

ORDINANCE NO. 2016- 16

AN ORDINANCE AUTHORIZING THE LEASE OF THE PROPERTY COMMONLY KNOWN AS 402 SOUTH ALAMEDA STREET, CARLSBAD, NEW MEXICO, TO THE CARLSBAD COMMUNITY KITCHEN, INC. FOR THE PROVISION OF ITS NUTRITIONAL PROGRAM SERVICES.

WHEREAS, the City of Carlsbad owns the property and improvements commonly known as 402 South Alameda Street, Carlsbad, New Mexico, as shown on Exhibit "A", and hereinafter referred to as the "Premises"; and

WHEREAS, the Premises were formerly used as the Carlsbad Juvenile Detention Center; and

WHEREAS, the Carlsbad Community Kitchen, Inc. is a New Mexico nonprofit corporation which has been addressing the nutritional needs of local low income, disabled, and hungry people for years; and

WHEREAS, in 2004, the City and the Carlsbad Community Kitchen, Inc. entered into a lease agreement pursuant to which the Carlsbad Community Kitchen, Inc. leased the Premises to use for its nutritional program; and

WHEREAS, the parties wish to lease the Premises for an additional five (5) year period; and

WHEREAS, the Premises has an appraised value of \$320,000, as shown in Exhibit "B"; and

WHEREAS, an analysis has found that the fair market rental value of the Premises is \$30,252 per year or \$2,521 per month, as shown in Exhibit "B"; and

WHEREAS, the Carlsbad Community Kitchen, Inc. has agreed to pay the appraised fair market annual rent either in cash, or by the provision of designated services, or by a combination of both cash and services; and

WHEREAS, the Governing Body of the City of Carlsbad believes it would be beneficial to the community to lease the Premises to the Carlsbad Community Kitchen, Inc. for the provision of a local nutritional program at the premises.

NOW THEREFORE, be it ordained by the Governing Body of the City of Carlsbad that:

1. The lease of the Premises, upon the terms and conditions set forth in the "Lease Agreement" incorporated herein by reference, is hereby approved.
2. The Carlsbad Community Kitchen, Inc. shall have the use of the Premises to provide its nutritional program services to local low income, disabled, and hungry people.
3. The Carlsbad Community Kitchen, Inc. shall compensate the City in an amount equal to the annual fair market rental of \$30,252 in the manner set forth in the "Lease Agreement".
4. The Mayor and City Administrator are authorized to execute all documents necessary to implement the terms of this ordinance.
5. Notice shall be published pursuant to the terms of NNMSA 1978, Sec. 3-54-1 (1999).

DONE AND APPROVED this 24th day of May, 2016.

/s/ Dale Janway
DALE JANWAY, MAYOR

ATTEST:

/s/ Annette Barrick
CITY CLERK

1 **LEASE AGREEMENT BETWEEN THE CITY OF CARLSBAD**
2 **AND THE CARLSBAD COMMUNITY KITCHEN, INC.**
3 **FOR THE LEASE OF THE CITY OWNED BUILDING AT 402 S. ALAMEDA STREET,**
4 **FORMERLY KNOWN AS THE CARLSBAD JUVENILE DETENTION CENTER**

5
6 THIS AGREEMENT is entered into this ____ day of _____, 20____ between the CITY
7 OF CARLSBAD, New Mexico, a municipal corporation (hereinafter referred to as "City"), and the
8 CARLSBAD COMMUNITY KITCHEN, INC., a New Mexico nonprofit corporation, (hereinafter
9 referred to as "CCK").

10
11 WHEREAS, the City of Carlsbad owns the building at 402 South Alameda which was
12 formerly used as a juvenile detention facility; and

13
14 WHEREAS, the Carlsbad Community Kitchen is a nonprofit corporation which has been
15 addressing the nutritional needs of local low income, disabled, and hungry people for years; and

16
17 WHEREAS, in 2004, the City and CCK entered into a lease agreement for the property at
18 402 South Alameda for CCK to use it for its nutritional program; and

19
20 WHEREAS, CCK has provided its services at 402 South Alameda since 2004; and

21
22 WHEREAS, the City believes that it would be beneficial to the community for CCK to
23 continue to provide such services to local residents; and

24
25 NOW THEREFORE, the parties agree to the following terms and conditions:

26
27 1. **Description of Premises.** Upon CCK's performance of the covenants of this Agreement,
28 the City hereby agrees to lease to CCK and CCK agrees to lease from the City the building
29 commonly known as 402 South Alameda, hereinafter the "Premises" as shown on Exhibit "A",
30 attached hereto.

