

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA

CIVIL DIVISION

CASE NO.

BROWARD COUNTY POLICE BENEVOLENT  
ASSOCIATION, INC., a Florida not-for-profit corporation,

Plaintiff,

vs.

CITY OF HOLLYWOOD, FLORIDA, a  
Florida municipal corporation; and CHARLES A.  
GRUBER CONSULTING, INC., an  
Illinois Corporation for profit, authorized to  
do business in the State of Florida,

Defendants.

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**EXHIBIT 2 TO COMPLAINT**

300-2010

**CONTRACT FOR CONSULTING/PROFESSIONAL SERVICES**

This Contract is made as of the 17 day of Oct, 2013, by and between the City of Hollywood, a municipal corporation of the State of Florida (hereinafter the "City"), and Charles A. Gruber Consulting, Inc. a Illinois corporation authorized to do business in the State of Florida, whose principal office is located at St. Charles, Illinois, whose Federal I.D. number is 27-1158525 (hereinafter referred to as "CONSULTANT").

WHEREAS, Charles A. Gruber Consulting, Inc. present a proposal to the City of Hollywood to perform an internal administrative audit of the Hollywood Police Department related to internal review assessment/ identifying problems, other technical assistance; and

WHEREAS, CONSULTANT specializes in consulting services in the area of creating and organizing a police department; assessing management style and supervision of police personnel; accessing policies and practices compared to best practices; conduct police chief services; and

WHEREAS, the City requires the expertise of CONSULTANT for internal administrative audit of the Hollywood Police Department; and

NOW, THEREFORE, in consideration of the mutual promises herein, the CITY and the CONSULTANT hereby agree as follows:

**ARTICLE 1 - SERVICES/CONSULTANT AND CITY REPRESENTATIVES**

The CONSULTANT'S responsibility under this Contract is to provide professional/consultation services as described in Exhibit "A" attached hereto and incorporated herein by reference.

The CONSULTANT'S Representative shall be: Charles A. Gruber  
6N 302 Ferson Woods Drive  
St. Charles, IL 60175

Telephone No.: 630-762-1095

The City's Representative shall be: Frank Fernandez  
Assistant City Manager/Chief of Police  
2600 Hollywood Blvd., Room 419  
Hollywood, Florida 33021

Telephone No. 954-921-3201

## ARTICLE 2 – SCHEDULE/TERM

The CONSULTANT shall commence services upon receipt of the executed contract and complete all services by September 30, 2014.

## ARTICLE 3 - PAYMENTS TO CONSULTANT

- A. The total amount to be paid by the City under this Contract for all services materials, out-of-pocket expenses and also including any approved subcontracts shall not exceed a total contract amount of twenty-five thousand Dollars (\$25,000). For purpose of this Contract, out-of-pocket expenses are for such items as travel, copying, postage and express mail. The CONSULTANT will bill the City on a monthly basis, or as otherwise provided, at the amounts set forth in Exhibit "A" for services rendered toward the completion of the Scope of Work. All invoices submitted to the City must be itemized to indicate the number of hours incurred by each category of personnel. Where incremental billings for partially completed items is permitted, the total billings shall not exceed the estimated percentage of completion as of the billing date. It is acknowledged and agreed to by the CONSULTANT that the dollar limitation set forth in this section is a limitation upon, and describes the maximum extent of, CITY'S obligation to pay CONSULTANT but does not include a limitation upon CONSULTANT'S duty to perform all services set forth in Exhibit "A" for the total compensation in the amount or less than the guaranteed maximum stated above.
- B. Invoices received by the City from the CONSULTANT pursuant to this Contract will be reviewed and approved in writing by the City's Representative, indicating that services have been rendered in conformity with the Contract, and then will be sent to the City's Financial Services Department for payment. All invoices shall contain a detailed breakdown of the services provided for which payment is being requested. Invoices shall be paid within thirty (30) days following the City Representative's approval, provided however, that the City will retain ten (10) percent of each monthly payment as security for final contract completion. In addition to detailed invoices, upon request of the City's Representative, CONSULTANT will provide City with detailed periodic Status Reports on the project.
- C. Final Invoice: In order for both parties herein to close their books and records, the CONSULTANT will clearly state "final invoice" on the CONSULTANT'S final/last billing to the City. This final invoice shall also certify that all services provided by CONSULTANT have been properly performed and all charges and costs have been invoiced to the City. Because this account will thereupon be closed, any and other further charges not properly included on this final invoice are waived by the CONSULTANT.

