

## LEASE AGREEMENT

**THIS LEASE AGREEMENT** is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation and home rule city of the State of Colorado (the "City" or "Lessor"), and **UNITED CHURCH OF MONTBELLO** whose address is 4879 Crown Boulevard, Denver, Colorado 80239 (the "Lessee").

### WITNESSETH:

**WHEREAS**, the City is the owner of certain property located at 4685 Peoria Street, Denver, Colorado 80239, which is not required for City use and occupancy at present; and

**WHEREAS**, the City is desirous of leasing said property to Lessee to operate a food bank within the parameters set forth in this Lease;

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements hereinafter contained, the City and the Lessee agree as follows:

1. **LEASED PREMISES**: Subject to the terms of this Lease Agreement (hereinafter referred to as "Lease"), the City agrees to lease, demise, and let unto Lessee and the Lessee does hereby lease from the City those certain premises (the "Leased Premises") located at 4685 Peoria Street, Denver, Colorado 80239, as more particularly described and depicted on **Exhibit A**, attached hereto and incorporated herein. The description contained on **Exhibit A** may be modified upon the written authorization of the Director, Division of Real Estate (hereinafter the "Director") to correct minor, technical errors.

2. **TERM**: The term of this Lease shall begin on January 1, 2015, and terminate on December 31, 2017 unless sooner terminated pursuant to the terms of this Lease.

3. **RENT**: The Lessee shall pay to the City for the rent of the Leased Premises the total sum of Three Dollars (\$3.00) for the Lease term, the receipt and sufficiency of which is hereby acknowledged.

4. **USE**: The Leased Premises are to be used and occupied by Lessee solely for the purpose of operating a food bank and activities associated therewith, except as may be otherwise allowed by prior written authorization of the Director. The Lessee shall use the premises in a careful, safe, and proper manner, and shall not use or permit the Leased Premises to be used for any purpose prohibited by the laws of the United States of America, the State of Colorado, or the

Charter or ordinances of the City and County of Denver. The Lessee shall not commit or suffer to be committed any waste or damage upon the Leased Premises or any nuisance to be created or maintained thereon. The Lessee shall also keep the Leased Premises free and clear from all trash, debris, and waste resulting from its use or the use by its employees, officers, agents, invitees and visitors.

5. **“AS IS” CONDITION:** The Leased Premises are accepted by Lessee in an “AS IS”, “WHERE IS” condition, with all faults and defects. The City does not make and disclaims any warranty or representation whatsoever, express or implied, and shall have no obligation or liability whatsoever, express or implied, as to the condition of or any other matter or circumstance affecting the Leased Premises.

6. **QUIET ENJOYMENT:** Lessee shall and may peacefully have, hold and enjoy the Leased Premises, subject to the other terms hereof, provided that Lessee pay the rental herein recited and performs all of Lessee's covenants and agreements herein contained.

7. **OPERATIONS COSTS AND CHARGES:** The Lessee shall pay for its own janitorial services. The City shall pay for utility costs.

8. **IMPROVEMENTS AND ALTERATIONS:**

(a) **By City:** Unless otherwise expressly stipulated herein, the City shall not be required to make any improvements to or repairs of any kind or character on the Leased Premises during the term of this Lease, except repairs as may be deemed necessary by the City for normal maintenance operations of the Leased Premises.

(b) **By Lessee:** Lessee shall make no alterations in or additions to, nor post any signage on, the Leased Premises without first obtaining the written consent of the Director on behalf of the City, which consent shall be within the City’s sole discretion. Lessee shall, after obtaining the written consent of the Director, repair any damage resulting from Lessee’s occupancy of the Leased Premises, and shall indemnify and hold the City harmless against any liability, loss, damage, costs or expenses, including attorneys’ fees, on account of any claims of any nature whatsoever, including but not limited to claims of liens by laborers, material suppliers, or others for work performed, or materials or supplies furnished to Lessee or persons claiming under Lessee.

9. **ENTRY BY CITY:** Lessee shall permit representatives of the City to enter into and upon the Leased Premises at all reasonable hours to inspect the same, and make any repairs deemed necessary by the City, and Lessee shall not be entitled to any abatement or reduction of rent by reason thereof.

