

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into as of this ____ day of _____, 2011, to be effective as of May 1, 2011, 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 **ICLEI LOCAL GOVERNMENTS FOR SUSTAINABILITY, USA, INC.**, a Massachusetts corporation, whose address 180 Canal Street, Suite 401, Boston, MA 02114, ("ICLEI" or the "Lessee").

W I T N E S S E T H:

WHEREAS, the City owns certain real property and leasehold improvements situated at 200 W. 14th Avenue in Denver, Colorado 80204 (the "Property"); and

WHEREAS, the City is desirous of subleasing a portion of the Property, which is not required for City use and occupancy at present, to Lessee for general office use consistent with 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 200 W. 14th Avenue, Denver, Colorado 80204. 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 Manager of Environmental Health or her designee (hereinafter the "Manager"), to correct minor, technical errors or to add or substitute space of comparable square footage for the Leased Premises, in any City building, so long as the total space leased does not exceed approximately 224 square feet. It is contemplated that the initial square footage leased will be approximately 80 square feet, but may be expanded to approximately 224 square feet.

The City agrees to provide the following items for use by ICLEI within the Leased Premises or the Property:

- a. One (1) desk and chair, a phone for local calls, file cabinet space, internet access, and building access;
- b. Access to the City's technical assistance for phones and internet service;

- c. Access to a City copier and fax machine, with the understanding that mass copies (greater than 100) will be either made elsewhere or will be made with paper supplied by ICLEI;
 - d. Ability to reserve, through appropriate City staff, meeting rooms as available;
 - e. Access to common areas (e.g. breakrooms).
2. **TERM:** The term of this Lease shall begin on May 1, 2011, and terminate on December 31, 2012, unless sooner terminated pursuant to the terms of this Lease.
3. **RENT:** The Lessee shall provide in kind services to the City in exchange for the use of the Leased Premises as further described below. The services to be provided shall include, but not be limited to, the following:
- a. Membership services in ICLEI, which include:
 - i. Assistance on development, updating, and implementation of the City's Climate Action Plan, including assistance from ICLEI's national and other regional offices as appropriate;
 - ii. Assistance with climate adaptation planning, including assistance from ICLEI's national and other regional offices, as appropriate;
 - iii. Access to guidebooks and toolkits with best practice examples for local government initiatives;
 - iv. Access to ICLEI's international membership network of climate and sustainability leaders;
 - v. Assistance in benchmarking regarding other urban sustainability activities;
 - vi. Other resources and services which may be offered to ICLEI members from time to time;
 - vii. Promoting the City as a leadership City to ICLEI's member network;
 - viii. Waive conference registration fees for two (2) city employees to be designated by the City to attend ICLEI's 2012 Local Action Summit;
 - ix. Access tools and technical assistance that are part of existing membership benefits to ICLEI.
 - b. Formal recognition of the City as a host city.
4. **USE:** The Leased Premises are to be used and occupied by Lessee solely for the purpose of operating a Mountain States Regional Office for ICLEI and activities associated therewith. 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. The Lessee shall follow all rules and regulations promulgated relating to the use of the Property.

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, by performing in kind services, and performs all of Lessee's covenants and agreements herein contained. Lessee acknowledges that the Leased Premises consists of cubicle space and as such City employees, agents and invitees may be circulating around the Leased Premises. Lessee shall not disrupt normal City activities in the vicinity of the Leased Premises.

7. **MAINTENANCE AND OPERATIONS COSTS AND CHARGES:**

(a) The City shall pay for all day to day utility, operations and maintenance costs, including but not limited to water, gas, sewer, heat, light, power, janitorial, local telephone service, maintenance of mechanical systems and the building exterior, and all other services supplied to the Leased Premises.

(b) The Lessee shall pay for long distance telephone charges and all costs relating to its computers except internet access.

(c) The City at its sole discretion reserves the right to undertake capital improvements during the term of this Lease at its own expense. The City agrees that it will consult with the Lessee before undertaking any such improvements.

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 Manager on behalf of the City, which consent shall be within the City's sole discretion. In the event Lessee desires to repair any damage resulting from Lessee's occupancy of the Leased Premises, or to make any modifications to the Leased Premises, and such repairs or modifications are acceptable to the Manager, the City shall perform such repairs or modifications on behalf of Lessee, and shall charge Lessee for the cost of such work.

