.

The client evaluated the success of the program first and foremost in terms of customer satisfaction, and implemented their own proprietary method of evaluating call quality in order to measure the overall customer experience (IQA). Additional metrics tracked included the average handle time (AHT), percentage of the customers converted to the store-branded credit card (CCC), average dollar sale of the transaction (ADS), and how well the call centers were able to ramp staff up and down to handle the seasonality of their sales (SCH).

The client came to us because they were unhappy with the performance of their current vendor on a number of key metrics. They also knew of Tom Cardella's uncompromising approach to quality first hand, having worked with Tom at Access





## Implementation Tactics

### Training, Tracking, Focus

The Client's benchmark metric for success was the overall customer experience and therefore customer satisfaction ratings were critical. In addition, like most businesses today, they wanted to keep their costs in line by reducing the average handle time, but were not willing to sacrifice quality to achieve it. When we started the program, their target average handle time (AHT) was between 7 and 7 ½ minutes. Our mean AHT after the first month of calling was 7:21, beating the incumbent as well as the in-house center.

Within six months, we had demonstrated that an AHT goal of 6:30 was entirely possible without compromising quality, and had taken over all the outsourced volume, knocking the incumbent vendor out of the mix entirely. We also showed an ability to compete at an equal or better level with the company's in-house service center across all other KPI metrics. During the initial six-month time frame, we were ramped up to a consistent level of 20 FTEs—successfully boosting that number to as high as 40 FTEs as seasonality/promotional schedules required—without compromising the high level of customer satisfaction required by this client.

The key to successfully lowering the AHT while maintaining quality was training, coaching and an ongoing commitment to continual process improvement. Initial program training emphasized the need to maintain a sharp focus on the call at all times, and use any “down” time to discuss other items that could be of interest to the caller. Agents became adept at using lags in conversation to up-sell additional merchandise or introduce the store-branded credit card as a payment

■ Initial program training emphasized the need to maintain a sharp focus on the call at all times and use any “down” time to discuss other items that could be of interest to the caller. ■

option. Agents were able to share their strategies for maintaining this sharp focus daily during their pre-shift meetings and floor managers

were able to use them as coaching tools with other teams. Part of an Agent's compensation is linked directly to performance, so daily awareness of goals and opportunity areas is crucial for individual success. While there is definitely an atmosphere of friendly competition, Agents are closely aligned as a team and believe in helping each other so the team can succeed as a whole.

Another key factor contributing to the success of the program is the enthusiasm and dedication of the frontline inbound team. In order to fully brand the team with the client, a specific area of the call center floor was designated for them, including a space for mannequins dressed in the client's most seasonal or hot-test items. This allowed the team to see the clothes, witness the workmanship and fabric quality, which they could then communicate to the customer.





Space was also allocated to set up a “Mock Store” so that employees—particularly during training sessions—could spend time with the product and at times even try on the clothing. Team members were not hired as “sales agents” but as “personal shoppers” with the goal of completely outfitting the customer at the other end of the telephone. In addition, all members of the inbound service team are entitled to a substantial discount on the client’s clothing, which further connects them to the product.

By enabling the team to fully identify with the company brand, we delivered a satisfying customer experience. Through training and resource allocation, we were able to communicate our own enthusiasm and passion for the client’s brand, helping to cement brand loyalty in the minds of their customers—and netting us all of the client’s outsourced call volume .

## Seamless Extension

### Flexible Technology, Daily Analysis Keys to Success

Technology played an important role as it allowed our team to be perceived as a seamless extension of our client’s in-house service center; their customer would have no indication that they were calling an outsourced service center as opposed to their in-house facility. Specifically, when the call needed to be

transferred into another department at the client’s location, the warm transfer included any relevant customer history, minimizing inconvenience to the customer.

■ Any negative trending needed to be reversed quickly and dealt with prior to the next calling shift.

In addition, because so many program metrics needed to be tracked on a daily basis (it would not make sense to work on lowering AHT if quality suffered or if the average dollar sale or credit card conversion rate fell significantly below goal) internal reporting needed to be modified so that these critical KPIs could be monitored near real-time. Any negative trending needed to be reversed quickly and dealt with prior to the next calling shift. Having this critical data at hand in such a timely manner allowed for clearer communication between trainers, quality assurance reps, floor managers and team mentors so that all Agents could be made aware of an issue and corrective action could be implemented. In addition to our KPI results, our technology was one of the reasons we were able to beat out the competing vendor; the client felt our technology was more flexible and state-of-the-art than the incumbent’s.

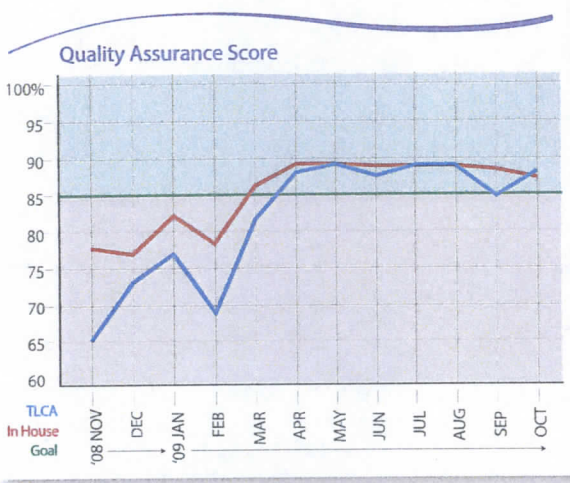
The ongoing training and coaching has allowed our team to surpass the 6-minute AHT goal and reset the new goal between 5 and 5 ½ minutes. For the last seven months, we have consistently beat the in-house contact center on AHT while maintaining the quality score at or above goal with strong results for average dollar sale and credit card conversions, all while meeting the challenge of staffing a program with seasonal fluctuations.



## Program Results

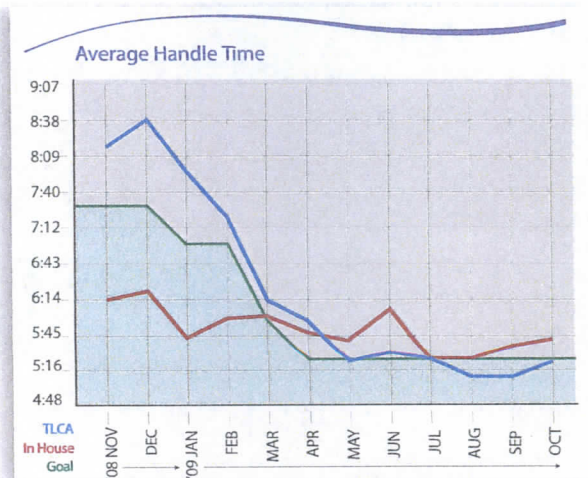
### Overall Customer Experience

The quality of this program was evaluated according to the same procedure as any other program at Thomas L. Cardella & Associates in terms of call monitoring, but the only score that mattered was the grade determined by the client. They measured program quality according to their own criteria and assigned a grade to represent the overall customer experience. They utilized real-time blind monitoring and had access to every digitally recorded call, which was posted on an FTP site for easy download. Calls could be selected by type or by specific Agent handling the call. While the quality score was provided to us by the client, all the other results were tabulated through the ACD and other reporting systems in place for this program. The chart to the left shows the actual quality scores (IQA) received by the client since the program began. During the first few months of calling, our quality scores were below goal, but through a daily commitment to pinpoint and coach specific opportunity areas—Agent by Agent—we were able to bring that score up to goal, and have exceeded it ever since, showing we can provide the same quality as the in-house center.



### Average Handle Time

As stated, the client was looking to reduce their average handle time (AHT) as a way to improve productivity and boost the ROI on their outsourcing costs. For example, when AHT is 7.5 minutes, eight calls are being handled for every hour paid to the vendor. The goal for the average dollar value of every call is \$165, which translates into an average, per-hour client revenue amount of \$1320. When AHT is reduced to 5 minutes, twelve calls per hour are now being handled delivering an average, per-hour client revenue amount of \$1980. Not only is the client getting a 50% better return on their outsourced investment when AHT is reduced, but they are also boosting revenue-per-hour by the same percentage. Because we were able to achieve this goal without compromising the quality of the customer experience, we delivered a significant improvement in ROI to the client. The chart above shows the actual data for AHT trending since we began the program.