10. **CARE AND SURRENDER OF THE LEASED PREMISES:** At the termination of this Lease, Lessee shall deliver the Leased Premises to the City in the same condition as the Leased Premises were in at the beginning of this Lease term, ordinary wear and tear excepted; and Lessee shall remove all of Lessee's movable furniture and other effects. All moveable furniture and other effects not so removed shall conclusively be deemed to have been abandoned and may be appropriated, sold, stored, destroyed or otherwise disposed of by the City without notice to Lessee or any other person, and without obligation to account therefor, and Lessee shall pay the City all expenses incurred in connection with disposing such property. Lessee's obligation to observe or perform this covenant shall survive the termination of this Lease. Lessee shall pay before delinquency any and all taxes, assessments, and other charges levied, assessed or imposed, and which become payable during the term of this Lease upon Lessee's operations, occupancy, or conduct of business at the Leased Premises, or upon Lessee's equipment, furniture, appliances, trade fixtures, and other personal property of any kind installed or located on the Leased Premises.

11. **INSURANCE:**

(a) **General Conditions:** Lessee agrees to secure, at or before the time of execution of this Lease, the following insurance covering all operations, goods or services provided pursuant to this Lease. Lessee shall keep the required insurance coverage in force at all times during the term of the Lease, or any extension thereof, during any warranty period, and for such time period specified in Section 2 of the Lease. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-VIII" or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies are canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the notices section of the Lease. Such notice shall reference the City contract number listed on the signature page of this Lease. Said notice shall be sent thirty (30) days prior to such

cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Lessee shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. Lessee shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Lease are the minimum requirements, and these requirements do not lessen or limit the liability of the Lessee. Lessee shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Lease.

(b) Proof of Insurance: Lessee shall provide a copy of this Lease to its insurance agent or broker. Lessee may not commence services or work relating to the Lease prior to placement of coverage required under this Lease. Lessee certifies that the certificate of insurance attached as **Exhibit B**, preferably an ACORD certificate, complies with all insurance requirements of this Lease. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Lease shall not act as a waiver of Consultant's breach of this Lease or of any of the City's rights or remedies under this Lease. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

(c) Additional Insureds: For Commercial General Liability and Business Auto Liability, the Lessee and subcontractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

(d) Waiver of Subrogation: For all coverages required under this Lease, the Lessee's insurer shall waive subrogation rights against the City.

(e) Sublessees and Subconsultants: All sublessees and subconsultants (including independent Lessees, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Lessee. Lessee shall include all such sublessees as additional

insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such sublessees and subconsultants maintain the required coverages. Lessee agrees to provide proof of insurance for all such sublessees and subconsultants upon request by the City.

(f) Workers' Compensation/Employer's Liability Insurance: Lessee shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Lessee expressly represents to the City, as a material representation upon which the City is relying in entering into this Lease, that none of the Lessee's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Lease, and that any such rejections previously effected, have been revoked as of the date the Lessee executes this Lease.

(g) Commercial General Liability: Lessee shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

(h) Business Automobile Liability: Lessee shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Lease.

(i) Additional Provisions:

(1) For Commercial General Liability and Business Automobile Liability, the policy must provide the following:

- (i) That this Lease is an Insured Contract under the policy;
- (ii) Defense costs are outside the limits of liability;
- (iii) A severability of interests, separation of insureds or cross liability provision; and

(iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(2) For claims-made coverage, the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.

(3) Lessee shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At the Lessee's own expense, where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Lessee shall procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

12. **DEFENSE & INDEMNIFICATION:**

(a) Lessee hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to this Lease, whether during the Lease Term or after, ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Lessee either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

(b) Lessee's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Lessee's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

(c) Lessee will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

(d) Insurance coverage requirements specified in this Lease shall in no way lessen or

limit the liability of the Lessee under the terms of this indemnification obligation. The Lessee shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

(e) This defense and indemnification obligation shall survive the expiration or termination of this Lease.

13. **LOSS OR DAMAGE**: The City shall not be liable or responsible to Lessee for any loss or damage to any property or person occasioned by theft, fire, Act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of any governmental entity other than the City. In the event of a fire or other casualty in or to the Leased Premises, Lessee shall immediately give notice thereof to City. If the Leased Premises, through no fault or neglect of Lessee, its agents, its employees, invitees, or visitors shall be partially destroyed by fire or other casualty so as to render the Leased Premises untenable, and the City elects to repair the same, the lease shall continue in full force and effect. In the event such repairs cannot be made within 90 days, Lessee may elect to terminate this Lease. In the event of the total destruction of the Leased Premises, or partial destruction in the event the City elects not to repair the Leased Premises, without fault or neglect of the Lessee, its agents, employees, invitees, or visitors, or if from any cause the Leased Premises shall be so damaged that the City shall decide not to rebuild (which decision City may make in its sole discretion), then all rent owed up to the time of such destruction or termination shall be paid by Lessee and this Lease shall cease and come to an end.

