

PERFORMANCE BOND
(Public Contract Code Section 20129)
Division 006000

Attachment 3

THIS CONSTRUCTION PERFORMANCE BOND ("Bond") is dated February 22, 2017 is in the amount of Twenty Two Million, Seven Hundred Six Thousand* ("Penal Sum"), which is 100% of the Contract Sum and is entered into by and between the parties listed below to ensure the faithful performance of the Contract identified below. This Bond consists of this page and the Bond Terms and Conditions, Paragraphs 1 through 13 attached to this page. Any singular reference to Avila Brother's** ("Contractor"), Great American *** ("Surety"), COUNTY OF MONTEREY ("Owner"), or other party shall be considered plural where applicable.

*Two Hundred and Twenty Dollars and no/100ths

CONTRACTOR:

Avila Brother's, Inc.
Avila Construction Company
12 Thomas Owens Way, Suite 200
Monterey, CA 93940

SURETY:

Great American Insurance Company
3017 Douglas Blvd., Suite 300
Roseville, CA 95661

**Inc., dba: Avila Construction Company

***Insurance Company

CONTRACTOR:

Agreement for the MONTEREY COUNTY
GOVERNMENT CENTER EAST/WEST WING RENOVATION located at 240 Church Street,
Salinas, California, dated February 8, 2017 in the amount of Twenty Two Million, Seven Hundred Six
Thousand, Two Hundred and Twenty and no/100ths (\$22,706, 220.00) Dollars

CONTRACTOR AS PRINCIPAL

SURETY

Avila Brother's Inc. dba:
Avila Construction Company

Great American Insurance Company

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

Civil Code § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

State of California)
) ss
County of Los Angeles)

On FEB 22 2017, before me, Natalie K. Trofimoff, Notary Public, personally appeared Maria Pena, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



(Seal)

Signature: Natalie K. Trofimoff
Natalie K. Trofimoff, Notary Public

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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State of California)
County of Monterey)

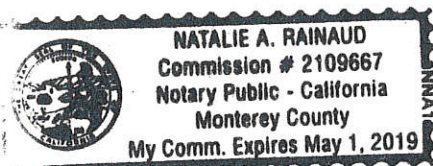
On February 24, 2017 before me, Natalie A. Rainaud, Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared ***Michael J. Avila*****
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Natalie A. Rainaud
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document Performance Bond #CA1750753
Title or Type of Document: Government Center East/West Document Date: February 22, 2017
Number of Pages: One Signer(s) Other Than Named Above: No Other Signers

Capacity(ies) Claimed by Signer(s)

Signer's Name: Michael J Avila
☒ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

PAYMENT BOND
(Civil Code Section 9550)
Division 006100

WHEREAS, the County of Monterey has awarded to Principal,

Avila Brother's, Inc. dba: Avila Construction Company

as Contractor, a Contract for the following Project:

**MONTEREY COUNTY GOVERNMENT CENTER EAST/WEST WING RENOVATION
PROJECT NO. 8864, BID PACKAGE NO. 10599; and**

WHEREAS, Principal, as Contractor, is required to furnish a bond in connection with said Contract, to secure the payment of Claims of laborers, mechanics, material suppliers, and other persons furnishing labor and materials on the Project, as provided by law.

NOW, THEREFORE, we Avila Brother's, Inc. dba: Avila Construction Company

as Principal, and Great American Insurance Company

as Surety, are held and firmly bound unto the County of Monterey, a political subdivision of the State of California (hereinafter called "County"), and to the persons named in California Civil Code Section 9100 in the penal sum of Twenty Two Million, Seven Hundred Six* Dollars (\$22,706,220.00), for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

*Thousand, Two Hundred Twenty and no/100ths

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

If Principal or any of Principal's heirs, executors, administrators, successors, assigns, or Subcontractors (1) fails to pay in full all of the persons named in Civil Code Section 9100 with respect to any labor or materials furnished by said persons on the Project described above, or (2) fails to pay in full all amounts due under the California Unemployment Insurance Code with respect to Work or labor performed under the Contract on the Project described above, or (3) fails to pay for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal and Subcontractors pursuant to Unemployment Insurance Code Section 13020 with respect to such Work and labor, then the Surety shall pay for the same.

Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract on the call for bids, or to the Work to be performed thereunder, or the Specifications accompanying the same, shall in any way affect its obligation under this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of said Contract or the call for bids, or to the Work, or to the Specifications.

If the County brings suit upon this Bond and judgment is recovered, the Surety shall pay all litigation expenses incurred by the County in such suit, including attorneys' fees, court costs, expert witness fees


and investigation expenses.

This Bond inures to the benefit of any of the persons named in Civil Code Section 9100, and such persons or their assigns shall have a right of action in any suit brought upon this Bond, subject to any limitations set forth in Civil Code Sections 9550 et seq. (Civil Code, Division 4, Part 6, Title 3, Chapter 5: Payment Bond for Public Works).

IN WITNESS WHEREOF the above-bounden parties have executed this instrument under their several seals this 22nd day of February, 2017, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Corporate Seal) Avila Brother's Inc. dba: Avila Construction Company

Principal

By: 
MICHAEL J. AVILA
Title: CEO

(Corporate Seal) Great American Insurance Company

Surety

By: 

Title: Maria Pena, Attorney-in-Fact

Attach: 1) Copy of authorization for signature for Principal, and 2) original or certified copy of unrevoked appointment, Power of Attorney, Attorney-in-Fact Certificate bylaws or other instrument entitling or authorizing person executing Bond on behalf of Surety to do so.

Civil Code § 1189

State of California)
) ss
County of Los Angeles)

e: Natalie K. Trofimoff
Natalie K. Trofimoff, Notary Public

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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State of California)
County of Monterey)

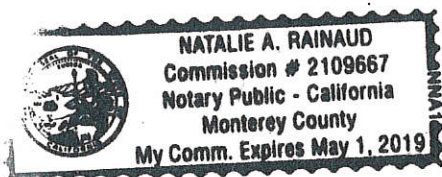
On February 24, 2017 before me, Natalie A. Rainaud, Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared ***Michael J. Avila*****
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Natalie A. Rainaud
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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Description of Attached Document Payment Bond CA1750753
Title or Type of Document: Government Center East/West Document Date: February 22, 2017
Number of Pages: One Signer(s) Other Than Named Above: No Other Signers

Capacity(ies) Claimed by Signer(s)

Signer's Name: Michael J Avila
☒ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

GREAT AMERICAN INSURANCE COMPANY®

Administrative Office: 301 E 4TH STREET • CINCINNATI, OHIO 45202 • 513-369-5000 • FAX 513-723-2740

The number of persons authorized by
this power of attorney is not more than FIVE

No. 0 14776

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the GREAT AMERICAN INSURANCE COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Ohio, does hereby nominate, constitute and appoint the person or persons named below, each individually if more than one is named, its true and lawful attorney-in-fact, for it and in its name, place and stead to execute on behalf of the said Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; provided that the liability of the said Company on any such bond, undertaking or contract of suretyship executed under this authority shall not exceed the limit stated below.

Name	Address	Limit of Power
C.K. NAKAMURA	NOEMI QUIROZ	ALL
E.S. ALBRECHT	MARIA PENA	\$75,000,000.00
LISA L. THORNTON	LOS ANGELES, CALIFORNIA	

This Power of Attorney revokes all previous powers issued on behalf of the attorney(s)-in-fact named above.

IN WITNESS WHEREOF the GREAT AMERICAN INSURANCE COMPANY has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 15TH day of MARCH, 2012
Attest GREAT AMERICAN INSURANCE COMPANY



Stephen C. Beraha
Assistant Secretary

David C. Kitchen
Divisional Senior Vice President

DAVID C. KITCHIN (877-377-2405)

STATE OF OHIO, COUNTY OF HAMILTON - ss:

On this 15TH day of MARCH, 2012, before me personally appeared DAVID C. KITCHIN, to me known, being duly sworn, deposes and says that he resides in Cincinnati, Ohio, that he is a Divisional Senior Vice President of the Bond Division of Great American Insurance Company, the Company described in and which executed the above instrument; that he knows the seal of the said Company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of his office under the By-Laws of said Company, and that he signed his name thereto by like authority.