31
32 2. **AS IS Condition of the Premises.** Prior to the commencement of this Agreement, CCK has
33 been given the opportunity to fully examine the Premises and all fixtures, installations, and
34 improvements thereon. CCK accepts the Premises and such fixtures, installations, and
35 improvements in their existing condition and state of repair. CCK accepts them in an **AS IS**
36 **CONDITION**. CCK agrees that no representations, statements, or warranties, express or implied,
37 have been made by or on behalf of the City in respect thereto, and the City shall in no event be liable
38 for any latent defects.

39
40 3. **Use of the Premises.**
41 A. **Permitted Uses.** CCK shall have the use of the Premises solely for the purpose of
42 providing nutritional support for members of this community. CCK shall not use or permit
43 the use of the Premises or any fixture, appliance, improvement, building, or appurtenance

1 thereon, for any purpose or use other than those expressly and specifically authorized by this
2 Agreement. Additional uses may be hereafter authorized in writing by the City, but only
3 upon such terms and conditions as may be set forth in such authorization.

4 **B. Applicable Laws.** Every use of the Premises, fixtures, appliances, improvements,
5 buildings, and appurtenances thereon shall be consistent with all applicable laws, ordinances,
6 rules, regulations, and policies and as they are now and as they may be made or amended
7 from time to time.

8 **C. Safe Condition.** CCK shall not allow or permit anyone to use or occupy any portion
9 of the Premises that is not in a safe and usable condition.

10 **D. Hazards and Interference.** No use of the Premises, fixtures, appliances,
11 improvements, buildings, or appurtenances thereon shall in any manner constitute a hazard
12 or interfere with the City's use and operation of the Premises, fixtures, appliances,
13 improvements, buildings, or appurtenances thereon. In the event this covenant is breached,
14 the City reserves the right to enter upon the Premises and cause the abatement of such hazard
15 or interference at the expense of CCK and / or terminate this Agreement.

16
17 4. **Rules and Regulations.** From time to time, the City may adopt and enforce reasonable rules
18 and regulations designed to facilitate the safe and orderly operation of the Premises. CCK agrees
19 to observe and obey such rules and regulations.

20
21 5. **Term.** The term of this Agreement shall be for five (5) years beginning on the ___ day of
22 _____, 20___ and terminating on the ___ day of _____, 20___. This Agreement may
23 be renewed one (1) additional five (5) year term upon the mutual agreement of the parties upon such
24 terms and conditions as may be mutually agreeable.

25
26 6. **Meetings.** CCK shall make personnel available to meet with City Administrator, the
27 governing body of the City, and other members of City staff as necessary and mutually convenient
28 to discuss matters related to Premises operation and management.

29
30 7. **Taxes, Licenses, and Permits.** CCK shall be solely responsible for:

31 **A. Taxes.** The timely payment of any and all personal property taxes which may be
32 assessed against equipment, merchandise, or other personal property belonging to CCK
33 located on the Premises. In the event any real estate taxes are assessed against the land or
34 improvements on the Premises during the term of this Agreement and such taxes are due to
35 or related to CCK's use of or presence at the Premises, such taxes shall be paid by CCK.

36 **B. Licenses and Permits.** Obtaining, maintaining and paying for all licenses, permits,
37 certifications, fees, or other authorizations or charges as required under federal, state, or local
38 laws, ordinances, codes, rules, regulations, or policies insofar as they are necessary to comply
39 with the requirements of this Agreement and the privileges extended hereunder.

1 **8. Maintenance.**

2 **A. CCK to Maintain.** CCK agrees that it shall keep, repair, maintain, improve and
3 operate the Premises and all fixtures, appliances, improvements, installations on, and
4 improvements to it at its own expense. CCK agrees to keep the Premises in good order and
5 repair at all times. CCK shall further use all reasonable precautions to prevent waste,
6 damage or injury to the Premises. CCK shall be solely responsible for complying with all
7 applicable codes including, but not limited to building, safety, and fire codes. CCK shall be
8 solely responsible for complying with the requirements of the Americans with Disabilities
9 Act. CCK shall perform all inspections, maintenance, repair, and replacement except for
10 those matters specified in Paragraph 8(E), below, as responsibilities of the City. CCK's
11 responsibilities shall include, but are not limited to the maintenance and repair of any and all:

- 12 i. Windows and window coverings;
- 13 ii. Glass;
- 14 iii. Doors and entries;
- 15 iv. Interior walls;
- 16 v. Plumbing, plumbing fixtures, and restroom accessories;
- 17 vi. Carpeting and floor coverings, including any tile work;
- 18 vii. Appliances and furnishings;
- 19 viii. Light fixtures and light bulbs;
- 20 ix. Drop ceiling panels and acoustical tiles; and
- 21 x. Security systems.

