

AGREEMENT

THIS AGREEMENT, made and entered into this 7th day of April, 2009, by and between the City of Redlands, a Municipal Corporation, organized and existing under the laws of the State of California, hereinafter referred to as the "City", and WEKA, Inc. of the City of Redlands, County of San Bernardino, State of California, hereinafter referred to as the "Contractor".

WITNESSETH: That the City and the Contractor, for the consideration hereinafter named, agree as follows:

1. **SCOPE OF WORK:** The Contractor will furnish all materials and will perform all of the work for the following:

Construction of the Recycled Water Transmission Main, complete all as required by the Contract Documents and Specifications for **CAPITAL IMPROVEMENT PROGRAM, SEWER PIPELINE REPLACEMENT PROJECT, Project No. 2-0955.**

2. **THE CONTRACT SUM:** \$1, 052, 350.40 in accordance with the terms and conditions set forth in the Contract Documents.

A. Pursuant to Section 22300 of the California Public Contract Code, Contractor has the option to deposit securities with an Escrow Agent as a substitute for retention of earnings requirement to be withheld by City pursuant to an Escrow Agreement as set forth in the Public Contract Code Section 22300.

3. **TIME FOR COMPLETION:** The work under this Contract is to be completed within one hundred (100) calendar days from and after the date of the Notice to Proceed.
4. **LIQUIDATED DAMAGES:** Failure of the Contractor to complete the work within the time allowed will result in damages being sustained by the City. Such damages are, and will continue to be, impracticable and extremely difficult to determine. The Contractor shall pay to the City, or have withheld from monies due it, the sum of **\$500** for each consecutive calendar day in excess of the specified time for completion of the work.

Execution of the Contract shall constitute agreement by the City and Contractor that **\$500** per day is the minimum and actual damage caused by the failure of the Contractor to complete the work within the allowed time. Such sum is liquidated damages and shall not be construed as a penalty, and may be deducted from payments due the Contractor if such delay occurs.

5. **CONTRACT DOCUMENTS:** The complete contract documents under this Agreement includes all of the contract documents set forth herein, to wit; Notice Inviting Bids, Instructions to Bidders, Proposal, Bid Bond, Agreement, Performance Bond, Labor and Material Bond, Plans, General Conditions, Special Conditions, Special Provisions and Specifications and any addenda thereto.

6. **ATTORNEYS' FEES:** In the event any legal action is commenced to enforce or interpret the terms or conditions of the contract documents, the prevailing party in such action, in addition to any costs and other relief, shall be entitled to recover its reasonable attorneys' fees.
7. **RESOLUTION OF CONSTRUCTION CLAIMS:** Claims by the Contractor in the amount of \$375,000 or less shall be made by Contractor and processed by the City pursuant to the provisions of Part 3, Chapter 1, Article 1.5 of the Public Contract Code (commencing with Section 20104). All claims shall be in writing and include the documents necessary to substantiate the claim. Nothing in subdivision (a) of Public Contract Code Section 20104.2 shall extend the time limit or supersede the notice requirements provided in this case from filing claims by Contractor.
8. **ELIGIBILITY OF CONTRACTOR/SUBCONTRACTOR:** Contractor and any subcontractors agree to abide by California Public Contract Code, Section 6109, and California Labor Code Sections 1777.1 and/or 1777.7, and certify that they are not debarred and are eligible to work on this project.
9. **ASSIGNMENT OF AGREEMENT:** No assignment by a party hereto of any rights or interests under this agreement will be binding on another party without the written consent of the party sought to be bound.
10. **SUCCESSORS AND ASSIGNS:** City and Contractor each binds itself, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.
11. **SEVERABILITY:** Any provision or part of the contract documents held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon City and Contractor.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

(SEAL)

City of Redlands
(Owner)

By: _____

Joe Hansen
Mayor, City of Redlands, County of
San Bernardino, California

ATTEST:

Diana Payne
City Clerk, City of Redlands
County of San Bernardino, California

(SEAL)

Weka, Inc.
Name of Contractor

By: _____

Jared Himle
Signature of Authorized Agent

Jared Himle, President
Title

Signature of Authorized Agent (if necessary)

Title

670100

Contractor's License No.

WORKER'S COMPENSATION INSURANCE CERTIFICATION

Description of Contract:

City of Redlands
Municipal Utilities Department
**CAPITAL IMPROVEMENT PROGRAM,
SEWER PIPELINE REPLACEMENT PROJECT,
Project No. 2-0955**

Labor Code, Section 3700, provides, in part that:

"Every employer except the State, shall secure the payment of compensation in one or more of the following ways:

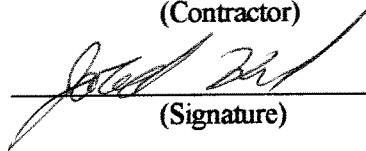
- (a) By being insured against liability to pay compensation in one or more insurer duly authorized to write compensation insurance in this State.
- (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, either as an individual employer, or as one employer in a group of employers which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.

I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this contract. (Labor Code section 1861)

Dated this 15th day of April, 2009.

Weka, Inc.

(Contractor)



(Signature)

Jared Himle, President

(Official Title)

(SEAL)

(Labor Code Section 1861 provides that the above certificate must be signed and filed by the Contractor with the Owner prior to performing the work of the contract.)

Bond issued in two (2) counterparts

Bond No. 58656726

Premium: \$11,461.00

Premium is for contract term
and is subject to adjustment
based on final contract price.

PERFORMANCE BOND

Whereas, the City Council of the City of Redlands, State of California, and WEKA, Inc. (hereinafter designated as "Principal") have entered into an agreement whereby Principal agrees to install and complete certain designated public improvements, which said agreement, dated April 9, 2009, and identified as **Construction of CAPITAL IMPROVEMENT PROGRAM, SEWER PIPELINE REPLACEMENT PROJECT, Project No. 2-0955** is hereby referred to and made a part hereof; and

Whereas, said Principal is required under the terms of said agreement to furnish a bond for the performance of said project.

Now, therefore, said Principal and Western Surety Company, as surety, are held firmly bound unto the City of Redlands (hereinafter call "City"), in the penal sum of One million fifty two thousand, three hundred fifty Dollars and forty Cents (\$1,052,350.40) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounded Principal, his or hers heirs, executors, administrator, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, or his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall defend, indemnify and save harmless the City, its elected officials, officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition the face amount specified therefore, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees incurred by the City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

In witness whereof, this instrument has been duly executed by the Principal and surety above named, on

April 13 2009

(SEAL)

(SEAL)

Weka, Inc.

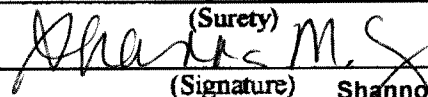
(Contractor)


(Signature)
Jared Himle, President

Western Surety Company

(Surety)

BY:


(Signature) Shannon M. Lopez

Address: PO Box 29242

Phoenix, AZ 85038-9242

Telephone (866) 521-3309

(Seal and Notarial Acknowledgment of
Surety)

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

State of California

County of San Bernardino

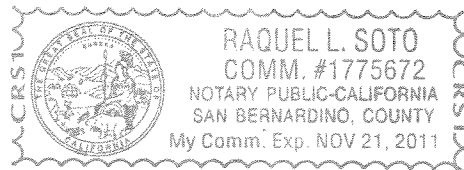
On April 13, 2009 before me Raquel L. Soto, Notary Public, personally appeared
Shannon Lopez

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature(s) on the instrument the person, or the entity upon behalf of which the person 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 Raquel L. Soto (Seal)



OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

Title(s)

- ☐ PARTNERS ☐ LIMITED
☐ GENERAL
☒ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

Performance Bond
Title or Type of Document

1
Number of Pages

4/13/09
Date of Document

SIGNER IS REPRESENTING:

Western Surety Company

Weka, Inc.
Signer(s) other than Named Above

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

**Peter M Davis, Kenzie K Thompson, Shannon M Lopez, Gale Delo, Martin M Davis,
Individually**

of Redlands, CA, 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 Senior Vice President and its corporate seal to be hereto affixed on this 30th day of April, 2008.



WESTERN SURETY COMPANY

Paul T. Bruflat, Senior Vice President

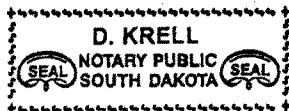
State of South Dakota }
County of Minnehaha }

ss

On this 30th day of April, 2008, 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 Senior 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

November 30, 2012



D. Krell, 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 13TH day of APRIL, 2009.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

Authorizing By-Law

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

LABOR AND MATERIAL BOND

Whereas, the City Council of the City of Redlands, State of California, and WEKA Inc. (hereinafter designated as "Principal") have entered into an agreement whereby Principal agrees to install and complete certain designated public improvements, which said agreement, dated April 9,
2009, and identified as **CAPITAL IMPROVEMENT PROGRAM, SEWER PIPELINE REPLACEMENT PROJECT, Project No. 2-0955**, is hereby referred to and made a part hereof; and

Whereas, under the terms of said agreement, Principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the City of Redlands to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California.

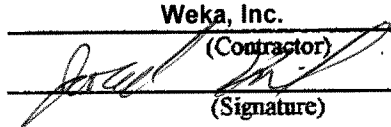
Now, therefore, said Principal and the undersigned as corporate surety, are held firmly bound unto the City of Redlands and all contractors, subcontractors, laborers, material men and other persons employed in the performance of the aforesaid agreement and referred to in the aforesaid Code of Civil Procedure in the sum of One million fifty two thousand, three hundred fifty Dollars and forty Cents (\$1,052,350.40) for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that said surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City of Redlands in successfully enforcing such obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall insure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

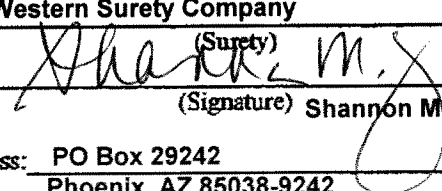
Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition.

In witness whereof, this instrument has been duly executed by the Principal and surety above named, on
April 13, 2009

(SEAL)
Weka, Inc.
(Contractor)

(Signature)
Jared Himle, President

(Seal and Notarial Acknowledgment of Surety)

(SEAL)
Western Surety Company
(Surety)
BY: 
(Signature) Shannon M. Lopez
Address: PO Box 29242
Phoenix, AZ 85038-9242
Telephone (866) 521-3309

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

State of California

County of San Bernardino

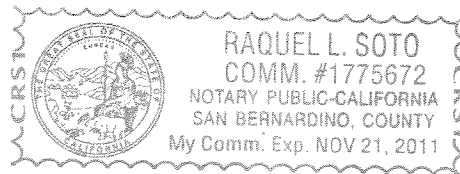
On April 13, 2009 before me Raquel L. Soto, Notary Public, personally appeared
Shannon Lopez

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature(s) on the instrument the person, or the entity upon behalf of which the person 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 Raquel L. Soto (Seal)



OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

Title(s)

- ☐ PARTNERS ☐ LIMITED
☐ GENERAL
☒ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

Payment Bond
Title or Type of Document

1
Number of Pages

4/13/09
Date of Document

SIGNER IS REPRESENTING:

Western Surety Company

Weka, Inc.
Signer(s) other than Named Above

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

**Peter M Davis, Kenzie K Thompson, Shannon M Lopez, Gale Delo, Martin M Davis,
Individually**

of Redlands, CA, 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 Senior Vice President and its corporate seal to be hereto affixed on this 30th day of April, 2008.



WESTERN SURETY COMPANY

Paul T. Bruflat, Senior Vice President

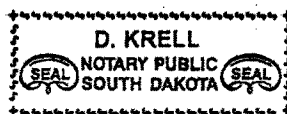
State of South Dakota
County of Minnehaha

} ss

On this 30th day of April, 2008, 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 Senior 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

November 30, 2012



D. Krell, 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 13TH day of APRIL, 2009.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

Authorizing By-Law

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

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Amendment to Agreement
Between
The City of Redlands
And
WEKA Incorporated
For
Capital Improvement Program – Sewer Pipeline Replacement Project
Project # 2-0955

The following amends the Agreement between the City of Redlands (Owner) and WEKA Incorporated (Contractor).

Revise Part ‘G’ , subs-section 2 of the Bid Documents, page BD 4 to remove ‘ocean transit’ from the Builders All Risk Insurance.

Part ‘G’, sub-section 2 is amended to read as follows:

2. be written on a Builder’s Risk “all-risk” or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and Work in storage at the project site or at another location acceptable to the City, and shall insure against at least the following perils: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition, occasioned by enforcement of laws and regulations, water damage, and damage caused by frost and freezing.

All other specifications and provisions are unaltered and are in full effect.

WEKA Incorporated stipulates that all materials and supplies needed to perform the contracted work is currently in the United States of America, and no ocean transit of materials or supplies is needed.

End of Amendment