14. **HAZARDOUS SUBSTANCES**: Lessee shall not cause or permit any Hazardous Substance to be used, stored, generated, or disposed of on or in the Premises by Lessee, Lessee's agents, employees, contractors, or invitees. If Hazardous Substances are used, stored, generated, or disposed of on or in the Premises, or if the Premises become contaminated in any manner due to the actions or inactions of the Lessee, Lessee shall indemnify and hold harmless the City from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, a decrease in value of the premises, damages caused by loss or restriction of rentable or usable space, or any damages caused by adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant, and expert fees) arising during or after the Lease Term and arising as a result of those actions or inactions by

Lessee. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision. Without limitation of the foregoing, if Lessee causes or permits the presence of any Hazardous Substance on the Leased Premises and that results in contamination, Lessee shall promptly, at its sole expense, take any and all necessary actions to return the Leased Premises to the condition existing prior to the presence of any such Hazardous Substance on the premises. Lessee shall first obtain City's approval for any such remedial action. As used herein, "Hazardous Substance" means any substance that is toxic, ignitable, reactive, or corrosive and that is regulated by any local government, the State of Colorado, or the United States Government. "Hazardous Substance" includes any and all material or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" pursuant to state, federal, or local governmental law. "Hazardous Substance" includes but is not restricted to asbestos, polychlorobiphenyls ("PCBs"), and petroleum.

15. **HOLDING OVER:** If after the expiration of the term of this Lease, Lessee shall remain in possession of the Leased Premises or any part thereof, and continue to pay rent, without any express agreement as to such holding, then such holding over shall be deemed and taken to be a periodic tenancy from month-to-month, subject to all the terms and conditions of this Lease, except for the provisions relating to the period of Lessee's occupancy, and One Dollar (\$1.00) per year or any portion thereof shall be due and payable in advance on the first day of January. Such holding over may be terminated by City or Lessee upon ten (10) days' notice. In the event that Lessee fails to surrender the Leased Premises upon termination or expiration of this Lease, or such month-to-month tenancy, then Lessee shall indemnify City against loss or liability resulting from any delay of Lessee in not surrendering the Leased Premises.

16. **REQUIREMENTS OF LEASE.** The Lessee shall, as conditions to the Lease, continue to operate and maintain a food bank for residents of the City. The failure to use the Leased Premises as a food bank constitutes a default under this Lease, unless written permission for another use is authorized by the Director, on behalf of the City.



17. **REMEDIES UPON BREACH:** In the event of a breach of this Lease by Lessee, the City may have the following remedy, in addition to all of the rights and remedies provided at law or in equity:

The City may retake possession of the Leased Premises and shall have the right, but not the obligation, without being deemed to have accepted a surrender thereof, and without terminating this Lease, to relet same for the remainder of the term provided for herein

18. **TERMINATION:** The City may, at the discretion of the Director, terminate this Lease upon thirty (30) days written notice to the Lessee in the event the Lessee does not meet the obligations set forth in this Lease to operate a food bank. Lessee shall be given the right to cure any deficiencies noted within sixty (60) days of notice from the City. If such cure is effected within the sixty (60) day period, or in the event the cure cannot be fully completed within sixty (60) days, and Lessee has started making good faith efforts to cure any violations, and has completed such actions within ninety (90) days, this Lease will not be terminated. Determination of whether a cure has been effected shall be at the sole discretion of the Director.

19. **NONDISCRIMINATION:** In connection with Lessee's performance pursuant to this Lease, Lessee agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all contracts hereunder for work on the Leased Premises.

20. **VENUE, GOVERNING LAW:** This Lease shall be construed and enforced in accordance with the laws of the State of Colorado, without regard to the choice of law thereof, and the Charter and Revised Municipal Code of the City and County of Denver. Venue for any legal action relating to this Lease shall lie in the State District Court in and for the City and County of Denver, Colorado.

21. **ASSIGNMENT AND RIGHT TO SUBLEASE:** The Lessee shall not assign or transfer its rights under this Lease without first obtaining the written consent of the Director.

22. **NO SALE OR ADVERTISING OF TOBACCO PRODUCTS:** The Lessee, its officers, agents, and employees shall cooperate and comply with the provisions of Executive Order No. 13, which prohibits the sale or advertisement of tobacco products on City owned

property and in facilities owned or operated or controlled by the City and County of Denver. “Sale” includes promotional distribution, whether for consideration or not, as well as commercial transactions for consideration. “Advertising” includes the display of commercial and noncommercial promotion of the purchase or use of tobacco products through any medium whatsoever, but does not include any advertising and sponsoring which is a part of a performance or show or any event displayed or held in City facilities.