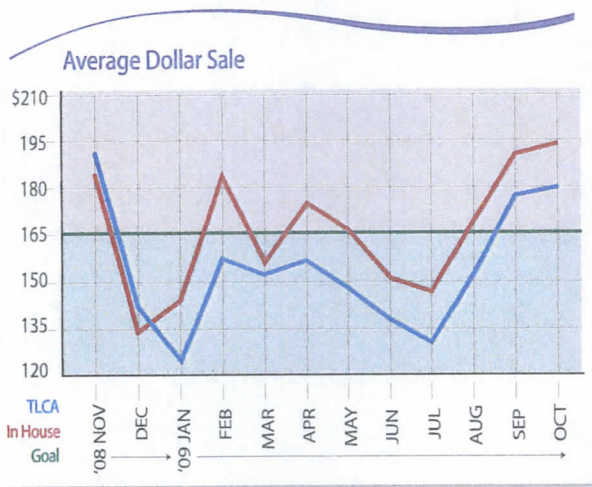






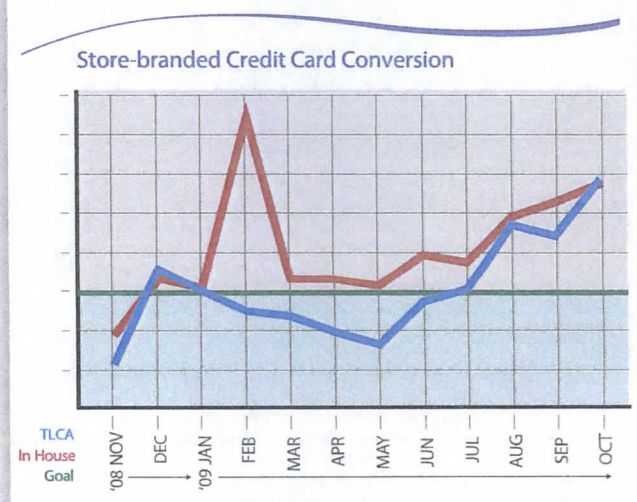
## Two Key Revenue Metrics

Two key success metrics in terms of revenue to the client were average dollar sale (ADS) and store-branded credit card conversion (CCC) rates. We understood that while we could deliver a quality customer experience and boost the client's ROI by reducing AHT, if we were not able to sell the product and create long-term customer value, we would not be successful in the long term. We realized we had some challenges in this area, particularly given the economic climate of the last twelve months. In addition, ADS results were slightly skewed in favor of the in-house center because some of the largest sales—wedding-related apparel and bridal registries—were routed to that center automatically.



In spite of the results being slightly skewed, the graph on the left shows that the TLCA team was never very far behind the in-house center in terms of ADS. The team never lost focus on the need to up-sell. Because they had access to the product, were able to buy items at a discount, and took incredible pride in being part of this client's brand, their enthusiasm for this particular clothing line was genuine. Training included a great deal of specific product knowledge so Agents were able to truly function as personal shoppers to the callers. They could convey with conviction the quality of the merchandise and recommend coordinating items with confidence as to color and fit.

The ability of the Agent to engage the caller in a satisfying overall experience was critical to converting them to the use of the private-label credit card, which translated into higher revenues for the client and increased brand loyalty. The client estimates that cardholders spend 30% more than non-cardholders each year. Last year it was estimated that cardholders spent \$600 more than non-cardholders so this metric can have significant impact on the client's future revenues.

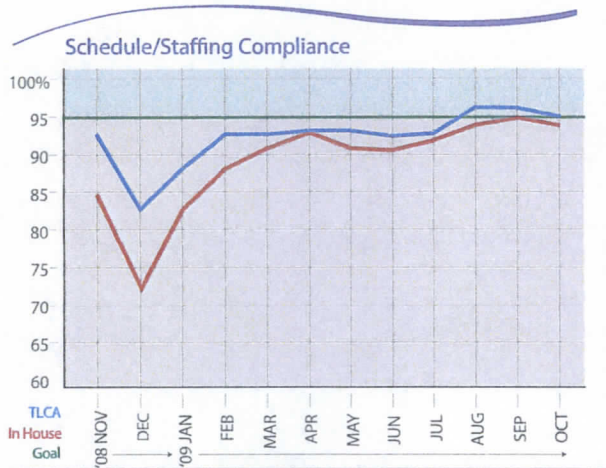




## Staffing Requirements

The final key metric we had to manage was the ability to manage the ups and downs of program staffing requirements (SCH). In addition to the seasonality of the client's industry, staffing adjustments were required following heavy promotions. Staffing to the compliant level was critical because if callers were unable to get through to place orders in a timely manner they would undoubtedly shop elsewhere. Not only would the client experience the loss of revenue for that sale, but there is truly no way of knowing the value of the lost opportunity in terms of future sales, customer loyalty and brand integrity.

The client would not want to risk the perception in the marketplace that trying to order from them over the phone was difficult, time consuming or inconvenient. The chart on the left shows trending toward above-goal compliance since August and within 5% of goal since March. Our performance closely matches the in-house data here, although it clearly shows that our team has a better compliance record, beating the in-house results since we came on board.



## Final Analysis

### Productivity without Sacrifice

The enthusiasm of the inbound service team, the technology deployed, and the solid history of performance both in terms of quality and AHT were factors directly affecting the high customer satisfaction ratings our team received, and had the added benefit of demonstrating to the client that they could reduce their cost per call without sacrifice to the overall customer experience.

In addition, our team demonstrated the ability to deliver better ROI for the client's outsourced investment while performing near or above goal for the other key success metrics for this program (ones that could significantly impact client revenue) average dollar sale, credit card conversion and staffing compliance. Thus, their ROI was higher with TLC & Associates than the previous vendor, which resulted in our selection as sole outsourced partner. The last outsourced vendor we displaced had been a long-term partner, operating on a virtual call center model. Their pricing was very competitive, yet we could demonstrate higher ROI to the client with a lower cost per call.





The chart below compares the incumbent's results for September and October 2008 with our results for September and October 2009, demonstrating that we are exceeding their results significantly. While the increase in revenue to the client can be clearly measured (Calls Per Hour multiplied by Average Dollar Sale and adding a value for the Credit Card Conversion metric), it is hard to quantify the total impact the incumbent's below-goal results for Quality and Schedule Compliance would have had in terms of lost opportunity to the client.

|                  | Time Frame | Quality | Average Handle Time | Calls Per Hour | Average Dollar Sale | Credit Card Conversions | Schedule Compliance |
|------------------|------------|---------|---------------------|----------------|---------------------|-------------------------|---------------------|
| Incumbent Vendor | Sep - '08  | 67%     | 9:29                | 6.33           | \$157               | 1.86%                   | 78%                 |
|                  | Oct - '08  | 69%     | 8:09                | 7.36           | \$157               | 2.53%                   | 78%                 |
| TLCA             | Sep - '09  | 84%     | 5:45                | 10.43          | \$176               | 4.37%                   | 96%                 |
|                  | Oct - '09  | 88%     | 5:56                | 10.11          | \$180               | 5.85%                   | 85%                 |

## Post Script

This program continues to operate today and trending for the TLCA team over the last few months has shown improvement in all areas. We are in the process of ramping up for the holiday season, typically one of this client's busiest times. We believe that we can only improve in our ability to consistently deliver the best return possible for this client's outsourced contact center investment as we continue this program in the months ahead.

|      |           | Quality Scores |          |      | Schedule Compliance |          |      | Average Handle Time |          |      | Average Dollar Sale |          |       | Credit Card Conversion |          |      |
|------|-----------|----------------|----------|------|---------------------|----------|------|---------------------|----------|------|---------------------|----------|-------|------------------------|----------|------|
|      |           | TLCA           | In House | Goal | TLCA                | In House | Goal | TLCA                | In House | Goal | TLCA                | In House | Goal  | TLCA                   | In House | Goal |
| 2009 | September | 84%            | 88%      | 85%  | 95.84%              | 94.61%   | 95%  | 5:45                | 6:20     | 5:30 | \$175.35            | \$188.70 | \$165 | 4.37%                  | 5.42%    | 3%   |
|      | October   | 88%            | 87%      | 85%  | 94.77%              | 93.46%   | 95%  | 5:56                | 6:25     | 5:30 | \$180.15            | \$194.12 | \$165 | 5.85%                  | 5.77%    | 3%   |

Trending over the last two months has shown that all program KPIs are at goal (or nearly), some exceeding goal and in a few instances are beating the in-house result.



We have recently received a Silver MVP for the success of the inbound sales and service program highlighted in this case study. Every year, *Customer Interactions Solutions* magazine recognizes companies that have exemplified the highest commitment to quality, excellence and customer service. This is the second recognition for quality the company has received since 2007.



