CITY OF BELLFLOWER
"GROWING TOGETHER"

staff report

TO: Honorable Mayor and Members of the City Council

ATTENTION: Jeffrey L. Stewart, City Manager

FROM: Randi L. Stover, Assistant to the City Manager

SUBJECT: Consideration and possible action to authorize the City Manager to execute Amendment No. 1 to Agreement File No. 701, in a form approved by the City Attorney, with Robert Mark, dba Onesquared Food & Beverage Consulting, to extend the term for one year, for catering and concessionaire services for the Events Center and Fire Museum.

DATE: December 12, 2016

EXECUTIVE SUMMARY

On April 1, 2016, the City entered into Agreement File No. 701 with Robert Mark, dba Onesquared Food & Beverage Consulting, for the development of the Request for Proposals (RFP) to solicit catering services for the newly designed Events Center and Fire Museum. The city is soliciting proposals for providing long-term and exclusive catering and concessions services. The purpose of this Amendment is to extend the term and maximum consideration for the consulting services.

RECOMMENDATION TO CITY COUNCIL

1) Authorize the City Manager to execute Amendment No. 1 to Agreement File No. 701, in a form approved by the City Attorney; or

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

FISCAL IMPACT

The total amount of the compensation to be paid to Robert Mark, dba Onesquared Food and Beverage Consulting, is budgeted through Contract Services (Economic Development Contract Services Account No. 510-42054-4002) for a maximum not to exceed the amount of $20,000 over two fiscal years.

ATTACHMENTS

Amendment No. 1 to Agreement File No. 701.....2
Agreement File No. 701.....9

AMENDMENT NO. 1 TO
AGREEMENT FILE NO. 701 BETWEEN
THE CITY OF BELLFLOWER AND
ROBERT MARK, DBA ONESQUARED FOOD & BEVERAGE CONSULTING
FOR CATERING AND CONCESSIONAIRE CONSULTING SERVICES

THIS AMENDMENT No. 1 ("Amendment") is made and entered into this 13th day of December 2016, by and between the CITY OF BELLFLOWER, a general law city and municipal corporation ("CITY"), and Robert Mark, a sole proprietor, dba Onesquared Food & Beverage Consulting ("CONSULTANT").

1. Pursuant to Section 1 and 8 of Agreement File No. 701 ("Agreement"), the services and payment of the agreement pursuant to the agreement is amended to read as follows:

> "1. CONSIDERATION. (C) As additional consideration, CITY agrees to pay CONSULTANT a sum not to exceed $20,000 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 "A," which is incorporated by reference."
>
> "8. TERM. The term of this agreement will be from April 11, 2016 to December 31, 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 16."

2. This Amendment may be executed in any number or counterparts, each of which will be an original, but all of which together constitutes one instrument executed on the same date.

3. Except as modified by this Amendment, all other terms and conditions of Agreement File No. 701 remain the same.

[SIGNATURES ON NEXT PAGE]

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

CITY OF BELLFLOWER	**Onesquared Food & Beverage Consulting**
_____	_____
Jeffrey L. Stewart, City Manager	**Robert Mark**

ATTEST:

_____
Mayra Ochiqui, City Clerk

APPROVED AS TO FORM:

_____
Karl H. Berger, City Attorney

AGREEMENT FILE NO. 701
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF BELLFLOWER AND
ROBERT MARK, DBA ONESQUARED FOOD & BEVERAGE CONSULTING
FOR CATERING AND CONCESSIONAIRE CONSULTING SERVICES

THIS AGREEMENT is entered into this 1st day of April 2016, by and between the CITY OF BELLFLOWER, a municipal corporation and general law city ("CITY") and Robert Mark, a sole proprietor, dba Onesquared Food & Beverage Consulting ("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 $10,000.00 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 "A," 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 "A") 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 $10,000.00 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. **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.

8. **TERM**. The term of this Agreement will be from April 11, 2016 to December 31, 2016. 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 **16**.

9. **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.

10. **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.

11. **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 Services and Hourly Rate

12. **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.

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

14. **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.

15. **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.

16. **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.

17. **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.

18. **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.

19. **INDEMNIFICATION**.

A. CONSULTANT agrees to the following:

i. *Indemnification for Professional Services.* CONSULTANT will save harmless and indemnify and at CITY's request reimburse defense costs for CITY and all its officers, volunteers, 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 resulting or arising from any negligent or wrongful act, error or omission by CONSULTANT or any of CONSULTANT's officers, agents, employees, or representatives, in the performance of this Agreement, except for such loss or damage arising from CITY's sole negligence or willful misconduct.

ii. *Indemnification for other Damages*. CONSULTANT indemnifies and holds CITY harmless from and against any claim, action, damages, costs (including, without limitation, attorney's fees), injuries, or liability, arising out of this Agreement, or its performance, except for such loss or damage arising from CITY's sole negligence or willful misconduct. Should CITY be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of this Agreement, or its performance, CONSULTANT will defend CITY (at CITY's request and with counsel satisfactory to CITY) and will indemnify CITY for any judgment rendered against it or any sums paid out in settlement or otherwise.

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 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 0, 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.

20. **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.

21. **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.

22. **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.

23. **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.

24. **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.

25. **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:

If to CONSULTANT:	If to CITY:
Attention: Robert Mark	Attention: P.J. Mellana, Director of Parks and Recreation
Onesquared Food & Beverage Consulting 323 E. Francis Avenue La Habra, CA 90631 (562) 688-4141 0bobmark0@gmail.com	City of Bellflower 16600 Civic Center Drive Bellflower, CA 90706 (562) 804-1424 pmellana@bellflower.org

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.

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

27. **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.

28. **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.

29. **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.

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

31. **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 is one (1) Attachment to this Agreement. This Agreement will bind and inure to the benefit of the parties to this Agreement and any subsequent successors and assigns.

32. **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.

33. **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.

34. **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 Manager, or designee, may execute any such amendment on behalf of CITY.

35. **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.

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

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

38. **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.

39. **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

Onesquared Food & Beverage Consulting

Robert Mark

ATTEST:

Mayra Ochiqui, City Clerk

APPROVED AS TO FORM:

Karl H. Berger, ~~Interim~~ City Attorney

Doc 337597

CITY OF BELLFLOWER

AGREEMENT FILE NO. 701 – EXHIBIT A

SCOPE OF SERVICES

Consultant will provide the following services:

- Preparation of a Request for Proposals (RFP) document that seeks qualified proposals for catering and concessionaire operators that meet the needs of the City.
- Objective evaluation of RFPs received by City to determine operator best suited to meet the needs of the City.
- Provide subject-matter insight and advice to City during catering and concessionaire operator recruitment.
- Attend meetings as necessary with City where Consultant would provide subject-matter advice to the City during deliberations on securing an operator.
- Assist with operator interviews and assessment, as required.
- Attend and oversee City pre-bid meeting, as required.
- Be available for, and participate in telephone conferencing with City staff, as required.

HOURLY RATE

Services are compensated at an hourly rate of One Hundred Twenty-five Dollars ($125.00).

Doc 337299