KAREN L. GROSHEIM
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 02-20-16

Karen L. Grosheim

This Power of Attorney is granted by authority of the following resolutions adopted by the Board of Directors of Great American Insurance Company by unanimous written consent dated June 9, 2008.

RESOLVED: That the Divisional President, the several Divisional Senior Vice Presidents, Divisional Vice Presidents and Divisional Assistant Vice Presidents, or any one of them, be and hereby is authorized, from time to time, to appoint one or more Attorneys-in-Fact to execute on behalf of the Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; to prescribe their respective duties and the respective limits of their authority; and to revoke any such appointment at any time.

RESOLVED FURTHER: That the Company seal and the signature of any of the aforesaid officers and any Secretary or Assistant Secretary of the Company may be affixed by facsimile to any power of attorney or certificate of either given for the execution of any bond, undertaking, contract of suretyship, or other written obligation in the nature thereof, such signature and seal when so used being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

CERTIFICATION

I, STEPHEN C. BERAHA, Assistant Secretary of Great American Insurance Company, do hereby certify that the foregoing Power of Attorney and the Resolutions of the Board of Directors of June 9, 2008 have not been revoked and are now in full force and effect.

Signed and sealed this

day of

FEB 22 2017



Stephen C. Beraha
Assistant Secretary

BOND TERMS AND CONDITIONS

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to Owner and the State of California for the complete and proper performance of the Construction Contract, which is incorporated herein by reference.
2. If Contractor completely and properly performs all of its obligations under the Construction Contract, Surety and Contractor shall have no obligation under this Bond.
3. If there is no Owner Default, Surety's obligation under this Bond shall arise after:
 - 3.1. Owner provides Surety with written notice that Owner has declared a Contractor Default under the Construction Contract pursuant to the terms of the Construction Contract; and
 - 3.2. Owner has agreed to pay the Balance of the Contract Sum:
 - 3.2.1. To Surety in accordance with the terms of this Bond and the Construction Contract; or
 - 3.2.2. To a Contractor selected to perform the Construction Contract in accordance with the terms of this Bond and the Construction Contract.
4. When Owner has satisfied the conditions of Paragraph 3 above, Surety shall promptly (within forty [40] Days) and at Surety's expense elect to take one of the following actions:
 - 4.1. Arrange for Contractor, with consent of Owner, to perform and complete the Construction Contract (but Owner may withhold consent, in which case the Surety must elect an option described in Paragraphs 4.2, 4.3 or 4.4 below); or
 - 4.2. Undertake to perform and complete the Construction Contract itself, through its agents or through independent Contractors; provided, that Surety may not select Contractor as its agent or independent Contractor or Contractor without Owner's consent; or
 - 4.3. Undertake to perform and complete the Construction Contract by obtaining bids from qualified Contractors acceptable to Owner for a Contract for performance and completion of the Construction Contract and, upon determination by Owner of the lowest responsive and responsible Bidder, arrange for a Contract to be prepared for execution by Owner and the Contractor or Contractor selected with 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, if Surety's obligations defined in Paragraph 7 below, exceed the Balance of the Contract Sum, then Surety shall pay to Owner the amount of such excess; or
 - 4.4. Waive its right to perform and complete, arrange for completion, or obtain a new Contractor or Contractor, and with reasonable promptness under the circumstances and, after investigation and consultation with Owner, determine in good faith its monetary obligation to Owner under Paragraph 7 below, for the performance and completion of the Construction Contract and, as soon as practicable after the amount is determined, tender payment therefor to Owner with full explanation of the payment's calculation. If Owner accepts Surety's tender under this Paragraph 4.4, Owner may still hold Surety liable for future damages then unknown or unliquidated resulting from the Contractor Default, as agreed by Owner and Surety at the time of tender. If Owner disputes the amount of Surety's tender under this Paragraph 4.4, Owner may exercise all remedies available to it at law to enforce Surety's liability under Paragraph 7 below.
5. If Surety does not proceed as provided in Paragraph 4 above then Surety shall be deemed to be in default on this Bond ten Days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond. Such Surety default shall be independent from the Contractor Default. To the extent Surety's independent default causes Owner to suffer damages, including, but not limited to, delay damages, which are different from, or in addition to (but not duplicative of) damages which Owner is entitled to receive under the Construction Contract, Surety shall also be liable for such damages.
6. At all times Owner shall be entitled to enforce any remedy available to Owner at law or under the Construction Contract including, without limitation, and by way of example only, rights to perform

Work, protect Work, mitigate damages, advance critical Work to mitigate schedule delay, and coordinate Work with other consultants or Contractors.