*Contact Center Specialists*

# EXECUTIVE SUMMARY

## A REPORT OF THE ECONOMIC IMPACT OF SCORE IN ALAMOGORDO, NM

January 22, 2018

Prepared by:

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Prepared using Total Impact



## PURPOSE & LIMITATIONS

This report presents the results of an analysis undertaken by the New Mexico Economic Development Department using Total Impact, an economic and fiscal impact analysis tool developed and supported by the Austin, TX based economic consulting firm, Impact DataSource.

The Total Impact model is a customized software program licensed to the New Mexico Economic Development Department. The model includes estimates, assumptions, and other information developed by Impact DataSource from its independent research effort detailed in New Mexico Economic Development Department's Total Impact User Guide.

The analysis relies on prospective estimates of business activity that may not be realized. New Mexico Economic Development Department made reasonable efforts to ensure that the project-specific data entered into the Total Impact model reflects realistic estimates of future activity.

No warranty or representation is made by New Mexico Economic Development Department or Impact DataSource that any of the estimates or results contained in this study will actually be achieved.

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Introduction

This report presents the results of an economic impact analysis performed using Total Impact, a model developed by Impact DataSource. The report estimates the impact that a potential project in the Alamogordo may have on the state and local economy and estimates the costs and benefits for the state and local taxing districts over a 10-year period.

Description of the Project

Project Score is looking to open a call center in Alamogordo, New Mexico in 2018. The company is planning to hire 240 employees in two year and invest heavily in IT equipment and furniture.

Economic Impact Overview

The Project's operations will support employment and other economic impacts in the state. The 240.0 workers directly employed by the Project will earn approximately \$20,000 per year initially. This direct activity will support 105.3 indirect and induced workers in the state earning \$24,000 on average. The total additional payroll or workers' earnings associated with the Project is estimated to be approximately \$72.4 million over the next 10 years.

Accounting for various taxable sales and purchases, including activity associated with the Project, worker spending, and visitors' spending in the state, the Project is estimated to support approximately \$79.4 million in taxable sales over the next 10 years.

Table 1. Economic Impact Over the Next 10 Years Statewide

|                                                                      | Direct        | Indirect & Induced | Total         |
|----------------------------------------------------------------------|---------------|--------------------|---------------|
| Economic output generated by direct, indirect, and induced activity  | \$165,897,782 | \$124,721,953      | \$290,619,735 |
| Number of permanent direct, indirect, and induced jobs to be created | 240.0         | 105.3              | 345.3         |
| Salaries to be paid to direct, indirect, and induced workers         | \$47,418,620  | \$24,980,129       | \$72,398,749  |
| Taxable sales and purchases                                          | \$72,563,268  | \$6,866,116        | \$79,429,384  |



The project is not expected to result in a consequential increase in the state's population. A majority of newly hired employees would likely be current New Mexico residents. However, it is estimated that approximately 20.0% of the new direct workers may be new residents to Otero County. The local population impacts may result in new residential properties constructed in the county and increase the enrollment of local public schools.

Table 2. Population Impacts Over the Next 10 Years for the County

|                                                                             | Direct | Indirect & Induced | Total |
|-----------------------------------------------------------------------------|--------|--------------------|-------|
| Number of direct, indirect, and induced workers who will move to the County | 48.0   | 10.8               | 58.8  |
| Number of new residents in the County                                       | 124.8  | 28.1               | 152.9 |
| Number of new residential properties to be built in the County              | 4.8    | 1.1                | 5.9   |
| Number of new students expected to attend local school district             | 24.1   | 5.4                | 29.5  |

The Project is estimated to support an average of approximately \$0.2 million in new non-residential taxable property each year over the next 10 years. The taxable value of property supported by the Project over the 10-year period is shown in the following table.

Table 3. Value of Taxable Property Supported by the Project Over the Next 10 Years

| Year | New Residential Property | The Project's Property |                                           |                                  |                                  | Total Residential & Nonresidential Property |
|------|--------------------------|------------------------|-------------------------------------------|----------------------------------|----------------------------------|---------------------------------------------|
|      |                          | Land                   | Buildings & Other Real Prop. Improvements | Furniture, Fixtures, & Equipment | Subtotal Nonresidential Property |                                             |
| 1    | \$61,080                 | \$0                    | \$0                                       | \$400,000                        | \$400,000                        | \$461,080                                   |
| 2    | \$148,832                | \$0                    | \$0                                       | \$360,000                        | \$360,000                        | \$508,832                                   |
| 3    | \$151,808                | \$0                    | \$0                                       | \$320,000                        | \$320,000                        | \$471,808                                   |
| 4    | \$154,844                | \$0                    | \$0                                       | \$280,000                        | \$280,000                        | \$434,844                                   |
| 5    | \$157,941                | \$0                    | \$0                                       | \$240,000                        | \$240,000                        | \$397,941                                   |
| 6    | \$161,100                | \$0                    | \$0                                       | \$200,000                        | \$200,000                        | \$361,100                                   |
| 7    | \$164,322                | \$0                    | \$0                                       | \$160,000                        | \$160,000                        | \$324,322                                   |
| 8    | \$167,609                | \$0                    | \$0                                       | \$120,000                        | \$120,000                        | \$287,609                                   |
| 9    | \$170,961                | \$0                    | \$0                                       | \$80,000                         | \$80,000                         | \$250,961                                   |
| 10   | \$174,380                | \$0                    | \$0                                       | \$80,000                         | \$80,000                         | \$254,380                                   |

The taxable value of residential property represents the value of properties that may be constructed as a result of new workers moving to the community.

This analysis assumes the residential real property appreciation rate to be 2.0% per year. The Project's real property is assumed to appreciate at a rate of 2.0% per year. The analysis assumes the Project's furniture, fixtures, and equipment will depreciate over time according to the depreciation schedule shown in Appendix A.

Fiscal Impact Overview

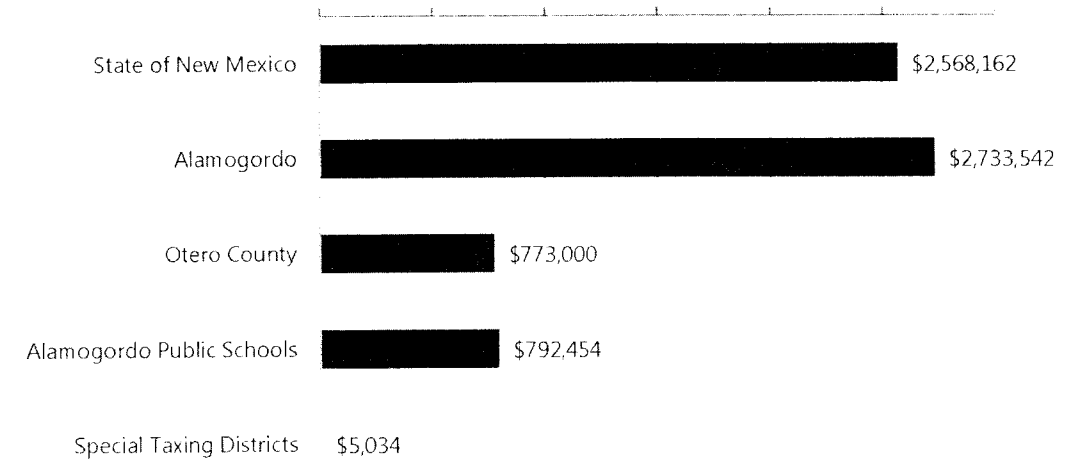
The Project will generate additional benefits and costs for local taxing districts, a summary of which is provided below. The source of specific benefits and costs are provided in greater detail for each taxing district on subsequent pages. Overall, the City will receive approximately \$2,733,500 in net benefits over the 10-year period and the Project will generate \$6,872,200 in total for all local taxing districts.

Table 3. Fiscal Net Benefits Over the Next 10 Years for the State and Local Taxing Districts

|                           | Benefits     | Costs          | Net Benefits | Present Value of Net Benefits* |
|---------------------------|--------------|----------------|--------------|--------------------------------|
| State of New Mexico       | \$11,419,950 | (\$8,851,788)  | \$2,568,162  | \$1,993,811                    |
| Alamogordo                | \$4,084,505  | (\$1,350,963)  | \$2,733,542  | \$2,088,723                    |
| Otero County              | \$1,206,522  | (\$433,522)    | \$773,000    | \$592,234                      |
| Alamogordo Public Schools | \$1,576,962  | (\$784,508)    | \$792,454    | \$599,095                      |
| Special Taxing Districts  | \$5,034      | \$0            | \$5,034      | \$4,027                        |
| Total                     | \$18,292,973 | (\$11,420,782) | \$6,872,191  | \$5,277,890                    |

\* The Present Value of Net Benefits expresses the future stream of net benefits received over several years as a single value in today's dollars. Today's dollar and a dollar to be received at differing times in the future are not comparable because of the time value of money. The time value of money is the interest rate or each taxing entity's discount rate. This analysis uses a discount rate of 5% to make the dollars comparable.

