

**FUNDING AGREEMENT  
LEVITT PAVILION AT RUBY HILL**

**THIS FUNDING AGREEMENT** (the “Agreement”), made and entered into by and among the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), **FRIENDS OF LEVITT PAVILION DENVER**, a Colorado nonprofit corporation (“Levitt Denver”), **MORTIMER & MIMI LEVITT FOUNDATION**, a New York not-for-profit corporation (the “Foundation”) and **LEVITT PAVILIONS**, a California nonprofit corporation (“Levitt National”). Levitt Denver, the Foundation, and Levitt National may sometimes be referred to herein collectively as the “Levitt Parties”. The City, Levitt Denver, the Foundation, and Levitt National may sometimes be referred to herein individually as a “Party” or collectively as the “Parties”.

**RECITALS**

**WHEREAS**, the qualified and registered voters of the City approved referred question 1G on November 6, 2007, approving the issuance of general obligation bonds (the “Bonds”) by the City in the aggregate principal amount of Seventy Million Dollars (\$70,000,000.00) for the purpose of financing the cost of new cultural facilities, which are now to include the construction of the Levitt Pavilion at Ruby Hill Park (the “Pavilion”), as more fully described below; and

**WHEREAS**, the City desires to make a part of the proceeds, totaling Two Million Dollars (\$2,000,000.00), of the Bonds (the “Bond Proceeds”) available to construct the Pavilion as more fully described below (the “Project”), in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, the Levitt Parties have committed to spending private funds in the amount of Two Million Dollars (\$2,000,000.00) to partially fund the Pavilion and to provide such funds to the City for the Project (the “Matching Funds”); and

**WHEREAS**, the City and the Levitt Parties desire to specify the conditions upon which these funds will be transferred by the Levitt Parties to and used by the City for the purposes of completing the Project.

**NOW, THEREFORE**, in consideration of the above, and the mutual promises and

covenants contained herein, the City and the Levitt Parties agree as follows:

1. **The Project:** The “Project,” as used herein, refers to the improvements to be designed, constructed, and installed by the City at Ruby Hill Park for the benefit of the public cultural facility, as described in **EXHIBIT A**, attached hereto and incorporated herein. The Project will be funded by the Bond Proceeds and the Matching Funds to the extent such proceeds are made available hereunder. The City will perform or cause to be performed all work items to satisfactorily complete the Project in accordance with the terms and conditions of this Agreement, up to a total of Four Million Dollars (\$4,000,000.00), upon receipt of the Bond Proceeds and the Matching Funds. The City is not responsible for funding more than Two Million Dollars (\$2,000,000.00) toward the Project in any event.

2. **Coordination and Liaison:**

A. The City's Program Manager for the Better Denver Bonds Program, Scott Hergenrader (the "**Manager**"), is vested with the authority to act on behalf of the City in performing the City's obligations under this Agreement. The Manager may designate someone to act on the Manager's behalf as the authorized representative. The City may change its authorized representative at any time by providing written notice to the Levitt Parties of such change.

B. The Executive Director of Levitt Denver is the Levitt Parties' authorized representative under this Agreement and, as such, is responsible for overseeing the Levitt Parties' interest in the Project, in accordance with the terms and conditions of this Agreement. The Levitt Parties may change their authorized representative at any time by providing written notice to the City of such change.

3. **Matching Funds Payment and Related Responsibilities:** As consideration for the performance of the City under this Agreement and in order to enable the construction of the Project for the benefit, in part, of Levitt Denver, Levitt Denver agrees to pay towards the cost of completing the Project Matching Funds in an amount not to exceed Two Million Dollars (\$2,000,000.00). The amount of Matching Funds actually due to the City from Levitt Denver shall be determined by the cost of the Project as determined after adoption of the Plan, defined below. Such payment of the Matching Funds to the City by Levitt Denver shall occur as follows:

A. The Foundation shall provide to Levitt Denver, and Levitt Denver shall provide to the City, a portion of the Matching Funds totaling Two Hundred Thousand Dollars (\$200,000.00)

upon (i) the City's receipt of the Bond Proceeds and (ii) an agreement for the funding for construction of the Project and an agreement for the maintenance and operations of the Project are each executed by all of the Parties. The Parties acknowledge that the condition in this subsection 3.A(i) has been satisfied; and

B. The Foundation shall provide to Levitt Denver, and Levitt Denver shall provide to the City, a portion of the Matching Funds totaling Two Hundred Thousand Dollars (\$200,000.00) upon Levitt Denver evidencing to the satisfaction of Levitt National and the Foundation that Levitt Denver has received cash contributions or firm pledges, which must be represented by a commitment in writing from the individual or entity making such pledge indicating the amount and date the pledged funds will be provided to Levitt Denver, of Two Hundred Thousand Dollars (\$200,000.00) from non-City, non-Levitt National, and non-Foundation sources; and

C. Levitt Denver shall provide to the City the balance of the Matching Funds, in an amount not to exceed One Million Six Hundred Thousand Dollars (\$1,600,000.00). Levitt Denver shall provide to the City a monthly report on the status of its fundraising efforts, including the amounts of actual cash contributions and firm pledges committed in writing.

Design of the Project shall begin upon receipt by the City from Levitt Denver of the Matching Funds identified in Sections 3.A and 3.B above, and design of the Project shall be funded solely from the Section 3.A and 3.B Matching Funds. The City shall have no obligation to construct the Project until the City has received the Matching Funds in its entirety from Levitt Denver. **If all of the Matching Funds are not received by the City on or before March 31, 2015, this Agreement may be terminated by the City in its sole discretion.** The City agrees that the Matching Funds shall be used solely for the Project and not for any other purposes. The Parties agree that the obligation of the City to expend any Bond Proceeds shall extend only to the payment of the Bond Proceeds that are duly and lawfully appropriated by the City Council for the purpose of this Agreement.

4. **Planning, Design and Construction of the Project:**

A. The Project includes the Levitt Pavilion and the Pavilion Property and all work necessary for construction of nearby public restroom facilities, upgrades and additions to parking areas, if any, as determined in the Plan, defined below, and other amenities, which shall include pads for food trucks if food trucks are to be utilized for provisions of concessions and accommodations for serving liquor if a liquor license will be sought, to accommodate public use

of and access to the Levitt Pavilion and the Pavilion Property. The “Levitt Pavilion” is defined as the permanent structure to be built as an outdoor amphitheater and used for live performances; such structure to include such elements as a covered stage, a green room, dressing rooms, storage space, office space, non-public bathrooms located within the structure, lighting and sound equipment, and other elements as required by the Project description in Exhibit A. The “Pavilion Property” shall be defined as that portion of Ruby Hill Park to contain the Levitt Pavilion and surrounding lawn area and as more particularly described in **Exhibit B**, attached hereto and incorporated herein, together with all permanent improvements thereon.

B. City shall fully construct the Project with the Bond Proceeds and the Matching Funds upon receipt of the Matching Funds. The City will provide monthly construction status reports to Levitt Denver. Levitt Denver will provide Levitt National with a proposed timeline and construction benchmarks for the Project no later than January 1, 2015. Levitt Denver will notify Levitt National in writing of any changes to the construction timeline as soon as such changes are known. Levitt Denver will also provide Levitt National with a copy of each monthly construction status report as provided to Levitt Denver by the City. No later than January 1, 2016, the City shall notify Levitt Denver whether the construction of the Project is on track to be completed in time for the first Levitt Denver concert to be held on or about June 1, 2016.

C. The Project shall be constructed in accordance with the design and site plan (the “**Plan**”) prepared by the firm chosen pursuant to the City’s competitive procurement process. The City shall make the Plan available to each of the Levitt Parties as soon as practicable after the City’s receipt of such Plan, and the Levitt Parties shall submit any comments to the City in writing within thirty (30) days of receipt by the Levitt Parties of such Plan. The City shall respond to any such comments, also in writing, promptly. Once the Plan has been finalized, the City shall consult the Levitt Parties with regard to any changes to the Plan that would adversely affect the Project. The final version of the Plan shall be approved in writing by each of the Levitt Parties. The final version of the Plan shall in no circumstance be projected to cost more than Four Million Dollars (\$4,000,000.00)..