22 **B. Trash and Litter.** CCK shall be responsible for the removal of any trash, litter, and
23 debris as well as the maintenance of the cleanliness of the Premises. There shall be no
24 outside storage of any material, property, equipment, rubbish, trash, garbage, or debris
25 without the prior written permission of the City. CCK shall not dispose of any waste at the
26 Premises unless the waste is appropriate for removal by the City's Solid Waste Department
27 and is properly stored while awaiting pickup.

28 **C. Reporting Damage.** CCK shall immediately verbally report to the City any
29 vandalism, damage, or destruction as well as any repair or maintenance needed to be
30 performed by the City. It shall also report such matters in writing within five (5) business
31 days.

32 **D. Janitorial Services.** CCK shall be responsible for the provision and payment of all
33 janitorial services on the Premises.

34 **E. City to Maintain.** The City shall be responsible only for maintenance of:

- 35 i. HVAC systems;
- 36 ii. The electrical system including electrical outlets, switches, dimmers, and
37 breakers;
- 38 iii. External walls;
- 39 iv. Roof; and
- 40 v. Outside grounds and facilities including but not limited to sidewalks, parking
41 lots, lawn, landscape irrigation system, and general landscaping.

1 F. **Right to Correct Deficiencies.** The City shall have the right to require reasonable
2 maintenance of and repairs to the Premises and all fixtures, appliances, improvements,
3 buildings, and appurtenances as required by this Agreement. Should CCK fail to make the
4 required corrections, the City may elect, but shall not be obligated to come onto the Premises
5 and remedy any deficiency. In the event the City remedies a deficiency, CCK shall be
6 responsible for all costs and expenses incurred by the City. Any action by the City to remedy
7 a deficiency shall not be deemed to waive or release the default of CCK or the right of the
8 City to take any action as may be otherwise permissible or to seek other remedy under the
9 law.

10
11 9. **Additions, Alterations, and Improvements.** No addition, alteration, improvement,
12 construction, repair, installation, or demolition on the Premises shall be done without the prior
13 written consent of the City Administrator. All such activity shall be performed in a workman-like
14 manner. Other conditions with respect to additions, alterations, improvements, construction, repairs,
15 installations, or demolitions are as follows:

16 A. **City Approval.** The plans and specifications for any such activity shall be submitted
17 to the City Administrator for written approval prior to commencing such activity;

18 B. **Filing.** Before commencement of any such activity, all plans and specifications shall
19 be filed with, approved by, and permitted by all governmental departments and authorities
20 having jurisdiction;

21 C. **Licensed Contractors.** All such activity shall be done by appropriately licensed
22 contractors in accordance with all applicable laws, rules, and regulations;

23 D. **Commencement and Completion.** All work, construction, altering, repairing,
24 installing, or demolishing must be commenced no later than six (6) months following the
25 approval of the plans and specifications by the City Administrator and must be completed
26 within six (6) months of that approval by the City Administrator.

27 E. **Ownership.** Unless otherwise agreed to in writing by the parties, all alterations,
28 additions, improvements, construction, repairs, and installations on or in the Premises at the
29 commencement of this Agreement and that may be erected or installed during the term of this
30 Agreement shall become a part of the Premises and the sole property of the City, except that
31 all moveable trade fixtures installed and owned by CCK shall be and remain the property of
32 CCK. Such moveable trade fixtures shall be removed by CCK at the termination of this
33 Agreement so long as such removal will not harm the structure or cause unreasonable
34 damage to the Premises or facilities. Any items which cannot or are not removed within
35 thirty (30) days of the termination of this Agreement shall, at the City's sole discretion,
36 become the sole property of the City, and CCK waives all claims for payment or offset
37 thereof.

38
39 10. **Compensation.**

40 A. **Rent.** As compensation for the use of the Premises, CCK shall pay the City the
41 appraised fair market value rent of Thirty Thousand Two Hundred Fifty-two Dollars per year
42 (\$30,252.00/year) or Two Thousand Five Hundred Twenty-one Dollars and 00/100ths per
43 month (\$2,521.00/month) as set forth in appraisal attached hereto as Exhibit "B". The Rent

1 shall be due on or before the fifteenth day of each month. Rent shall be paid to P.O. Box
2 1569, Carlsbad, NM 88221-1569, Attention City Finance Director, or such other place or
3 person as the City may direct in writing.