Figure 1. Net Benefits Over the Next 10 Years for the State and Local Taxing Districts



State of New Mexico

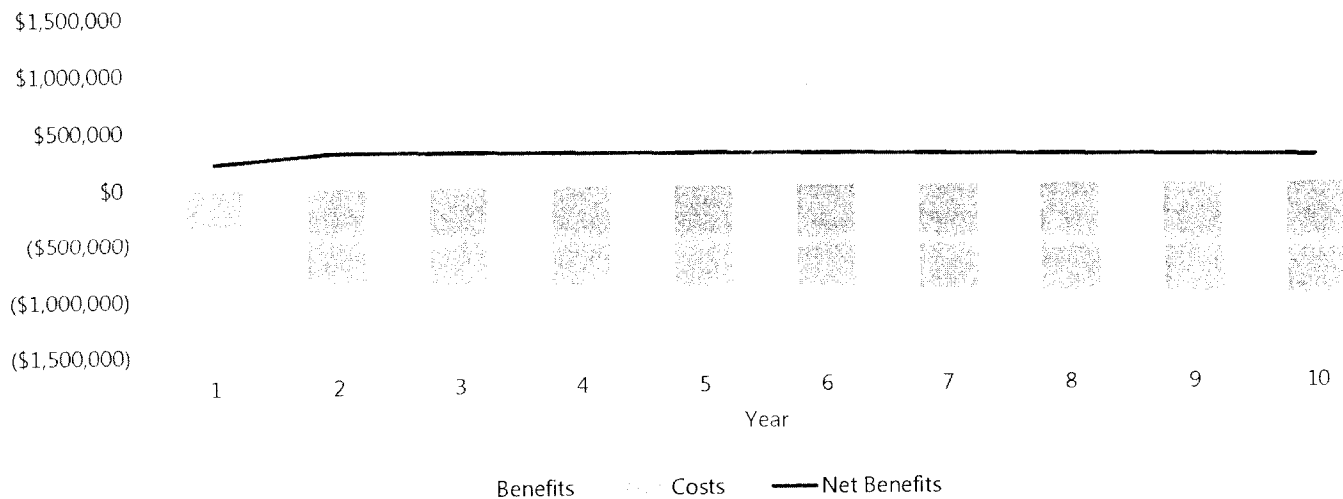
The table below displays the estimated additional benefits to be received by the State of New Mexico over the first 10 years. The project is expected to have a small effect on the statewide population and therefore some additional statewide costs to provide additional services were estimated for the state. Appendix C contains the year-by-year calculations.

Table 4. State of New Mexico: Benefits, Costs, and Net Benefits Over the Next 10 Years

|                                  | Amount        |
|----------------------------------|---------------|
| Gross Receipts Taxes             | \$3,097,746   |
| Real Property Taxes - Project    | \$0           |
| FF&E Property Taxes - Project    | \$3,046       |
| Property Taxes - New Residential | \$2,058       |
| Personal Income Taxes            | \$2,767,780   |
| Corporate Income Taxes           | \$187,249     |
| Miscellaneous Taxes & User Fees  | \$5,362,071   |
| Subtotal Benefits                | \$11,419,950  |
| Cost of Providing State Services | (\$8,851,788) |
| Subtotal Costs                   | (\$8,851,788) |
| Net Benefits                     | \$2,568,162   |
| Present Value (5% discount rate) | \$1,993,811   |

Gross receipts taxes are estimated on new taxable gross receipts resulting from the project. Property taxes are estimated on the firm's property and new residential property constructed. Personal income taxes are estimated based on an effective income tax rate and the earnings of new direct and indirect workers. Corporate income taxes on the direct activity is based on the net taxable income projected by the company. Corporate income taxes on the indirect activity is estimated on a per indirect worker basis and the observed statewide corporate income tax collections per worker. To the extent that the project will result in an increase in new households in the state, additional miscellaneous taxes and user fees have been estimated for the state. Additionally, the costs to provide state services to these new households were also estimated based on recent state expenditure data as detailed in the Appendix.

Figure 2. Annual Fiscal Net Benefits for the State of New Mexico



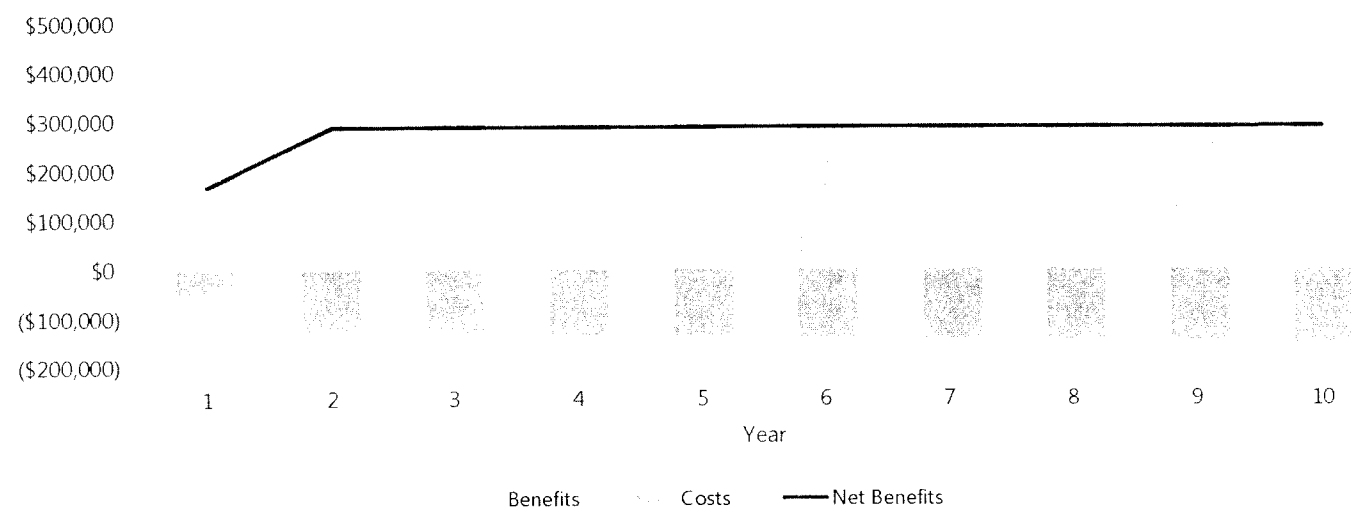
Alamogordo

The table below displays the estimated additional benefits, costs, and net benefits to be received by the City over the next 10 years of the Project. Appendix C contains the year-by-year calculations.

Table 5. Alamogordo: Benefits, Costs, and Net Benefits Over the Next 10 Years

|                                         | Amount               |
|-----------------------------------------|----------------------|
| Gross Receipts Taxes                    | \$2,866,490          |
| Real Property Taxes - Project           | \$0                  |
| FF&E Property Taxes - Project           | \$19,938             |
| Property Taxes - New Residential        | \$10,157             |
| Utility Revenue                         | \$575,777            |
| Utility Franchise Fees                  | \$130,648            |
| Building Permits and Fees               | \$0                  |
| Lodgers Taxes                           | \$545                |
| Miscellaneous Taxes & User Fees         | \$480,950            |
| <u>Subtotal Benefits</u>                | <u>\$4,084,505</u>   |
| Cost of Providing Municipal Services    | (\$757,913)          |
| Cost of Providing Utility Services      | (\$593,051)          |
| <u>Subtotal Costs</u>                   | <u>(\$1,350,963)</u> |
| Net Benefits                            | \$2,733,542          |
| <i>Present Value (5% discount rate)</i> | <i>\$2,088,723</i>   |

Figure 3. Annual Fiscal Net Benefits for the Alamogordo



## Otero County

The table below displays the estimated additional benefits, costs, and net benefits to be received by the County over the next 10 years of the Project. Appendix C contains the year-by-year calculations.