D. The City shall be solely responsible for assuring that all phases of the Project are properly contracted and performed and that the work done and the materials used are in conformance with all applicable laws (local, state, and federal) that govern the performance of

the work, including (to the extent applicable) the requirements of the federal Americans with Disabilities Act and any other federal or state laws requiring access for the disabled to public accommodations.

5. **Term**: The Term of this Agreement shall commence upon execution and shall terminate upon the completion of all phases of the Project.

6. **Notices**: Any notices, responses, or communications given hereunder shall be in writing and may be personally delivered or sent by first class mail, addressed to the following:

To the City:

Scott Hergenrader  
Project Manager  
Better Denver Bond Program  
201 W. Colfax Avenue  
Denver, CO 80202

City Attorney  
c/o Shaun Sullivan  
201 W. Colfax Avenue, Dept. 1207  
Denver, CO 80202

To Levitt Denver:

Friends of Levitt Pavilion  
2648 Eudora Street  
Denver, CO 80207  
Attn: Chris Zacher  
chris@levittdenver.org

To Levitt National:

Levitt Pavilions  
9951 Kip Drive  
Beverly Hills, CA 90210  
Attn: Sharon Yazowski  
sharon@levittpavilions.org

To the Foundation:

Mortimer & Mimi Levitt Foundation  
9951 Kip Drive  
Beverly Hills, CA 90210  
Attn: Elizabeth Levitt Hirsch  
liz@levittpavilions.org

The contacts and addresses specified above may be changed by a Party at any time upon written notice to the other Parties.

7. **Conflict of Interest:** The Parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the Project or related services or property described herein.

8. **No Third Party Beneficiaries:** The Parties expressly agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Levitt Parties; and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such agreements. The City and the Levitt Parties expressly agree that any person other than the City and the Levitt Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

9. **Subject to Local Laws; Venue:** Each and every term, provision or condition herein is subject to and shall be construed in accordance with the provisions of Colorado law, the Charter of the City and County of Denver, and the applicable ordinances, regulations, executive orders, or fiscal rules, enacted or promulgated pursuant thereto. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

10. **Execution of Agreement/Contingencies:** This Agreement is expressly subject to, and shall not be or become effective or binding on the City and the Levitt Parties until fully executed by all signatories of the City and the Levitt Parties.

11. **Legal Authority:** The City and the Levitt Parties each represent that they possess the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

12. **Agreement as Complete Integration; Amendments:** This Agreement is intended as the complete integration of all understandings between the Parties, and no prior or contemporaneous addition, deletion or other amendment shall have any force or effect, unless embodied herein in writing. Amendments to this Agreement will become effective only when approved by all Parties and executed in the same manner as this Agreement.

13. **Counterparts of Agreement:** This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement, and all of which, taken together, shall constitute one and the same document.

14. **Electronic Signatures and Electronic Records:** The Levitt Parties consent to the use of electronic signatures by the City. The Agreement, 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 Agreement 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 Agreement 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.

