

**AGREEMENT FOR LITTER CONTROL SERVICES**

THIS AGREEMENT is entered into this 6<sup>TH</sup> day of SEPT, 2019, by and between the CITY OF OCALA, a Florida municipal corporation ("City") and WEAR GLOVES, INC., a Florida not-for-profit corporation (EIN: 27-3644705), located at 701 SE Sanchez Avenue, Ocala, FL 34471 ("Litter Control Provider").

**WHEREAS:**

The City has a need for litter control services, landscape maintenance, and miscellaneous services identified by city departments.

Wear Gloves, a community non-profit provider, is willing to provide these services.

**NOW THEREFORE**, in consideration of the matters set forth above (which are incorporated herein by reference), the parties hereto agree as follows:

1. **SERVICES.** Wear Gloves shall provide litter control services, landscape maintenance, and miscellaneous services to the City as needed and when requested by city departments as described, and pursuant to the contents and sections within this Agreement.
2. **TERM.** The term of this Agreement shall commence on August 6, 2019 and shall end on July 31, 2020. This Agreement may be renewed for two (2), consecutive one (1) year terms upon the mutual written consent of both parties, unless terminated by either party pursuant to the terms of this Agreement.
3. **COMPENSATION.** The City will pay the Litter Control Provider for services a total of \$2,080 per week (TWO-THOUSAND, EIGHTY DOLLARS) for a crew of four litter collectors and one supervisor working 40 hours each per week.

**Invoicing:**

- A. Litter Control Provider shall invoice the City monthly for each week completed for the preceding calendar month.
- B. Invoices for this agreement will be prepared by Litter Control Provider, and submitted to each responsible City Project Manager electronically through email.

- C. All invoices must contain the City contract number.
  - D. Completed invoices must be reviewed and agreed upon by City Project Manager, this review and agreement shall not be unreasonably withheld, conditioned, or delayed.
4. **LITTER CONTROL PROVIDER DUTIES.** The duties of the Litter Control Provider are outlined below:
- A. Litter control services will be provided daily in the parks and areas identified in **Exhibit A- Litter Control Park Schedule.**
  - B. Landscape maintenance and miscellaneous services may also be required, and will be coordinated with the City project manager in lieu of litter control efforts.
  - C. Labor hours are verified, via email, on Mondays for any work completed during the prior week.
  - D. Services utilized through this Agreement can be terminated at will. The City will inform the Litter Control Provider in writing or via email when a litter control worker is no longer needed or desired.
  - E. The Litter Control Provider will have a drug free workplace program in place. Litter Control Provider's employees will not consume alcohol during working hours, will not work while under the influence of alcohol or illegal substances, and will not smoke while in City vehicles or buildings.
  - F. During the assignment, litter control workers shall not work for any period over eight (8) hours per day for a maximum of forty (40) hours per week without prior authorization from the City.
5. **EMPLOYEE UNIFORM/ SAFETY VESTS.** Litter Control Provider's employees and personnel assigned to provide temporary labor services under this Agreement shall present a neat and clean appearance suitable for duties as directed. Litter Control Provider is required to provide yellow safety vests to workers, and insure they have appropriate footwear.
6. **SUBCONTRACTING/ASSIGNMENT.** Litter Control Provider shall not assign/subcontract any work without the prior written approval of the City. The City reserves the right to decline any assignments/subcontracting.

7. **PERFORMANCE EVALUATION.** At the end of the contract, the City will evaluate the Litter Control Provider's performance. This evaluation will become public record.
8. **INDEPENDENT CONTRACTOR STATUS.** City expressly acknowledges the Litter Control Provider is an independent contractor, and nothing in this Agreement is intended nor shall be construed to create an agency relationship, an employer/employee relationship, a joint venture relationship, or any other relationship allowing the City to exercise control or discretion over the manner or method by which Litter Control Provider performs hereunder.
9. **INDEMNITY.** Litter Control Provider shall indemnify City and its elected officials, employees and volunteers against, and hold City and its elected officials, employees and volunteers harmless from, all damages, claims, losses, costs, and expenses, including reasonable attorneys' fees, which City or its elected officials, employees or volunteers may sustain, or which may be asserted against City or its elected officials, employees or volunteers, arising out of the activities contemplated by this Agreement or Litter Control Provider's breach of any obligation under this Agreement, including, without limitation, harm or personal injury to third persons during the term of this Agreement to the extent attributable to the actions of Litter Control Provider, its agents, or employees.
10. **LITTER CONTROL PROVIDER REPRESENTATIONS.**
  - A. The Litter Control Provider has examined and carefully studied the Contract Documents and the other related data.
  - B. The Litter Control Provider is familiar with and is satisfied as to all Federal, state, and local laws and regulations that may affect cost, progress, and performance of the Work.
  - C. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. **ADDITIONAL INSURED.** The "City of Ocala" shall be added to all third party coverage required by and provided for this contract as an "ADDITIONAL INSURED," but only to the extent of the risk obligations assumed hereunder by Litter Control Provider.

