



# AIA Document A133™ – 2009 Exhibit A-1

## Guaranteed Maximum Price Amendment

*(Paragraphs deleted)*

**for the following PROJECT:**

*(Name and address or location)*

City of Venice Generator  
401 W. Venice Avenue  
Venice, FL 34285

**THE OWNER:**

*(Name, legal status and address)*

City of Venice  
401 W. Venice Avenue  
Venice, FL 34285

**THE CONSTRUCTION MANAGER:**

*(Name, legal status and address)*

Willis A. Smith Construction, Inc.  
5001 Lakewood Ranch Blvd.  
Sarasota, FL 34240

### ARTICLE A.1

#### § A.1.1 Guaranteed Maximum Price

Pursuant to Section 2.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of this Agreement.

**§ A.1.1.1** The Contract Sum, is guaranteed by the Construction Manager not to exceed One Million, One Hundred Forty Thousand Two Hundred Forty Six Dollars and no/100 Dollars (\$1,140,246.00), subject to additions and deductions by Change Order as provided in the Contract Documents.

Preconstruction	\$ 85,000
<b>Amendment A-1 Generator</b>	<b>\$1,055,246</b>
<b>Total</b>	<b>\$1,140,246</b>

**§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price.** Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Construction Manager's Fee, and other items that comprise the Guaranteed Maximum Price.  
*(Provide below or reference an attachment.)*

See attached Exhibit B-1 - GMP Estimate dated May 1, 2020 (1 page), and Exhibit C-1 - Scope, Clarifications & Exclusions dated 5/1/2020 (1 page).

**§ A.1.1.3** The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

#### 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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

(State the numbers or other identification of accepted alternates. If the Contract Documents permit the Owner to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

See attached Exhibit B-1 - GMP Estimate dated May 1, 2020 (1 page).

**§ A.1.1.4** Allowances included in the Guaranteed Maximum Price, if any:  
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
See attached Exhibit C-1 - Scope, Clarifications & Exclusions dated 5/1/2020 (1 page).	

**§ A.1.1.5** Assumptions, if any, on which the Guaranteed Maximum Price is based:

See attached Exhibit C-1 - Scope, Clarifications & Exclusions dated 5/1/2020 (1 page).

**§ A.1.1.6** The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
See attached Exhibit C-1	Scope, Clarifications & Exclusions	5/1/2020	1

**§ A.1.1.7** The Guaranteed Maximum Price is based upon the following Specifications:  
(Either list the Specifications here, or refer to an exhibit attached to this Agreement.)  
N/A

Section	Title	Date	Pages
See attached Exhibit D-1	Plans and Specifications Log	3/2/2020	2

**§ A.1.1.8** The Guaranteed Maximum Price is based upon the following Drawings:  
(Either list the Drawings here, or refer to an exhibit attached to this Agreement.)

Number	Title	Date
See attached Exhibit D-1	Plans and Specifications Log	3/2/2020

**§ A.1.1.9** The Guaranteed Maximum Price is based upon the following other documents and information:  
(List any other documents or information here, or refer to an exhibit attached to this Agreement.)

Exhibit B-1 – GMP dated May 1, 2020 (1 page)  
Exhibit C-1 – Scope, Clarifications & Exclusions dated 5/1/2020 (1 page)  
Exhibit D-1 – Plans and Specifications Log (2 pages)  
Exhibit E-1 – Schedule (1 page)  
Exhibit F-1 – Bond (9 pages)  
Exhibit G-1 – Supplementary Conditions (12 pages)  
Exhibit H-1 – Bid Documents (318 pages)

## ARTICLE A.2

**§ A.2.1** The anticipated date of Substantial Completion established by this Amendment:

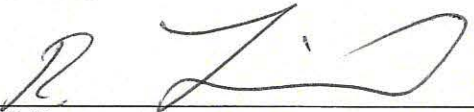
Refer to Exhibit E-1- Project Schedule

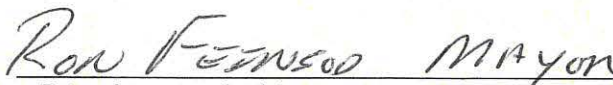
Substantial Complete Date of December 18, 2020

Init.