**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 \_\_\_\_\_

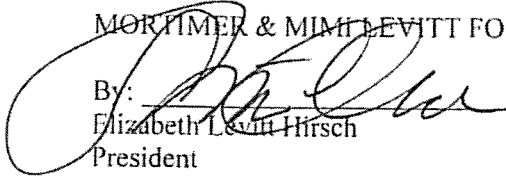
By \_\_\_\_\_



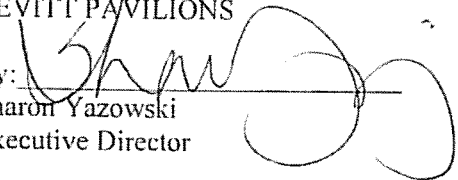


Contract control number: PARKS-201313796-00

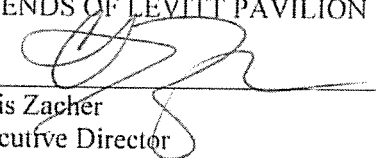
MORTIMER & MIMI LEVITT FOUNDATION

By:   
Elizabeth Levitt Hirsch  
President

LEVITT PAVILIONS

By:   
Sharon Yazowski  
Executive Director

FRIENDS OF LEVITT PAVILION DENVER

By:   
Chris Zacher  
Executive Director



**Contract control number:** PARKS-201313473-00

MORTIMER & MIMI LEVITT FOUNDATION

By: \_\_\_\_\_  
Elizabeth Levitt Hirsch  
President

LEVITT PAVILIONS

By: \_\_\_\_\_  
Sharon Yazowski  
Executive Director

FRIENDS OF LEVITT PAVILION DENVER

By: \_\_\_\_\_  
Chris Zacher  
Executive Director

EXHIBIT A  
DESCRIPTION OF THE “PROJECT”

Pavilion Property (minimum requirements):

The site must be a minimum of two acres in size designed to accommodate an audience capacity of approximately 5,000 persons in an open lawn setting. The site chosen by the Parties is depicted in Exhibit B. If permanent seating is required by city code or ADA requirements, it must be located on the sides or at the back of the lawn, such that access and views to the front of the stage are open to all. The site must either have a natural bowl or be graded as a gradual upslope away from the stage to achieve optimum viewing throughout the lawn area. Appropriate landscaping and walkways should enhance the ambiance. The site must meet ADA standards. The Levitt Pavilion must be accessible by large vehicles to accommodate load-in and load-out of production equipment. The access way should be concrete and a minimum of 10 feet wide. Sufficient lighting for safety, both at the Pavilion Property and in parking areas, is required. Access to public restrooms is required. Restrooms may be located in the park or in a nearby building, as long as the facilities are within reasonable walking distance for children and seniors. Upgrades and additions to parking and/or park circulation roads may be necessary to support the Levitt Pavilion, as determined by Denver Parks and Recreation.

Levitt Pavilion (minimum requirements):

- Open air stage with roof – minimum 50 feet wide at the front and 30 feet deep at the center, with minimum approximate square footage of 1,100 square feet; roof must cover at least 70% of stage.
- A minimum of two dressing rooms, at least 130 square feet per room, each equipped with built-in counters, proper lighting, and mirrors for make-up application, and a minimum of one full-length mirror in each dressing room.
- A minimum of two ADA accessible bathrooms located within the backstage area; such bathrooms are only for the use of Levitt personnel and performers and not for use by the general public.
- One artist green room of a minimum of 270 square feet, equipped with built-in counters and kitchenette.

- Climate-control system for all rooms in backstage area.
- Secure and climate-controlled storage space, a minimum of 300 square feet, for sound and lighting equipment.
- Telephone system.
- WiFi capability.
- Standard electrical power for an outdoor performing arts venue – a minimum of 500 amps dedicated to sound and lighting with each system on a separate circuit.
- Overhead beams, lighting grids, and/or side trusses to accommodate professional lighting.
- Prominent permanent, horizontal signage naming the structure “Levitt Pavilion for the Performing Arts” or “Levitt Pavilion Denver” or “Levitt Pavilion” visible to the audience.
- Concrete pad, minimum 8 feet by 8 feet, for a front of house sound station in the lawn area.
- Underground, water-proof duct for conduit to accommodate the front of house station.
- Height of stage between 36 inches and 40 inches to create an intimate environment for the audience and to allow children to experience performers close-up.
- Digital screens, visible to the audience, installed as part of the structure to highlight sponsors and supporters and showcase promotional pieces before and after concerts.
- Recommended site design elements:
  - Backstage area to include an office, large enough to be functional, for use by Levitt Denver staff either year-round or specifically during the concert season.
  - Backstage area to include one or more showers for performers who travel directly, often long distances, from one engagement to the next.



# Ruby Hill Park

Levitt Pavilion and Lawn Area

