staff report

TO: Honorable Mayor and Members of the City Council

ATTENTION: Jeffrey L. Stewart, City Manager

FROM: Len Gorecki, Director of Public Works
Bernardo Iniguez, Public Works Manager

SUBJECT: Consideration and possible action to authorize the City Manager to execute Agreement File No. XXX, in a form approved by the Interim City Attorney, with Pretty Smart to provide for design services for the renovation of the Public Works Maintenance Yard offices.

DATE: January 14, 2016

EXECUTIVE SUMMARY

This action would authorize the City to enter into an agreement with Pretty Smart to provide design services for the renovation of the Public Works Maintenance Yard offices.

RECOMMENDATION TO CITY COUNCIL

1) Authorize the City Manager to execute Agreement File No. XXX, in a form approved by the Interim City Attorney; or

2) Alternatively, discuss and take other action related to this item.

FISCAL IMPACT

The total payment will be an amount not to exceed $43,758. Sufficient funds are available in the FYs 2015-2017 budget in Account No. 011-47260-9000.

DISCUSSION

In 2002, the City purchased a modular unit to serve as the offices for Public Works management staff. Since that time Public Works has added administrative staff, while office space has remained the same. As part of our ongoing efforts to improve the management and delivery of City services, we budgeted funds in the Fiscal Years 2015-2017 budget for the planning and construction of offices at the Maintenance Yard. Public Works solicited a proposal from Pretty Smart for design services for the renovation of the Maintenance Yard offices. Public Works has reviewed the proposal, found it to be satisfactory, and prepared the attached Professional Services Agreement. The Scope of Work will include the preparation of the design and construction documents, construction administration and project management, and interior design services, as necessary.

ATTACHMENT

Agreement File No. XXX 2

AGREEMENT NO. XXX
PROFESSIONAL SERVICES AGREEMENT
FOR DESIGN SERVICES
BETWEEN
THE CITY OF BELLFLOWER AND
PRETTY SMART
FOR DESIGN SERVICES FOR THE RENOVATION OF THE PUBLIC WORKS MAINTENANCE YARD OFFICES

This AGREEMENT is entered into this January 14, 2016 by and between the CITY OF BELLFLOWER, a municipal corporation and general law city ("CITY") and Daniella Carter dba Pretty Smart, a sole proprietorship ("CONSULTANT").

1. **CONSIDERATION**.

   A. As partial consideration, CONSULTANT agrees to perform the work listed in the SCOPE OF SERVICES, below;

   B. As additional consideration, CONSULTANT and CITY agree to abide by the terms and conditions contained in this Agreement;

   C. As additional consideration, CITY agrees to pay CONSULTANT a sum not to exceed $43,758.00 for CONSULTANT's services. CITY may modify this amount as set forth below. Unless otherwise specified by written amendment to this Agreement, CITY will pay this sum as specified in the attached Exhibit "B," which is incorporated by reference.

2. **SCOPE OF SERVICES**.

   A. CONSULTANT will perform services listed in the attached Exhibit "A," which is incorporated by reference.

   B. CONSULTANT will, in a professional manner, furnish all of the labor, technical, administrative, professional and other personnel, all supplies and materials, equipment, printing, vehicles, transportation, office space and facilities, and all tests, testing and analyses, calculation, and all other means whatsoever, except as herein otherwise expressly specified to be furnished by CITY, necessary or proper to perform and complete the work and provide the professional services required of CONSULTANT by this Agreement.

3. **PERFORMANCE STANDARDS**. While performing this Agreement, CONSULTANT will use the appropriate generally accepted professional standards of practice existing at the time of performance utilized by persons engaged in providing similar services. CITY will continuously monitor CONSULTANT's services. CITY will notify CONSULTANT of any deficiencies and CONSULTANT will have fifteen (15) days after such notification to

cure any shortcomings to CITY's satisfaction. Costs associated with curing the deficiencies will be borne by CONSULTANT.