All parties agree that time is of the essence for the work described within this amendment and that actual damages incurred by the CITY due to delays in completion of this work caused by the CONSTRUCTION MANAGER and/or the CONSTRUCTION MANAGER's Subcontractor(s) will require compensation. Liquidated Damages should be in the amount stated below, for each calendar day (Weekends and Holidays included) the CONSTRUCTION MANAGER does not deliver the project after the date of Substantial Completion. The amount(s) of liquidated damages may be deducted and retained out of the monies payable to the CONSTRUCTION MANAGER. If not deducted, the CONSTRUCTION MANAGER and sureties for the CONSTRUCTION MANAGER shall be liable for this amount. The amount of liquidated damages to be assessed for each calendar day that Substantial Completion is delayed beyond the required date, caused by the CONSTRUCTION MANAGER, shall be Two Hundred Dollars and Zero cents (\$200.00) per day. The above stated liquidated damages provided shall be the Owner's exclusive remedy for delay damages.

  
\_\_\_\_\_  
OWNER (Signature)

  
\_\_\_\_\_  
(Printed name and title)

  
\_\_\_\_\_  
CONSTRUCTION MANAGER (Signature)

Brett Raymaker  
Vice President

\_\_\_\_\_  
(Printed name and title)

(Table deleted)(Paragraphs deleted)(Table deleted)(Paragraphs deleted)(Table deleted)(Paragraphs deleted)(Table deleted)(Paragraphs deleted)(Table deleted)(Paragraphs deleted)

**COV Emergency Generator**  
 City of Venice

**EXHIBIT B-1**  
**GMP Estimate**  
 May 1, 2020

Schedule

7 Months

Project Area (Square Feet)

2,838

Division	Scope of Work	Total	Comments
01A	General Conditions	68,862	
02A	Survey and Layout	6,500	
02B	Material Testing	3,500	
06A	Carpentry and Installations	7,678	
03A	Cast-In-Place Concrete/Masonry	107,377	
26A	Electrical	663,556	
<b>SUBTOTAL</b>		<b>857,473</b>	
	Permit Fee	18,000	Allowance
	FPL Primary and Transformer	65,000	Allowance
	Owner Contingency	17,149	2.00%
	Construction Contingency	25,724	3.00%
<b>SUBTOTAL</b>		<b>\$ 983,346</b>	
	Insurance/Risk Management	8,850	0.90%
	Builder's Risk Insurance	0	Provided by owner
<b>SUBTOTAL</b>		<b>\$ 992,197</b>	
	Contractor Fee/Overhead	54,571	5.5%
<b>SUBTOTAL</b>		<b>\$ 1,046,767</b>	
	Payment/Performance Bond	8,479	0.81%
<b>GRAND TOTAL</b>		<b>\$ 1,055,246</b>	

**COV Emergency Generator**  
City of Venice

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**Scope of Work**

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- Complete Construction Management (CM) services for your project.
- All work to be per drawings and specifications prepared by Sweet Sparkman Architects dated plans 3/2/2020 except as noted in the clarifications and exclusions listed below.
- Includes Addenda 01 thru 04.
- Includes RFI 15- Generator Concrete Pad
- The Project Schedule shall be 7 months based on the attached Project Schedule. Construction to commence after issuance of building permit and receipt of executed contract or Purchase Order.
- Proposal is good until June 1, 2020. Approval after this date is subject to repricing.

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**Guaranteed Maximum Price**

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- |                                                                   |              |
|-------------------------------------------------------------------|--------------|
| • The Guaranteed Maximum Price (GMP) estimate for your project is | \$ 1,055,246 |
|-------------------------------------------------------------------|--------------|

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**Clarifications**

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**General**

- Estimate based on normal working hours (Monday - Friday 7:00am - 3:30pm).
- Payment and Performance Bond will be billed as a lump sum at the first billing period after issuance of the Notice to Proceed or execution of the contract/purchase order.
- The included Insurance/Risk Management that is included within this GMP will be billed as a lump sum at the first billing period, after issuance of the Notice to Proceed or execution of the contract/purchase order.
- Includes sales tax on all materials provided to the project. If tax exempt, owner may elect to purchase materials over \$10,000 directly for tax savings.
  - At the conclusion of the project, if any owner material purchase orders have a balance, the remaining value of the purchase order plus the applicable sales tax shall be returned to the contractor via additive change order to the Construction Manager.
- Includes Davis Bacon Rates.
- Includes and adheres to the Certification Regarding Lobbying Form.
- Includes, adheres and takes no exception of Disclosure of Lobbying Activities Form.
- Have reviewed and take no exception of Certification Regarding Debarment Form.
- GMP includes a construction contingency. Below are acceptable uses for the contingency but does not outline all potential usages:
  - Repair of damage to installed work
  - Improve upon project schedule including workforce supplementation
  - Work resulting from scope gaps or ambiguity of the contract documents

