



AUBURN
UNIVERSITY

FACILITIES MANAGEMENT
PROGRAM MANAGEMENT AND PROJECT
EXECUTION
DESIGN AND CONSTRUCTION CONTRACTS

RECEIVED

TO:

Bailey-Harris Construction Co.

ATTN: Russell Harris

ADDRESS:

Post Office Box 490

Auburn, AL 36831-0490

FROM:

Walker Davis

(334) 703-0050

DATE:

2/10/2016

FEB 11 2016

BAILEY-HARRIS CONST CO., INC.

PHONE NUMBER:

334-821-0807

TOTAL NO. OF ITEMS ATTACHED, INCLUDING COVER:

4

FAX NUMBER:

XXX-XXX-XXXX

AU FAC MGMT PROJECT NUMBER:

14-193 – Pharmacy Research Building –
Structural Works (Phase II); 15-035 –
School of Nursing – Structural Works
(Phase II)

RE:

Return of Bid Bond / Cashier's Check
and Executed LPW Contracts

NOTES/COMMENTS:

Please find attached your original Bid Bond or Cashier's Check as submitted with your bid proposal and executed LPW Contracts with purchase order numbers for the above referenced projects.

USE BLACK INK ONLY

BID BOND

The **PRINCIPAL** (*Bidder's Name and Address*)

Bailey-Harris Construction Co., Inc.
P.O. Box 490 Auburn, AL 36831-0490

The **SURETY** (*Name and Principal Place of Business*)

Western Surety Company
333 S. Wabash Ave. Chicago, IL 60604

The **OWNER** (*Name and Address*)

Auburn University
1161 West Samford Avenue Auburn, AL 36849

The **PROJECT** for which the Principal's Bid is submitted: (*Project name as it appears in the Bid Documents*)

AU Pharmacy Research Building Structural Works - AU Project 14-193, AU School of Nursing Phase
2: Structural Work - AU Project 15-035

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned Principal and Surety, jointly and severally, hereby bind ourselves, our heirs, executors, administrators, successors, and assigns to the Owner in the **PENAL SUM of five percent (5%) of the amount of the Principal's bid, but in no event more than Ten-thousand Dollars (\$10,000.00).**

THE CONDITION OF THIS OBLIGATION is that the Principal has submitted to the Owner the attached bid, which is incorporated herein by reference, for the Project identified above.

NOW, THEREFORE, if, within the terms of the Bid Documents, the Owner accepts the Principal's bid and the Principal thereafter either:

- (a) executes and delivers a Construction Contract with the required Performance and Payment Bonds (each in the form contained in the Bid Documents and properly completed in accordance with the bid) and delivers evidence of insurance as prescribed in the Bid Documents, or
- (b) fails to execute and deliver such Construction Contract with such Bonds and evidence of insurance, but pays the Owner the difference, not to exceed the Penal Sum of this Bond, between the amount of the Principal's Bid and the larger amount for which the Owner may award a Construction Contract for the same Work to another bidder, **then**, this obligation shall be null and void, otherwise it shall remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that the obligation of the Surety under this Bond shall not in any manner be impaired or affected by any extension of the time within which the Owner may accept the Principal's bid, and the Surety does hereby waive notice of any such extension.

SIGNED AND SEALED this 12th day of January, 2016.

ATTEST:

Edie M. Tapley

ATTEST

Renee Ellis
Renee Ellis

PRINCIPAL:

Bailey-Harris Construction Co., Inc.

By

Russell A. Harris Vice-President
Name and Title

SURETY:

Western Surety Company

By

Billie Jo Sanders Attorney-in-Fact
Name and Title

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Thomas J Gentile, Billie Jo Sanders, Renee Ellis, Paul B Scott Jr, David J Durden, Milton Kopf III, Individually A

of Montgomery, AL, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 19th day of June, 2015.



