


THE ATTACHED AGREEMENT HAS BEEN REVIEWED  
AND APPROVED AS TO FORM BY THE CITY  
ATTORNEY'S OFFICE AND WILL BE  
FORMALLY SIGNED UPON APPROVAL BY  
THE CITY COUNCIL

  
\_\_\_\_\_  
Glen R. Coogins  
City Attorney

Dated: 6/4/15

AGREEMENT BETWEEN  
CITY OF CHULA VISTA AND  
J.P. MORGAN SECURITIES LLC  
TO PROVIDE INVESTMENT BANKING &  
BOND UNDERWRITING SERVICES FOR THE BAYFRONT PROJECT

**Agreement between  
City of Chula Vista  
and  
J.P. Morgan Securities LLC,  
To Provide Investment Banking & Bond Underwriting Services for the Bayfront Project**

This agreement (Agreement), effective June 1, 2015, is between the City-related entity whose name and business form is indicated on Exhibit A, Paragraph 2, (City), and the entity whose name, business form, place of business and telephone numbers are indicated on Exhibit A, Paragraphs 4 through 6, (Consultant), and is made with reference to the following facts:

**RECITALS**

WHEREAS, the City and the San Diego Unified Port District (Port) have been participating in a joint planning effort to develop the Chula Vista Bayfront (the “Bayfront”); and

WHEREAS, when completed, the Bayfront will create thousands of new local and regional jobs, create new public parks, protect natural coastal resources, and provide conference and visitor-serving amenities; and

WHEREAS, over the next several years, the City anticipates new development projects in the Bayfront will require financing for infrastructure and other project costs; and

WHEREAS, the City intends to contract for investment banking and bond underwriting services to be performed in connection with the Bayfront project (the “Project”); and

WHEREAS, the Finance Department issued a Request for Proposals (RFP P09-14/15) to provide Investment Banking and Underwriting Services for the Bayfront project; and

WHEREAS, the City completed an evaluation of the proposals for Investment Banking & Underwriting Services and selected J.P. Morgan Securities LLC; and

WHEREAS, Consultant warrants and represents that it is experienced and staffed in a manner such that it can deliver the services required of Consultant to City in accordance with the time frames and the terms and conditions of this Agreement.

**[End of Recitals. Next Page Starts Obligatory Provisions.]**

## OBLIGATORY PROVISIONS PAGES

NOW, THEREFORE, for valuable consideration the City and Consultant do hereby mutually agree as follows:

All of the Recitals above are incorporated into this Agreement by this reference.

### ARTICLE I. CONSULTANT'S OBLIGATIONS

#### A. General

1. General Duties. Consultant shall perform all of the services described on Exhibit A, Paragraph 7 (General Duties).
2. Scope of Work and Schedule. In performing and delivering the General Duties, Consultant shall also perform the services, and deliver to City the "Deliverables" described in Exhibit A, Paragraph 8, entitled "Scope of Work and Schedule," according to, and within the time frames set forth in Exhibit A, Paragraph 8, time being of the essence of this agreement. The General Duties and the work and Deliverables required in the Scope of Work and Schedule shall be referred to as the "Defined Services." Failure to complete the Defined Services by the times indicated does not, except at the option of the City, terminate this Agreement.
  - a. *Reductions in Scope of Work.* City may independently, or upon request from Consultant, from time to time, reduce the Defined Services to be performed by the Consultant under this Agreement. Upon doing so, City and Consultant agree to meet in good faith and confer for the purpose of negotiating a corresponding reduction in the compensation associated with the reduction.
  - b. *Additional Services.* In addition to performing the Defined Services, City may require Consultant to perform additional consulting services related to the Defined Services (Additional Services), and upon doing so in writing, if they are within the scope of services offered by Consultant, Consultant shall perform same on a time and materials basis at the rates set forth in the "Rate Schedule" in Exhibit A, Paragraph 10(C), unless a separate fixed fee is otherwise agreed upon. All compensation for Additional Services shall be paid monthly as billed.
3. Standard of Care. The Consultant expressly warrants that the work to be performed pursuant to this Agreement, whether Defined Services or Additional Services, shall be performed in accordance with the standard of care ordinarily exercised by members of the profession currently practicing under similar conditions and in similar locations.
  - a. *No Waiver of Standard of Care.* Where approval by City is required, it is understood to be conceptual approval only and does not relieve the Consultant of responsibility for complying with all laws, codes, industry standards, and liability for damages

caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of the Consultant or its subcontractors.

**B. Application of Laws.** Should a federal or state law pre-empt a local law, or regulation, the Consultant must comply with the federal or state law and implementing regulations. No provision of this Agreement requires the Consultant to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of federal, state, territorial, or local law, regulation, or ordinance. If compliance with any provision of this Agreement violates or would require the Consultant to violate any law, the Consultant agrees to notify City immediately in writing. Should this occur, the City and the Consultant agree that they will make appropriate arrangements to proceed with or, if necessary, amend or terminate this Agreement, or portions of it, expeditiously.

