

This is the front page of the performance/payment bond issued in compliance with Florida Statute 255.05
PERFORMANCE AND PAYMENT BOND
(Public Work)
In compliance with F.S. Chapter 255.05(1)(a)

Bond No.: _____

CONTRACTOR:

Name: Whiting-Turner Contracting Company
Address: 300 East Joppa Road, Towson, Maryland 21286
Phone: [insert]

SURETY(S):

Name: TBD
Address: _____
Phone: _____

OWNER/CONTRACTING ENTITY:

Name: Dr. Phillips Center for the Performing Arts, Inc.
Address: 155 East Anderson Street, Orlando, Florida 32801

OBLIGEE: (If contracting entity is different from the entity that owns the public building being constructed)

Name: City of Orlando
Address: 450 South Orange Avenue, Suite 150, Orlando, Florida 32801

OBLIGEE: (If contracting entity is different from the entity that owns the public building being constructed)

Name: City of Orlando Community Redevelopment Agency
Address: 450 South Orange Avenue, Suite 150, Orlando, Florida 32801

Bond Amount: TBD

Description of Work: Dr. Phillips Center for the Performing Arts, Stage II

Project Location: That portion of the existing site of the Dr. Phillip's Center for the Performing Arts bordered to the west by S. Magnolia Ave, to the North by E. South Street, and to the East by S. Rosalind Ave in Orlando, Florida 32801.

FRONT PAGE

All other Bond page(s) are deemed subsequent to this page regardless of any page number(s) that may be re-printed thereon.

DRAFT AIA[®] Document A312[™] - 2010

Performance Bond

CONTRACTOR:

(Name, legal status and address)

« The Whiting-Turner Contracting Company » « 300 East Joppa Road, Towson, Maryland 21286 »

« »

SURETY:

(Name, legal status and principal place of business)

« TBD » « »

« »

OWNER:

(Name, legal status and address)

« Dr. Phillips Center for the Performing Arts, Inc. »
« 155 E. Anderson Street »
« Orlando, FL 32801 »

CONSTRUCTION CONTRACT

Date: « TBD »

Amount: \$ « TBD »

Description:

(Name and location)

« sample »
« Dr. Phillips Center for the Performing Arts, Stage II Project, Orlando Florida »

BOND

Date:

(Not earlier than GMP Amendment Date ~~Construction Contract Date~~)

« »

Amount: \$ « TBD »

Modifications to this Bond:



None



See Section 16

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

SURETY

Company: (Corporate Seal)

Signature:

Name and « » « »

Title:

(Any additional signatures appear on the last page of this Performance Bond.)

Signature:

Name and « » « »

Title:

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

« »
« »
« »

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

« The Projects Group »
« 301 Commerce Street »
« Suite 1301 »
« Fort Worth, TX 76102 »
« »
« »

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

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§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to

the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 Balance of the Contract Price. The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 Contractor Default. Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

«**MULTIPLE OBLIGEE RIDER ATTACHED**»

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

Signature:

Name and Title:

Address:

« »« »

« »

SURETY

Company:

(Corporate Seal)

Signature:

Name and Title:

Address:

« »« »

« »

MULTIPLE OBLIGEE RIDER

[INSERT NAME(S) OF SURETY/SURETIES]

This Rider is executed concurrently with and shall be attached to and form a part of Performance Bond No. _____.

WHEREAS, on or about the 9th day of May, 2016, Whiting-Turner Contracting Company (hereinafter call the "Principal"), entered into a written agreement with Dr. Phillips Center for the Performing Arts, Inc. (hereinafter called the "Primary Obligees") for Dr. Phillips Center for the Performing Arts, Stage II (hereinafter called the "Contract"); and

WHEREAS, Principal is required by the Contract to provide a Performance Bond and Primary Obligees has requested that City of Orlando, 450 South Orange Avenue, Suite 150, Orlando, Florida 32801 and City of Orlando Community Redevelopment Agency, 450 South Orange Avenue, Suite 150, Orlando, Florida 32801 be named as additional obligees under the Performance Bond; and

WHEREAS, principal and *** SEE LIST OF SURETIES BELOW *** (hereinafter referred to as "Surety") have agreed to execute and deliver this Rider in conjunction with Performance Bond No. _____ (hereinafter referred to as "Bond").