4 **B. Cash or Services.** CCK shall pay the rent either in cash or by providing designated
5 services valued at not less than the fair market value rent, or a combination of both cash and
6 services. The value of the designated services shall be calculated pursuant to the accounting
7 matrix set forth in Exhibit "C" attached hereto. The unit value of the designated services
8 may be changed from time to time with the written consent of both Parties, provided that the
9 value of all services shall be established wherever possible based upon comparable
10 marketplace values of similar services. CCK may receive carryover credit for any month in
11 which the value of designated services exceeds the monthly fair market rent of the Premises.
12 The amount of such carryover credit shall be the amount by which designated services
13 exceeds the fair market rent, provided, however, that the City shall not, under any
14 circumstances, be obligated to reimburse CCK for or otherwise be liable for the value of such
15 excess services. Furthermore, and without in any way limiting the foregoing, in the event
16 of the termination of this Agreement, CCK shall forfeit any accrued but unapplied credits.
17 In the event that the value of designated services does not equal or exceed the fair market
18 annual rent at the end of any 12 month period, CCK shall pay the difference to the City in
19 cash not later than 30 days after the end of that 12 month period.

20 **C. Cash.** Should CCK elect to pay all or part of the rent in cash, such rent shall be paid
21 monthly and in advance on or before the fifteenth day of each month.

22 **D. Monthly Report.** By the 15th of each month, CCK shall provide the City with an
23 accounting of the designated services rendered by it to the citizens of the City of Carlsbad
24 and the surrounding area during the prior month. The report shall be in the format and
25 contain the information set forth above, as well as such other information as may be required
26 by the City to determine CCK's performance under this agreement.

27 **E. Annual Report.** CCK shall, by January 5th of each year, submit to the City a written
28 report itemizing the designated services rendered by it to the citizens of the City of Carlsbad
29 and the surrounding area during the previous calendar year. The report shall be in the format
30 and contain the information described in Paragraph 10(D), above.

31
32 11. **Signs.** No sign shall be erected or maintained by CCK except in compliance with all
33 applicable laws, ordinances, codes, rules, regulations, and policies. Prior to erection of a sign, CCK
34 shall obtain written approval from the City.

35
36 12. **Storage of Materials.** Storage or disposal on the Premises of any materials or waste defined
37 as hazardous or toxic by local, state, or federal ordinances, laws, codes, rules, or regulations shall
38 be strictly prohibited except with the prior written permission of the City.

39
40 13. **Utility Services.** All applications and connections for utility services on the Premises shall
41 be made in the name of CCK only. CCK shall be solely responsible for all utility charges as they
42 become due, including, but not limited to those for sewer, water, gas, electricity, and telephone
43 services.
44

1 14. **Damage or Destruction of Premises.**

2 A. **Repair.** If the Premises or improvements thereto are partially destroyed or damaged
3 by fire or other casualty, then CCK, at its sole expense, shall repair and restore the Premises,
4 or improvements thereto as soon as it is reasonably practicable. Such repair or restoration
5 shall commence not later than six (6) months after such damage occurs, and shall be
6 completed with six (6) months of the commencement date. Such restoration shall be to
7 substantially the same condition in which the Premises or improvements thereto were before
8 such damage. In the event that CCK has not commenced repairs or restoration within six (6)
9 months or completed the repairs or restoration within six (6) months of the commencement,
10 this Agreement may be immediately terminated by the City. Such termination shall be made
11 effective by serving notice upon CCK, and shall be effective on the date of receipt of such
12 notice by CCK.

13 B. **Destruction.** In the event the Premises or improvements thereto are completely
14 destroyed or so badly damaged that repairs cannot be commenced within six (6) months and
15 completed within six (6) months thereafter, then this Agreement may be terminated without
16 penalty to either party. Such termination shall be effective as of the date of the occurrence
17 of the damage or destruction, and made effective by either party hereto by serving written
18 notice upon the other.