**Electrical**

- Includes complete genset package per plans and specs
- At the time of completion of the scope of work, only the new City Hall ATS will be operable. The remaining ATS's (Fire Station & Chiller Yard) will be operable at completion of the Fire Station 1 & City Hall Expansion portion of the project.
- Includes relocation of FPL primary conduit and installation of new transformer per construction documents

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**Exclusions**

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- Builder's Risk Insurance (to be provided by the owner)
- Utility and Gas Connection Fees, Meters and Service
- Hazardous Materials Testing
- Filled generator fuel tank. Only fuel to be provided for testing purposes
- Professional Architectural and Engineering
- Unforeseen Conditions



CITY OF VENICE GENERATOR  
City of Venice  
401 E. Venice Avenue  
Venice, FL 34285



**Plans Log (Exhibit D-1)**

**Architect:**

**Plans Development Stage:**

**Date:**

**Sweet Sparkman Architects**  
**100% Construction Documents**  
**3/2/2020**

Sheet Number	Sheet Title	Issuance Date	Addendum 01	Addendum 02	Addendum 03	Addendum 04
<b>CIVIL</b>						
C1.3	SITE DEMOLITION PLAN	3/2/2020				
C1.4	GRADING & STORM DRAINAGE PLAN	3/2/2020				
<b>ARCHITECTURAL</b>						
AB0.3	ARCHITECTURAL SITE PLAN	3/2/2020				
AB0.4	ENLARGED SITE PLANS & DETAILS	3/2/2020				
<b>STRUCTURAL</b>						
S-101	GROUND FLOOR PLAN	3/2/2020				
S-411	SECTIONS	3/2/2020				
<b>ELECTRICAL</b>						
EB7.1	ELECTRICAL DEMOLITION RISER	3/2/2020				
EB7.2	GENERATOR RISER - BLDG B	3/2/2020				

CITY OF VENICE GENERATOR  
City of Venice  
401 E. Venice Avenue  
Venice, FL 34285



**Specifications Log (Exhibit D-1)**

Architect: Sweet Sparkman Architects  
Plans Development Stage: Construction Documents  
Date: 3/2/2020

Division	Section	Specification Title	Issuance Date	Addendum 01	Addendum 02	Addendum 03	Addendum 04
		SPECIFICATIONS ARE INCLUDED WITH THE FIRE STATION 1 AND CITY HALL EXPANSION PROJECT MANUAL					