1. Subcontractors. Consultant agrees to take appropriate measures necessary to ensure that all participants utilized by the Consultant to complete its obligations under this Agreement, such as subcontractors, comply with all applicable laws, regulations, ordinances, and policies, whether federal, state, or local, affecting Project implementation. In addition, if a subcontractor is expected to fulfill any responsibilities of the Consultant under this Agreement, the Consultant shall ensure that the subcontractor carries out the Consultant’s responsibilities as set forth in this Agreement.

**C. Insurance**

1. General. Consultant must procure and maintain, during the period of performance of this Agreement, and for twelve months after completion, pertaining claims-made forms, policies of insurance from insurance companies to protect against claims for wrongful acts that may arise from or in connection with the performance of the professional services under this Agreement and the results of that professional services by the Consultant, his agents, representatives, employees or subcontractors, and provide documentation of same prior to commencement of professional services.
2. Minimum Scope of Insurance. Coverage must be at least as broad as:
  - a. *E&O* . Professional Liability or Errors & Omissions Liability insurance appropriate to the Consultant’s profession. Architects’ and Engineers’ coverage is to be endorsed to include contractual liability.
3. Minimum Limits of Insurance. Consultant must maintain limits no less than those included in the table below:

Professional Liability or Errors & Omissions Liability:	\$5,000,000 each wrongful act
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4. Deductibles and Self-Insured Retentions. Consultant shall be solely responsible for all deductibles or self-insured retentions to which such policies are subject.

5. Claims Forms. If Professional Liability or Errors & Omissions coverage are written on a claims-made form:
  - a. *Maintenance and Evidence.* Insurance must be maintained for one year after completion of the professional services and, upon request, evidence of insurance must be provided for at least one (1) year after completion of the professional services required by the Agreement.
  - b. *Non-Renewal.* If coverage is canceled or non-renewed, and not replaced with another claims-made policy form, the Consultant must purchase “extended reporting” coverage for a minimum of one (1) year after completion of the work required by the Agreement.
6. Acceptability of Insurers. Insurance is to be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best’s rating of no less than A-V, or is a captive insurer that meets the statutory requirements of its domiciled state. Exception may be made for the State Compensation Fund when not specifically rated.
7. Verification of Coverage. Consultant shall furnish the City with standard ACORD certificates and endorsements effecting coverage required by Section I.C. of this Agreement. All certificates and endorsements are to be received and approved, in City’s reasonable discretion, by the City before professional services commence.
8. Not a Limitation of Other Obligations. Insurance provisions under this Article shall not be construed to limit the Consultant’s obligations under this Agreement.

#### D. Security for Performance

1. Performance Bond. In the event that Exhibit A, at Paragraph 18, indicates the need for Consultant to provide a Performance Bond (indicated by a check mark in the parenthetical space immediately preceding the subparagraph entitled “Performance Bond”), then Consultant shall provide to the City a performance bond, in the amount indicated at Exhibit A, Paragraph 18, in the form prescribed by the City and by such sureties which are authorized to transact such business in the State of California, listed as approved by the United States Department of Treasury Circular 570, <http://www.fms.treas.gov/c570>, and whose underwriting limitation is sufficient to issue bonds in the amount required by the Agreement, and which also satisfy the requirements stated in Section 995.660 of the Code of Civil Procedure, except as provided otherwise by laws or regulations. All bonds signed by an agent must be accompanied by a certified copy of such agent’s authority to act. Surety companies must be duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds for the limits so required. Form must be satisfactory to the Risk Manager or City.

2. Letter of Credit. In the event that Exhibit A, at Paragraph 18, indicates the need for Consultant to provide a Letter of Credit (indicated by a check mark in the parenthetical space immediately preceding the subparagraph entitled "Letter of Credit"), then Consultant shall provide to the City an irrevocable letter of credit callable by the City at its unfettered discretion by submitting to the bank a letter, signed by the City Manager, stating that the Consultant is in breach of the terms of this Agreement. The letter of credit shall be issued by a bank, and be in a form and amount satisfactory to the Risk Manager or City Attorney which amount is indicated in the space adjacent to the term, "Letter of Credit," in Exhibit A, Paragraph 18.
  3. Other Security. In the event that Exhibit A, at Paragraph 18, indicates the need for Consultant to provide security other than a Performance Bond or a Letter of Credit (indicated by a check mark in the parenthetical space immediately preceding the subparagraph entitled "Other Security"), then Consultant shall provide to the City such other security therein listed in a form and amount satisfactory to the Risk Manager or City Attorney.
- E. **Business License**. Consultant agrees to obtain a business license from the City and to otherwise comply with Title 5 of the Chula Vista Municipal Code.