19
20 15. **Compliance with Laws.** CCK shall comply with all applicable local, state, and federal laws,
21 rules, regulations, and policies, whether currently in effect or adopted hereafter, including, but not
22 limited to, all New Mexico Environmental Department rules and regulations. CCK shall obtain and
23 maintain any and all permits, licenses, or certifications that may be necessary to carry out the
24 operations contemplated by this Agreement. In the event CCK should cease to be properly
25 permitted, licensed, or certified, it shall immediately inform the City. Within five (5) days of ceasing
26 to be properly permitted, licensed, or certified, CCK shall also notify the City in writing of that
27 event. CCK shall require all its employees, officers, and agents, to comply with all applicable local,
28 state, and federal laws, rules, regulations, and policies.

29
30 16. **CCK's Insurance.** During the term of this Agreement and for any further time that CCK
31 shall hold the premises, CCK shall obtain and continuously maintain at its expense the following
32 types of insurance:

33 A. **Public Liability Insurance.** General public liability insurance which names the City
34 as an additional insured in an amount of not less than one million fifty thousand dollars
35 (\$1,050,000.00) and which provides coverage against property damage, bodily injury, and
36 wrongful death. Prior to the execution of this Agreement, CCK shall provide the City with
37 a Certificate of Insurance reflecting the coverages specified herein and naming the City as
38 an additional insured. CCK shall also provide the City with a Certificate of Insurance upon
39 each renewal of such insurance. Should such insurance terminate or be cancelled, CCK shall
40 immediately inform the City and all activities at the premises shall cease.

41 B. **Fire and Casualty.** CCK shall obtain and maintain at its own expense fire and
42 extended coverage for any contents, personal property, equipment, furniture, or fixtures
43 owned by CCK.

1 **C. Certificate of Insurance.** All insurance shall be with a company or companies
2 licensed and authorized to do business in the State of New Mexico. No later than the
3 effective date of this Agreement, CCK shall provide the City Administrator with a Certificate
4 of Insurance reflecting the coverages specified herein and naming the City as an additional
5 insured. CCK shall annually furnish to the City Administrator a Certificate of Insurance for
6 the above-required insurances. CCK shall provide the City Administrator with notice of any
7 change thereof, and furnish to the City Administrator evidence of acquirement of a substitute
8 thereof, and payment of the premium thereof. If CCK should fail to maintain such insurance
9 coverage or coverages, then the City may, at its sole discretion, obtain such insurance to
10 insure its interests. If the City does so, it may recover the cost of that insurance from CCK.

11 **D. Tort Claims Act.** The City and its “public employees,” as defined in the New
12 Mexico Tort Claims Act, do not waive any sovereign immunity, defense, or limitation of
13 liability pursuant to law. No provision of this Agreement modified and/or waives any
14 provision of the New Mexico Tort Claims Act.

15
16 17. **City Insurance.** During the term of this Agreement, the City shall obtain and continuously
17 maintain at its expense property loss insurance as may be required by law. The City shall have sole
18 and absolute discretion to determine the amount and coverage of such insurance and the applicable
19 deductible or deductibles. To the extent City receives insurance proceeds for any covered casualty
20 loss, the City shall have sole discretion to determine when and how such proceeds shall be expended.

21
22 18. **Indemnity.** CCK shall save, indemnify, and hold harmless the City, its officers, directors,
23 employees, and agents and shall provide such assistance as the City may require, with respect to any
24 and all claims, lawsuits, damages, losses, and expenses of every kind, together with any attorneys’
25 fees and litigation costs, made by or on behalf of any person or entity arising out of or in any manner
26 associated with this Agreement.

27
28 19. **Release of Liability.** The City shall not be responsible for any personal injury, death, or
29 property damage to CCK, its agents, employees, representatives, or assigns, nor shall the City be
30 liable to CCK for any loss or damage to CCK’s personal property, equipment, furniture, or fixtures
31 arising from any cause or causes whatsoever during the term of this Agreement, or during any further
32 time that CCK shall hold the premises.

33
34 20. **Assignment, Mortgage, or Sublease.** Neither CCK nor its successors or assigns shall
35 assign, mortgage, pledge, or encumber this agreement or sublet the premises in whole or in part or
36 permit the premises to be used or occupied by others, nor shall this lease be assigned or transferred
37 by operation of law without the prior written consent of the City in each instance. If there is an
38 approved assignment, CCK shall continue to be liable hereunder in accordance with the terms and
39 conditions of this Agreement and shall not be released from the performance of the terms and
40 conditions hereof. The consent by the City to an assignment, mortgage, pledge, or transfer shall not
41 be construed to relieve CCK from obtaining the express written consent of the City to any future
42 transfer of interest.