7. If Surety timely elects to act under Paragraphs 4.1, 4.2 or 4.3 above and complies with its obligations under this Bond, Surety's obligations under this Bond are commensurate with the obligations of Contractor under the Construction Contract. Surety's obligations shall include, but are not limited to:
 - 7.1. The responsibilities of Contractor under the Construction Contract for completion of the Construction Contract and correction of defective Work;
 - 7.2. The responsibilities of Contractor under the Construction Contract to pay liquidated damages; and
 - 7.3. Additional legal, professional and delay costs resulting from Contractor Default or resulting from the actions or failure to act of the Surety under Paragraph 4 above (but excluding attorney's fees incurred to enforce this Bond).
8. If Surety timely elects to act under Paragraphs 4.1, 4.3 or 4.4 above and complies with its obligations under this Bond, Surety's monetary obligation under this Bond is limited by the amount of this Bond identified herein as the Penal Sum.
9. No right of action shall accrue on this Bond to any person or entity other than Owner or its successors or assigns.
10. Surety hereby waives notice of any change, alteration or addition to the Construction Contract or to related Subcontracts, Agreements, purchase orders and other obligations, including changes of time, and of any Owner action in accordance with Paragraph 6 above. Surety consents to all terms of the Construction Contract, including provisions on changes to the Contract. No extension of time, change, alteration, Modification, deletion, or addition to the Contract Documents, or of the Work (including services) required thereunder, or any Owner action in accordance with Paragraph 6 above shall release or exonerate Surety on this Bond or in any way affect the obligations of Surety on this Bond, unless such action is an Owner Default. Except in the event of an Owner Default, and to the extent Surety is damaged thereby, Surety hereby waives the provisions of California Civil Code Section 2809, and any other law which either prohibits, restricts, limits or modifies in any way any obligation of a Surety which is larger in amount or in any other respect more burdensome than that of the principal.
11. Any proceeding, legal or equitable, under this Bond shall be instituted in any court of competent jurisdiction where a proceeding is pending between Owner and Contractor regarding the Construction Contract, or in the courts of the County of Monterey, or in a court of competent jurisdiction in the location in which the Work is located. Communications from Owner to Surety under Paragraph 3.1 above shall be deemed to include the necessary Agreements under Paragraph 3.2 above unless expressly stated otherwise.
12. All notices to Surety or Contractor shall be mailed or delivered (at the address set forth on the signature page of this Bond), and all notices to Owner shall be mailed or delivered as provided in Document 00 5000 (Agreement). Actual receipt of notice by Surety, Owner or Contractor, however accomplished, shall be sufficient compliance as of the date received at the foregoing addresses.
13. Any provision in this Bond conflicting with any statutory or regulatory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein.

Definitions

Balance of the Contract Sum: The total amount payable by Owner to Contractor pursuant to the terms of the Construction Contract after all proper adjustments have been made under the Construction Contract, for example, deductions for progress payments made, and increases/decreases for approved Modifications to the Construction Contract.

Construction Contract: The Agreement between Owner and Contractor identified on the

signature page of this Bond, including all Contract Documents and changes thereto.

Contractor Default: Material failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract, limited to “default” or any other condition allowing a termination for cause as provided in Document 00 7100 (General Conditions).

Owner Default: Material failure of Owner, which has neither been remedied nor waived, to pay Contractor progress payments due under the Construction Contract or to perform other material terms of the Construction Contract, if such failure is the cause of the asserted Contractor Default and is sufficient to justify Contractor termination of the Construction Contract.