4. **PAYMENTS**. For CITY to pay CONSULTANT as specified by this Agreement, CONSULTANT must submit a detailed invoice to CITY which lists the hours worked and hourly rates for each personnel category and reimbursable costs (all as set forth in Exhibit "B") the tasks performed, the percentage of the task completed during the billing period, the cumulative percentage completed for each task, the total cost of that work during the preceding billing month and a cumulative cash flow curve showing projected and actual expenditures versus time to date.

5. **NON-APPROPRIATION OF FUNDS**. Payments due and payable to CONSULTANT for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of the CITY. In the event the CITY has not appropriated sufficient funds for payment of CONSULTANT services beyond the current fiscal year, this Agreement will cover only those costs incurred up to the conclusion of the current fiscal year.

6. **ADDITIONAL WORK**.

A. CITY's city manager ("Manager") may determine, at the Manager's sole discretion, that CONSULTANT must perform additional work ("Additional Work") to complete the Scope of Work. If Additional Work is needed, the Manager will give written authorization to CONSULTANT to perform such Additional Work.

B. If CONSULTANT believes Additional Work is needed to complete the Scope of Work, CONSULTANT will provide the Manager with written notification that contains a specific description of the proposed Additional Work, reasons for such Additional Work, and a detailed proposal regarding cost.

C. Payments over $20,000.00 for Additional Work must be approved by CITY's city council. All Additional Work will be subject to all other terms and provisions of this Agreement.

7. **NON-APPROPRIATION OF FUNDS**. Payments due and payable to CONSULTANT for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of the CITY. In the event the CITY has not appropriated sufficient funds for payment of CONSULTANT services beyond the current fiscal year, this Agreement will cover only those costs incurred up to the conclusion of the current fiscal year.

8. **FAMILIARITY WITH WORK**.

A. By executing this Agreement, CONSULTANT agrees that it has:

i. Carefully investigated and considered the scope of services to be performed;

ii. Carefully considered how the services should be performed; and

iii. Understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement.

B. If services involve work upon any site, CONSULTANT agrees that CONSULTANT has or will investigate the site and is or will be fully acquainted with the conditions there existing, before commencing the services hereunder. Should CONSULTANT discover any latent or unknown conditions that may materially affect the performance of the services, CONSULTANT will immediately inform CITY of such fact and will not proceed except at CONSULTANT's own risk until written instructions are received from CITY.

9. **TERM**. The term of this Agreement will be from January 14, 2016 to January 13, 2017. Unless otherwise determined by written amendment between the parties, this Agreement will terminate in the following instances:

A. Completion of the work specified in Exhibit "A";

B. Termination as stated in Section **17**.

10. **TIME FOR PERFORMANCE**.

A. CONSULTANT will not perform any work under this Agreement until:

i. CONSULTANT furnishes proof of insurance as required under Section 23 of this Agreement; and

ii. CITY gives CONSULTANT a written notice to proceed.

B. Should CONSULTANT begin work on any phase in advance of receiving written authorization to proceed, any such professional services are at CONSULTANT's own risk.

11. **TIME EXTENSIONS**. Should CONSULTANT be delayed by causes beyond CONSULTANT's control, CITY may grant a time extension for the completion of the contracted services. If delay occurs, CONSULTANT must notify the Manager within

forty-eight hours (48 hours), in writing, of the cause and the extent of the delay and how such delay interferes with the Agreement's schedule. The Manager will extend the completion time, when appropriate, for the completion of the contracted services.

12. **CONSISTENCY**. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement takes precedence over the attached Exhibits; this Agreement supersedes any conflicting provisions. Any inconsistency between the Exhibits will be resolved in the order in which the Exhibits appear below:

Exhibit "A" – Scope of Work
Exhibit "B" – Fee Schedule

13. **CHANGES**. CITY may order changes in the services within the general scope of this Agreement, consisting of additions, deletions, or other revisions, and the contract sum and the contract time will be adjusted accordingly. All such changes must be authorized in writing, executed by CONSULTANT and CITY. The cost or credit to CITY resulting from changes in the services will be determined in accordance with written agreement between the parties.