WESTERN SURETY COMPANY

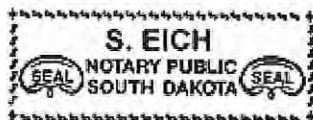
Paul T. Bruflat, Vice President

State of South Dakota }
County of Minnehaha } ss

On this 19th day of June, 2015, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

February 12, 2021



S. Eich, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 12th day of January, 2016



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

B.C Project No.

CONSTRUCTION CONTRACT

- (1)
- (2) This Construction Contract is entered into this January 19, 2016
- (3) between the **OWNER(s)**,
Auburn University, c/o Facilities Management
1161 West Samford Avenue
Auburn University, AL 36849-5514
Phone: 334-844-9450; Fax: 334-844-9452
- (4) and the **CONTRACTOR**,
Bailey-Harris Construction Company Inc.
1552 Bailey Harris Drive
Auburn, AL 36830
- (5) for the **WORK** of the Project, identified as:
AU Project Name: Pharmacy Research Building - Structural Works Phase II
AU Project No.: 14-193
- (6) The **CONTRACT DOCUMENTS** are dated 2015-12-04, and have been ammended by
(7) **ADDENDA: 3**
- (8) The **ARCHITECT** is: GOODWYN MILLS & CAWOOD, INC.
2660 EASTCHASE LANE, SUITE 200
MONTGOMERY, AL 36117
- (9) The **CONTRACT SUM** is Eight Hundred Sixty-One Thousand Two Hundred Eighty-Five Dollars and 0 Cent
\$861,285.00) and is the sum of the Contractor's Base Bid for the Work and the following
- (10) **BID ALTERNATE PRICES:**
- | | | |
|---------------|---------------------|----------|
| Base Bid | \$861,285.00 | Accepted |
| TOTAL: | \$861,285.00 | |
- (11) The **CONTRACT TIME** is

One Hundred Seventy Two (172) calendar days from the date of Notice to Proceed.
Work is to be completed prior to July 29, 2016, per Special Conditions.

THE OWNER AND THE CONTRACTOR AGREE AS FOLLOWS:

The Contract Documents, as defined in the General Conditions of the Contract (ABC Form C-8), are incorporated herein by reference. The Contractor shall perform the Work in accordance with the Contract Documents. The Owner will pay and the Contractor will accept as full compensation for such performance of the Work, the Contract Sum subject to additions and deductions (including liquidated damages) as provided in the Contract Documents. The Work shall be commenced on a date to be specified in a Notice to Proceed issued by the Owner or the Director, Technical Staff, Alabama Building Commission, and shall then be substantially completed within the Contract Time.

(12) **LIQUIDATED DAMAGES** for which the Contractor and its Surety (if any) shall be liable and may be required to pay the Owner in accordance with the Contract Documents shall be equal to six percent interest per annum on the total Contract Sum unless a dollar amount is stipulated in the following space, in which case liquidated damages shall be determined at (\$) per calendar day.

(13) **SPECIAL PROVISIONS** (*Special Provisions may be inserted here, such as Acceptance or Rejection of Unit Prices.*)

(14) **STATE GENERAL CONTRACTOR'S LICENSE:** The Contractor does hereby certify that Contractor is currently licensed by the Alabama State Licensing Board for General Contractors and that the
License No. Bid Limit: Classification:
11341 UNLIMITED BC: BUILDING CONSTRUCTION

The Owner and Contractor have entered into this Construction Contract as of the date first written above and have executed this Construction Contract in sufficient counterparts to enable each contracting party to have an originally executed Construction Contract each of which shall, without proof or accounting for the other counterparts, be deemed an original thereof.

The Owner does hereby certify that this Construction Contract was let in accordance with the provisions of Title 39, Code of Alabama 1975, as amended, and all other applicable provisions of law, and that the terms and commitments of this Construction Contract do not constitute a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26.

(15) **APPROVALS**


By _____

STATE OF ALABAMA BUILDING COMMISSION
(Not required for locally-funded, SDE projects.)

By _____
Director, Technical Staff

CONTRACTING PARTIES

Bailey-Harris Construction Company Inc.

