

**AGREEMENT**  
**BETWEEN**  
**THE CITY OF MIRAMAR**  
**AND**  
**THE BUTLER GROUP OF SOUTH FLORIDA, LLC**  
**d/b/a NEXTAFF**  
**FOR**  
**SCHOOL CROSSING GUARD SERVICES**

This Agreement (or "Contract") is entered into this 15th day of January, 2020, by and between the City of Miramar, Florida, a Florida municipal corporation, hereinafter referred to as "City",

**AND**

The Butler Group of South Florida, LLC d/b/a Nextaff, , a Florida corporation with its principal business address located at 3810 Inverrary Boulevard, Suite # 205, Lauderhill, Florida 33319, hereinafter referred to as "Contractor".

**WHEREAS**, on September 25, 2019 the City issued Invitation for Bid No. 19-014 ("IFB") for SCHOOL CROSSING GUARD SERVICES; and

**WHEREAS**, the Contractor was determined to be the lowest responsive, responsible Bidder and whose Bid was most advantageous to the City for Service; and

**WHEREAS**, on January 15, 2020, the City Commission approved Resolution No. 7077 for the award of the IFB to the Contractor and authorized the execution of the appropriate Agreement between the City and the Contractor for provision of services, for an initial term of three years with the option to renew for two additional one-year terms.

**NOW, THEREFORE**, in consideration of the mutual terms and conditions, promises, and covenants hereinafter set forth, City and Contractor agree as follows:

**ARTICLE 1**  
**SCOPE OF SERVICES**

Contractor agrees to provide the following Services to the City (the "Services") during the Term of this Agreement:

This Agreement is subject to and Contractor shall provide Services in accordance with the Scope of Services, terms, conditions and requirements of City of Miramar Invitation for Bids No. 19-014 ("IFB"), the Contractor's Bid, as accepted by the City, and any subsequently negotiated changes to same, which documents or agreements are incorporated by reference herein. In the case of any conflict between the provisions of this Contract, the Bid and the Bid Response, the conflict shall be resolved in the following order of priority: terms of this Contract; terms of the Bid; terms of the Bid Response.

Contractor represents and warrants to the City that: (i) it possesses all qualifications, licenses and expertise required for the performance of the Services; (ii) it is not delinquent in the payment of any sums due the City; (iii) all personnel assigned to perform the Services are and shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; and (iv) the Services will be performed in the manner described in the "IFB".

**Estimates/Quotations:**

All requests for related Services estimates/quotations not covered under this Agreement shall be submitted in writing prior to any Work being undertaken or approved. The estimate must include a detailed list of the Work to be completed, listed item by item, and location where Work is to be performed. Estimates/quotations are to be submitted electronically, if desired, to the City to secure purchase order approval prior to the Work being performed, and such Work shall not exceed 15% of the annual Contract for Services.

**Purchase Orders:**

1. The Contractor shall not perform or begin any Work without prior written authorization from the City, as well as an approved purchase order authorizing Services.

2. Failure of the Contractor to adhere to the City's purchasing protocol – working without having an official City purchase order for the Work, shall constitute a default and authorization for payment shall be denied.

**ARTICLE 2**  
**COMPENSATION**

The Contractor shall submit periodic invoices for the Goods and Services provided to the City of Miramar, ATTN: Accounts Payable, 2300 Civic Center Place, Miramar, FL 33025. The date of the invoice shall not exceed 30 calendar days from the date of acceptance of the Goods and Services by the City. Under no circumstance shall an invoice be submitted to the City in advance of the delivery and acceptance of the commodities and/or Services, unless otherwise agreed to. All invoices shall reference the appropriate Contract number, the address where the commodities were delivered or the Services performed, and the corresponding acceptance slip that was signed by an authorized representative of the City when the Goods and/or Services were delivered and accepted. Payment by the City shall be made within 30

days after receipt of Contractor's invoice, which shall be accompanied by sufficient supporting documentation and contain sufficient detail to allow a proper audit of expenditures should the City require one to be performed.

### **ARTICLE 3** **TERM OF AGREEMENT**

The term of this Agreement shall commence upon the date this Contract is executed by both parties and shall be for a term of three years, with the City having the option to renew the Agreement, on an annual basis, for up to two additional one year renewal terms, unless terminated earlier pursuant to Article 4 of this Agreement. The Chief Procurement Officer may authorize up to a 90-day extension of this Contract in accordance with its terms and conditions, and the City Manager or designee is authorized to extend this Agreement, for operational purposes only, for an additional 90 days, for a maximum of 180 days.