14. **TAXPAYER IDENTIFICATION NUMBER**. CONSULTANT will provide CITY with a Taxpayer Identification Number.

15. **PERMITS AND LICENSES**. CONSULTANT, at its sole expense, will obtain and maintain during the term of this Agreement, all necessary permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement.

16. **WAIVER**. CITY's review or acceptance of, or payment for, work product prepared by CONSULTANT under this Agreement will not be construed to operate as a waiver of any rights CITY may have under this Agreement or of any cause of action arising from CONSULTANT's performance. A waiver by CITY of any breach of any term, covenant, or condition contained in this Agreement will not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement, whether of the same or different character.

17. **TERMINATION**.

A. Except as otherwise provided, CITY may terminate this Agreement at any time with or without cause.

B. CONSULTANT may terminate this Agreement at any time with CITY's mutual consent. Notice will be in writing at least thirty (30) days before the effective termination date.

C. Upon receiving a termination notice, CONSULTANT will immediately cease performance under this Agreement unless otherwise provided in the termination notice. Except as otherwise provided in the termination notice, any additional work performed by CONSULTANT after receiving a termination notice will be performed at CONSULTANT'' own cost; CITY will not be obligated to compensate CONSULTANT for such work.

D. Should termination occur, all finished or unfinished documents, data, studies, surveys, drawings, maps, reports and other materials prepared by CONSULTANT will, at CITY's option, become CITY's property, and CONSULTANT will receive just and equitable compensation for any work satisfactorily completed up to the effective date of notice of termination, not to exceed the total costs under Section 1(C).

E. Should the Agreement be terminated pursuant to this Section, CITY may procure on its own terms services similar to those terminated.

F. By executing this document, CONSULTANT waives any and all claims for damages that might otherwise arise from CITY's termination under this Section.

18. **OWNERSHIP OF DOCUMENTS.** All documents, data, studies, drawings, maps, models, photographs and reports prepared by CONSULTANT under this Agreement are CITY's property. CONSULTANT may retain copies of said documents and materials as desired, but will deliver all original materials to CITY upon CITY's written notice. CITY agrees that use of CONSULTANT's completed work product, for purposes other than identified in this Agreement, or use of incomplete work product, is at CITY's own risk.

19. **PUBLICATION OF DOCUMENTS.** Except as necessary for performance of service under this Agreement, no copies, sketches, or graphs of materials, including graphic art work, prepared pursuant to this Agreement, will be released by CONSULTANT to any other person or public CITY without CITY's prior written approval. All press releases, including graphic display information to be published in newspapers or magazines, will be approved and distributed solely by CITY, unless otherwise provided by written agreement between the parties.

20. **INDEMNIFICATION.**

A. CONSULTANT must save harmless, indemnify and defend CITY and all its officers, employees and representatives from and against any and all suits, actions, or claims, of any character whatever, brought for, or on account of, any injuries or damages sustained by any person or property arising from, pertaining to, or relating to the negligence, recklessness, or willful misconduct of CONSULTANT or

any of CONSULTANT's officers, agents, employees, or representatives.

B. For purposes of this section "CITY" includes CITY's officers, officials, employees, agents, representatives, and certified volunteers.

C. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

D. The requirements as to the types and limits of insurance coverage to be maintained by CONSULTANT as required by Section 24, and any approval of said insurance by CITY, are not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONSULTANT pursuant to this Agreement, including, without limitation, to the provisions concerning indemnification.

21. **ASSIGNABILITY**. This Agreement is for CONSULTANT's professional services. CONSULTANT's attempts to assign the benefits or burdens of this Agreement without CITY's written approval are prohibited and will be null and void.