## ARTICLE II. CITY OBLIGATIONS

- A. **Consultation and Cooperation**. City shall regularly consult the Consultant for the purpose of reviewing the progress of the Defined Services and Schedule, and to provide direction and guidance to achieve the objectives of this Agreement. The City shall allow Consultant access to its office facilities, files and records, as deemed necessary and appropriate by the City, throughout the term of this Agreement. In addition, City agrees to provide the materials identified at Exhibit A, Paragraph 9, with the understanding that delay in the provision of those materials beyond thirty days after authorization to proceed, shall constitute a basis for the justifiable delay in the Consultant's performance.
- B. **Compensation**.
1. Following Receipt of Billing. The Consultant shall be compensated pursuant to the terms of a Bond Purchase Agreement or similar Agreement approved by the City Council. Such payment will be contingent on the successful closing of the financing program.
  2. Supporting Information. Any billing submitted by Consultant shall contain sufficient information as to the propriety of the billing, including properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature of the charges to the Project in order to permit the City to evaluate that the amount due and payable is proper, and such billing shall specifically contain the City's account number indicated on Exhibit A, Paragraph 17(C) to be charged upon making such payment.
  3. Exclusions. In determining the amount of the compensation City will exclude any cost: 1) incurred prior to the effective date of this Agreement; or 2) arising out of or related to

the errors, omissions, negligence or acts of willful misconduct of the Consultant, its agents, employees, or subcontractors.

- a. *Errors and Omissions.* In the event that the City Administrator determines that the Consultant's negligence, errors, or omissions in the performance of work under this Agreement has resulted in expense to City greater than would have resulted if there were no such negligence, errors, omissions, Consultant shall reimburse City for any additional expenses incurred by the City. Nothing in this paragraph is intended to limit City's rights under other provisions of this Agreement.
4. Payment Not Final Approval. The Consultant understands and agrees that payment to the Consultant for any Project cost does not constitute a City final decision about whether that cost is allowable and eligible for payment under the Project and does not constitute a waiver of any violation of Consultant of the terms of the Agreement. The Consultant acknowledges that City will not make a final determination about the eligibility of any cost until the final payment has been made on the Project or the results of an audit of the Project requested by the City has been completed, whichever occurs latest. If City determines that the Consultant is not entitled to receive any portion of the compensation due or paid, City will notify the Consultant in writing, stating its reasons. The Consultant agrees that Project closeout will not alter the Consultant's responsibility to return any funds due City as a result of later refunds, corrections, or other similar transactions; nor will Project closeout alter the right of City to disallow costs and recover funds provided for the Project on the basis of a later audit or other review.
    - a. *Consultant's Obligation to Pay.* Upon notification to the Consultant that specific amounts are owed to City, whether for excess payments or disallowed costs, the Consultant agrees to remit to City promptly the amounts owed, including applicable interest.

### ARTICLE III. ETHICS

#### A. Financial Interests of Consultant

1. Consultant is Designated as an FPPC Filer. If Consultant is designated on Exhibit A, Paragraph 14, as an "FPPC filer," Consultant is deemed to be a "Consultant" for the purposes of the Political Reform Act conflict of interest and disclosure provisions, and shall report economic interests to the City Clerk on the required Statement of Economic Interests in such reporting categories as are specified in Paragraph 14 of Exhibit A, or if none are specified, then as determined by the City Attorney.
2. No Participation in Decision. Regardless of whether Consultant is designated as an FPPC Filer, Consultant's personnel performing the General Duties (the "Underwriting Team") shall not make, or participate in making or in any way attempt to use Consultant's position to influence a governmental decision in which the Underwriting Team knows or has reason to know Consultant has a financial interest other than the compensation promised by this Agreement.

3. Search to Determine Economic Interests. Regardless of whether Consultant is designated as an FPPC Filer, Consultant warrants and represents that the Underwriting Team has diligently conducted a search and inventory of the Underwriting Team's economic interests, as the term is used in the regulations promulgated by the Fair Political Practices Commission, and has determined that the Underwriting Team does not, to the best of the Underwriting Team's knowledge, have an economic interest which would conflict with Consultant's duties under this Agreement.
4. Promise Not to Acquire Conflicting Interests. Regardless of whether Consultant is designated as an FPPC Filer, Consultant further warrants and represents that the Underwriting Team will not acquire, obtain, or assume an economic interest during the term of this Agreement which would constitute a conflict of interest as prohibited by the Fair Political Practices Act.
5. Duty to Advise of Conflicting Interests. Regardless of whether Consultant is designated as an FPPC Filer, Consultant further warrants and represents that the Underwriting Team will immediately advise the City Attorney if the Underwriting Team learns of an economic interest of Consultant's that may result in a conflict of interest for the purpose of the Fair Political Practices Act, and regulations promulgated thereunder.
6. Specific Warranties Against Economic Interests. Consultant warrants, represents and agrees that:
  - a. Neither the Underwriting Team, nor the Underwriting Team's immediate family members, nor Underwriting Team's employees or agents (Consultant Associates) presently have any interest, directly or indirectly, whatsoever in any property which may be the subject matter of the Defined Services, or in any property within 2 radial miles from the exterior boundaries of any property which may be the subject matter of the Defined Services, (Prohibited Interest), other than as listed in Exhibit A, Paragraph 14.
  - b. No promise of future employment, remuneration, consideration, gratuity or other reward or gain has been made to Consultant or Consultant Associates in connection with Consultant's performance of this Agreement. Consultant promises to advise City of any such promise that may be made during the Term of this Agreement, or for twelve months thereafter.
  - c. Consultant Associates shall not acquire any such Prohibited Interest within the Term of this Agreement, or for twelve months after the expiration of this Agreement, except with the written permission of City.
  - d. The Underwriting Team may not conduct or solicit any business for any party to this Agreement, or for any third party that may be in conflict with Consultant's responsibilities under this Agreement, except with the written permission of City.