CONTRACTOR Initials\_\_\_\_\_

SUBCONTRACTOR Initials\_\_\_\_\_

## City of Venice Generator



ID	Task Name	Duration	Start	Finish	Qtr 3, 2019				Qtr 1, 2020				Qtr 3, 2020				Qtr 1, 2021				Qtr 3, 2021				Qtr 1, 2022			
					May	Jul	Sep	Nov	Jan	Mar	May	Jul	Sep	Nov	Jan	Mar	May	Jul	Sep	Nov	Jan	Mar	May	Jul	Sep	Nov	Jan	Mar
1	City of Venice- Fire Station 1 & City Hall Expansion/Renovations	544 days	Mon 9/30/19	Fri 11/12/21																								
2	Permitting & Review	213 days	Mon 9/30/19	Mon 7/27/20																								
3	SD Estimate Presentation	0 days	Mon 9/30/19	Mon 9/30/19																								
4	DD Documents & Estimate	22 days	Mon 10/28/19	Tue 11/26/19																								
5	Venice Site Permit & SWFWMD Submittal	40 days	Fri 11/22/19	Fri 1/17/20																								
6	CD Documents & Estimate	45 days	Fri 2/28/20	Thu 4/30/20																								
7	Submit for Building Permit	45 days	Fri 2/28/20	Thu 4/30/20																								
8	City Council Meeting for GMP	1 day	Tue 5/26/20	Tue 5/26/20																								
9	GMP Award & NTP	3 days	Wed 5/27/20	Fri 5/29/20																								
10	Procurement and Submittals	20 days	Mon 6/1/20	Fri 6/26/20																								
11	FPL Design/Engineering	40 days	Mon 6/1/20	Mon 7/27/20																								
12	Notice to Demo	10 days	Mon 6/8/20	Fri 6/19/20																								
13	Milestones	371 days	Fri 5/29/20	Fri 11/12/21																								
23	Install New Generator	141 days	Mon 6/1/20	Fri 12/18/20																								
24	Prepare Equipment Submittal	15 days	Mon 6/1/20	Fri 6/19/20																								
25	Submit for Approval	1 day	Mon 6/22/20	Mon 6/22/20																								
26	Review & Approval of Equipment	15 days	Tue 6/23/20	Tue 7/14/20																								
27	Lead Time & Delivery of Equipment	100 days	Wed 7/15/20	Fri 12/4/20																								
28	Pad Prep & Concrete Placement	10 days	Tue 10/20/20	Mon 11/2/20																								
29	Pull, Test, & Install Conductors (Generator to Transfer Switches)	10 days	Tue 11/3/20	Mon 11/16/20																								
30	Pull, Test, & Install Conductors (Gear to City Hall)	5 days	Tue 11/17/20	Mon 11/23/20																								
31	Set Generator & Test	10 days	Mon 12/7/20	Fri 12/18/20																								
32	Streetscape Harbor Drive South	38 days	Mon 6/1/20	Thu 7/23/20																								
41	Central Energy Plant	237 days	Mon 6/1/20	Wed 5/5/21																								
53	Site Prep & New Electrical Distribution	100 days	Mon 6/1/20	Tue 10/20/20																								
54	Ground Penetrating Radar Locate	5 days	Mon 6/1/20	Fri 6/5/20																								
55	Install Construction Fence	3 days	Mon 6/8/20	Wed 6/10/20																								
56	Tree Protection	3 days	Thu 6/11/20	Mon 6/15/20																								
57	Place Construction Trailer & Utilities	5 days	Thu 6/11/20	Wed 6/17/20																								
58	Site Demo	10 days	Thu 6/18/20	Wed 7/1/20																								
59	Install Secondary Conduits & Conductors	15 days	Thu 7/2/20	Thu 7/23/20																								
60	Install FPL Primary Conduits & Prepare Easements	20 days	Tue 7/28/20	Mon 8/24/20																								
61	Placement of Transformer Pad	2 days	Tue 8/25/20	Wed 8/26/20																								
62	Submit Easements to City Council	10 days	Tue 8/25/20	Tue 9/8/20																								
63	Approve & Record Easements	10 days	Wed 9/9/20	Tue 9/22/20																								
64	FPL pull conductors, set transformer & energize	20 days	Wed 9/23/20	Tue 10/20/20																								
65	Construction of Fire Station & City Hall Expansion	271 days	Mon 6/29/20	Thu 7/22/21																								
114	Sitework	238 days	Mon 8/31/20	Fri 8/6/21																								
134	City Hall Renovation	80 days	Fri 7/23/21	Fri 11/12/21																								





# AIA Document A312™ – 2010

## Performance Bond

Bond No. K40575091

### CONTRACTOR:

(Name, legal status and address)

Willis A. Smith Construction, Inc.  
5001 Lakewood Ranch Blvd. North  
Sarasota, FL 34240  
(941) 366-3116

### OWNER:

(Name, legal status and address)

City of Venice, Florida  
401 W. Venice Avenue  
Venice, FL 34285  
(941) 486-2626

### CONSTRUCTION CONTRACT

Date: October 8, 2019

### SURETY:

(Name, legal status and principal place of business)

Federal Insurance Company  
202B Hall's Mill Road  
Whitehouse Station, NJ 08889  
(908) 903-3493

Indiana Corporation

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.

AIA Document A312-2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

Amount: One Million Fifty-five Thousand Two Hundred Forty-six And No/100 (\$1,055,246.00)

### Description:

(Name and location)

Guaranteed Maximum Price Amendment A-1, City of Venice Generator, 401 W. Venice Avenue, Venice FL 34285

### BOND

Date: May 14, 2020

(Not earlier than Construction Contract Date)

Amount: One Million Fifty-five Thousand Two Hundred Forty-six And No/100 (\$1,055,246.00)

Modifications to this Bond: ☒ None ☐ See Section 16

### CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

Willis A. Smith Construction, Inc.

Signature:

Name David E. Sessions  
and Title: President

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

### SURETY

Company: (Corporate Seal)

Federal Insurance Company

Signature:

Name April L. Lively

and Title: Attorney-in-Fact and Resident Agent, State of Florida

(FOR INFORMATION ONLY — Name, address and telephone)

### AGENT or BROKER:

Guignard Company  
1904 Boothe Circle  
Longwood, FL 32750  
(407) 834-0022

### OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

Sweet Sparkman Architects  
2168 Main Street  
Sarasota, FL 34237

§ 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:

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

**CONTRACTOR AS PRINCIPAL**

**SURETY**

Company:

*(Corporate Seal)*

Company:

*(Corporate Seal)*

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Address \_\_\_\_\_

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Address \_\_\_\_\_

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.



# AIA Document A312™ – 2010

## Payment Bond

Bond No. K40575091

### CONTRACTOR:

(Name, legal status and address)

**Willis A. Smith Construction, Inc.**  
5001 Lakewood Ranch Blvd. North  
Sarasota, FL 34240  
(941) 366-3116

### OWNER:

(Name, legal status and address)

**City of Venice, Florida**  
401 W. Venice Avenue  
Venice, FL 34285  
(941) 486-2626

### CONSTRUCTION CONTRACT

Date: October 8, 2019

### SURETY:

(Name, legal status and principal place of business)

**Federal Insurance Company**  
202B Hall's Mill Road  
Whitehouse Station, NJ 08889  
(908) 903-3493

Indiana

Corporation

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.

AIA Document A312-2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

Amount: **One Million Fifty-five Thousand Two Hundred Forty-six And No/100 (\$1,055,246.00)**

### Description:

(Name and location)

**Guaranteed Maximum Price Amendment A-1, City of Venice Generator, 401 W. Venice Avenue, Venice FL 34285**

### BOND

Date: **May 14, 2020**

(Not earlier than Construction Contract Date)


Amount: **One Million Fifty-five Thousand Two Hundred Forty-six And No/100 (\$1,055,246.00)**

Modifications to this Bond: ☐ None ☒ See Section 18

### CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

**Willis A. Smith Construction, Inc.**


Signature:   
Name **David E. Sessions**  
and Title: **President**

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

### SURETY

Company: (Corporate Seal)

**Federal Insurance Company**

Signature:   
Name **April L. Lively**  
and Title: **Attorney-in-Fact and Resident Agent, State of Florida**

(FOR INFORMATION ONLY — Name, address and telephone)

### AGENT or BROKER:

**Guignard Company**  
1904 Boothe Circle  
Longwood, FL 32750  
(407) 834-0022

### OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

**Sweet Sparkman Architects**  
2168 Main Street  
Sarasota, FL 34237

§ 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:

This bond is given to comply with Section 255.05 Florida Statutes, and any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2), Florida Statutes.

*(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 \_\_\_\_\_

**CAUTION.** You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.



**Power of Attorney**

Federal Insurance Company | Vigilant Insurance Company | Pacific Indemnity Company

**Know All by These Presents**, That **FEDERAL INSURANCE COMPANY**, an Indiana corporation, **VIGILANT INSURANCE COMPANY**, a New York corporation, and **PACIFIC INDEMNITY COMPANY**, a Wisconsin corporation, do each hereby constitute and appoint Paul J Ciambriello, Deborah Ann Defoe, Bryce R. Guignard, Jennifer L. Hindley, April L. Lively, Margie L. Morris, Christine A. Morton, Kelly Phelan and Allyson Foss Wing of Longwood, Florida -----

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

**In Witness Whereof**, said **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** have each executed and attested these presents and affixed their corporate seals on this **17<sup>th</sup>** day of **October, 2019**.

*Dawn M. Chloros*

Dawn M. Chloros, Assistant Secretary

*Stephen M. Haney*

Stephen M. Haney, Vice President



STATE OF NEW JERSEY

County of Hunterdon

SS.

On this **17<sup>th</sup>** day of **October, 2019**, before me, a Notary Public of New Jersey, personally came Dawn M. Chloros, to me known to be Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros, being by me duly sworn, did depose and say that she is Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of said Companies; and that she signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that she is acquainted with Stephen M. Haney, and knows him to be Vice President of said Companies; and that the signature of Stephen M. Haney, subscribed to said Power of Attorney is in the genuine handwriting of Stephen M. Haney, and was thereto subscribed by authority of said Companies and in deponent's presence.

Notarial Seal



KATHERINE J. ADELAAR  
NOTARY PUBLIC OF NEW JERSEY  
No. 2316685  
Commission Expires July 16, 2024

*Katherine J. Adelaar*

Notary Public

**CERTIFICATION**

Resolutions adopted by the Boards of Directors of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY on August 30, 2016:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into in the ordinary course of business (each a "Written Commitment"):

- (1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.
- (2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such person's written appointment as such attorney-in-fact.
- (3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (4) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing to any other officer of the Company the authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested."

I, Dawn M. Chloros, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY (the "Companies") do hereby certify that

- (i) the foregoing Resolutions adopted by the Board of Directors of the Companies are true, correct and in full force and effect,
- (ii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Whitehouse Station, NJ, this **May 14, 2020**



*Dawn M. Chloros*

Dawn M. Chloros, Assistant Secretary

IN THE EVENT YOU WISH TO VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT:  
Telephone (908) 903-3493 Fax (908) 903-3656 e-mail: surety@chubb.com