22. **INDEPENDENT CONTRACTOR.** CITY and CONSULTANT agree that CONSULTANT will act as an independent contractor and will have control of all work and the manner in which is it performed. CONSULTANT will be free to contract for similar service to be performed for other employers while under contract with CITY. CONSULTANT is not an agent or employee of CITY and is not entitled to participate in any pension plan, insurance, bonus or similar benefits CITY provides for its employees. Any provision in this Agreement that may appear to give CITY the right to direct CONSULTANT as to the details of doing the work or to exercise a measure of control over the work means that CONSULTANT will follow the direction of the CITY as to end results of the work only.

23. **AUDIT OF RECORDS.** CONSULTANT will maintain full and accurate records with respect to all services and matters covered under this Agreement. CITY will have free access at all reasonable times to such records, and the right to examine and audit the same and to make transcript therefrom, and to inspect all program data, documents, proceedings and activities. CONSULTANT will retain such financial and program service records for at least three (3) years after termination or final payment under this Agreement.

24. **INSURANCE**.

A. Before commencing performance under this Agreement, and at all other times this Agreement is effective, CONSULTANT will procure and

maintain the following types of insurance with coverage limits complying, at a minimum, with the limits set forth below:

Type of Insurance	Limits
Commercial general liability:	$2,000,000
Professional Liability	$1,000,000
Business automobile liability	$1,000,000
Workers compensation	Statutory requirement

B. Commercial general liability insurance will meet or exceed the requirements of the most recent ISO-CGL Forms. The amount of insurance set forth above will be a combined single limit per occurrence for bodily injury, personal injury, and property damage for the policy coverage. Liability policies will be endorsed to name CITY, its officials, and employees as “additional insureds” under said insurance coverage and to state that such insurance will be deemed “primary” such that any other insurance that may be carried by CITY will be excess thereto. Such insurance will be on an “occurrence,” not a “claims made,” basis and will not be cancelable or subject to reduction except upon thirty (30) days prior written notice to CITY.

C. Professional liability coverage will be on an “occurrence basis” if such coverage is available, or on a “claims made” basis if not available. When coverage is provided on a “claims made basis,” CONSULTANT will continue to renew the insurance for a period of three (3) years after this Agreement expires or is terminated. Such insurance will have the same coverage and limits as the policy that was in effect during the term of this Agreement, and will cover CONSULTANT for all claims made by CITY arising out of any errors or omissions of CONSULTANT, or its officers, employees or agents during the time this Agreement was in effect.

D. Automobile coverage will be written on ISO Business Auto Coverage Form CA 00 01 06 92, including symbol 1 (Any Auto).

E. CONSULTANT will furnish to CITY duly authenticated Certificates of Insurance evidencing maintenance of the insurance required under this Agreement and such other evidence of insurance or copies of policies as may be reasonably required by CITY from time to time. Insurance must be placed with insurers with a current A.M. Best Company Rating equivalent to at least a Rating of “A:VII.”

F. Should CONSULTANT, for any reason, fail to obtain and maintain the insurance required by this Agreement, CITY may obtain such coverage at CONSULTANT's expense and deduct the cost of such insurance from payments due to CONSULTANT under this Agreement or terminate pursuant to Section 17.

G. Self-Insured Retention/Deductibles. All policies required by this Agreement must allow CITY, as additional insured, to satisfy the self-insured retention ("SIR") and deductible of the policy in lieu of CONSULTANT (as the named insured) should CONSULTANT fail to pay the SIR or deductible requirements. The amount of the SIR or deductible is subject to the approval of the City Attorney and the Finance Director. CONSULTANT understands and agrees that satisfaction of this requirement is an express condition precedent to the effectiveness of this Agreement. Failure by CONSULTANT as primary insured to pay its SIR or deductible constitutes a material breach of this Agreement. Should CITY pay the SIR or deductible on CITY's behalf upon the CONSULTANT'S failure or refusal to do so in order to secure defense and indemnification as an additional insured under the policy, CITY may include such amounts as damages in any action against CONSULTANT for breach of this Agreement in addition to any other damages incurred by CITY due to the breach.

25. **USE OF SUBCONTRACTORS.** CONSULTANT must obtain CITY's prior written approval to use any consultants while performing any portion of this Agreement. Such approval must approve of the proposed consultant and the terms of compensation.