#### IV. LIQUIDATED DAMAGES

- A. **Application of Section.** The provisions of this section apply if a Liquidated Damages Rate is provided in Exhibit A, Paragraph 13.
1. Estimating Damages. It is acknowledged by both parties that time is of the essence in the completion of this Agreement. It is difficult to estimate the amount of damages resulting from delay in performance. The parties have used their judgment to arrive at a reasonable amount to compensate for delay.
  2. Amount of Penalty. Failure to complete the Defined Services within the allotted time period specified in this Agreement shall result in the following penalty: For each consecutive calendar day in excess of the time specified for the completion of the respective work assignment or Deliverable, the Consultant shall pay to the City, or have withheld from monies due, the sum of Liquidated Damages Rate provided in Exhibit A, Paragraph 13 (Liquidated Damages Rate).
  3. Request for Extension of Time. If the performance of any act required of Consultant is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the Consultant, as determined by the City, Consultant shall be excused from performing that act for the period of time equal to the period of time of the prevention or delay. In the event Consultant claims the existence of such a delay, the Consultant shall notify the City's Contract Administrator, or designee, in writing of that fact within ten calendar days after the beginning of any such claimed delay. Extensions of time will not be granted for delays to minor portions of work unless it can be shown that such delays did or will delay the progress of the work.

#### ARTICLE V. INDEMNIFICATION

##### A. **Defense, Indemnity, and Hold Harmless.**

1. General Requirement. Notwithstanding any other indemnification provision in the Request for Proposal (RFP P09-14/15), to the maximum extent allowed by law, Consultant shall defend, indemnify, protect and hold harmless the City, its elected and appointed officers, agents and employees (collectively, "City-Related Parties"), from and against any and all third party claims, demands, causes of action, costs, expenses, (including reasonable attorney's fees and actual costs), liability or loss, in law or equity, for physical damage or injury to property or persons, including wrongful death (collectively, "Liability"), arising out of or incident to the gross negligence or willful misconduct of Consultant, its officials, officers, employees, agents, and contractors (collectively, "Consultant or Related Party Conduct"), arising out of or in connection with the performance of the Defined Services, the results of such performance, or this Agreement. Consultant shall have an affirmative duty to *defend and protect* City from any and all Liability as provided hereunder, including a duty to pay any and all related attorneys' fees and court costs. Notwithstanding the foregoing, Consultant's ultimate

*indemnity* obligations hereunder with respect to Liability (a) shall not be triggered until a mutually agreed upon settlement or adjudication thereof; and (b) shall not extend to (i) any Liability adjudicated to be arising from the sole negligence or sole willful misconduct of the City-Related Parties; or (ii) City-Related Parties Liability adjudicated to be greater than fifty percent (50%) of the overall Liability at issue. For the avoidance of doubt, this provision supersedes any other indemnification provisions included in the Request for Proposal (RFP P09-14/15), including Section VIII of the Request for Proposal and Section 27 of “Attachment A – General Provisions” to the Request for Proposal.

2. Design Professional Services. Notwithstanding the forgoing, if the services provided under this Agreement are design professional services, as defined by California Civil Code section 2782.5, as may be amended from time to time, the defense and indemnity obligation under Section 1, above, shall be limited to the extent required by California Civil Code section 2782.8.
3. Costs of Defense and Award. Included in the obligations in Sections A.1 and A.2, above, is the Consultant’s obligation to defend, at Consultant’s own cost, expense and risk, any and all suits, actions or other legal proceedings, that may be brought or instituted against the City, its directors, officials, officers, employees, agents and/or volunteers, subject to the limitations in Sections A.1. and A.2. Subject to the limitations in Sections A.1. and A.2., Consultant shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents and/or volunteers, for any and all related legal expenses and costs incurred by each of them.
4. Insurance Proceeds. Consultant’s obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials, officers, employees, agents, and/or volunteers.
5. Declarations. Consultant’s obligations under Article V shall not be limited by any prior or subsequent declaration by the Consultant.
6. Enforcement Costs. Consultant agrees to pay any and all costs City incurs enforcing the indemnity and defense provisions set forth in Article V.
7. Survival. Consultant’s obligations under Article V shall survive the termination of this Agreement.
8. No Alteration of Other Obligations. This Article V, shall in no way alter, affect or modify any of the Consultant’s other obligations and duties under this Agreement.