By  _____
Name and Title Russell Harris, VP

Auburn University

Owner

By  _____
Name & Title Dr. G. Jay Ogque, President

PERFORMANCE BOND

USE BLACK INK ONLY

SURETY'S BOND NUMBER

58732991

(1)

(2)

The **PRINCIPAL** (Name and address of Contractor as appear in the Construction Contract)

Bailey-Harris Construction Co., Inc.
P.O. Box 490 Auburn, AL 36831-0490

(3)

The **SURETY** (Name and Principal Place of Business)

Western Surety Company
333 S. Wabash Ave. Chicago, IL 60604

(4)

The **OWNER** (Name and address, same as appears in the Construction Contract)

Auburn University
1161 West Samford Avenue Auburn, AL 36849

(5)

The **PENAL SUM** of this Bond (the Contract Sum) Eight Hundred Sixty One Thousand Two Hundred Eighty Five Dollars and 00/100 (\$ 861,285.00).

(6)

DATE of the Construction Contract ; January 19, 2016

(7)

The **PROJECT:** (Same as appears in the Construction Contract)

Pharmacy Research Building - Structural Works Phase II, AU Project No. 14-193

1. **WE, THE PRINCIPAL** (hereinafter "Contractor") **AND THE SURETY**, jointly and severally, hereby bind ourselves, our heirs, executors, administrators, successors, and assigns to the Owner in the Penal Sum stated above for the performance of the Contract, and Contract Change Orders, in accord with the requirements of the Contract Documents, which are incorporated herein by reference. If the Contractor performs the Contract, and Contract Change Orders, in accordance with the Contract Documents, then this obligation shall be null and void; otherwise it shall remain in full force and effect.
2. The Penal Sum shall remain equal to the Contract Sum as the Contract Sum is adjusted by Contract Change Orders. All Contract Change Orders involving an increase in the Contract Sum will require consent of Surety by endorsement of the Contract Change Order form. The Surety waives notification of any Contract Change Orders involving only extension of the Contract Time.

Numbers in margin correspond to "Checklist", ABC Form B-7

3. Whenever the Architect gives the Contractor and the Surety, at their addresses stated above, a written Notice to Cure a condition for which the Contract may be terminated in accordance with the Contract Documents, the Surety may, within the time stated in the notice, cure or provide the Architect with written verification that satisfactory positive action is in process to cure the condition.
4. The Surety's obligation under this Bond becomes effective after the Contractor fails to satisfy a Notice to Cure and the Owner:
 - (a) gives the Contractor and the Surety, at their addresses stated above, a written Notice of Termination declaring the Contractor to be in default under the Contract and stating that the Contractor's right to complete the Work, or a designated portion of the Work, shall terminate seven days after the Contractor's receipt of the notice; and
 - (b) gives the Surety a written demand that, upon the effective date of the Notice of Termination, the Surety promptly fulfill its obligation under this Bond.
5. In the presence of the conditions described in Paragraph 4, the Surety shall, at its expense:
 - (a) On the effective date of the Notice of Termination, take charge of the Work and be responsible for the safety, security, and protection of the Work, including materials and equipment stored on and off the Project site, and
 - (b) Within twenty-one days after the effective date of the Notice of Termination, proceed, or provide the Owner with written verification that satisfactory positive action is in process to facilitate proceeding promptly, to complete the Work in accordance with the Contract Documents, either with the Surety's resources or through a contract between the Surety and a qualified contractor to whom the Owner has no reasonable objection.
6. As conditions precedent to taking charge of and completing the Work pursuant to Paragraph 5, the Surety shall neither require, nor be entitled to, any agreements or conditions other than those of this Bond and the Contract Documents. In taking charge of and completing the Work, the Surety shall assume all rights and obligations of the Contractor under the Contract Documents; however, the Surety shall also have the right to assert "Surety Claims" to the Owner in accordance with the Contract Documents. The presence or possibility of a Surety Claim shall not be just cause for the Surety to fail or refuse to promptly take charge of and complete the Work or for the Owner to fail or refuse to continue to make payments in accordance with the Contract Documents.
7. By accepting this Bond as a condition of executing the Construction Contract, and by taking the actions described in Paragraph 4, the Owner agrees that:
 - (a) the Owner shall promptly advise the Surety of the unpaid balance of the Contract Sum and, upon request, shall make available or furnish to the Surety, at the cost of reproduction, any portions of the Project Record, and
 - (b) as the Surety completes the Work, or has it completed by a qualified contractor, the Owner shall pay the Surety, in accordance with terms of payment of the Contract Documents, the unpaid balance of the Contract Sum, less any amounts that may be or become due the Owner from the Contractor under the Construction Contract or from the Contractor or the Surety under this Bond.
8. In the presence of the conditions described in Paragraph 4, the Surety's obligation includes responsibility for the correction of Defective Work, liquidated damages, and reimbursement of any reasonable expenses incurred by the Owner as a result of the Contractor's default under the Contract, including architectural, engineering, administrative, and legal services.