26. **INCIDENTAL TASKS.** CONSULTANT will meet with CITY monthly to provide the status on the project, which will include a schedule update and a short narrative description of progress during the past month for each major task, a description of the work remaining and a description of the work to be done before the next schedule update.

27. **NOTICES**. All communications to either party by the other party will be deemed made when received by such party at its respective name and address as follows:

<u>If to CONSULTANT:</u>

Pretty Smart
2730 E 4th Street
Long Beach, CA 90814
(562) 343-2491
daniella@pretty-smart.net

<u>If to CITY:</u>

City of Bellflower
350 Main Street
Bellflower, CA 90245
(562) 804-1424, ext. 2217
lgorecki@bellflower.org

Attention: Daniella Carter, Principal

Attention: Len Gorecki, Director of Public Works

Any such written communications by mail will be conclusively deemed to have been received by the addressee upon deposit thereof in the United States Mail, postage prepaid and properly addressed as noted above. In all other instances, notices will be deemed given at the time of actual delivery. Changes may be made in the names or addresses of persons to whom notices are to be given by giving notice in the manner prescribed in this paragraph.

28. **CONFLICT OF INTEREST**. CONSULTANT will comply with all conflict of interest laws and regulations including, without limitation, CITY's conflict of interest regulations.

29. **SOLICITATION**. CONSULTANT maintains and warrants that it has not employed nor retained any company or person, other than CONSULTANT's bona fide employee, to solicit or secure this Agreement. Further, CONSULTANT warrants that it has not paid nor has it agreed to pay any company or person, other than CONSULTANT's bona fide employee, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Should CONSULTANT breach or violate this warranty, CITY may rescind this Agreement without liability.

30. **THIRD PARTY BENEFICIARIES**. This Agreement and every provision herein is generally for the exclusive benefit of CONSULTANT and CITY and not for the benefit of any other party. There will be no incidental or other beneficiaries of any of CONSULTANT's or CITY's obligations under this Agreement.

31. **INTERPRETATION**. This Agreement was drafted in, and will be construed in accordance with the laws of the State of California, and exclusive venue for any action involving this agreement will be in Los Angeles County.

32. **COMPLIANCE WITH LAW**. CONSULTANT agrees to comply with all federal, state, and local laws applicable to this Agreement.

33. **ENTIRE AGREEMENT.** This Agreement, and its Attachments, sets forth the entire understanding of the parties. There are no other understandings, terms or other agreements expressed or implied, oral or written. There are two (2) Attachments to this Agreement. This Agreement will bind and inure to the benefit of the parties to this Agreement and any subsequent successors and assigns.

34. **RULES OF CONSTRUCTION.** Each Party had the opportunity to independently review this Agreement with legal counsel. Accordingly, this Agreement will be construed simply, as a whole, and in accordance with its fair meaning; it will not be interpreted strictly for or against either Party.

35. **SEVERABILITY.** If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion will be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Agreement will continue in full force and effect.

36. **AUTHORITY/MODIFICATION.** The Parties represent and warrant that all necessary action has been taken by the Parties to authorize the undersigned to execute this Agreement and to engage in the actions described herein. This Agreement may be modified by written amendment. CITY's executive manager, or designee, may execute any such amendment on behalf of CITY.

37. **ACCEPTANCE OF FACSIMILE SIGNATURES.** The Parties agree that this Agreement, agreements ancillary to this Agreement, and related documents to be entered into in connection with this Agreement will be considered signed when the signature of a party is delivered by facsimile transmission. Such facsimile signature will be treated in all respects as having the same effect as an original signature.

38. **CAPTIONS.** The captions of the paragraphs of this Agreement are for convenience of reference only and will not affect the interpretation of this Agreement.

39. **TIME IS OF ESSENCE.** Time is of the essence for each and every provision of this Agreement.

40. **FORCE MAJEURE**. Should performance of this Agreement be prevented due to fire, flood, explosion, acts of terrorism, war, embargo, government action, civil or military authority, the natural elements, or other similar causes beyond the Parties' reasonable control, then the Agreement will immediately terminate without obligation of either party to the other.