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. **INDEMNITY**: The Lessee shall defend, indemnify, and save harmless the City, its officers, agents and employees from any and all losses, damages, claims, demands, suits, actions or proceedings of any kind or nature whatsoever, including without limitation Workers' Compensation claims, of or by anyone whomsoever, that the City may sustain or on account of injuries to the person or property of the City, its agents or employees or to injuries or death of

any other person rightfully on the Leased Premises for any purpose whatsoever, where the injuries are caused by the negligence or misconduct of the Lessee, the Lessee's agents, employees, assignees, or of any other person entering upon the Leased Premises under express or implied invitation of the Lessee or where such injuries are the result of the violation of the provisions of this Lease by any of such persons. This indemnity shall survive the expiration or earlier termination of this Lease. Lessee shall not, however, indemnify or save harmless the City, its officers, agents and employees from damages resulting from the sole negligence of the City's officers, agents and employees. This indemnity clause shall also cover the City's defense costs, in the event that the City, in its sole discretion, elects to provide its own defense. Insurance coverage specified herein constitutes the minimum requirements, and said requirements shall in no way lessen or limit the liability of the Lessee under this Lease. The Lessee shall procure and maintain, at its own expense and cost, any additional kinds and amounts of insurance that it may deem necessary.

12. **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.

13. **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.

14. **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. 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.

15. **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

16. **TERMINATION:** The City may, at the discretion of the Manager, terminate this Lease upon thirty (30) days written notice to the Lessee, in whole or in part, and with or without cause. In the event the Lessee does not meet the obligations and goals set forth in this Lease

with regard to providing services to the City, Lessee shall be given the right to cure any deficiencies noted within thirty (30) days of notice from the City. If such cure is effected within the thirty (30) day period, or in the event the cure cannot be fully completed within thirty (30) days, and Lessee has started making good faith efforts to cure any violations, and has completed such actions within sixty (60) days, this Lease will not be terminated. Determination of whether a cure has been effected shall be at the sole discretion of the Manager, however the Manager must base such decision on the goals and duties of ICLEI as set forth herein.

17. **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.

18. **INSURANCE**: From the commencement of this Lease, and at all times throughout the term, Lessee shall carry and maintain the following insurance policies:

(a) Sufficient Workers' Compensation Insurance to fully insure its responsibilities under Colorado law.

(b) Fire and extended coverage insurance on all of its personal property, including removable trade fixtures, located in the Leased Premises in the minimum amount of \$50,000.00.

(c) A policy or policies of comprehensive general liability insurance, issued by and binding upon an insurance company authorized to do business in the State of Colorado, such insurance to afford minimum protection of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate. Commercial general liability coverage shall be at least as broad as insurance services office standard form CG 0001 or equivalent. The City and County of Denver, its officers, officials and employees shall be named as additional insureds, with coverage at least as broad as insurance services office standard form CG 2026. Defense costs coverage shall include defense costs coverage for additional insureds outside the limits of insurance.

(d) Contractual liability coverage.

(e) Waiver of Subrogation and Rights of Recovery against the City, its officers, officials and employees for both Worker's Compensation and commercial general liability (per ISO form CG2404 or equivalent) coverage.

(f) Certificates of insurance evidencing the above required coverages, shall be delivered to the City's Risk Administrator upon execution of this Agreement. Each such policy or certificate shall contain a valid provision or endorsement stating "This policy will not be canceled or materially changed or altered without first giving thirty (30) days' written notice thereof to the City's Risk Administrator, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202, and sent by certified mail, return receipt requested."

19. **VENUE, GOVERNING LAW:** This Agreement 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 Agreement shall lie in the State District Court in and for the City and County of Denver, Colorado.

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

21. **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.

22. **EXAMINATION OF RECORDS:** The Lessee agrees that any duly authorized representative of the City shall, until the expiration of three (3) years after final payment under this 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.

23. **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 Manager 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 Agreement, 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.

24. **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.

25. **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.

26. **THIRD PARTIES**: This Agreement 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.

27. **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

Manager of Environmental Health
200 West 14th Avenue, Dept. 1009
Denver, Colorado 80204

To Lessee: ICLEI-Local Governments for
Sustainability, USA, Inc.
180 Canal St.
Suite 401
Boston, MA 02114
Attention: K.C Boyce

Deputy Executive Director

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.

28. **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.

29. **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.

30. **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 Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Lease.

31. **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.

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

33. **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.

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

35. **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.

36. **CITY’S EXECUTION OF AGREEMENT:** 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.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

EXHIBIT A
LEASED PREMISES DESCRIPTION

Contract Control Number:

Vendor Name:

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 _____



IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals at Denver, Colorado as of the day first above written.

Contract Control Number: 201101026

Vendor Name: ICLEILOCAL Governments For Sustainability
USA, INC.