Table 6. Otero County: Benefits, Costs, and Net Benefits Over the Next 10 Years

|                                         | Amount             |
|-----------------------------------------|--------------------|
| Gross Receipts Taxes                    | \$830,233          |
| Real Property Taxes - Project           | \$0                |
| FF&E Property Taxes - Project           | \$26,544           |
| Property Taxes - New Residential        | \$14,023           |
| Building Permits and Fees               | \$0                |
| Miscellaneous Taxes & User Fees         | \$335,722          |
| <u>Subtotal Benefits</u>                | <u>\$1,206,522</u> |
| Cost of Providing County Services       | (\$433,522)        |
| <u>Subtotal Costs</u>                   | <u>(\$433,522)</u> |
| Net Benefits                            | \$773,000          |
| <i>Present Value (5% discount rate)</i> | <i>\$592,234</i>   |

## Alamogordo Public Schools

The table below displays the estimated additional benefits, costs, and net benefits to be received by the school district over the next 10 years of the Project. Appendix C contains the year-by-year calculations.

Table 7. Alamogordo Public Schools: Benefits, Costs, and Net Benefits Over the Next 10 Years

|                                         | Amount             |
|-----------------------------------------|--------------------|
| Real Property Taxes - Project           | \$0                |
| FF&E Property Taxes - Project           | \$19,295           |
| Property Taxes - New Residential        | \$12,489           |
| State Equalization Guarantee            | \$1,545,178        |
| <u>Subtotal Benefits</u>                | <u>\$1,576,962</u> |
| Cost of Educating New Students          | (\$784,508)        |
| <u>Subtotal Costs</u>                   | <u>(\$784,508)</u> |
| Net Benefits                            | \$792,454          |
| <i>Present Value (5% discount rate)</i> | <i>\$599,095</i>   |



Benefits for Other Taxing Districts

The table below displays the estimated additional property taxes to be received by other property taxing districts over the next 10 years of the Project. Appendix C contains the year-by-year calculations.

| Table 8. Other Taxing Districts: Benefits Over the Next 10 Years |                |
|------------------------------------------------------------------|----------------|
|                                                                  | Amount         |
| Real Property Taxes - Project                                    | \$0            |
| FF&E Property Taxes - Project                                    | \$3,228        |
| Property Taxes - New Residential                                 | \$1,806        |
| Benefits                                                         | \$5,034        |
| <i>Present Value (5% discount rate)</i>                          | <i>\$4,027</i> |

## City Non-Tax Incentives

The City is considering the following non-tax incentives for the Project.

Table 12. City Incentives Under Consideration

| Year  | Enter Incentive Description |
|-------|-----------------------------|
| 1     | \$500,000                   |
| 2     | \$0                         |
| 3     | \$0                         |
| 4     | \$0                         |
| 5     | \$0                         |
| 6     | \$0                         |
| 7     | \$0                         |
| 8     | \$0                         |
| 9     | \$0                         |
| 10    | \$0                         |
| Total | \$500,000                   |

These financial incentives may be considered an investment in the Project made by the city. Four calculations analyzing possible investments were made:

1. Net Benefits - detailed above
2. Present Value of Net Benefits - detailed above
3. Rate of Return on Investment - discussed and detailed below
4. Payback Period - discussed and detailed below

The rate of return on investment calculates the average annual rate of return to the city, treating the incentives as the initial investment and the net benefits to the city as the return on investment. The payback period is the number of years that it will take the city to recover the cost of incentives from the additional revenues that it will receive as a result of the Project.

The table below shows an analysis of these incentives, including a calculation of incentives per job, rate of return, and payback period.

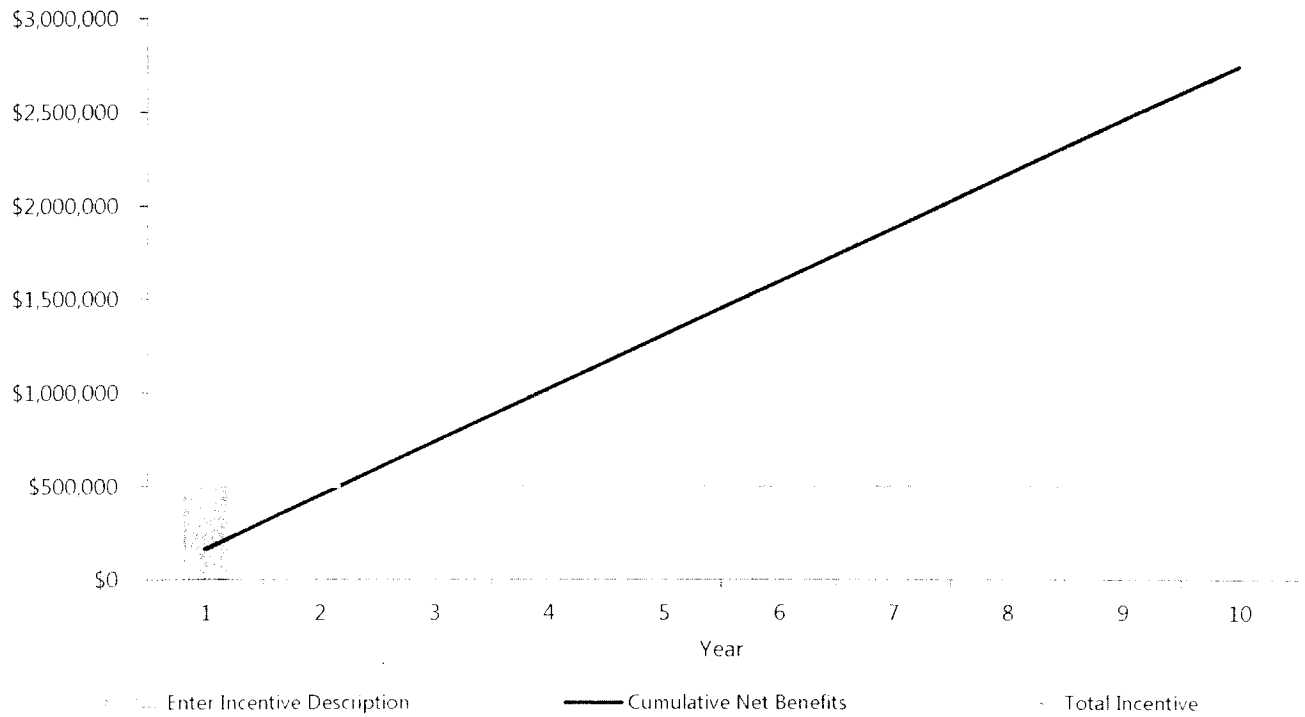
Table 13. Analysis of City Incentives

|                         |           |
|-------------------------|-----------|
| Total Non-Tax Incentive | \$500,000 |
| Incentive Per Job       | \$2,083   |
| Rate of Return          | 54.7%     |
| Payback period (years)  | 2.2       |

Note: The Rate of Return and Payback Period are calculated based on the sum of annual incentives, not the present value of the incentives.

The graph below depicts the total incentives currently under consideration versus the cumulative net benefits to the City. The intersection indicates the length of time until the incentives are paid back.

Figure 4. City Incentives Under Consideration





Overview of Methodology

This report presents the results of an analysis undertaken by the New Mexico Economic Development Department using Total Impact, an economic and fiscal impact analysis tool developed and supported by the Austin, TX based economic consulting firm, Impact DataSource.

The Total Impact model combines project-specific attributes with community data, tax rates, and assumptions to estimate the economic impact of the Project and the fiscal impact for local taxing districts over a 10-year period.

The economic impact as calculated in this report can be categorized into two main types of impacts. First, the direct economic impacts are the jobs and payroll directly created by the Project. Second, this economic impact analysis calculates the indirect and induced impacts that result from the Project. Indirect jobs and salaries are created in new or existing area firms, such as maintenance companies and service firms, that may supply goods and services for the Project. In addition, induced jobs and salaries are created in new or existing local businesses, such as retail stores, gas stations, banks, restaurants, and service companies that may supply goods and services to new workers and their families.

The economic impact estimates in this report are based on the Regional Input-Output Modeling System (RIMS II), a widely used regional input-output model developed by the U. S. Department of Commerce, Bureau of Economic Analysis. The RIMS II model is a standard tool used to estimate regional economic impacts. The economic impacts estimated using the RIMS II model are generally recognized as reasonable and plausible assuming the data input into the model is accurate or based on reasonable assumptions. Impact DataSource utilizes county-level multipliers to estimate the impact occurring at the sub-county level.