12. MISCELLANEOUS INSURANCE PROVISIONS.

- A. Severability of Interests. Litter Control Provider shall arrange for its liability insurance to include, or be endorsed to include, a severability of interests / cross liability provision, so that the "City of Ocala" (where named as an additional insured) will be treated as if a separate policy were in existence, but without increasing the policy limits.
- B. Insurance Requirements. These insurance requirements shall not relieve or limit the liability of the Litter Control Provider. The City does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect the Litter Control Provider's interests or liabilities, but are merely minimums. No insurance is provided by the City under this contract to cover the Litter Control Provider.
- C. Duplicate Coverage.
  - 1. Insurance required of the Litter Control Provider or any other insurance of the Litter Control Provider shall be considered primary and insurance or self-insurance of the City shall be considered excess, as may be applicable to claims against the City which arise out of this contract.
  - 2. Insurance written on a "Claims Made" form is not acceptable without City Risk Management consultation.
  - 3. No work shall be commenced under this contract until the required Certificate(s) have been provided. Work shall not continue after expiration (or cancellation) of the Certificate and shall not resume until new Certificate(s) have been provided.
- D. Deductibles. Litter Control Provider's deductibles/self-insured retentions shall be disclosed to the City and may be disapproved by the latter. They shall be reduced or eliminated at the option of the City. The Litter Control Provider is responsible for the amount of any deductible or self-insured retention.
- E. Certificates. Litter Control Provider shall provide a Certificate of insurance, issued by an agency authorized to do business in the State of Florida and with an A.M. Best rating\* of at least A, showing the "City of Ocala" as an Additional Insured. Shown on the certificate as the certificate holder should be: **City of Ocala, Contracting Department- 3<sup>rd</sup> FL, 110 SE Watula Ave, Ocala, FL 34471.** Renewal certificates must also be forwarded to the Contracting Department prior to the

policy expiration. Ten (10) days written notice must be provided to the City in the event of cancellation

\*Non-rated insurers must be pre-approved by the City Risk Manager.

- F. Failure to Maintain Coverage. In the event that Litter Control Provider shall fail to obtain or maintain in full force and effect any insurance coverage required to be obtained by Litter Control Provider under this agreement, the Litter Control Provider shall be considered to be in default of this agreement.

**13. LIABILITY INSURANCE.** General liability insurance, with combined single limits of not less than \$1,000,000 per occurrence shall be provided and maintained by the Litter Control Provider. The only aggregate limit acceptable is a "project aggregate" and the Certificate must show an appropriate endorsement (ISO CG2501 or equal).

A. If the Commercial General Liability form is used:

1. Coverage A - shall include premises, operations, products and completed operations, independent Litter Control Providers, contractual liability covering this contract and broad form property damage coverage.
2. Coverage B - shall include personal injury.
3. Coverage C - medical payments, is not required.

B. If the Comprehensive General Liability form is used, it shall include at least:

1. Bodily Injury and Property Damage liability for premises, operations, products and completed operations, independent Litter Control Providers, and property damage resulting from explosion, collapse or underground (XU) exposures.

**14. BUSINESS AUTO LIABILITY.** Business Auto Liability insurance shall be provided by the Litter Control Provider with combined single limits of not less than \$100,000 per person, \$300,000 per occurrence, and is to include bodily injury and property damage liability arising out of operation, maintenance, or use of any auto including owned, non-owned and hired automobiles and employee non-ownership use.