## ARTICLE VI. TERMINATION OF AGREEMENT

- A. **Termination for Cause**. If, through any cause, Consultant shall fail to fulfill in a timely and proper manner Consultant's obligations under this Agreement, or if Consultant shall violate any of the covenants, agreements or stipulations of this Agreement, City shall have the right

to terminate this Agreement by giving written notice to Consultant of such termination and specifying the effective date thereof at least five (5) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, reports and other materials prepared by Consultant shall, at the option of the City, become the property of the City, and Consultant shall be entitled to receive just and equitable compensation, in an amount not to exceed that payable under this Agreement and less any damages caused City by Consultant's breach, for any work satisfactorily completed on such documents and other materials up to the effective date of Notice of Termination.

- B. Termination of Agreement for Convenience of City.** City may terminate this Agreement at any time and for any reason, by giving specific written notice to Consultant of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In that event, all finished and unfinished documents and other materials described hereinabove shall, at the option of the City, become City's sole and exclusive property. If the Agreement is terminated by City as provided in this paragraph, Consultant shall be entitled to receive just and equitable compensation, in an amount not to exceed that payable under this Agreement, for any satisfactory work completed on such documents and other materials to the effective date of such termination. Consultant hereby expressly waives any and all claims for damages or compensation arising under this Agreement except as set forth in this section.

#### ARTICLE VII. RECORD RETENTION AND ACCESS

- A. Record Retention.** During the course of the Project and for three (3) years following completion, the Consultant agrees to maintain, intact and readily accessible, all data, documents, reports, records, contracts, and supporting materials relating to the Project as City may require.
- B. Access to Records of Consultant and Subcontractors.** The Consultant agrees to permit, and require its subcontractors to permit City or its authorized representatives, upon request, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Contractor and its subcontractors pertaining to the Project.
- C. Project Closeout.** The Consultant agrees that Project closeout does not alter the reporting and record retention requirements of this Agreement.

#### ARTICLE VIII. PROJECT COMPLETION, AUDIT, AND CLOSEOUT

- A. Project Completion.** Not applicable.
- B. Audit of Consultants.** Consultant agrees to perform financial and compliance audits the City may require. The Consultant also agrees to obtain any other audits required by City. Consultant agrees that Project closeout will not alter Consultant's audit responsibilities. Audit costs are allowable Project costs.

- C. **Project Closeout.** Project closeout occurs when City notifies the Consultant that City has closed the Project, and either forwards the final payment or acknowledges that the Consultant has remitted the proper refund. The Consultant agrees that Project closeout by City does not invalidate any continuing requirements imposed by the Agreement or any unmet requirements set forth in a written notification from City

#### ARTICLE IX. MISCELLANEOUS PROVISIONS

- A. **Assignability.** The services of Consultant are personal to the City, and Consultant shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or notation), without prior written consent of City.
1. **Limited Consent.** City hereby consents to the assignment of the portions of the Defined Services identified in Exhibit A, Paragraph 16 to the subconsultants identified as “Permitted Subconsultants.”
- B. **Ownership, Publication, Reproduction and Use of Material.** All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems and any other materials or properties produced under this Agreement shall be the sole and exclusive property of City. No such materials or properties produced in whole or in part under this Agreement shall be subject to private use, copyrights or patent rights by Consultant in the United States or in any other country without the express written consent of City. City shall have unrestricted authority to publish, disclose (except as may be limited by the provisions of the Public Records Act), distribute, and otherwise use, copyright or patent, in whole or in part, any such reports, studies, data, statistics, forms or other materials or properties produced under this Agreement.
- C. **Independent Contractor.** City is interested only in the results obtained and Consultant shall perform as an independent contractor with sole control of the manner and means of performing the services required under this Agreement. City maintains the right only to reject or accept Consultant's work products. Consultant and any of the Consultant's agents, employees or representatives are, for all purposes under this Agreement, independent contractors and shall not be deemed to be employees of City, and none of them shall be entitled to any benefits to which City employees are entitled including but not limited to, overtime, retirement benefits, worker's compensation benefits, injury leave or other leave benefits. Therefore, City will not withhold state or federal income tax, social security tax or any other payroll tax, and Consultant shall be solely responsible for the payment of same and shall hold the City harmless with regard to them.
1. **Actions on Behalf of City.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever, as an agent or otherwise. Consultant shall have no authority, express or implied, to bind City or its members, agents, or employees, to any obligation whatsoever, unless expressly provided in this Agreement.