Two types of regional economic multipliers were used in this analysis: an employment multiplier and an earnings multiplier. An employment multiplier was used to estimate the number of indirect and induced jobs created or supported in the area. An earnings multiplier was used to estimate the amount of salaries to be paid to workers in these new indirect and induced jobs. The employment multiplier shows the estimated number of total jobs created for each direct job. The earnings multiplier shows the estimated amount of total salaries paid to these workers for every dollar paid to a direct worker. The multipliers used in this analysis are listed below:

| Multiplier            |                          | City   | County | State  |
|-----------------------|--------------------------|--------|--------|--------|
| Employment Multiplier | (Type II Direct Effect ) | 1.1696 | 1.2262 | 1.4386 |
| Earnings Multiplier   | (Type II Direct Effect ) | 1.2038 | 1.2717 | 1.5268 |

Calculation of Fiscal Impact

Calculation of Revenues for the State

The state's revenues from gross receipts taxes, property taxes, personal and corporate income taxes were estimated directly using data entered about the project and state tax rates and assumptions about workers moving to the area and possibly building new property.

Impact DataSource estimated the miscellaneous taxes and user fees as a function of statewide personal income. The data used to estimate these factors were obtained from the US Census of Governments and the Bureau of Economic Analysis. Next, these percentages were applied to the total increase in workers' earnings from the economic impact calculations to determine the annual miscellaneous taxes and user fees to be collected by the state related to the permanent increase in economic activity supported by the project.



The fiscal costs associated with the project result from the portion of new worker households that relocate to New Mexico to take a job and the resulting costs to provide state services to these new residents. Impact DataSource estimated the cost of providing state services to new worker households moving to the state by applying the average per household cost of state expenditures to the estimated number of new workers new to the state.

Impact DataSource determined the marginal cost to provide state government services on per household in the state by using approximately 40% of the average cost. The data used to estimate these costs were obtained from the US Census of Governments and US Census. On average, the state incurs \$5,000 in costs to provide these services to households.

#### *Calculation of Revenues for the City*

The city's revenues from gross receipts taxes, property taxes, city-owned utilities, utility franchise fees, lodging taxes, and building permits and fees were estimated directly using data entered about the project and local tax rates and assumptions about workers moving to the area and possibly building new property.

The new firm was not asked for nor could reasonably provide some data for calculating some other revenues for the city. For example, while the city will likely receive revenues from fines paid on speeding tickets given to new workers at the firm, the firm may not reasonably know the propensity of its workers to speed. Therefore, some other city revenues were calculated using an average revenue approach. This approach uses two assumptions:

- 1 - The city has two general revenue sources -- revenues from residents and revenues from businesses.
- 2 - The city will collect (a) about the same amount of other revenues from each household of new workers that may move to the city as it currently collects from an average household of existing residents, and (b) about the same amount of other revenues from the new firm (on a per worker basis) will be collected as the city collects from other businesses in the city.

Using this average revenue approach, revenues likely to be received by the city were calculated from the households of new workers who may move to the city and from the new firm using average city revenues per household and per worker calculations. These revenues are labeled as miscellaneous taxes and user fees.

The total annual city revenues used to make average revenue calculations in this analysis were obtained from the city's latest annual budget and the per household and per worker and calculations are detailed in Appendix A.

#### *Calculation of Costs for the City*

This analysis sought to answer the question, what additional monies will the city have to spend to provide services to households of new workers who may move to the city and to the firm. A marginal cost approach was used to calculate additional city costs from the new firm and its workers.

This approach uses two assumptions:

- 1 - The city spends money on services for two general groups -- residents and businesses.
- 2 - The city will spend (a) about the same amount for variable or marginal cost for each household of new workers that may move to the city as it currently spends for an average household of existing residents, and (b) about the same amount for variable or marginal costs for the new firm (on a per worker basis) as it spends for other businesses in the city.

#### *Calculation of Net Benefits for the City*

Net benefits calculated in this analysis are the difference between additional city revenues over a ten-year period and additional city costs to provide services to the new firm and its workers and indirect workers who may move to the city.

*Calculation of Revenues, Costs and Net Benefits for the County*

The model estimates additional revenues, costs and net benefits for the county using the same methodology described for the city relying on county budget data.

*Calculation of Revenues for Public Schools*

The school district's revenues from property taxes were calculated on the new residential property for some new direct and indirect workers who may move to the county and on the firm's property that will be added to local tax rolls.

However, school district revenues from state and federal funds and other local funding were calculated using an average revenue approach. This approach used the assumption that the school district will collect about the same amount of these revenues for each new student in the household of a new worker who may move to the county as it currently collects for each existing student.

*Calculation of Costs for Public Schools*

A marginal cost approach was used to calculate additional school district costs from the new firm and its workers. This approach uses the assumption that the school district will spend about the same amount for variable or marginal cost for each new student as it spends for each existing student.

*Calculation of Net Benefits for Public Schools*

Net benefits calculated in this analysis are the difference between additional school district revenues over a ten-year period and marginal costs for the school district to provide services to students in the households of new workers who may move to the county.

The school district's total annual revenues and expenses to make average revenue and marginal costs calculations in this analysis were obtained from the school district's latest annual budget.

*Calculation of Property Taxes to be Collected by Countywide Special Taxing Districts*

Revenues for countywide special taxing districts from property taxes were calculated on the new residential property for some new direct and indirect workers who may move to the county and on the firm's property that will be added to local tax rolls.

While each of these special taxing districts may incur additional costs from new residents and from the new firm, these additional costs were not calculated in this analysis.

*About Impact DataSource*

Impact DataSource is an Austin economic consulting, research, and analysis firm founded in 1993. The firm has conducted over 2,500 economic impact analyses of firms, projects, and activities in most industry groups in New Mexico and more than 30 other states.

In addition, Impact DataSource has prepared and customized more than 50 economic impact models for its clients to perform their own analyses of economic development projects. These clients include the Frisco EDC in Texas and the Metro Orlando (Florida) Economic Development Commission.

## **PROJECT PARTICIPATION AGREEMENT**

This Project Participation Agreement is entered into the \_\_\_ day of \_\_\_\_\_, 2018, between the City of Alamogordo, a New Mexico municipal corporation (the "City") and Thomas L. Cardella & Associates, Inc, a for profit corporation who will be required to register with the New Mexico Public Regulation Commission, whose business address is 4515 20<sup>th</sup> Ave, Suite B, Cedar Rapids, IA 52404 (hereinafter referred to as the "TLC").

### **I. Recitals**

- A. The purpose of this Agreement is to allow TLC to improve and operate a customer service call center in Otero County, New Mexico. Completion of the Project is in the best interests of the City and the health, safety, and welfare of the residents and the taxpayers of the City of Alamogordo, and is in accord with the public purposes and provisions of applicable state and local laws.
- B. By Ordinance No. 983, adopted August 13, 1996, the City has adopted an ordinance pursuant to the statutory authority conferred upon municipalities to allow public support of economic projects to foster, promote and enhance local economic development efforts (N.M. Stat. Ann. Section 5-10-1 through Section 5-10-13-1978). The Ordinance was adopted as part of the City's Economic Development Plan.
- C. By Ordinance No. 1564, adopted \_\_\_\_\_, 2018 ("Approval Date"), the City has adopted an Ordinance which establishes that TLC meets the requirements of the Local Economic Development Act and that TLC has provided information pertaining to its intent to make infrastructure improvements and purchase equipment needed to operate a customer service call center located at the White Sands Mall, 3199 N. White Sands Blvd., Alamogordo, New Mexico, 88310. This operation and management will create a minimum of one hundred (100) new jobs with an hourly wage of at least nine (\$9.00) dollars per hour, and will thereafter maintain the one hundred (100) jobs and create sufficient additional new jobs necessary to fulfill its obligation to repay the Economic Development Incentive during the term of this Agreement (the "Project"), all of which qualifies for assistance under the City's Economic Development Ordinance.
- D. Material inducements for the City's participation in this Agreement with TLC are:
  - 1. TLC creating and maintaining jobs in accordance with the provisions of this Agreement by -
    - a. producing no fewer than one hundred (100) new full-time jobs at an hourly wage of at least nine (\$9.00) dollars;
    - b. producing at least one executive-level position at an hourly wage of at least twenty-five (\$25.00) dollars;
  - 2. Begin hiring employees within the calendar year of 2018.
- E. Location of TLC's business operations in Otero County will provide additional jobs and substantially improve economic conditions in accordance with the purposes and goals of the City's Economic Development Plan.
- F. As a condition precedent to its receipt of public assistance TLC is required to execute this Project Participation Agreement.