23. **EXAMINATION OF RECORDS:** The Lessee agrees that any duly authorized representative of the City, including the auditor, shall, until the expiration of three (3) years after termination of Lease, have access to and the right to examine any directly pertinent books, documents, and records of the Lessee involving matters directly related to this Lease.

24. **AMENDMENT:** No alteration, amendment or modification of this Lease shall be valid unless evidenced by a written instrument executed by the parties hereto with the same formality as this Lease, however, the Director shall have the authority to execute agreements which make technical, minor, or non-substantive changes to this Lease. The failure of either party hereto to insist in any one or more instances upon the strict compliance or performance of any of the covenants, agreements, terms, provisions or conditions of this Lease, shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision or condition, but the same shall remain in full force and effect.

25. **SEVERABILITY:** If any portion of this Lease is determined by a court to be unenforceable for any reason, the remainder of the Lease remains in full force and effect.

26. **BINDING EFFECT:** This Lease when executed and when effective, shall inure to the benefit of and be binding upon the successors in interest or the legal representative of the respective parties hereto, subject to assignment or sublease in accordance with paragraph 21 above.

27. **THIRD PARTIES:** This Lease does not, and shall not be deemed or construed to, confer upon or grant to and third party or parties any right to claim damages or to bring any suit, action or other proceeding against the parties hereto because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein.

28. **NOTICES:** All notices hereunder shall be given to the following by hand delivery or by certified mail, return receipt requested:

To the City: Mayor's Office  
City and County Building  
1437 Bannock Street, Room 350  
Denver, CO 80202

With copies to: Denver City Attorney  
Denver City Attorney's Office  
1437 Bannock Street, Room 353  
Denver, CO 80202

Director, Division of Real Estate  
201 West Colfax Avenue, Dept. 1010  
Denver, Colorado 80202

To Lessee: United Church of Montbello  
4879 Crown Blvd.  
Denver, Colorado 80239

Either party hereto may designate in writing from time to time the address of substitute or supplementary persons to receive such notices. The effective date of service of any such notice shall be the date such notice is deposited in the mail or hand-delivered to the Party.

29. **ENTIRE AGREEMENT:** The parties acknowledge and agree that the provisions contained herein constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect. Further, this Lease supersedes any and all prior written or oral agreements between the parties.

30. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event shall any performance hereunder constitute or be construed to be a waiver by any party or any breach of covenant or condition or of any default which may then exist. The rendering of any such performance when any breach or default exists shall in no way impair or prejudice any right or remedy available with respect to such breach or default. Further, no assent, expressed or implied, to any breach of any one or more covenants, provisions, or conditions of the Lease shall be deemed or taken to be a waiver of any other default or breach.

31. **NO PERSONAL LIABILITY:** No elected official, director, officer, agent or employee of the City, nor any director, officer, employee or personal representative of Lessee shall be charged personally or held contractually liable by or to the other party under any term or

provision of this Lease or because of any breach thereof or because of its or their execution, approval or attempted execution of this Lease.

32. **CONFLICT OF INTEREST BY CITY OFFICER:** Lessee represents that to the best of its information and belief, no officer or employee of the City is either directly or indirectly a party or in any manner interest in this Lease, except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

33. **APPROPRIATION:** All obligations of the City under and pursuant to this Lease are subject to prior appropriation of monies expressly made by the City Council for the purposes of this Lease and paid into the Treasury of the City.

34. **REASONABLENESS OF CONSENT OR APPROVAL:** Whenever under this Lease “reasonableness” is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.

35. **AUTHORITY TO EXECUTE:** Lessee represents that the persons who have affixed their signatures hereto have all necessary and sufficient authority to bind Lessee.

36. **PARAGRAPH HEADINGS:** The paragraph headings are inserted only as a matter of convenience and for reference and in no way are intended to be a part of this Lease or to define, limit or describe the scope or intent of this Lease or the particular paragraphs to which they refer.

37. **CITY’S EXECUTION OF LEASE:** This Lease is expressly subject to, and shall not be or become effective or binding on the City until approval by its City Council and full execution by all signatories set forth below.

38. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** Lessee consents to the use of electronic signatures by the City. The Lease, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Lease solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Lease in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its

original form or is not an original.