NOW, THEREFORE, the undersigned hereby agree and stipulate that City of Orlando and City of Orlando Community Redevelopment Agency shall be added to the Bond as named obligees (hereinafter referred to as "Additional Obligees"), subject to the conditions set forth below:

1. The Surety shall not be liable under the Bond to the Primary Obligees, the Additional Obligees, or any of them, unless the Primary Obligees, the Additional Obligees, or any of them, shall make payments to the Principal (or in the case the Surety arranges for completion of the Contract, to the Surety) strictly in accordance with the terms of said Contract as to payments and shall perform all other obligations to be performed under said Contract at the time and in the manner therein set forth; and

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

3. The Surety may, at its option, make any payments under the Bond by check issued jointly to all of the obligees.

Except as herein modified, the Bond shall be and remains in full force and effect.

Signed this _____ day of _____, 201_,

Whiting-Turner Contracting Company, Principal

By: _____

[Insert list of Sureties]

By: _____
_____, Attorney-In-Fact

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Payment Bond

CONTRACTOR:

(Name, legal status and address)

«The Whiting-Turner Contracting Company »«300 East Joppa Road, Towson, Maryland 21286 »

« »

SURETY:

(Name, legal status and principal place of business)

«TBD »« »

« »

OWNER:

(Name, legal status and address)

«Dr. Phillips Center for the Performing Arts, Inc. »
«155 E. Anderson Street—»
«Orlando, FL 32801—»

CONSTRUCTION CONTRACT

Date: «TBD »

Amount: \$ «TBD »

Description:

(Name and location)

«sample»

«Dr. Phillips Center for the Performing Arts, Stage II Project, Orlando Florida—»

BOND

Date:

(Not earlier than GMP Amendment Date~~Construction Contract Date~~)

« »

Amount: \$ «TBD »

Modifications to this Bond:



None



See Section 18

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

SURETY

Company: (Corporate Seal)

Signature:

Name and « »« »

Title:

(Any additional signatures appear on the last page of this Payment Bond.)

Signature:

Name and « »« »

Title:

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

« »

« »

« »

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

«The Projects Group »

«301 Commerce Street—»

«Suite 1301 »

«Fort Worth, TX 76102—»

« »

« »

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

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§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

« ****THE PROVISIONS AND LIMITATIONS OF SECTION 255.05 FLORIDA STATUTE, INCLUDING BUT NOT LIMITED TO THE TIME LIMITATIONS IN SECTIONS 255.05(2) AND 255.05(10), ARE INCORPORATED INTO THIS BOND BY REFERENCE**** »

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature:

Name and Title:

Address:

« »« »

« »

Signature:

Name and Title:

Address:

« »« »

« »

AIA A312 PAYMENT BOND RIDER

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

WHEREAS, on or about the 9th day of May 2016, Whiting-Turner Contracting Company (hereinafter referred to as "Principal") entered into a written agreement with Dr. Phillips Center for Performing Arts, Inc. (hereinafter referred to as "Owner"), for Dr. Phillips Center for the Performing Arts, Stage II (hereinafter referred to as "Contract"); and

WHEREAS, the Principal is obligated under the Contract to provide a payment bond in connection with the Contract naming Dr. Phillips Center for the Performing Arts, Inc. as Obligee;

WHEREAS, the Obligee has requested that City of Orlando, 450 South Orange Avenue, Suite 150, Orlando, Florida 32801 and City of Orlando Community Redevelopment Agency, 450 South Orange Avenue, Suite 150, Orlando, Florida 32801 be named as Additional Obligees under the Payment Bond; and

WHEREAS, the Principal and [insert sureties] have agreed to execute and deliver the Payment Bond on the conditions herein stated.

NOW, THEREFORE, the Payment bond is hereby modified as follows:

The undersigned hereby agree and stipulate that City of Orlando and City of Orlando Community Redevelopment Agency shall be added to the Bond as Additional Obligees.

Except as herein modified, the Payment Bond shall be and remains in full force and effect.

Signed, sealed, and dated this ____ day of ____, 201__.

Whiting-Turner Contracting Company, Principal

By: _____
(Title)

(Surety) (Seal)

By: _____
(Title)

(Surety) (Seal)

By: _____
(Title)