

APPENDIX 17

**FORMS OF PERFORMANCE BOND, PAYMENT BOND AND MULTIPLE OBLIGEE
RIDERS**

- 17-A Form of Performance Bond
- 17-B Form of Payment Bond
- 17-C.1 Form of Multiple Obligee Rider – Performance Bond
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APPENDIX 17-A

FORM OF PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That Denver Great Hall LLC (“Developer”) has entered into a contract with the City and County of Denver, through and on behalf of its Department of Aviation (the “Owner”) bearing the effective date of [____], for developing, designing, financing, operating and maintaining the Great Hall Project (the “Project”), bearing Contract Control #201735867 (the “Development Agreement”); and

That we _____ (Design-Build Contractor Name), an entity duly authorized to do business in the State of Colorado (the “State”) and having its principal place of business at _____ ([Street Address, Owner, State, Zip and Phone #]) (the “Principal” or “Contractor”), have entered into a contract (the “Contract”) with Developer bearing the date of _____ related to the performance of design, construction, operations and maintenance work for the Project; and

That the Principal and _____ (the “Surety”), duly authorized to do business in the State, having its principal place of business at _____ (Home Office Address) are held and firmly bound unto Developer in the full and just sum of **Three Hundred and Twenty-Five Million DOLLARS** lawful money of the United States of America (**US\$325,000,000**), to whom payment well and truly will be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally and firmly by these presents;

WHEREAS, it was one of the conditions of the Contract and the Development Agreement that these presents shall be executed;

NOW, THEREFORE, the conditions of this obligation are such that if Principal shall faithfully, promptly, efficiently and fully perform in accordance with the obligations of the Contract and shall indemnify and save harmless Developer from all cost and damage by reason of Principal’s failure to do so, and further if the Principal shall promptly pay all State Workers’ Compensation and Unemployment Compensation taxes incurred in the performance of the Contract obligations and shall have satisfied any obligations related to any civil action instituted by the Owner or any officer of the Owner authorized in such cases for double any amount in money or property the Owner may lose or be overcharged or otherwise defrauded of, by reason of any wrongful or criminal act, if any, of the Principal, its agents, and employees, then this obligation shall be void; otherwise, it shall remain in full force and effect.

Should the Principal be declared to be in default of its obligations under the Contract, the Surety shall pay Developer all costs assessed against the Principal because of the default(s) which were not withheld from Contract proceeds, and upon Developer’s demand, the Surety shall take over performance of the Contract obligations; provided, however, that in the event Developer elects to have the Surety take over performance of

the Contract obligations, the Surety may not select the Principal or any affiliate of the Principal to perform the Contract obligations for and on behalf of the Surety.

The Surety shall be fully liable under this bond up to the full penal sum hereof, regardless of any modifications (of whatever amount) to the Contract amount. The obligations covered by this bond specifically include liability for liquidated damages and warranties as specified in the Contract, as well as any Design Work performed prior to the effective date of the Contract, but in any event shall not exceed the penal sum of this Bond. To the extent that there are multiple providers of this Bond, the obligations of each provider hereunder are joint and several and Developer may proceed against any provider of this Bond in connection with its enforcement of the terms of this Bond.

This Bond is executed pursuant to and in accordance with the Colorado Public Works Act, C.R.S. Section 38-26-101, *et seq.*

WITNESS the signature of the Principal and the signature of the Surety by _____ its _____ (Agent or Attorney-in-Fact) with the seals of said Principal and Surety hereunto affixed this ____ day of _____, _____.

Complete the following as appropriate

_____ Principal (Entity Name)*
Authorized Signature: _____
*Signature: _____
Printed Name: _____
* _____
Title: _____
(Seal)

*Include the signature and printed name of each partner required to be affixed per partnership agreement.

Principal shall record this bond in the official records of the Clerk of Court of the county where the improvement is located prior to commencing the work.

Organized and existing under the laws of the State of _____ and authorized to do business in the State of Colorado, pursuant to the laws of the State of Colorado.	
Countersigned: _____ Colorado Licensed Insurance Agent Print information below (Colorado Licensed Insurance Agent; whether in Attorney-in-Fact or Countersignature role): Name: _____ Business Address: _____ Telephone: _____	_____ Surety Company Name (Print) (Seal) By: _____ Colorado Licensed Insurance Agent or Attorney-in-Fact (Surety) <input type="checkbox"/> Above Signatory is also a Colorado Licensed Insurance Agent (check if applicable and complete business name, address and telephone number block; if not, have such an agent countersign and complete block). NOTE: Power of Attorney showing authority of Surety's Agent or Attorney-in-Fact is to be attached.