1 21. **Right of Access.** The City shall have the right, at any reasonable time, to enter the Premises
2 and to inspect or to have a third party enter and inspect the Premises and all fixtures, appliances,
3 improvements, improvements, buildings, and appurtenances.

4
5 22. **Waiver.** The failure of the City to insist upon strict performance of any of the terms and
6 conditions hereof shall be deemed a waiver of the rights or remedies that the City may have
7 regarding that specific instance only, and shall not be deemed a waiver of any subsequent breach or
8 default in any term or condition.

9
10 23. **Termination.** Either party may terminate this Agreement without cause by providing the
11 other party with written notice of its intention to terminate this Agreement at least one hundred
12 eighty (180) days prior to the termination date.

13
14 24. **Surrender of Possession.** CCK shall on the last day of the term or on earlier termination
15 and forfeiture of this Agreement, peaceably and quietly surrender and deliver the Premises to the
16 City free of subtenancies, including all buildings, additions, and improvements constructed or placed
17 thereon by CCK, except movable trade fixtures, all in good condition and repair. Any trade fixtures
18 or personal property not used in connection with the operation of the Premises and belonging to
19 CCK, if not removed within thirty (30) days of the termination of this Agreement, if the City shall
20 so elect, shall be deemed abandoned and become the property of the City without any payment or
21 offset thereof.

22
23 25. **Default or Breach.** Each of the following events shall constitute a default or breach of this
24 Agreement:

25 A. **Bankruptcy Filing.** If CCK, during the term of this Agreement, shall file a petition
26 in bankruptcy or insolvency or for reorganization under any bankruptcy act, or shall
27 voluntarily take advantage of any such act by answer or otherwise, or shall make an
28 assignment for the benefit of creditors.

29 B. **Involuntary Proceedings.** If involuntary proceedings under any bankruptcy law or
30 insolvency act shall be instituted against CCK, or if a receiver or trustee shall be appointed
31 for all or substantially all of the property of CCK and such proceedings shall not be
32 dismissed or the receivership or trusteeship vacated within sixty (60) days after the institution
33 or appointment.

34 C. **Failure to Comply.** If CCK fails to perform or comply with any of the conditions
35 of this Agreement, and if the nonperformance or noncompliance shall continue for a period
36 of thirty (30) days after notice thereof, or, if the performance or compliance cannot be
37 reasonably had within the thirty (30) day period, and CCK shall not in good faith have
38 commenced performance within the thirty (30) day period and then diligently proceeded to
39 completion of performance.

40 D. **Transfer of Agreement.** If this Agreement shall be transferred to or shall pass to or
41 devolve to any other person or party, except in the manner specified herein.

42 E. **Vacation of Premises.** If CCK shall vacate or abandon the Premises.
43

1 26. **Effect of Default.** In the event of default hereunder as set forth in this Agreement, the rights
2 of the City shall be as follows:

3 A. **Termination.** The City shall have the right to cancel and terminate this Agreement.
4 On expiration of the time fixed in the notice, this Agreement and all rights, title, and interest
5 of CCK hereunder shall terminate in the same manner and with the same force and effect,
6 except as to CCK's liability, as if the date fixed in the notice of cancellation and termination
7 were the end of the term herein originally determined.

8 B. **Correction by City.** The City may elect, but shall not be obligated to make any
9 payment required of CCK herein or to comply with any agreement, term, or condition
10 required hereby to be performed by CCK. The City shall have the right to direct or remedy
11 any such default. Any expenditure for correction by the City shall not be deemed to waive
12 or release the default of CCK or the right of the City to take any action as may be otherwise
13 permissible or to seek other remedy under the law.

14 C. **Other Remedies.** The City may pursue any other remedy available at law or in
15 equity. No right or remedy is exclusive of any other provided herein or permitted by law or
16 equity. All such rights and remedies shall be cumulative and may be enforced concurrently
17 or individually.

18
19 27. **Notice.** All notices permitted or required by the terms of this Agreement shall be in writing
20 and be deemed to have been duly given and delivered, if mailed, certified postage prepaid:

21 If to the City:

22 City of Carlsbad
23 c/o City Administrator
24 P.O. Box 1569
25 Carlsbad, NM 88221-1569

If to CCK:

Carlsbad Community Kitchen, Inc.
c/o Elba Farrell, President
P. O. Box 3217
Carlsbad, NM 88221-3217

26 When a new President of the Carlsbad Community Kitchen is named, CCK will provide City with
27 written notice that change.