## ARTICLE 4 - TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Contract by the CONSULTANT shall also act as the execution of a truth in negotiation certificate certifying that the wage rates, overhead charges, and other costs used to determine the compensation provided for this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the CONSULTANT'S most favored customer for the same or substantially similar service. Should the CITY determine that said rates and costs were significantly increased due to incomplete, non current or inaccurate representation, then said rates shall be adjusted accordingly.

## **ARTICLE 5 - TERMINATION**

This Contract may be cancelled by the CONSULTANT upon thirty (30) days prior written notice to the City's Representative in the event of substantial failure by the City to perform in accordance with the terms of this Contract through no fault of the CONSULTANT. It may also be terminated, in whole or in part, by the City, with or without cause, immediately upon written notice from the City's Representative to the CONSULTANT. Unless the CONSULTANT is in breach of its Contract, the CONSULTANT shall be paid for services rendered to the City's satisfaction through the date of termination. Ten (\$10.00) Dollars paid to the CONSULTANT, the adequacy of which is acknowledged, is given as specific and independent consideration of the City's right to terminate this Contract for convenience. Termination for cause by the City shall include, but not be limited to, failure to suitably perform the work, failure to continuously perform the work in a manner calculated to meet or accomplish the objectives of the City as set forth herein, or multiple breach of the provisions of this Contract notwithstanding whether any such breach was previously waived or cured. After receipt of a Termination Notice and except as otherwise directed by the City the CONSULTANT shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work documents in process, completed work, and other materials related to the terminated work to the City.
- D. Continue and complete all parts of the work that have not been terminated.

## **ARTICLE 6 - PERSONNEL**

The CONSULTANT is, and shall be, in the performance of all work services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONSULTANT'S sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONSULTANT'S relationship and the relationship of its employees to the City shall be that of an Independent Contractor and not as employees or agents of the City. This contract does not create a partnership or joint venture between the parties.

The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City, nor shall such personnel be entitled to any benefits of the City including, but not limited to, pension, health and workers' compensation benefits.

All of the services required hereunder shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the CONSULTANT'S key personnel, as may be listed in Article 1, must be made known to the City's Representative and written approval must be granted by the City's Representative before said change or substitution can become effective.

The CONSULTANT warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

#### **ARTICLE 7 - SUBCONTRACTING**

CONSULTANT shall not subcontract any services or work to be provided to City without the prior written approval of the City's Representative. The City reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make determination as to the capability of the subcontractor to perform properly under this Contract. The City's acceptance of a subcontractor shall not be unreasonably withheld. The CONSULTANT is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities.

#### **ARTICLE 8 - FEDERAL AND STATE TAX**

The City is exempt from payment of Florida State Sales and Use Taxes. The City will sign an exemption certificate submitted by the CONSULTANT. The CONSULTANT shall **not** be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the City, nor is the CONSULTANT authorized to use the City's Tax Exemption Number in securing such materials.

The CONSULTANT shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Contract.

#### **ARTICLE 9 - AVAILABILITY OF FUNDS**

The CITY'S performance and obligation to pay under this contract is contingent upon an annual appropriation for its purpose by the City Commission. The City Commission has appropriated sufficient funds in the FY 14 Operating Budget for this contract.