Send "Notices to Owner" to:

Stuart Williams
Senior Vice President of Special Programs
24735 E. 75th Avenue
Denver, Colorado 80249-6340
Email: Stuart.williams@flydenver.com
Phone: (720) 840-5292

APPENDIX 17-B

FORM OF PAYMENT BOND
(Bond No. _____)

KNOW ALL MEN BY THESE PRESENTS:

That Denver Great Hall LLC (“Developer”) has entered into a contract with the Owner and County of Denver, through and on behalf of its Department of Aviation (the “Owner”) bearing the effective date of [_____] for developing, designing, financing, operating and maintaining the Great Hall Project (the “Project”), bearing Contract Control #201735867 (the “Development Agreement”); and

That _____ (Design-Build Contractor Name), an entity duly authorized to do business in the State of Colorado (the “State”) and having its principal place of business at _____ **[Street Address, Owner, State, Zip and Phone #]** (the “Principal” or “Contractor”), has entered into a contract (the “Contract”) with Developer bearing the date of _____, for the performance of design, construction, operations and maintenance work in connection with the Project; and

That the Principal and _____ (the “Surety”), duly authorized to do business in the State, having its principal place of business at _____ (Home Office Address) are held and firmly bound unto Developer, in the full and just sum of **Three Hundred and Twenty-Five Million DOLLARS** lawful money of the United States of America (**US\$325,000,000**), to whom payment well and truly will be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally;

CONDITIONS OF THIS BOND ARE AS FOLLOWS:

- A. Each person who furnishes labor, services, or materials for the prosecution of the work provided for in the Contract (each, a “claimant”) shall have a right of action against the Principal and Surety for the amount due him or her, including unpaid finance charges due under the claimant’s contract.
- B. A claimant, except a laborer, who is not in privity with the Principal shall, before commencing or not later than 90 days after commencing to furnish labor, materials, or supplies for the prosecution of the work, furnish the Principal with a notice that he or she intends to look to this Bond for protection. A claimant who is not in privity with the Principal and who has not received payment for his or her labor, materials, or supplies shall deliver to the Principal and to the Surety written notice of the performance of the labor or delivery of the materials, or supplies and of the nonpayment. The notice of nonpayment may be served at any time during the progress of the work or thereafter but not before 45 days after the first furnishing of labor, services, or materials, and not later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect

to rental equipment, not later than 90 days after the date that the rental equipment was last on the job site available for use. No action for the labor, materials, or supplies may be instituted against the Principal or the Surety unless both notices have been given. Notices required or permitted may be conveyed in accordance with Section 4-1-201(b)(36), Colorado Revised Statutes. An action, except for an action exclusively for recovery of retainage, must be instituted against the Principal or the Surety on this Bond within 1 year after the performance of the labor or completion of delivery of the materials or supplies, or within 90 days after receipt of final payment (or the payment estimate containing Developer's final reconciliation of quantities if no further payment is earned and due as a result of deductive adjustments) by the Principal or Surety, whichever comes last. The time periods for service of a notice of nonpayment or for bringing an action against a Principal or a Surety shall be measured from the last day of furnishing labor, services, or materials by the claimant.

- C. An action must be instituted by a claimant, whether in privity with the Principal or not, against the Principal or the Surety on this Bond within 365 days after the final acceptance of the Contract work by the Owner (pursuant to the Development Agreement). A claimant may not waive in advance his or her right to bring an action under this Bond against the Surety. In any action brought to enforce a claim against this Bond under this section, the prevailing party is entitled to recover a reasonable fee for the services of his or her attorney for trial and appeal, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions.
- D. The amount of this Bond is a fixed amount and shall not be changed. To the extent that there are multiple providers of this Bond, the obligations of each provider hereunder are joint and several and Developer may proceed against any provider of this Bond in connection with its enforcement of the terms of the Bond.
- E. Neither any change in or under the Contract, nor any compliance or noncompliance with any formalities provided in the Contract nor the change shall relieve the Surety of its obligations under this Bond.
- F. This Bond is executed pursuant to and in accordance with the Colorado Public Works Act, C.R.S. Section 38-26-101, *et seq.*

IN WITNESS WHEREOF, Principal and Surety have executed these presents and the Surety has affixed its seal, this _____ day of _____, 20__.

PRINCIPAL: _____ Date: _____

Authorized Signature: _____

Print Name & Title: _____

NAME OF SURETY: _____

Date: _____

Signature (Attorney-in-Fact): _____

(Affix Seal)

Print Full Name, Address and Telephone No.