## II. Definitions

For all purposes of this Agreement, except as otherwise expressly provided or unless the context clearly requires otherwise, the following terms have the meanings assigned to them:

- A. "Approval Date" means [REDACTED].
- B. "Economic Development Incentive" means financial assistance provided to TLC by the City of Alamogordo through the Local Economic Development Act.
- C. "Eligible Project Costs" means the costs and expenditures directly related to the various infrastructure upgrades that need to be accomplished in order to open and operate the call center. Examples of eligible infrastructure upgrade costs include various infrastructure upgrades, purchases of systems and equipment to operate the call center, and installation costs.
- D. "Facility" shall mean TLC's call center located within the White Sands Mall, 3199 N. White Sands Blvd., Alamogordo, New Mexico.
- E. "Job Credit" is a performance measurement figure. A job credit is annually:
  - 1. Eighteen thousand, seven hundred twenty dollars (\$18,720), yearly, for each non-executive fulltime equivalent job created (\$9 per hour x 2080 yearly hours);
  - 2. Twenty-four thousand, nine hundred sixty dollars (\$24,960), yearly, for each front line management equivalent job created (\$12 per hour x 2080 yearly hours);
  - 3. Thirty-five thousand, three hundred sixty dollars (\$35,360), yearly for each program manager equivalent job created (\$17 per hour x 2080 yearly hours);
  - 4. Fifty-eight thousand two hundred forty dollars (\$58,240) yearly, for each site director fulltime equivalent job created (\$28 per hour x 2080 yearly hours).
- F. "Job Period" means every twelve (12) month period from the Approval Date through the Term of Agreement during which the Qualified Entity is obligated to create and maintain New Jobs.
- G. "New Job" shall mean 2,080 hours of paid employment over 365 days.

|                       |
|-----------------------|
| <p><b>Example</b></p> |
|-----------------------|

|                                                                           |
|---------------------------------------------------------------------------|
| <p>2 people, each working 1,040 hours, over 365 days, is one New Job.</p> |
|---------------------------------------------------------------------------|

|                                                                     |
|---------------------------------------------------------------------|
| <p>1 person working 2,600 hours over 365 days is 1.25 New Jobs.</p> |
|---------------------------------------------------------------------|

## III. Agreements

The Parties agree as follows:

- A. Authority. The City's execution of this Agreement is authorized by
  - 1. The Local Economic Development Act, NMSA 1978 §5-10-1 through §5-10-13 (2007) (LEDA), Ordinance No. 983, which established the Alamogordo Economic Development Strategic Plan that promotes economic development projects in the City of Alamogordo; and
  - 2. Ordinance No. 1564, which approved the Project.

- B. TLC's execution and performance of this Agreement constitutes a valid and binding obligation of TLC in the event TLC proceeds with the Project. TLC has full power and authority to execute, deliver and perform, as applicable, this Project Agreement, to make the obligations hereunder, to execute and deliver the financial guarantee and to grant to the City the security as hereinafter described.
- C. "New Jobs Payroll" shall mean all monies paid annually to all persons holding New Jobs, whether paid by the hour, day, week, semi-monthly, monthly, or yearly, and includes, but is not limited to, overtime, bonuses, and piecework.

#### **IV. TLC's Obligations**

Per the purpose of the Agreement recited in paragraph I(A), above, TLC will meet the City's job creation expectation in paragraph I(D) by the following means:

- A. Employment Opportunities - TLC shall create and thereafter maintain during each Job Period those jobs as defined in paragraph I(D)(1)(a, b), for the period defined in I(D)(1)(c).
- B. TLC shall only be credited for the creation of jobs performed within Otero County, New Mexico.
- C. Local Preferences - Though not required, TLC shall use its best efforts to contract with local contractors in order for the City to receive gross receipts tax revenue. During the term of this Agreement, TLC shall make available to the City records verifying the use of local contractors and the making of local purchases. For purposes of this Agreement, a local contractor is a contractor meeting the requirements of section 2-13-180 of the Alamogordo City Code.

#### **V. The City's Obligations**

- A. The City agrees to provide \$1,200,000 of Economic Development Incentives to TLC to construct, improve and operate a value added call center in Otero County, New Mexico. TLC will be responsible for any additional costs or expenses related to the Project.

#### **VI. The City's Limitations**

- A. This Agreement shall not be construed as a commitment, issue or obligation of any specific funds other than those funds to be received by the City from its Municipal Infrastructure Gross Receipts Tax.
- B. The functions and duties assumed by the City include only those described in this Agreement, and the City is not obligated to act except in accordance with the terms and conditions of this Agreement.
- C. TLC acknowledges that the City does not warrant any equipment, materials, or services purchased with the funds.
- D. TLC shall be obligated hereunder even if the equipment, materials, or services are defective or fail to conform to the warranties extended by the supplier.



- E. The obligations of TLC shall not be affected by any dispute TLC may have with any manufacturer, distributor, contractor or supplier.
- F. TLC will not assert any claim or defense which it may have against any manufacturer, distributor, supplier or contractor against the City.
- G. The City is under no duty to supervise or inspect the installation or construction contemplated by this Agreement.
- H. Any inspection or examination by the City is for the sole purpose of protecting the City's security interest and preserving the City's rights under this Agreement.
- I. No default of TLC will be waived by any inspection by the City.
- J. In no event will any inspection by the City be a representation that the installation or construction is free from defective materials or workmanship.

## **VII. Disbursement of Economic Development Incentive**

- A. Disbursement of the Economic Development Incentive shall be made upon the City's receipt and approval of a request for the disbursement and supporting documents. Invoices submitted which are determined to be outside the scope of those allowable by state or local ordinance shall be rejected.
- B. The supporting documents shall include itemized invoices from contractors and suppliers, and a report detailing the dollar amount and purpose of the Eligible Project Cost.
- C. TLC and the City shall establish a joint account into which the disbursement shall be deposited by the City.
- D. City anticipates TLC will use the disbursement for the following, to include, but not limited to:
  - 1. Electrical Upgrades, i.e: Fiber, Power/Cabling, Wireless Interfaces
  - 2. IT and Data Center infrastructure, i.e: Rack, Power/Cabling, Switches, Routers, Servers
  - 3. Call Center Technology, i.e: Computers, Wireless hardware, Software, Security
  - 4. Furniture and Fixtures
- E. The City anticipates the above items are required and variation to this list necessitates discussion and agreement between the parties.
- F. In its sole discretion, the City may withhold disbursement if it determines that TLC has failed to comply with and/or is in default under the terms and conditions of this Agreement, or has failed to provide adequate documentation of the eligible project cost.

## **VIII. Obligation to Repay the Economic Development Incentive**

- A. TLC understands and agrees that the failure of TLC to perform its obligations will result in a forfeiture of the Economic Development Incentive. In the event of a forfeiture, or upon termination of this Agreement, TLC agrees to pay to the City the balance of the Economic Development Incentive not otherwise repaid through the creation of jobs. TLC's obligation to pay to the City the balance of the economic

development incentive not otherwise repaid is evidenced by a financial guarantee bond, a copy of which is attached as exhibit \_\_\_\_.

- B. Security Interest. The City acquires a security interest in this agreement through TLC's purchase of a financial guarantee bond which will be provided to the City of Alamogordo prior to the payment of any invoices.

#### **IX. Insurance.**

- A. TLC, at its sole cost and expense, shall procure and maintain, with financially sound and reputable insurers authorized to do business in the State of New Mexico:
  - 1. Insurance on the value of the improvements on a replacement basis with no limiting modification including the City as named insured party;
  - 2. Insurance policy which covers damage to, or the destruction of, the contents of the Facility on a replacement basis to include, but not limited to, all items purchased under this agreement.
- B. TLC will furnish to the City, upon its written request, the insurance certificates with respect to such insurance.

#### **X. Evidence of Job Creation**

- A. **Job Audit.** Annually, 60 days after the start of the Fiscal Year, a Job Audit to determine Job Credit shall be performed by the City to validate TLC follows this Agreement. TLC shall produce the necessary records to allow the City to perform its Job Audit.
- B. **Job Credit.** TLC shall receive a credit against the principal balance of the promissory note for each new job that is created/maintained during the job period.
- C. **Pro-rated Credit.** In the event the TLC falls short of meeting annual creation/maintenance obligation for any Period, TLC receives a partial credit. The amount of the partial credit shall be calculated using the above described formula.
- D. **Term.** The parties anticipate it will take two years to fulfill the goal of obtaining sufficient job credits to repay the Economic Development Incentive (EDI). In the event, at the end of the two year term, the EDI has not been fully repaid, the repayment term automatically extends until repayment is achieved.