## **ARTICLE 10- INDEMNIFICATION**

The CONSULTANT shall indemnify, defend and hold harmless the CITY, its officials, appointed officers, agents and employee, from and against any and all liability, suits, actions, damages, costs, losses and expenses, including, but not limited to attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the CONSULTANT and other persons employed or utilized by the CONSULTANT in the performance of the services under this Agreement and any Project Agreement. These provisions shall survive the expiration or earlier termination of this Contract. Such obligation to indemnify and hold harmless shall continue notwithstanding any negligence or comparative negligence on the part of the CITY relating to such loss or damage and shall include all costs, expenses and liabilities incurred by the CITY in connection with any such claim, suit, action or cause of action, including the investigation thereof and the defense of any action or proceeding brought thereon and any order, judgment or decree which may be entered in any such action or proceeding or as a result thereof. CONSULTANT acknowledges and agrees that CITY would not enter into this contract without this indemnification of CITY by CONSULTANT, and that CITY'S entering into this contract shall constitute good and sufficient consideration for this indemnification. These provisions shall survive the expiration or earlier termination of this Contract. Nothing in this contract shall be construed to affect, in any way, the CITY'S rights, privileges, and immunities under the doctrine of "sovereign immunity" and as set forth in Florida Statutes §768.28.

## **ARTICLE 11 – SUCCESSORS AND ASSIGNS**

The City and the CONSULTANT each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the City nor the CONSULTANT shall assign, sublet, encumber, convey or transfer its interest in this Contract without the prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the City which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the City and the CONSULTANT.

## **ARTICLE 12 - REMEDIES**

This Contract shall be governed by the laws of the State of Florida. Any and all legal action between the parties arising out of the Contract will be brought in Broward County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

## **ARTICLE 13- CONFLICT OF INTEREST**

The CONSULTANT represents that it has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in the Code of Ethics for Public Officers and Employees (Chapter 112, Part III, Florida Statutes). The CONSULTANT further represents that no person having any interest shall be employed for said performance.

The CONSULTANT shall promptly notify the City's representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT'S judgement or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the CONSULTANT. The City agrees to notify the CONSULTANT of its opinion by certified mail within thirty (30) days of receipt of notice by the CONSULTANT. If, in the opinion of the CITY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the CITY shall so state in the notice and the CONSULTANT shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by the CONSULTANT under the terms of this Contract.

## **ARTICLE 14 - EXCUSABLE DELAYS**

The CONSULTANT shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the CONSULTANT or its subcontractors and without their fault or negligence. Such causes include, but are not limited to: acts of God; natural or public health emergencies; freight embargoes; and abnormally severe and unusual weather conditions.

Upon the CONSULTANT'S request, the City shall consider the facts and extent of any failure to perform the work and, if the CONSULTANT'S failure to perform was without it or its subcontractors fault or negligence, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly; subject to the City's rights to change, terminate, or stop any or all of the work at any time.

## **ARTICLE 15 - DEBT**

The CONSULTANT shall not pledge the City's credit or attempt to make it a guarantor of payment or surety for any contract, debt, obligation, judgement, lien or any form of indebtedness. The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

## **ARTICLE 16 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS**

The CONSULTANT shall deliver to the City's Representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the City under this Contract.

All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the City or at its expense will be kept confidential by the CONSULTANT and will not be disclosed to any other party, directly or indirectly, without the City's prior written consent unless required by a lawful order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Contract for or at the City's expense shall be and remain the City's property and may be reproduced and reused at the discretion of the City.

The City and the CONSULTANT shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law).

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

## **ARTICLE 17 - CONTINGENT FEES**

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. Violation of this Article shall constitute a forfeiture of this Contract by CONSULTANT.

## **ARTICLE 18 - ACCESS AND AUDITS**

The CONSULTANT shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion of this Contract or until completion of any audit, whichever is later. The City shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the CONSULTANT'S place of business.

## **ARTICLE 19 - NONDISCRIMINATION**

The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.



## **ARTICLE 20 - INTERPRETATION**

The language of this Contract has been agreed to by both parties to express their mutual intent and no rule of strict construction shall be applied to either party hereto. The headings are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular, the plural, and vice versa, unless the context otherwise requires.

## **ARTICLE 21 - AUTHORITY TO PRACTICE**

The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the City's representative upon request.

## **ARTICLE 22 - SEVERABILITY**

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Contract, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

## **ARTICLE 23 - ENTIRETY OF CONTRACTUAL AGREEMENT**

The City and the CONSULTANT agree that this Contract together with the Exhibit hereto, sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 24 - Modification of Work. In the event of any conflict or inconsistency between this Contract and the provisions in the incorporated Exhibit, the terms of this Contract shall supersede and prevail over the terms in the Exhibit.