NOTES CONCERNING SURETY AND EXECUTION:

A. SURETY COMPANY REQUIREMENTS

To be acceptable to the Owner, the Surety shall meet all of the requirements of the Development Agreement, laws of Colorado and the regulations of the Owner, and has the Owner's approval.

B. EXECUTION OF BOND

1. Enter the Surety's name and address on each copy of this Bond in the space provided.
2. Have each copy of this Bond signed by the same person that signed the Contract on behalf of the Principal (affix Corporate Seal, if appropriate).
3. Have each copy of this Bond signed by the person authorized to sign on behalf of the Surety. Put the date the signature was affixed in the space provided. Print that person's name in the place provided on each copy of this Bond. Also,

have the Surety's Corporate Seal affixed to each copy of this Bond beside that person's signature (no facsimiles are acceptable).

4. Each copy of this Bond must have a Power of Attorney attached indicating that the person in item B.3 above is authorized to sign on behalf of the Surety.
5. Each copy of the Power of Attorney must have the Surety's Corporate Seal manually affixed unless facsimile seal is authorized.
6. The date of execution of the Power of Attorney is the same as the date shown on the signature line for the Surety Attorney-In-Fact.

APPENDIX 17-C.1

FORM OF MULTIPLE OBLIGEE RIDER – PERFORMANCE BOND

MULTIPLE OBLIGEE

RIDER

This Rider is executed concurrently with and shall be attached to and form a part of Performance Bond No. _ (the "Performance Bond").

WHEREAS, on or about the _____ day of _____, 20, _____, (hereinafter called the "Principal"), entered into a written agreement (hereinafter called the "Contract") with _____, (hereinafter called the "Primary Obligee") for _____ (hereinafter called the "Project");
and

WHEREAS, the Primary Obligee requires that Principal provide the Performance Bond and that _____, _____ and _____ be named as additional obligees under the Performance Bond; and

WHEREAS, Principal and the Surety have agreed to execute and deliver this Rider currently with the execution of the Performance Bond upon the conditions herein stated.

NOW, THEREFORE, the undersigned agree and stipulate that _____, _____, and _____ shall be added to the Performance Bond as named obligees (hereinafter referred to as "Additional Obligees").

PROVIDED, HOWEVER, that the aggregate liability of the Surety under this Performance Bond, to any or all of the obligees, as their interests may appear, is limited to the penal sum of said Performance Bond, that the Additional Obligees' rights hereunder are subject to the same defenses Principal and/or Surety have against the Primary Obligee, and that the total liability of the Surety shall in no event exceed the amount recoverable from the Principal by the Primary Obligee under the Contract; and

PROVIDED, FURTHER that the Surety may, at its option, make any payments under said Performance Bond by check issued jointly to all of the obligees.

Except as herein modified, said Performance Bond No. _____ shall be and remains in full force and effect.

Signed, sealed and dated this ___ day of _____, 20__.

(Principal)
(Seal)

By:

(Title)

(Surety)
(Seal)

By:

, Attorney-in-Fact

APPENDIX 17-C.2

FORM OF MULTIPLE OBLIGEE RIDER – PAYMENT BOND

MULTIPLE OBLIGEE

RIDER

This Rider is executed concurrently with and shall be attached to and form a part of Payment Bond No. ____ (the "Payment Bond").

WHEREAS, on or about the _____ day of _____, 20____, _____, (hereinafter called the "Principal"), entered into a written agreement (hereinafter called the "Contract") with _____, (hereinafter called the "Primary Obligee") for _____ (hereinafter called the "Project"); and

WHEREAS, the Primary Obligee requires that Principal provide the Payment Bond and that _____, _____ and _____ be named as additional obligees under the Payment Bond; and

WHEREAS, Principal and the Surety have agreed to execute and deliver this Rider currently with the execution of the Payment Bond upon the conditions herein stated.

NOW, THEREFORE, the undersigned agree and stipulate that _____, _____, and _____ shall be added to the Payment Bond as named obligees (hereinafter referred to as "Additional Obligees").

PROVIDED, HOWEVER that the aggregate liability of the Surety under this Payment Bond, to any or all of the obligees, as their interests may appear, is limited to the penal sum of said Payment Bond, that the Additional Obligees' rights hereunder are subject to the same defenses Principal and/or Surety have against the Primary Obligee, and that the total liability of the Surety shall in no event exceed the amount recoverable from the Principal by the Primary Obligee under the Contract; and

Except as herein modified, said Payment Bond No. _____ shall be and remains in full force and effect.

Signed, sealed and dated this ___ day of _____, 20__.

(Principal)
(Seal)

By:

(Title)

(Surety)
(Seal)

By:

, Attorney-in-Fact