2. **No Obligations to Third Parties.** In connection with the Project, Consultant agrees and shall require that its agents, employees, subcontractors agree that City shall not be responsible for any obligations or liabilities to any third party, including its agents, employees, subcontractors, or other person or entity that is not a party to this Agreement. Notwithstanding that City may have concurred in or approved any solicitation, subagreement, or third party contract at any tier, City shall have no obligation or liability to any person or entity not a party to this Agreement.
- D. Administrative Claims Requirements and Procedures.** No suit or arbitration shall be brought arising out of this Agreement, against City unless a claim has first been presented in writing and filed with City and acted upon by City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may from time to time be amended, the provisions of which are incorporated by this reference as if fully set forth herein, and such policies and procedures used by City in the implementation of same. Upon request by City, Consultant shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement.
- E. Administration of Contract.** Each party designates the individuals (Contract Administrators) indicated on Exhibit A, Paragraph 12, as that party's contract administrator who is authorized by the party to represent it in the routine administration of this Agreement.
- F. Term.** This Agreement shall terminate when the parties have complied with all executory provisions hereof.
- G. Statement of Costs.** In the event that Consultant prepares a report or document, or participates in the preparation of a report or document in performing the Defined Services, Consultant shall include, or cause the inclusion of, in the report or document, a statement of the numbers and cost in dollar amounts of all contracts and subcontracts relating to the preparation of the report or document.
- H. Consultant is Real Estate Broker and/or Salesman.** If the box on Exhibit A, Paragraph 15 is marked, the Consultant and/or its principals is/are licensed with the State of California or some other state as a real estate broker or salesperson. Otherwise, Consultant represents that neither Consultant, nor its principals are licensed real estate brokers or salespersons.
- I. Notices.** All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, demands and requests to be sent to any party shall be deemed to have been properly given or served if personally served or deposited in the United States mail, addressed to such party, postage prepaid, registered or certified, with return receipt requested, at the addresses identified in this Agreement as the places of business for each of the designated parties.
- J. Integration.** This Agreement, together with any other written document referred to or contemplated in it, embody the entire Agreement and understanding between the parties relating to the subject matter hereof. Neither this Agreement nor any provision of it may be

amended, modified, waived or discharged except by an instrument in writing executed by the party against which enforcement of such amendment, waiver or discharge is sought.

- K. Capacity of Parties.** Each signatory and party to this Agreement warrants and represents to the other party that it has legal authority and capacity and direction from its principal to enter into this Agreement, and that all necessary resolutions or other actions have been taken so as to enable it to enter into this Agreement.
- L. Governing Law/Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in the federal or state courts located in San Diego County, State of California, and if applicable, the City of Chula Vista, or as close thereto as possible. Venue for this Agreement, and performance under it, shall be the City of Chula Vista.
- M. Municipal Advisor Rules.** The City acknowledges that Consultant may not be able to perform some of the services the City may request of Consultant from time to time in connection with Consultant's engagement as lead underwriter to the extent that such services would cause Consultant to be considered a "municipal advisor" under SEC Rel. No. 34-70462 (Sept. 20, 2013) (such final rules and to the extent referenced therein, Section 975, the "Municipal Advisor Rules") implementing Section 975 ("Section 975") of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

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**Signature Page  
to  
Agreement between  
City of Chula Vista and  
J.P. Morgan Securities LLC,  
To Provide Investment Banking & Bond Underwriting Services for the Bayfront Project**

IN WITNESS WHEREOF, City and Consultant have executed this Agreement, indicating that they have read and understood same, and indicate their full and complete consent to its terms:

**City of Chula Vista**

By: \_\_\_\_\_  
Mary Casillas Salas, Mayor

Attest:

\_\_\_\_\_  
Donna Norris, City Clerk

Approved as to form:

\_\_\_\_\_  
Glen R. Googins, City Attorney

**J.P. Morgan Securities LLC**

By: \_\_\_\_\_  
John Houlberg, Executive Director\*

\* Consultant to provide signature authority for signatory.

Exhibit List to Agreement:   Exhibit A  
  Exhibit B: RFP P09-14/15  
  Exhibit C

**Exhibit A**  
**to**  
**Agreement between**  
**City of Chula Vista**  
**and**  
**J.P. Morgan Securities LLC**

1. Effective Date: The Agreement shall take effect upon full execution of the Agreement, as of the effective date stated on page 1 of the Agreement.

2. City-Related Entity:

City of Chula Vista, a municipal chartered corporation of the State of California

The Chula Vista Public Financing Authority, a  
\_\_\_\_\_

The Chula Vista Industrial Development Authority, a  
\_\_\_\_\_

Other: \_\_\_\_\_, a [insert business form]

3. Place of Business for City:

City of Chula Vista  
276 Fourth Avenue  
Chula Vista, CA 91910

4. Consultant:

J.P. Morgan Securities LLC

5. Business Form of Consultant:

Sole Proprietorship  
 Partnership  
 Corporation

6. Place of Business, Telephone and Fax Number of Consultant:

560 Mission Street, Floor 3  
San Francisco, CA 94105  
Phone: (415) 315-5958  
Fax: (415) 240-4088



7. General Duties:

Consultant shall provide investment banking and bond underwriting services and perform related duties for the Chula Vista Bayfront project.