### **ARTICLE 4** **TERMINATION OF AGREEMENT**

City may terminate this Agreement for convenience by giving the Contractor 30 calendar days written notice. City may terminate this Agreement for cause by giving the Contractor five calendar days written notice upon the failure of Contractor to cure any default after being provided with notice of that default and a demand for cure within ten (10) calendar days. The termination of this Agreement shall not relieve either party of any liability that accrued prior to such termination and any such accrued liability shall survive the termination of this Agreement

### **ARTICLE 5** **INDEPENDENT CONTRACTOR**

Contractor is an independent contractor under this Agreement. Services provided by Contractor shall be by employees of Contractor and subject to supervision by Contractor, and not as officers, employees or agents of City. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, travel, per diem policy, and purchasing policies under the Agreement shall be the sole responsibility of Contractor. Contractor shall have no rights under the City's worker's compensation, employment, insurance benefits or similar laws or benefits.

### **ARTICLE 6** **INDEMNIFICATION / HOLD HARMLESS CLAUSE**

Contractor shall indemnify, defend and hold harmless City, its officials, agents, employees, and volunteers from and against any and all liability, suits, actions, damages, costs, losses and expenses, including attorneys' fees, demands and claims for personal injury, bodily injury, sickness, diseases or death or damage or destruction of tangible property or loss of use resulting therefrom, arising out of any errors, omissions, misconduct or negligent acts

of Contractor, its respective officials, agents, employees or subcontractors in the Contractor's performance of Services pursuant to this Agreement.

## **ARTICLE 7** **NON-APPROPRIATION OF FUNDS**

In the event no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable in any fiscal year for payments due under this Agreement, then the City, upon written notice to Contractor of such occurrence, shall have the unqualified right to terminate this Agreement without any penalty or expense to the City.

## **ARTICLE 8** **INSURANCE**

8.1 **INSURANCE** - For programs that are active in nature, which shall be determined in the sole and exclusive discretion of the City, Contractor shall maintain commercial general, automobile (where applicable), workers' compensation and professional liability insurance in an amount acceptable to the City's Risk Manager.

8.2 **Minimum Limits of Insurance** - Contractors shall maintain the following minimum limits of insurance (unless higher limits are required by law or statute):

1. Commercial General Liability: \$1,000,000 Combined Single Limit per occurrence, property damage and medical expense \$10,000, personal injury and advertising injury liability \$1,000,000; products and completed operations policy aggregate \$2,000,000 and general aggregate \$2,000,000.
2. Employer's Liability: \$1,000,000 per accident for bodily injury by accident or disease.
3. Workers' Compensation: Statutory.

8.3 **Required Insurance Endorsements** - The City requires the following insurance endorsements:

1. **ADDITIONAL INSURED** - The City must be included as an additional insured by policy endorsement under Commercial General Liability policy for liability arising from Services provided by or on behalf of the Contractor.
2. **WAIVERS OF SUBROGATION** - Contractor agrees to waive all rights of subrogation by policy endorsement against the City for loss, damage, claims, suits or demands, regardless of how caused:
  - a. To property, equipment, vehicles, laptops, cell phones, etc., owned, leased or used by the Contractor or the Contractor's employees, agents or Subcontractors; and

- b. To the extent such loss, damage, claims, suits or demands are covered, or should be covered, by the required or any other insurance (except professional liability to which this requirement does not apply) maintained by the Contractor.

This waiver shall apply to all first-party property, equipment, vehicle and worker's compensation claims, and all third-party liability claims, including deductibles or retentions which may be applicable thereto. If necessary, the Contractor agrees to endorse the required insurance policies to acknowledge the required waivers of subrogation in favor of the City. Contractor further agrees to hold harmless and indemnify the City for any loss or expense incurred as a result of Contractor's failure to obtain such waivers of subrogation from Contractor's insurers.

This Agreement shall not be deemed approved until the Contractor has obtained all insurance required under this section and has supplied the City with evidence of such coverage in the form of a Certificate of Insurance with additional insured and waiver of subrogation endorsements for policies as stated in the required insurance endorsement section above. The City shall be named as additional insured in all of Contractor's liability insurance policies. The City shall approve such Certificates prior to the performance of any Services pursuant to this Agreement.