28
29 28. **Independent Contractor.** CCK and its employees, officers, and agents are independent
30 contractors and are not employees of the City. CCK and its employees, officers, and agents shall not
31 accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to
32 the employees of the City of Carlsbad as a result of this Agreement.

33
34 29. **Workers' Compensation.** CCK agrees to comply with any and all applicable state laws,
35 rules, and regulations regarding workers' compensation benefits for its employees. Should CCK fail
36 to comply with the Workers' Compensation Act and applicable rules when required to do so, this
37 Agreement may be terminated by the City.

38
39 30. **Entirety of Agreement.** This Agreement incorporates all the agreements, covenants, and
40 understandings between the parties hereto concerning the subject matter hereof, and all such
41 covenants, agreements, and understandings have been merged into this written Agreement. No prior
42 agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or
43 enforceable unless embodied in this Agreement. The parties expressly waive any other or further

1 representations, warranties, or agreements not set forth in this document. This Agreement cannot
2 be changed except by a written instrument subsequently executed with the same formalities as with
3 this Agreement.
4

5 31. **Successors and Assigns.** This Agreement and all terms, covenants, conditions, and
6 agreements contained herein shall be binding upon and shall inure to the benefit of the heirs, legal
7 representatives, successors, and assigns of the parties.
8

9 32. **Limits of Authority.** CCK agrees not to purport to bind the City, unless CCK has express
10 written authority to do so, and then only within the strict limits of that authority.
11

12 33. **New Mexico Law and Venue.** The parties agree this Agreement shall be construed and
13 controlled by the laws of the state of New Mexico. The parties further agree that any legal action
14 arising out of this Agreement shall be brought in the District Court of Eddy County, New Mexico
15 for the Fifth Judicial District. The parties expressly consent to both in personam and subject matter
16 jurisdiction of the Eddy County District Court and agree that venue shall properly lie in the Eddy
17 County, New Mexico District Court.
18

19 34. **ARBITRATION.** SHOULD ANY DISPUTE ARISE BETWEEN THE PARTIES IN
20 CONNECTION WITH THE AGREEMENT AND IF SUCH DISPUTE CANNOT BE RESOLVED
21 BY DISCUSSION BETWEEN THE PARTIES, THE PARTIES AGREE TO SUBMIT THE
22 UNRESOLVED DISPUTE TO ARBITRATION IN LIEU OF LITIGATION.
23

24 35. **WAIVER OF JURY TRIAL.** THE PARTIES HEREBY WAIVE THE RIGHT TO A
25 JURY TRIAL ON ANY ISSUE ARISING OUT OF OR RELATING, DIRECTLY OR
26 INDIRECTLY, TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED
27 HEREBY.
28

29 36. **Captions.** The captions of any articles, paragraphs, or sections hereof are made for
30 convenience only and shall not control or affect the meaning or construction of any of the provisions
31 hereof.
32

33 37. **Exhibits.** Any instrument or document made and attached to this Agreement shall constitute
34 a part hereof as though set forth in full in the body of this Agreement, whether made a part hereof
35 by reference or whether made a part hereof by attachment.
36

37
38 CITY OF CARLSBAD:
39
40
41

42 _____
43 DALE JANWAY, MAYOR



EXHIBIT A
Stevens Addition Subdivision, Block 50, Lots 2 & 4
Carlsbad Community Kitchen "Premises"