8. Scope of Work and Schedule:

A. Detailed Scope of Work:

- 1) Consultant shall work collaboratively with City staff, San Diego Port District staff, City's Financial Advisor, and other stakeholders to develop a comprehensive financing plan for the Chula Vista Bayfront project that minimizes debt service costs.
- 2) Consultant shall participate throughout the planning process, including attending meetings related to financing, performing necessary research and quantitative analysis, and providing input regarding pricing implications of various debt structuring options.
- 3) Consultant shall assist in final structuring of project debt issue, including recommendations on the timing of the debt sale, maturity schedule, call provisions, lien structure and security, restrictions and covenants to be included in the financing documents, bond ratings, cash flow modeling of revenues, and debt service requirements.
- 4) Consultant shall participate in the preparation and review of bond and legal documents.
- 5) Consultant shall assist the City in preparing materials for review by, and presentations to, the City council, credit rating agencies, bond insurance companies, and investors, as appropriate.
- 6) Consultant shall develop a sale strategy and marketing plan, and conduct such bond marketing activities as the City and Consultant agree are necessary or desirable in marketing project bonds.
- 7) Consultant shall assist in the preparation and documentation necessary to timely close each bond issue and shall timely deliver the necessary funds to purchase each bond issue in accordance with the terms of the respective bond purchase agreements.
- 8) Consultant shall manage the Underwriting Team prior to and during the debt financing process.
- 9) Consultant shall prepare and present timely and comprehensive summary analysis of project debt issue and other financing mechanisms.

B. Date for Commencement of Consultant Services:

(X) Same as Effective Date of Agreement

( ) Other: \_\_\_\_\_

C. Dates or Time Limits for Delivery of Deliverables:

Deliverable No. 1: \_\_\_\_\_.

Deliverable No. 2: \_\_\_\_\_.

Deliverable No. 3: \_\_\_\_\_.

D. Date for completion of all Consultant services: This agreement shall be effective upon execution for a period of one year, with five one-year options. The City may exercise each one-year option at its sole discretion, upon written notification by the City Manager, or designee, to the Consultant.

9. Materials Required to be Supplied by City to Consultant:

10. Compensation: The Consultant shall be compensated pursuant to the terms of a Bond Purchase Agreement or similar Agreement approved by the City Council. Such payment will be contingent on the successful closing of the financing program.

A. ( ) Single Fixed Fee Arrangement.

For performance of all of the Defined Services by Consultant as herein required, City shall pay a single fixed fee in the amounts and at the times or milestones or for the Deliverables set forth below:

Single Fixed Fee Amount: \_\_\_\_\_, payable as follows:

<u>Milestone or Event or Deliverable</u>	<u>Amount or Percent of Fixed Fee</u>
--	---------------------------------------

1. ( ) Interim Monthly Advances. The City shall make interim monthly advances against the compensation due for each phase on a percentage of completion basis for each given phase such that, at the end of each phase only the compensation for that phase has been paid. Any payments made hereunder shall be considered as interest free loans that must be returned to the City if the Phase is not satisfactorily completed. If the Phase is satisfactorily completed, the City shall receive credit against the compensation due for that phase. The retention amount or percentage set forth in Paragraph 19 is to be applied to each interim payment such that, at the end of the phase, the full retention has been held back from the compensation due for that phase. Percentage of completion of a phase shall be assessed in the sole and unfettered discretion by the Contracts Administrator designated herein by the City, or such other person as the City Manager shall designate, but only upon such proof demanded by the City that has been provided, but in no event shall such interim advance payment be made unless the Consultant shall have represented in writing that

said percentage of completion of the phase has been performed by the Consultant. The practice of making interim monthly advances shall not convert this agreement to a time and materials basis of payment.

B. ( ) Phased Fixed Fee Arrangement.

For the performance of each phase or portion of the Defined Services by Consultant as are separately identified below, City shall pay the fixed fee associated with each phase of Services, in the amounts and at the times or milestones or Deliverables set forth. Consultant shall not commence Services under any Phase, and shall not be entitled to the compensation for a Phase, unless City shall have issued a notice to proceed to Consultant as to said Phase.

<u>Phase</u>	<u>Fee for Said Phase</u>
1.	\$ _____
2.	\$ _____
3.	\$ _____

1. ( ) Interim Monthly Advances. The City shall make interim monthly advances against the compensation due for each phase on a percentage of completion basis for each given phase such that, at the end of each phase only the compensation for that phase has been paid. Any payments made hereunder shall be considered as interest free loans that must be returned to the City if the Phase is not satisfactorily completed. If the Phase is satisfactorily completed, the City shall receive credit against the compensation due for that phase. The retention amount or percentage set forth in Paragraph 18 is to be applied to each interim payment such that, at the end of the phase, the full retention has been held back from the compensation due for that phase. Percentage of completion of a phase shall be assessed in the sole and unfettered discretion by the Contracts Administrator designated herein by the City, or such other person as the City Manager shall designate, but only upon such proof demanded by the City that has been provided, but in no event shall such interim advance payment be made unless the Consultant shall have represented in writing that said percentage of completion of the phase has been performed by the Consultant. The practice of making interim monthly advances shall not convert this agreement to a time and materials basis of payment.