Numbers in margin correspond to "Checklist", ABC Form B-7

9. Nothing contained in this Bond shall be construed to mean that the Surety shall be liable to the Owner for an amount exceeding the Penal Sum of this Bond, except in the event that the Surety should be in default under the Bond by failing or refusing to take charge of and complete the Work pursuant to Paragraph 5. If the Surety should fail or refuse to take charge of and complete the Work, the Owner shall have the authority to take charge of and complete the Work, or have it completed, and the following costs to the Owner, less the unpaid balance of the Contract Sum, shall be recoverable under this Bond:

- (a) the cost of completing the Contractor's responsibilities under the Contract, including correction of Defective Work;
- (b) additional architectural, engineering, managerial, and administrative services, and reasonable attorneys' fees incident to completing the Work;
- (c) interest on, and the cost of obtaining, funds to supplement the unpaid balance of the Contract Sum as may be necessary to cover the foregoing costs;
- (d) the fair market value of any reductions in the scope of the Work necessitated by insufficiency of the unpaid balance of the Contract Sum and available supplemental funds to cover the foregoing costs; and
- (f) additional architectural, engineering, managerial, and administrative services, and reasonable attorneys' fees incident to ascertaining and collecting the Owner's losses under the Bond.

10. All claims and disputes arising out of or related to this bond, or its breach, shall be resolved in accordance with Article 24, General Conditions of the Contract.

(8) SIGNED AND SEALED this 19th day of January, 2016.

(9) ATTEST:

Annis D. Hamlet

CONTRACTOR as PRINCIPAL:

Bailey-Harris Construction Co., Inc.

By

Russell A. Harris

Russell A. Harris Vice President

Name and Title

(10) Countersigned by
Alabama Resident Agent for Surety:

By Billie Jo Sanders

Billie Jo Sanders

Name

2601 Bell Road Montgomery, AL 36117

Address

SURETY:

Western Surety Company

By

Billie Jo Sanders

Billie Jo Sanders

Attorney-in-Fact

Name and Title

(11) NOTE: Power of attorney for the Surety's signatory shall be furnished with the original and five copies of the bond.

PAYMENT BOND

USE BLACK INK ONLY

SURETY'S BOND NUMBER

58732991

Numbers in margin correspond to "Checklist", ABC Form B-7

- (1)
- (2) The **PRINCIPAL** (Name and address of Contractor, same as appears in the Construction Contract)
- Bailey-Harris Construction Co., Inc.
P.O. Box 490 Auburn, AL 36831-0490
- (3) The **SURETY** (Name and Principal Place of Business)
- Western Surety Company
333 S. Wabash Ave. Chicago, IL 60604
- (4) The **OWNER(s)** (Name and address, same as appears in the Construction Contract)
- Auburn University
1161 West Samford Avenue Auburn, AL 36849
- (5) The **PENAL SUM** of this Bond (the Contract Sum) Eight Hundred Sixty One Thousand Two Hundred Eighty Five Dollars and 00/100 (\$ 861,285.00).
- (6) **DATE** of the Construction Contract : January 19, 2016
- (7) The **PROJECT:** (Same as appears in the Construction Contract)
- Pharmacy Research Building - Structural Works Phase II, AU Project No. 14-193