By: 

Name: KC Boyce
(please print)

Title: COO + CFO
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)





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

PERMIT CENTER BUILDING
3RD FLOOR
200 WEST 14TH AVENUE
DENVER, COLORADO

DATE: 08.28.09
REVISIONS: 08.25.09, 08.11.09,
03.09.09, 02.08.09, 01.16.09
DRAWN BY: KP

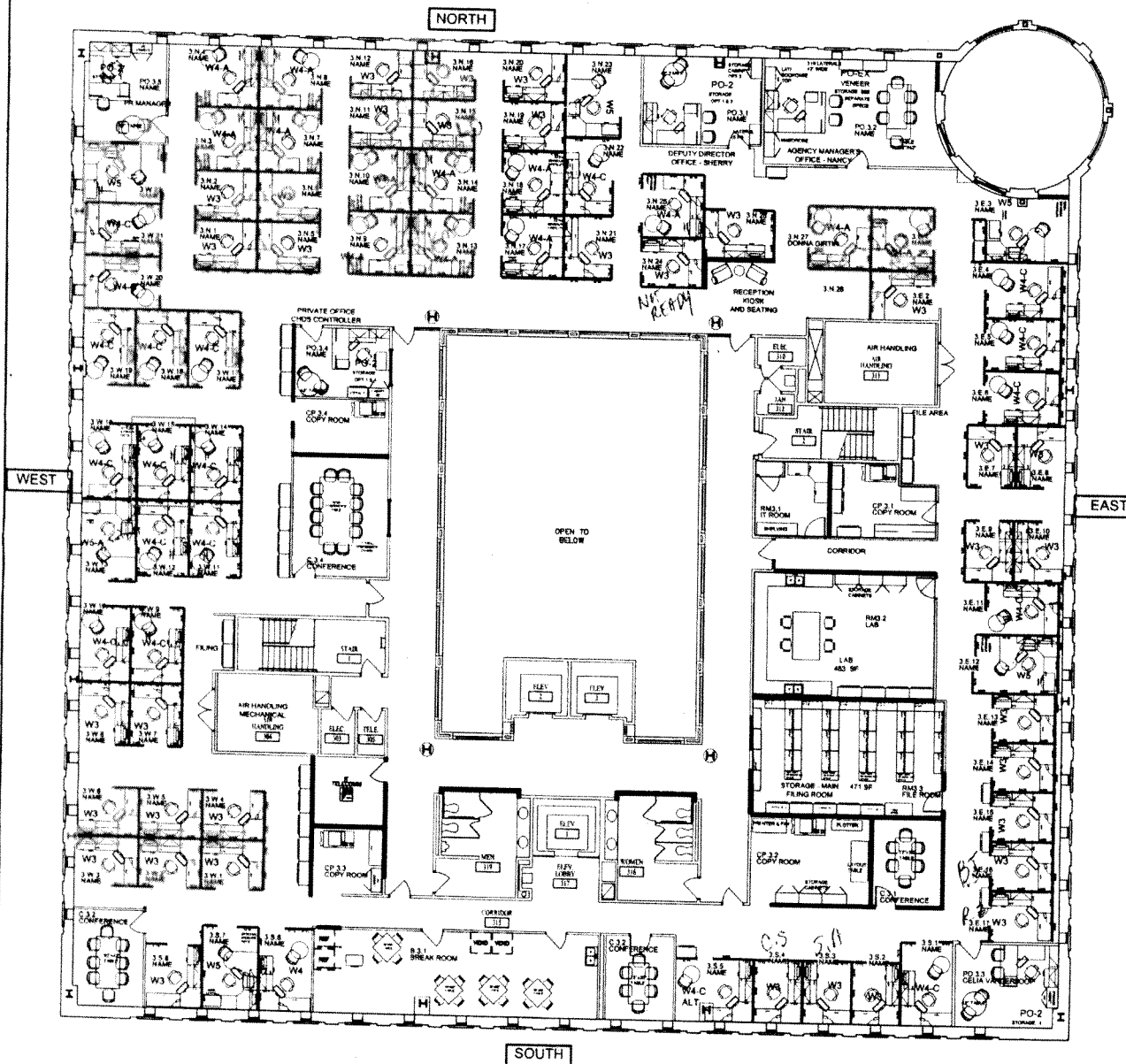
3 of 3

F3

THIRD FLOOR - OVERALL - 09.01.09

Scale: 1/16" = 1'-0"

THIRD FLOOR - ENVIRONMENTAL HEALTH - W5-REVISION (CLOUDED)



ENVIRONMENTAL HEALTH SIGN OFF (+ CHANGE)
TO APPROVE SPACE PLAN - FURNITURE LAYOUT AND ROOM USE.

Ex. A