C. ( ) Hourly Rate Arrangement

For performance of the Defined Services by Consultant as herein required, City shall pay Consultant for the productive hours of time spent by Consultant in the performance of said Services, at the rates or amounts set forth in the Rate Schedule herein below according to the following terms and conditions:

1. ( ) Not-to-Exceed Limitation on Time and Materials Arrangement

Notwithstanding the expenditure by Consultant of time and materials in excess of said Maximum Compensation amount, Consultant agrees that Consultant will perform all of the Defined Services herein required of Consultant for \$\_\_\_\_\_, including all Materials, and other “reimbursables” (Maximum Compensation).

2. ( ) Limitation without Further Authorization on Time and Materials Arrangement

At such time as Consultant shall have incurred time and materials equal to \$\_\_\_\_\_ (Authorization Limit), Consultant shall not be entitled to any additional compensation without further authorization issued in writing and approved by the City. Nothing herein shall preclude Consultant from providing additional Services at Consultant's own cost and expense. See Exhibit B for wage rates.

( ) Hourly rates may increase by 6% for services rendered after [month], 20\_\_\_\_, if delay in providing services is caused by City.

D. (X) Other

See Exhibit C.

11. Materials Reimbursement Arrangement

For the cost of out of pocket expenses incurred by Consultant in the performance of services herein required, City shall pay Consultant at the rates or amounts set forth below:

(X) None, the compensation includes all costs.

	Cost or Rate
( ) Reports, not to exceed \$_____:	\$_____
( ) Copies, not to exceed \$_____:	\$_____
( ) Travel, not to exceed \$_____:	\$_____
( ) Printing, not to exceed \$_____:	\$_____
( ) Postage, not to exceed \$_____:	\$_____
( ) Delivery, not to exceed \$_____:	\$_____
( ) Outside Services:	\$_____
( ) Other Actual Identifiable Direct Costs:	\$_____
_____ , not to exceed \$_____:	\$_____
_____ , not to exceed \$_____:	\$_____

12. Contract Administrators:

City:

Tiffany Allen  
Treasury & Business Manager  
City of Chula Vista  
276 Fourth Avenue  
Chula Vista, CA 91910-2631  
(619) 691-5179

Consultant:

John Houlberg  
Executive Director  
J.P. Morgan  
560 Mission Street, Floor 3  
San Francisco, CA 94105  
(415) 315-5958

13. Liquidated Damages Rate:

- \$\_\_\_\_\_ per day.
- Other: \_\_\_\_\_
- None

14. Statement of Economic Interests, Consultant Reporting Categories, per Conflict of Interest Code (Chula Vista Municipal Code chapter 2.02):

Not Applicable. Not an FPPC Filer.

FPPC Filer

Category No. 1. Investments, sources of income and business interests.

Category No. 2. Interests in real property.

Category No. 3. Investments, business positions, interests in real property, and sources of income subject to the regulatory, permit or licensing authority of the department administering this Agreement.

Category No. 4. Investments and business positions in business entities and sources of income that engage in land development, construction or the acquisition or sale of real property.

( ) Category No. 5. Investments and business positions in business entities and sources of income that, within the past two years, have contracted with the City of Chula Vista or the City's Redevelopment Agency to provide services, supplies, materials, machinery or equipment.

( ) Category No. 6. Investments and business positions in business entities and sources of income that, within the past two years, have contracted with the department administering this Agreement to provide services, supplies, materials, machinery or equipment.

( ) List Consultant Associates interests in real property within 2 radial miles of Project Property, if any:

\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

15. ( ) Consultant is Real Estate Broker and/or Salesman

16. Permitted Subconsultants: None.

17. Bill Processing:

A. Consultant's Billing to be submitted for the following period of time:

- ( ) Monthly
( ) Quarterly
( ) Other: \_\_\_\_\_

B. Day of the Period for submission of Consultant's Billing:

- ( ) First of the Month
( ) 15th Day of each Month
( ) End of the Month
( ) Other: \_\_\_\_\_

C. City's Account Number: 09100-6301

18. Security for Performance

(X)None

- ( ) Performance Bond, \$ \_\_\_\_\_
- ( ) Letter of Credit, \$ \_\_\_\_\_
- ( ) Other Security:  
Type: \_\_\_\_\_  
Amount: \$ \_\_\_\_\_

( ) Retention. If this space is checked, then notwithstanding other provisions to the contrary requiring the payment of compensation to the Consultant sooner, the City shall be entitled to retain, at their option, either the following “Retention Percentage” or “Retention Amount” until the City determines that the Retention Release Event, listed below, has occurred:

- ( ) Retention Percentage: \_\_\_\_\_
- ( ) Retention Amount: \$ \_\_\_\_\_

Retention Release Event:

- ( ) Completion of All Consultant Services
- ( ) Other: \_\_\_\_\_
- ( ) Other: The Retention Amount may be released on a monthly basis provided that Consultant has performed said monthly services to the sole satisfaction of the Assistant City Manager/Director of Development Services or his designee.