#### **XI. Termination and Recovery of Incentive**

- A. **Events of Default.** The following events shall constitute events of default under this Agreement:
  - 1. Failure of TLC to fulfill, in whole or in part, any obligation required by this Agreement.
  - 2. Cessation by TLC of its Otero County operations, or reduction of those operations to a level below the performance measures set forth of this Agreement.
  - 3. Filing by TLC of a petition, case, proceeding, or other action against the City as a debtor under any debtor relief law or seeking appointment of a receiver, trustee, custodian, or liquidator of the TLC.
  - 4. The abandonment by TLC of all or a portion of the Facility.

5. The discovery by the City that any representation, warranty, or covenant made by the TLC in connection with this Agreement was or has become false, materially misleading, erroneous, or breached in any material respect.
6. TLC assigns, sells, or transfers a majority interest in its business entity, whether in a single transaction or a series of transactions. If TLC desires to assign, sell, or transfer a majority interest in its business entity, whether in a single transaction or a series of transactions, before expiration of this Agreement, the City retains the right to reject any and all assignments, sales, or transfers of any interest in the TLC's business entity until, in the sole discretion of the City, adequate assurances are given that the assignee, buyer, or transferee is TLC under the Alamogordo Economic Development Plan and that terms of this Agreement will be satisfied by the assignee, buyer, or transferee.

**B. TLC's Response to Default.** Upon the occurrence of an event of default by TLC specified in this Agreement, the City shall notify TLC in writing that an event of default has occurred under this Agreement. Within thirty (30) days of the receipt of such notice, TLC shall:

1. Cause the default to be cured; or
2. Furnish a written response indicating:
  - a. The factors which caused or contributed, in whole or in part, to the occurrence of default;
  - b. The measures TLC has undertaken to avoid the reoccurrence of default in the future;
  - c. Whether any performance measure not achieved can still be achieved in a timeframe acceptable to the City; and
  - d. What further action TLC plans to take to achieve the performance measure in a timeframe acceptable to the City.

**C. City's Response to Default.** The City staff shall review the response furnished by TLC and within thirty (30) days from the receipt of such response, recommend to the City Commission whether to modify or terminate this Participation Agreement. TLC shall have an opportunity to make a presentation to the City Commission at any meeting where such recommendation will be acted upon. The decision of the City Commission will be final and binding. Other than the opportunity for TLC to make a presentation to the City Commission, in the event of default nothing herein shall be construed to limit in any way the power and authority of the City Commission to terminate this Agreement and to demand immediate repayment of the Economic Incentive, including all interest both accrued and deferred; and to foreclose upon, collect, and recover all collateral pledged by TLC as security if repayment is not made.

## **XII. Effect of Termination.**

Except for any obligations that accrue prior to such termination or except as otherwise provided in this Agreement, which obligations shall survive the termination of this Agreement, other rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the applicable date of termination of this Project Agreement.

### **XIII. Facility Closure Clawback.**

Should TLC cease operation of the Project prior to fulfilling their financial obligation to the City of Alamogordo, TLC shall, within ninety (90) days of the cessation of operations, pay to the City, in cash, an amount equal to the outstanding balance left under this agreement. This amount may either be paid by the bond procured in this case, or by cash from TLC itself. In this event, TLC agrees to immediately submit to a job audit within 30 days of closure and will receive any and all credit to which it is entitled. After all credits are applied, TLC agrees that the City may call due its performance bond. Any clawbacks not paid when due shall bear interest at the rate of prime plus 2% per annum from the due date until paid.

### **XIV. No Joint Venture.**

It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create a partnership or joint venture among the parties. Neither party shall have any authority to act on behalf of the other party under any circumstances of this Agreement.

### **XV. Appropriations.**

The performance by the City of any of the terms, covenants, or conditions in this Agreement that the City is obligated to perform shall be subject to the availability of appropriated funds that may be lawfully used for such purpose.

### **XVI. Miscellaneous Provisions.**

- A. If any legal action should be necessary for the enforcement of this Project Participation Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provision of this Agreement, the City shall be entitled to recover reasonable attorney fees and/or other costs incurred in that action or proceeding in addition to any other relief which the City may be entitled to under the law.
- B. The parties agree that in the event of any dispute, venue for such dispute shall be laid and established in the District court of Otero County, New Mexico and no other.
- C. City and TLC will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist each other in carrying out such terms and provisions.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the day and year first written.

CITY OF ALAMOGORDO, NEW MEXICO  
a New Mexico municipal corporation

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Margaret Paluch,  
City Manager

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Thomas L. Cardella, President  
Thomas L. Cardella & Associates

AFFIRMED:

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Rachel Hughs,  
City Clerk

APPROVED AS TO FORM:

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Petria Schreiber,  
City Attorney



# AGENDA REPORT

## CITY OF ALAMOGORDO

### CITY COMMISSION

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**Meeting Date:** 02/27/2018

**Report Date:** 02/22/2018

**Report No:** 6.

**Submitted By:** April Jones

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**Subject:** Appointments to Boards and Committees. (*Richard Boss, Mayor*)

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**Fiscal Impact:**

Amount Budgeted:

Fund:

Additional Fiscal Impact:

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**Recommendation:** Appoint to the White Sands Beautification Committee.

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**Background: Airport Zoning Board.** Three (3) vacancies. Staff Liaison - Cheryl Otero-Baker (Openings due to the expired term of Darron Williams and resignation of Frank Nelson and Paul Vigneault.)

No nominations received.

**Alamogordo Disability Council.** Three (3) vacancies. Staff Liaison - \*\*No Staff Liaison appointed to this Council\*\*

(Openings due to the resignation of Viviane Ackall, and expired terms of Lori Adam and Rita Martinez)

No nominations received.

**Alamogordo Promotion Board.** One (1) vacancy- tourism related. Staff Liaison - Jan Wafful

(Opening due to Kathleen Beall's resignation)

No nominations received.

**Alamogordo Public Library Board.** One (1) vacancy. Staff Liason - Melissa Garcia.

No nominations received.

**Community Development Advisory Committee.** Six (6) vacancies. Staff Liaison - Cynde Sagenkahn (Opening due to the expired term of Bruce Knee, Melanie Hall, and Gloria Vaughn; and the resignation of Eddie Kemp and Arthur Alterson)

No nominations received.

**Parks and Recreation Board.** One (1) vacancy. Staff Liason - Jan Wafful. (Opening due to the resignation of Paul Sanchez)

**Senior Volunteer Programs Advisory Council.** One (1) vacancy. Staff Liaison - Julie Baker (Openings due to the expiring terms of Annarelle McDonald)  
No nominations received.

**White Sands Beautification Committee.** One (1) vacancy Staff Liaison - Darron Williams (Opening due to the resignation of Stephanie Hale.)  
The following individual is interested in being appointed:  
Danielle Bynum, if appointed this will be her first term.

RECEIVED

FEB 20 2018

CITY CLERK

**City of Alamogordo**  
APPLICATION TO SERVE ON A  
CITY BOARD/COMMITTEE

Name: Danielle Bynum  
Home Phone: (575) 495-5244 Work Phone: (575) 446-5763  
Cell Phone: (575) 495-5244 Fax No: (575) 446-5769  
e-mail address: daniellembynum@gmail.com  
Physical Address: 1113 San Miguel Alamogordo, NM 88310  
Is the above address within City limits? Yes ☒ No ☐  
Mailing Address: " "  
Present Employer: GCRM Job Title: Director of Operations  
Physician Practices  
Board/Committee you wish to serve on:  
First choice: White Sands Beautification  
Second choice: \_\_\_\_\_

Are you related to anyone who is presently employed by the City of Alamogordo:

Yes \_\_\_\_\_ No ☒ If so, what is their relation to you? \_\_\_\_\_

Are you related to any Elected Official of the City of Alamogordo?

Yes \_\_\_\_\_ No ☒ If so, what is their relation to you? \_\_\_\_\_

Experience and education relating to the Board/Committee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please indicate your interest in serving on a City Board/ Committee: I am invested  
into the betterment of the community and believe  
in this committee's purpose and vision.  
\_\_\_\_\_  
\_\_\_\_\_

Please return completed application to:

City Clerk's Office  
1376 E. Ninth Street  
Alamogordo, NM 88310  
PHONE: (505)439-4205  
FAX: (505)439-4396