**15. RELATIONSHIP OF PARTIES.** Neither this Agreement, nor any term, provision, payment or right hereunder shall in any way or for any purpose constitute or cause City to become or be deemed a partner of Litter Control Provider in the conduct of its business,

or otherwise, or to cause City to become or be deemed a joint adventurer or a member of a joint enterprise with Litter Control Provider, as City is and shall remain an independent Litter Control Provider by reason of this Agreement.

16. **TERMINATION.** If the Litter Control Provider defaults in the performance or materially breaches any provision of this Agreement, the City may, at its option, terminate this Agreement by giving written notification thereof to the other party at least thirty (30) days in advance of termination. Termination of this Agreement shall have no effect upon the rights of the parties that accrued prior to termination.
17. **DEFAULT.** This Agreement is critical to the City and the City reserves the right to immediately cancel either in whole or in part any portion of this Agreement due to failure of the Litter Control Provider to carry out any obligation, term, or condition of the Agreement. The City will issue a written notice of default effective immediately and not deferred by any interval of time. Default shall be considered to be any act or failure to act on the part of the Litter Control Provider including, but not limited to, any of the following:
- A. Litter Control Provider fails to adequately perform the services set forth in the specifications of the Agreement;
  - B. Litter Control Provider fails to make progress in the performance of the Agreement and/or gives the City reason to believe that the Litter Control Provider will not or cannot perform to the requirements of the Agreement.
18. **REMEDIES/OPPORTUNITY TO CURE.** If Litter Control Provider defaults on any provision of this Agreement, City may, at its sole discretion, give written notice to Litter Control Provider detailing Litter Control Provider's violations and giving Litter Control Provider an opportunity to cure the default. If such violation is not corrected to the reasonable satisfaction of City within the time required by the City to cure the default, after the date of notice of violation, the City may, without further notice, declare Litter Control Provider to be in breach of this Agreement and pursue any and all remedies available at law or equity, including termination of this agreement without further notice and all rights of Litter Control Provider hereunder. Notwithstanding City's termination of the Agreement, Litter Control Provider shall remain liable to City for damages, costs, or attorney's fees arising prior to such termination. In case of default, the City reserves the right to hire another Litter Control Provider to complete the required work in accordance with the needs of the City. City may recover any actual excess costs from

the Litter Control Provider by: (a) Deduction from an unpaid balance, or (b) Any other remedy as provided by law.

19. **WAIVER.** The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any circumstance shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.
20. **FORCE MAJEURE.** Neither party shall be responsible for damages or delays caused by Force Majeure or other events beyond the reasonable control of the party and which could not reasonably have been anticipated or prevented. For purposes of this Agreement, Force Majeure includes, but is not limited to, adverse weather conditions, floods, epidemics, war, riot, lockouts, and other industrial disturbances; unknown site conditions, accidents, sabotage, fire loss of or failure to obtain permits, unavailability of labor, materials, fuel, or services; court orders; acts of God; acts, orders, laws, or regulations of the Government of the United States or the several states, or any foreign country, or any governmental agency. In the event that Force Majeure occurs, the parties shall mutually agree on the terms and conditions upon which services may continue.
21. **ASSIGNMENT.** Neither party may assign this Agreement or the rights and obligations thereunder to any third party without the prior express written approval of the other party, which shall not be unreasonably withheld.
22. **TERMINATION FOR CONVENIENCE.** Parties may at any time and for any reason terminate services by providing a 30-day notice to the other party. Upon receipt of such notice, Litter Control Provider shall, unless the notice directs otherwise, immediately discontinue the work in connection with the performance of this Agreement. Upon such termination, Litter Control Provider shall be entitled to payment only as follows: (1) the actual cost of the work hours completed in conformity with this

Agreement; plus, (2) such other costs actually incurred by Litter Control Provider as permitted by the contract and approved by City.

23. **NON EXCLUSIVITY.** Nothing herein is intended nor shall be construed as creating any exclusive arrangement with Litter Control Provider. This Contract shall not restrict City from acquiring similar, equal or like goods and/or services, or executing additional contracts from other entities or sources.
24. **SEVERABILITY OF ILLEGAL PROVISIONS.** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under the applicable law. Should any portion of this Agreement be declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this Agreement.
25. **NON-DISCRIMINATORY EMPLOYMENT PRACTICES.** During the performance of the contract, the Litter Control Provider agrees to not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation or veteran status and will take affirmative action to ensure that an employee or applicant is afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation and selection for training or retraining, including apprenticeship and on-the-job training.
26. **PUBLIC ENTITY CRIMES.** Litter Control Provider on its behalf and its affiliates agrees and affirms that it has not been placed on the convicted vendor list following a conviction of a public entity crime as provided for in Section 287.133(2)(a), Florida Statutes, which states that a person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases or real property to a public entity, may not be awarded or perform work as a Litter Control Provider, supplier, subcontractor Control Provider, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO, for a period of 36 months from the date of being placed on the convicted vendor list..