41. **STATEMENT OF EXPERIENCE.** By executing this Agreement, CONSULTANT represents that it has demonstrated trustworthiness and possesses the quality, fitness and capacity to perform the Agreement in a manner satisfactory to CITY. CONSULTANT represents that its financial resources, surety and insurance experience, service experience, completion ability, personnel, current workload, experience in dealing with private consultants, and experience in dealing with public agencies all suggest that CONSULTANT is capable of performing the proposed contract and has a demonstrated capacity to deal fairly and effectively with and to satisfy a public CITY.

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

CITY OF BELLFLOWER

_____
Jeffrey L. Stewart,
City Manager

PRETTY SMART

_____
Daniella Carter, Principal

ATTEST:

_____
Mayra Ochiqui,
City Clerk

Taxpayer ID No. 26-2945184
Business License No. N/A

APPROVED AS TO FORM:

_____
Karl H. Berger, Interim City Attorney

CITY OF BELLFLOWER

AGREEMENT FILE NO. XXX - EXHIBIT A

SCOPE OF WORK

The following scope of work is to include the renovation and adaptive reuse of an existing industrial building of approximately 2640 s.f. and possible addition of up to 300 s.f. to accommodate the relocation of the existing Public Works offices. The renovated space is to include a public counter and reception area, administration and management offices, a conference room, break room and accessible bathrooms and locker rooms. Goals of the design are to improve employee efficiency and user experience, as well as to provide fully accessible and ADA compliant spaces.

Deliverables are outlined as follows:

1. **Pre-design**: Production of existing floor plans, roof plan and exterior elevations, research and resolution strategy for change of use issues and basic site analysis.

2. **Schematic Design**: Completion of agency research, production of proposed floor plan, site plan, basic 3-D renderings as needed for design communication and approval.

3. **Design Development**: Plan and exterior elevation development, key interior elevations, reflective ceiling plans, consultant selection, key architectural details.

4. **Construction Documents**: Technical documents for permitting, bidding, consultant coordination, city submittal and corrections, assistance in bid review and selecting contractor.

5. **Construction Administration/Project Management**: Site visits at appropriate times, respond to information requests, provide supplemental information as required, review changes and unforeseen conditions, facilitate client/contractor communication, review contractor applications for payment, assist with project closeout, public/council preparation and presentation.

6. **Interior Design**: Furniture planning, selection of final finish materials and detailed interior elevations as needed, coordination and communication with furniture vendor, sourcing and procurement, wallcoverings, window coverings, custom furniture and detailed casework design as needed.

Schedule: It is estimated each phase will take approximately 6-8 weeks to complete.

This project may require coordination with the following consultants: Site Surveyor, Structural Engineer, MEP Engineer, Fire Life Safety, and Title 24 Consultant (for state mandated energy calculations). CONSULTANT will help procure proposals and provide recommendations, if necessary. All fees and services from aforementioned consultants are excluded from the architectural scope of work and will be contracted by the CITY directly.

CITY OF BELLFLOWER

AGREEMENT FILE NO. XXX – EXHIBIT B

FEE SCHEDULE

Payment to CONSULTANT for the deliverables described in Exhibit A will be as follows:

Fixed Fees:

Item 1: **Pre-design** $4,306.00
Item 2: **Schematic Design** $6,460.00
Item 3: **Design Development** $10,766.00
Item 4: **Construction Documents** $17,226.00

On Hourly Basis:

Item 5: **Construction Administration/Project Management**
Item 6: **Interior Design**

Hourly Rates:

Client Meetings, on-site coordination, and design $125/hr
Sourcing, research, and coordination $95/hr
Drafting and project assistant ..... $75 hr

CITY's Director of Public Works is authorized to approve payment for Items 5 and 6 above based on actual hours spent in satisfactorily performing work, as reasonably determined by CITY's Director of Public Works, in an amount not to exceed $5,000.

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