**[SIGNATURE PAGES TO FOLLOW]**

**Contract Control Number:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



Contract Control Number:

FINAN-201520034-00

Contractor Name:

United Church of Montbello

By:

Vel Garner

Name:

Vel Garner  
(please print)

Title:

Clerk of Council  
(please print)

ATTEST: [if required]

By:

Jim [Signature]

Name:

REV. JAMES E. FORTNER, JR.  
(please print)

Title:

PASTOR  
(please print)





# EXHIBIT A

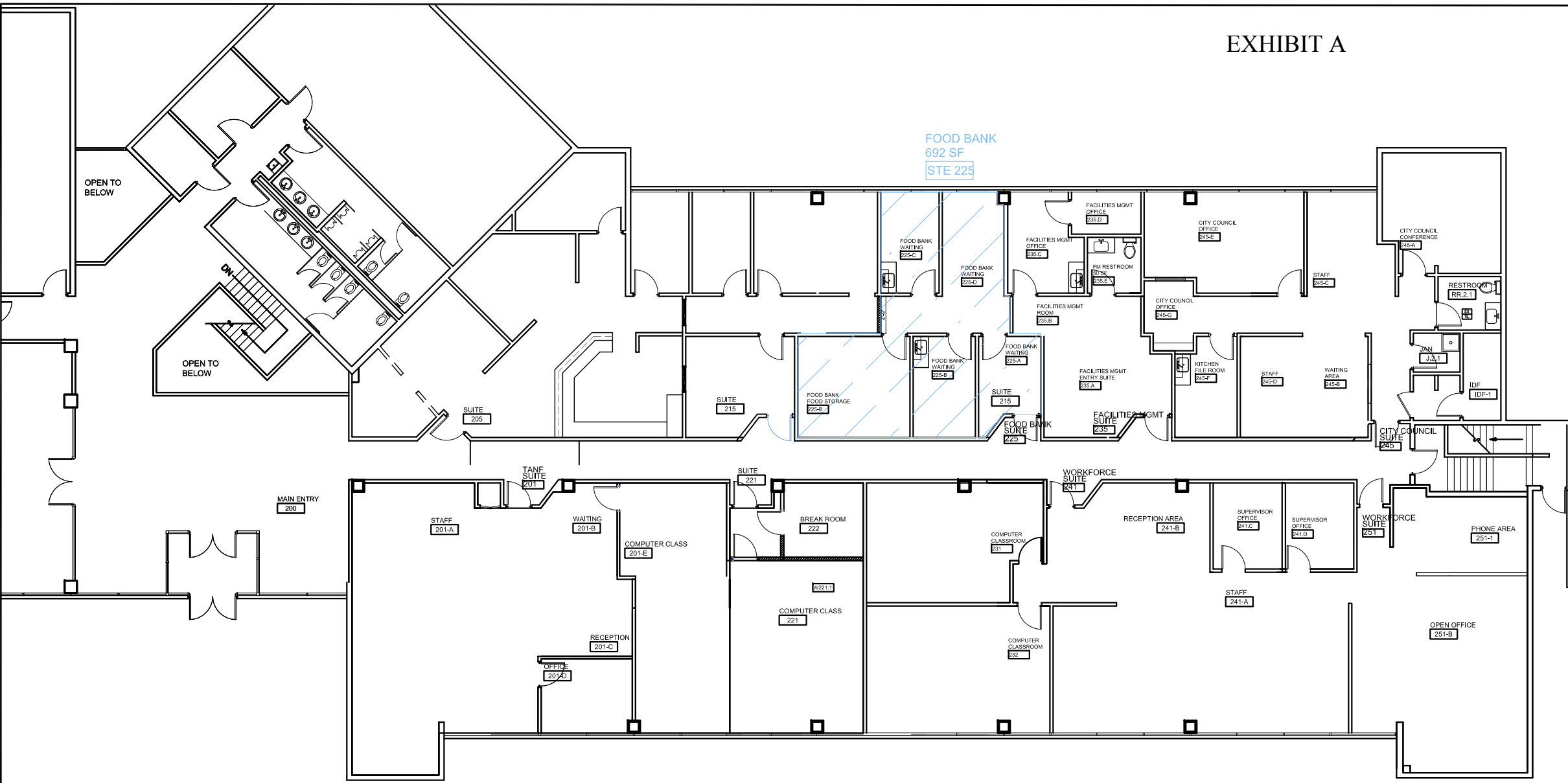
DEPARTMENT OF FINANCE  
DIVISION OF REAL ESTATE  
201 W. COLFAX AVE., DEPT. 904  
DENVER, COLORADO 80202

ARIE P TAYLOR BUILDING  
LEVEL 2 - EAST ENTRANCE  
4685 PEORIA STREET  
DENVER, COLORADO

DATE: 07.23.12  
PREVIOUS RELEASE: 04.11.11  
DRAWN BY: KASHA P.

1 OF 1

F2



FOOD BANK  
692 SF  
STE 225

FOOD BANK - 2ND FLOOR  
Scale: 1/16" - 1'-0"



FOOD BANK  
AREA: 692 SF