**27. COMPLIANCE WITH OTHER LAWS.** Litter Control Provider shall comply with all laws, rules or regulations governing the performance of this Agreement including, without limitation, those involving compensation to its employees or agents such as the Fair Labor Standards Act and the Florida Minimum Wage Act, and shall, upon request by City, provide City with such proof of such compliance including, without limitation, all records required to be maintained thereunder.

**28. NOTICES.** All notices, certifications or communications required by this Agreement shall be given in writing and shall be deemed delivered when personally served, or when received if by facsimile transmission with a confirming copy mailed by registered or certified mail, postage prepaid, return receipt requested. Notices can be concurrently delivered by email. All notices shall be addressed to the respective parties as follows:

If to Litter Control Provider:

Wear Gloves, Inc.  
Ken Kebrdle, President 1469 N.  
Magnolia Ave., Unit B Ocala, FL  
34471  
Phone: 352-727-0239  
Email: [ken@weargloves.org](mailto:ken@weargloves.org)

If to City:

Tiffany Kimball, Contracting Officer  
110 SE Watula Avenue, 3rd Floor  
Ocala, Florida 34471  
Phone: 352-629-8366  
Fax: 352-690-2025  
Email: [tkimball@ocalafl.org](mailto:tkimball@ocalafl.org)

Copy to:

Patrick G. Gilligan  
Gilligan, Gooding, Franjola & Batsel, P.A.  
Attorneys at Law  
1531 SE 36<sup>th</sup> Avenue  
Ocala, Florida 34471  
Phone: 352-867-7707  
Fax: 352-867-0237  
Email: [pgilligan@ocalalaw.com](mailto:pgilligan@ocalalaw.com)

**29. ATTORNEYS' FEES.** If any civil action, arbitration or other legal proceeding is brought

for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses reasonably incurred even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges reasonably billed by the attorney to the prevailing party.

**29. JURY WAIVER.** IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

**30. GOVERNING LAW.** This Agreement is and shall be deemed to be a contract entered into and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida.

**31. JURISDICTION AND VENUE.** The parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Marion County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of

venue of any such civil action or legal proceeding in such court and/or the right to bring an action or proceeding in any other court. Service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedures or local rules.

32. **REFERENCE TO PARTIES.** Each reference herein to the parties shall be deemed to include their successors, assigns, heirs, administrators, and legal representatives, all whom shall be bound by the provisions hereof.

33. **MUTUALITY OF NEGOTIATION.** Litter Control Provider and City acknowledge that this Agreement is a result of negotiations between Litter Control Provider and City, and the Agreement shall not be construed in favor of, or against, either party as a result of that party having been more involved in the drafting of the Agreement.

34. **AMENDMENT.** No amendment to this Agreement shall be effective except those agreed to in writing and signed by both of the parties to this Agreement.

35. **SECTION HEADINGS.** The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.

36. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

37. **RIGHTS OF THIRD PARTIES.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.

38. **ELECTRONIC SIGNATURE(S).** Litter Control Provider, if and by offering an electronic signature in any form whatsoever, will accept and agree to be bound by said electronic signature to all terms and conditions of this agreement. Further, a duplicate or copy of the agreement that contains a duplicated or non-original signature will be treated the same as an original, signed copy of this original agreement for all purposes.

30. **ENTIRE AGREEMENT.** This Agreement, including exhibits, (if any) constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof. There are no other representations, warranties, promises, agreements or understandings, oral,

written or implied, among the Parties, except to the extent reference is made thereto in this Agreement. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date set forth above.

**ATTEST:**

**CITY OF OCALA**


  
Angel B. Jacobs  
City Clerk

  
Mary S. Rich  
City Council President

**Approved as to form and legality:**

  
For Patrick G. Gilligan  
City Attorney

**WEAR GLOVES, INC.**

  
Ken Kebrdle as President