1. **WE, THE PRINCIPAL** (hereinafter "Contractor") **AND THE SURETY**, jointly and severally, hereby bind ourselves, our heirs, executors, administrators, successors, and assigns to the Owner in the Penal Sum stated above to promptly pay all persons supplying labor, materials, or supplies for or in the prosecution of the Contract, which is incorporated herein by reference, and any modifications thereof by Contract Change Orders. If the Contractor and its Subcontractors promptly pay all persons supplying labor, materials, or supplies for or in the prosecution of the Contract and Contract Change Orders, then this obligation shall be null and void; otherwise to remain and be in full force and effect.
2. The Penal Sum shall remain equal to the Contract Sum as the Contract Sum is adjusted by Contract Change Orders. All Contract Change Orders involving an increase in the Contract Sum will require consent of Surety by endorsement of the Contract Change Order form. The Surety waives notification of any Contract Change Orders involving only extension of the Contract Time.

Numbers in margin correspond to "Checklist", ABC Form B-7

3. Any person that has furnished labor, materials, or supplies for or in the prosecution of the Contract and Contract Change Orders for which payment has not been timely made may institute a civil action upon this Bond and have their rights and claims adjudicated in a civil action and judgment entered thereon. Notwithstanding the foregoing, a civil action may not be instituted on this bond until 45 days after written notice to the Surety of the amount claimed to be due and the nature of the claim. The civil action must commence not later than one year from the date of final settlement of the Contract. The giving of notice by registered or certified mail, postage prepaid, addressed to the Surety at any of its places of business or offices shall be deemed sufficient. In the event the Surety or Contractor fails to pay the claim in full within 45 days from the mailing of the notice, then the person or persons may recover from the Contractor and Surety, in addition to the amount of the claim, a reasonable attorney's fee based on the result, together with interest on the claim from the date of the notice.
4. Every person having a right of action on this bond shall, upon written application to the Owner indicating that labor, material, or supplies for the Work have been supplied and that payment has not been made, be promptly furnished a certified copy of this bond and the Construction Contract. The claimant may bring a civil action in the claimant's name on this Bond against the Contractor and the Surety, or either of them, in the county in which the Work is to be or has been performed or in any other county where venue is otherwise allowed by law.
5. This bond is furnished to comply with Code of Alabama, §39-1-1, and all provisions thereof shall be applicable to civil actions upon this bond.
6. All claims and disputes between Owner and either the Contractor or Surety arising out of or related to this bond, or its breach, shall be resolved in accordance with Article 24, General Conditions of the Contract

(8) SIGNED AND SEALED this 19th day of January, 2016.

(9) ATTEST:

Ann D. Hamlet

CONTRACTOR as PRINCIPAL:

Bailey-Harris Construction Co., Inc.

By *Russell A. Harris*

Russell A. Harris Vice President

Name and Title

(10) Countersigned by
Alabama Resident Agent for Surety:

By *Billie Jo Sanders*

Billie Jo Sanders

Name

2601 Bell Road Montgomery, AL 36117

Address

SURETY:

Western Surety Company

By *Billie Jo Sanders*

Billie Jo Sanders

Attorney-in-Fact

Name and Title

(11) NOTE: Power of attorney for the Surety's signatory shall be furnished with the original and five copies of the bond.

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls; and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Thomas J Gentile, Billie Jo Sanders, Renee Ellis, Paul B Scott Jr, David J Durden, Milton A Kopf III, Individually

of Montgomery, AL, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 19th day of June, 2015.



WESTERN SURETY COMPANY

Paul T. Bruflat, Vice President

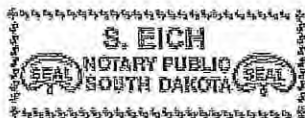
State of South Dakota }
County of Minnehaha }

ss

On this 19th day of June, 2015, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

February 12, 2021



S. Eich, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 19th day of January, 2016 ,



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary