

CITY OF BELL
CONTRACT SERVICES AGREEMENT FOR
BONDHOLDER LOCATION AND TENDER OFFER SERVICES

This Contract Services Agreement for Bondholder Location and Tender Offer Services ("Agreement") is made and entered into this 21st day of March 2012, by and between the City of Bell, a municipal corporation ("City"), and Bondholder Communications Group, LLC ("Consultant").

NOW, THEREFORE, the parties hereto agree as follows:

1.0 SERVICES OF CONSULTANT

Scope of Services. In compliance with all of the terms and conditions of this Agreement, Consultant shall perform the work or services set forth in the "Scope of Services" attached hereto as *Exhibit "A"* and incorporated herein by reference. The Consultant's Engagement Letter for Bondholder Identification and Tender Offer Services related to the City of Bell General Obligation Bonds (Election of 2003), Series 2007 is attached to *Exhibit "A"* and incorporated herein by this reference ("Proposal"). Consultant warrants that all work or services set forth in the Scope of Services will be performed in a competent, professional and satisfactory manner. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that Consultant is a provider of first class work and services and Consultant is experienced in performing the work and services contemplated herein and, in light of such status and experience, Consultant covenants that it has the experience and knowledge to perform the contemplated services and shall follow the highest professional standards in performing the work and services required hereunder.

1.1 Compliance With Law. All work and services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules and regulations of the City and any federal, state or local governmental agency of competent jurisdiction.

1.2 Licenses, Permits, Fees and Assessments. Consultant shall obtain, at its sole cost and expense, such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement.

2.0 COMPENSATION

2.1 Contract Sum. For the services rendered pursuant to this Agreement, Consultant shall be compensated in accordance with the rates and amounts set forth in the Exhibit A hereto, but not exceeding the maximum contract amount of \$30,000.00 ("Contract Sum"). Expenses, which are not included in the Contract Sum, shall be reimbursed in accordance with Consultant's 2011 Expense Schedule attached to its letter on Exhibit A hereto.

2.2 Method of Payment. Provided that Consultant is not in default under the terms of this Agreement, Consultant shall be paid upon completion and acceptance of the work by the City or as otherwise described in Exhibit A hereto.

3.0 COORDINATION OF WORK

3.1 Representative of Consultant. Ted Bloch is hereby designated as being the representative of Consultant authorized to act on its behalf with respect to the work or services specified herein and make all decisions in connection therewith.

3.2 Contract Officer. The City's Chief Administrative Officer is hereby designated as being the representative the City authorized to act in its behalf with respect to the work and services specified herein and make all decisions in connection therewith ("Contract Officer"). The City may designate another Contract Officer by providing written notice to Consultant.

3.3 Prohibition Against Subcontracting or Assignment. Consultant shall not contract with any entity to perform in whole or in part the work or services required hereunder without the express written approval of the City. Neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City. Any such prohibited assignment or transfer shall be void.

3.4 Independent Contractor. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth on *Exhibit "A"*. Consultant shall perform all services required herein as an independent contractor of City and shall remain under only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City.

4.0 INSURANCE AND INDEMNIFICATION

4.1 Insurance. Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance:

(a) Commercial General Liability Insurance. A policy of commercial general liability insurance using Insurance Services Office "Commercial General Liability" policy form CG 00 01, with an edition date prior to 2004, or the exact equivalent. Coverage for an additional insured shall not be limited to its vicarious liability. Defense costs must be paid in addition to limits. Limits shall be no less than \$1,000,00.00 per occurrence for all covered losses and no less than \$2,000,000.00 general aggregate.

(b) Workers' Compensation Insurance. A policy of workers' compensation insurance on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident for all covered losses.

(c) Automotive Insurance. Not applicable.

(d) Professional Liability or Error and Omissions Insurance. A policy of insurance in an amount not less than \$1,000,000.00 per claim or as is customary for the work to be performed under this contract with respect to loss arising from the actions of Consultant performing professional services hereunder on behalf of the City.

All of the above policies of insurance shall be primary insurance. The general liability policy shall name the City, its officers, employees and agents ("City Parties") as additional insureds and shall waive all rights of subrogation and contribution it may have against the City and the City's Parties and their respective insurers. All of said policies of insurance shall provide that said insurance may be not cancelled without providing ten (10) days prior written notice by registered mail to the City. In the event any of said policies of insurance are cancelled or amended, Consultant shall, prior to the cancellation or amendment date, submit new evidence of insurance in conformance with this Section 4.1 to the Contract Officer. No work or services under this Agreement shall commence until Consultant has provided City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by City.

Consultant agrees that the provisions of this Section 4.1 shall not be construed as limiting in any way the extent to which Consultant may be held responsible for the payment of damages to any persons or property resulting from Consultant's activities or the activities of any person or persons for which Consultant is otherwise responsible.

The insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City due to unique circumstances.

In the event that the Consultant is authorized to subcontract any portion of the work or services provided pursuant to this Agreement, the contract between the Consultant and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Consultant is required to maintain pursuant to this Section 4.1.

4.2 Indemnification. To the fullest extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents against, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, including paying any legal costs, attorneys fees, or paying any judgment (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work or services of Consultant, its officers, agents, employees, agents, subcontractors, or invitees, provided for herein ("indemnitors"), or arising from Consultant's indemnitors' negligent performance of or failure to perform any term, provision, covenant, or condition of this Agreement, except claims or liabilities to the extent caused by the negligence or willful misconduct of the City indemnitees.

5.0 TERM

5.1 Term. Unless earlier terminated in accordance with Section 5.2 below, this Agreement shall continue in full force and effect until completion and acceptance of the work by the City.

5.2 Termination Prior to Expiration of Term. Either party may terminate this Agreement at any time, with or without cause, upon seven (7) days' written notice to the other party. Upon receipt of the notice of termination, the Consultant shall immediately cease all work or services hereunder except as may be specifically approved by the Contract Officer. In the event of termination by the City, Consultant shall be entitled to compensation for all services rendered prior to the effectiveness of the notice of termination and for such additional services specifically authorized by the Contract Officer and City shall be entitled to reimbursement for any compensation paid in excess of the services rendered.

6.0 MISCELLANEOUS

6.1 Covenant Against Discrimination. Consultant covenants that, by and for itself, its heirs, executors, assigns and all persons claiming under or through it, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin or ancestry.

6.2 Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

6.3 Conflict of Interest. No officer or employee of the City shall have any financial interest in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any state statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement. When requested by the Contract Officer, prior to the City's execution of this Agreement, Consultant shall provide the City with an executed statement of economic interest.

6.4 Notice. Any notice or other communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first class mail, in the case of the City, to the Chief Administrative Officer and to the attention of the Contract Officer, City of Bell, 6330 Pine Avenue, Bell, California 90201, and in the case of the Consultant, to the person at the address designated on the execution page of this Agreement.

6.5 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either

party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

6.6 Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and that this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by a writing signed by both parties.

6.7 Severability. In the event that part of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

6.8 Waiver. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

6.9 Attorneys' Fees. If either party to this Agreement is required to initiate, defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, shall be entitled to reasonable attorneys' fees, whether or not the matter proceeds to judgment.

6.10 Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

6.11 Confidentiality. Employees of Consultant, in the course of their duties, may have access to financial, accounting and statistical data provided by City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. Upon request, all City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this section shall survive the termination of this Agreement.

6.12 Law. This Agreement shall be governed by the laws of the State of California.

6.13 Ownership of Work Product. All reports, documents or other written material developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City provided that Consultant may retain a record copy for its file, subject to confidentiality requirements stated above.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first written above.

ATTEST:

By: Patricia Kelly
City Clerk

"CITY"
CITY OF BELL
By: AK
Anne Croce,
Interim Chief Administrative Officer

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

AK
City Attorney

"CONSULTANT"
BONDHOLDER COMMUNICATIONS
GROUP, LLC

By: Ted Bloch
Signature
TED BLOCH, VICE PRESIDENT
Print Name and Title

By: _____
Signature

Print Name and Title

Date: March 19, 2012

Designee: Ted Bloch

Bondholder Communication
Group LLC
30 Broad Street, 46th Floor
New York, New York 10004

EXHIBIT "A"

SCOPE OF SERVICES

Steps to be undertaken

Bondholder Identification Services (Compensation \$5,000)

For the purposes of Exhibit "A," "Bonds" means \$35,000,000 City of Bell General Obligation Bonds, Series 2007. "Holders" means the beneficial owners of the Bonds.

Consultant will identify the holders of the Bonds as of a single date (or as agreed to by the Contract Officer). We will deliver the results to City in a Bondholder Identification Report (the "Report"). Such Report will be provided to City in electronic and physical form.

The Report will provide City with information regarding the Holders, including Holders who hold their Bonds in "Street Name." Among other details, the Report will show the:

- Names and addresses of the Holders;
- Institutional vs. Retail Holdings;
- Nominee distribution of the Bonds – Top Institutional and Retail Firms;
- At Institutional Holders, the "key decision makers" for these accounts, such as fund managers, and their contact details;
- Largest Retail Holders and their financial advisors such as brokers and bank trust departments; and
- Geographical distribution of the Holders.

Consultant will provide City with the individuals with actual discretion over the accounts, which will have the added benefits of expediting City's tender offer and ensuring the documents get into the right hands.

Information and Tender Agent Services (Compensation \$25,000)

With respect to the Tender Offer (the "Offer") requiring communications with and obtaining responses from the Holders, we provide one or more of the following services as requested by City:

- Provide assistance in developing the mechanical aspects of the tender strategy;
- Provide assistance in the crafting of language to be used in communicating the offer to Holders, working closely with City and City's counsel and focusing on the mechanical aspects of the documents;
- Transmit the tender offer materials to Holders via email, and hard copies only if necessary. *Consultant recommends creating a website on which Consultant can post the documents and emailing electronic copies of the documents directly to the Holders and their contacts as identified in stage one. This will expedite the tender offer process and save the City money;*
- Follow up with bondholders (and their brokers) by telephone. Consultant would monitor responses by customers of each broker and bank holding Bonds on behalf of their customers;
- Consultant also coordinates with "back-offices" of brokerage and banking companies whose customers hold the Bonds;
- Set up and remain responsible for all operational relationships with the Depository Trust Company (DTC), including establishing an Automated Tender Offer Program (ATOP) account for the deal;
- Monitor the ATOP account and report on tenders received. Deliver real-time reports throughout the tender period so City will be able to see "moment-to-moment" how the tender is progressing, enabling the analysis of available data to support continuous decision-making;
- Obtain Holder response to the offer, including coordinating the back-office activities of all bank and broker nominees holding positions in the Bonds for the ultimate beneficial bond owners;
- Provide coordination and logistical support to the retail marketing teams of brokers and banks whose customers own the Bonds;
- Monitor activities by all brokerage firms with customers holding the Bonds (including "check-up" calls to their customers), reporting on their progress (and their "spin" on the deal) to City;

- “Bird Dog” Holder responses, including following up to make certain that Bonds that were promised to be tendered are actually tendered;
- Undertake continuing Holder communications and coordination in relation to acceptance of tenders, price setting, extensions (if any) and settlement;
- Coordinate contact with City, the Trustee, and DTC, as necessary to assure a successful settlement of the tender and cancellation of the Bonds;
- Coordinate the giving of all notices, including notices of acceptance and settlement;
- Review and process requests for payment of solicitation fees if any. Provide reports to City with respect to solicitation fees earned and payable;
- Receive and review requests for payments of broker and bank forwarding expenses;
- Disburse expense reimbursements;
- Record retention. Provide two forms of secure storage, for a minimum of 3 years, of all documents and records associated with the transaction.