## **ARTICLE 24 - MODIFICATION OF SCOPE OF WORK**

The City reserves the right to make changes in the Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the CONSULTANT of the City's notification of a contemplated change, the CONSULTANT shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the City of any estimated change in the completion date, and (3) advise the CITY if the contemplated change shall effect the CONSULTANT'S ability to meet the completion dates or schedules of this Contract.

If the City so instructs in writing, the CONSULTANT shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the City's decision to proceed with the change.

If the City elects to make the change, the CITY shall initiate a Contract Amendment and the CONSULTANT shall not commence work on any such change until such written amendment is signed by the CONSULTANT and the CITY, and if such amendment is in excess of \$25,000 it must also first be approved by the CITY Commission and signed by the appropriate City Official authorized by the City Commission.

The City shall not be liable for payment of any additional or modified work which is not authorized in the manner provided for by this Article.

#### **ARTICLE 25 - NOTICE**

All notices required in this Contract shall be sent by certified mail, return receipt requested, and if sent to the City shall be mailed to:

Frank Fernandez  
Assistant City Manager/Chief of Police  
2600 Hollywood Blvd., Rm. 419  
Hollywood, FL. 33020

and if sent to the CONSULTANT shall be mailed to:

Charles A. Gruber  
6N 302 Ferson Woods Drive  
St. Charles, IL 60175


#### **ARTICLE 26 – OWNERSHIP OF DOCUMENTS**

All finished or unfinished documents, data, reports, studies, surveys, drawings, maps, models and photographs prepared or provided by CONSULTANT in connection with this Contract shall become property of the City, whether the project for which they are made is completed or not, and shall be delivered by CONSULTANT to City within ten (10) days of notice of termination. If applicable, City may withhold any payments then due to CONSULTANT until CONSULTANT complies with the provisions of this section.


Contract for Professional/Consulting Services with Charles A. Gruber Consulting, Inc.

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals the day and year first above written.


ATTEST:

  
Patricia A. Cerny, MMC  
City Clerk

City of Hollywood, a municipal  
Corporation of the State of Florida

  
By: Cathy Swanson-Rivenbark,  
City Manager


Approved as to form & legality for the  
use and reliance of the City of Hollywood,  
Florida, only.

  
Jeffrey B. Sheffel  
City Attorney

Approved by:   
Matt Lalla, Director of  
Financial Services



AS TO CONSULTANT

  
Charles A. Gruber  
Title: President

**Exhibit "A"**  
**Scope of Services**

**Project Scope of Services**

**Internal Review Assessment/Identifying Problems**

The CAG Team will commence the internal administrative review of the City of Hollywood Police Department Internal Affairs Section. The time length of the internal administrative review will depend on the number of personnel to be interviewed as well as clarity of the cases to be reviewed.

1. Locate disposition of thirteen (13) missing cases or others as determined by review;
2. Audit entire IAPRO (Internal Affairs software) including hard drive for case management and any unusual manipulations of cases status. Reveal any deficiencies and recommend policy changes to meet acceptable policing standards;
3. Identify and interview individuals who might have information, who work or have worked in Internal Affairs and who have or had access during a certain time frame to Internal Affairs files;
4. Cross check deleted cases with actual files and attempt to restore, as close to as possible, the original file. Recommend plan to remediate lost files and identify any victims, if possible;
5. Cross check Internal Affairs' files with Human Resources' files and any other known police department files.
6. Research applicable Florida Records Law and assure statutory compliance and recommend policy changes to assure future compliance were failures have been identified.
7. Provide written recommendation on Best Practices.
8. Provide an overall written report of the:
  - Review and identify investigative discrepancies;
  - Review and identify administrative discrepancies..
9. Provide a verbal report of the Findings followed by a written report.

**Fees**

The City's cost for consultant work shall not exceed the amount set forth in Article 3 of this Agreement. Consultant shall submit the invoice in accordance with Article 3 of this Agreement and notify the City when fees are within \$2,000 of the maximum allowed under this contract.