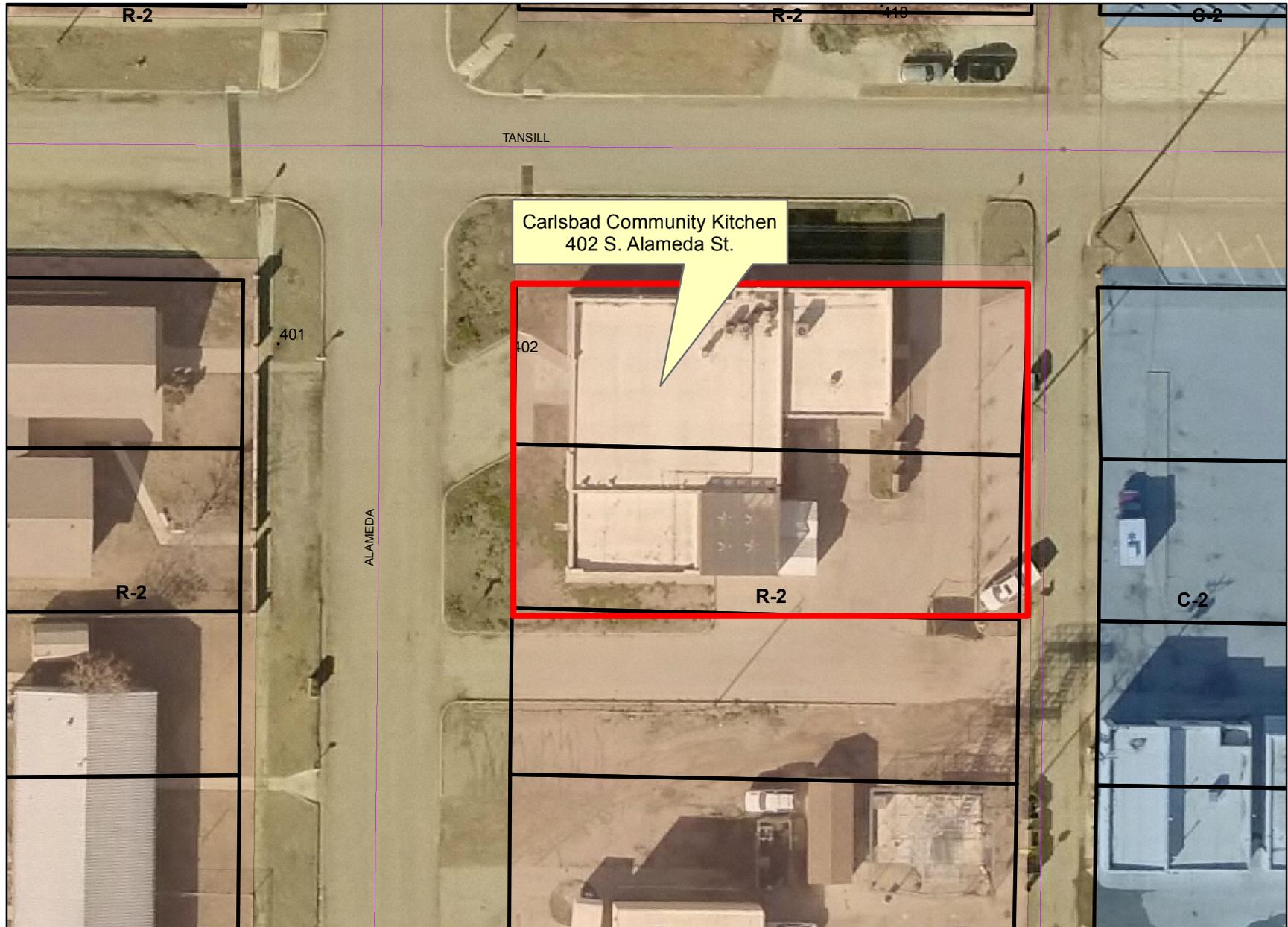




EXHIBIT B

Stephanie Shumsky <seshumsky@cityofcarlsbadnm.com>

Fw: City properties

1 message

denise@meansrealtors.com <denise@meansrealtors.com>
To: seshumsky@cityofcarlsbadnm.com

Tue, Mar 10, 2015 at 11:16 AM

-----Original Message-----

From: denise@meansrealtors.com
Date: 2/25/2015 10:07:33 AM
To: Stephanie Shumsky
Subject: City properties

Dear Stephanie:

I apologize for the delay in getting this information to you. I do have the comparable values estimated now using what has been available though MLS and Appraisor resources.

The property located at 402 South Alameda Street has available square footage for use in the amount of 5042 square feet. Using what we believe to be the highest and best comparables, we can use \$6.00 per square foot. That makes the amount of this property value at \$30,252 for rental value on an annual basis. Fair monthly rent would be \$2,521.

The other property at 511 North Twelfth Street has available square footage for use in the amount of 2358 square feet. Once again, using what we believe to be the highest and best comparables, we can use \$5.00 per square foot. That makes the amount of this property value at \$11,790 for rental value on an annual basis. Fair monthly rent would be \$983.00.

Please be advised that this is simply a broker price opinion based on my experience and opinions. It no way means to misconstrue these values as appraised.

Feel free to let me know if you need further information.

Sincerely,

EXHIBIT “C”

Value of Service Provided

Average retail value of meals served:
\$12.00 /meal

Value of Services provided per month:
 $(\text{Number of meals served during month}) \times (\$12.00/\text{meal}) = \text{Value of Services for Month}$