8.4 ALL INSURANCE COMPANIES PROVIDED SHALL: Be rated at least A VII per Best's Key Rating Guide and be licensed to do business in Florida. The Contractor's liability insurance shall be primary to any liability insurance policies that may be carried by the City. The Contractor shall be responsible for all deductibles and self-insured retentions on their liability insurance policies.

8.5 All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be cancelled, materially changed or renewal refused until at least 30 calendar days' written notice has been given to the City by certified mail.

## **ARTICLE 9** **MISCELLANEOUS**

9.1 Contractor shall, without additional expense to the City, be responsible for paying any taxes, obtaining any necessary licenses and for complying with all applicable federal, state, county, and municipal laws, ordinances and regulations in connection with the performance of the Services specified herein.

9.2 Precautions shall be exercised at all times for the protection of persons and property. The Contractor and all Subcontractors shall conform to all OSHA, federal, state, county, and City regulations while performing under the terms and conditions of this Agreement. Any fines levied by the above-mentioned authorities because of failure to comply with these requirements shall be borne solely by the Contractor responsible for the same.

9.3 At all times during the term of this Agreement, Contractor shall pay each of its covered employees a living wage for all hours worked for the City of Miramar. A living wage with health care benefits shall be no less than Thirteen Dollars and Twenty-seven Cents (\$13.27) per hour, and, if health care benefits are provided, shall submit an affidavit of compliance. If Contractor

does not offer a covered employee health care benefits, Contractor shall pay a living wage of no less than Fourteen Dollars and Ninety Cents (\$14.90) per hour, which shall be adjusted on January 1, 2021 to Sixteen Dollars and Seventy-One Cents (\$16.71) per hour for the remainder of the Agreement. Furthermore, Contractor agrees to produce, upon request of the City, all documents and payroll records demonstrating compliance with the abovementioned living wage requirements. A covered employee, as used herein, is defined as an employee who performs school crossing guard services either on a full-time or part-time basis for the City of Miramar while the Agreement remains in effect between the Parties.

#### **ARTICLE 10** **AUDIT AND INSPECTION RIGHTS**

10.1 The City may, at reasonable times, and for a period of up to three years following the date of final performance of Services by Contractor under this Agreement, audit, or cause to be audited, those books and records of Contractor which are related to Contractor's performance under this Agreement. Contractor agrees to maintain all such books and records at its principal place of business for a period of three years after final payment is made under this Agreement.

10.2 The City may, at reasonable times during the term hereof, perform such inspections as the City deems reasonably necessary to determine whether the Services required to be provided by Contractor under this Agreement conform to the terms of this Agreement. Contractor shall make available to the City all reasonable assistance to facilitate the performance of inspections by the City's representatives.

#### **ARTICLE 11** **AMENDMENTS AND ASSIGNMENT**

11.1 This Agreement constitutes the entire agreement between Contractor and City and all negotiations and oral understandings between the parties are merged herein. The terms and conditions set forth in this Agreement supersede any and all previous agreements, promises, negotiations or representations. Any other agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force and effect.

11.2 No modification, amendment or alteration of the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality as this Agreement.

11.3 Contractor shall not transfer or assign the performance of Services set forth in the Agreement without the prior written consent of the City, which may be withheld or conditioned in the City's sole discretion.

#### **ARTICLE 12** **GOVERNING LAW AND VENUE**

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any action arising out of or relating to this Agreement shall be in Broward County, Florida.

**ARTICLE 13**  
**NOTICES**

Whenever either party desires to give notice to the other, it must be given by written notice, sent by certified United States mail, return receipt requested, addressed to the party for whom it is intended, at the place last specified in writing as the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice:

FOR CONTRACTOR:

  
\_\_\_\_\_  
Managing Member  
The Butler Group of South Florida 33319  
3810 Inverrary Boulevard, Suite 205  
Lauderhill, Florida 33319  
Telephone: (954)733-0777

FOR CITY:

*for*   
\_\_\_\_\_  
City Manager  
City of Miramar  
2300 Civic Center Place  
Miramar, Florida 33025  
Telephone: (954) 602-3117

With A Copy to:

Burnadette Norris-Weeks, Esq.  
City Attorney  
Austin Pamies Norris Weeks Powell, PLLC  
401 North Avenue of the Arts  
Fort Lauderdale, FL 33311  
Telephone: (954) 768-9770  
Facsimile: (954) 768-9790

**ARTICLE 14**  
**NON-DISCRIMINATION**

Contractor represents and warrants to the City that Contractor does not and will not engage in discriminatory practices and that there shall be no discrimination in connection with Contractor's performance under this Agreement on account of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor that cannot be lawfully used as a basis for delivery of Services. Contractor further covenants that no otherwise qualified individual shall, solely by reason of his/her race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for delivery of Services, be excluded from participation in, be denied Services, or be subject to discrimination under any provision of this Agreement.

**ARTICLE 15**  
**PUBLIC RECORDS**

A. Public Records: CONTRACTOR shall comply with The Florida Public Records Act as follows:

1. Keep and maintain public records that ordinarily and necessarily would be required by CITY in order to perform the service.
2. Upon request by CITY's records custodian, provide CITY with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement.
4. Upon completion of this Agreement or in the event of termination of this Agreement by either party, any and all public records relating to this Agreement in the possession of CONTRACTOR shall be delivered by CONTRACTOR to CITY, at no cost to CITY, within seven days. All records stored electronically by CONTRACTOR shall be delivered to CITY in a format that is compatible with CITY's information technology systems. Once the public records have been delivered to CITY upon completion or termination of this Agreement, CONTRACTOR shall destroy any and all duplicate public records that are exempt or confidential and exempt from public record disclosure requirements.
5. CONTRACTOR'S failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Agreement by the CITY.

**IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 954-602-3011, OR BY MAIL: City Of Miramar – City Clerk's Office, 2300 Civic Center Place, Miramar, FL 33025.**

B. Ownership of Documents: Unless otherwise provided by law, any and all reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of CITY. Any compensation due to CONTRACTOR shall be withheld until all documents are received as provided herein.



**ARTICLE 16**  
**SCRUTINIZED COMPANY**

- A. Contractor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the City may immediately terminate this Agreement at its sole option if the Contractor or its subcontractors are found to have submitted a false certification; or if the Contractor, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.
- B. If this Agreement is for more than one million dollars, the Contractor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the City may immediately terminate this Agreement at its sole option if the Contractor, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Contractor, its affiliates, or its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.
- C. The Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.
- D. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

**ARTICLE 17**  
**HEADINGS, CONFLICT OF PROVISIONS,**  
**WAIVER OR BREACH OF PROVISIONS**

Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement. In the event of conflict between the terms of this Agreement and any terms or conditions contained in any attached documents, the terms in this Agreement shall prevail. No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision, and no waiver shall be effective unless made in writing.

**ARTICLE 18**  
**SEVERABILITY**

If any provision of this Agreement or the application thereof to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Agreement and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect and be enforced to the fullest extent permitted by law.

**ARTICLE 19**  
**SURVIVAL**

All representations and other relevant provisions herein shall survive and continue in full force and effect upon termination of this Agreement.

**ARTICLE 20**  
**ENTIRE AGREEMENT**

This Agreement represents the entire and integrated Agreement between the City and Contractor and supersedes all prior negotiations, representations or agreements, whether written or oral.

**ARTICLE 21**  
**JOINT PREPARATION**

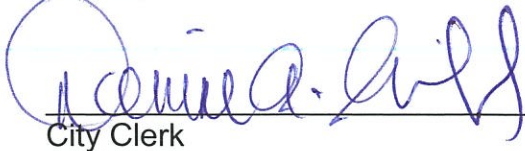
The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein, and that the preparation of this Agreement has been a joint effort of the parties, the language has been agreed to by the parties to express their mutual intent, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement on the respective dates under each signature: City, signing by and through its City Manager, attested to and duly authorized to execute same by the City Commission of the City of Miramar, and by the Contractor, by and through its Managing Member, attested to and duly authorized to execute same.

**CITY**

CITY OF MIRAMAR


ATTEST:

  
City Clerk

*For*  
By:   
*Dw* \_\_\_\_\_  
Vernon E. Hargray, City Manager

This 3 day of March, 2019<sup>20</sup>.

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE OF AND RELIANCE BY THE CITY OF MIRAMAR ONLY:

  
Austin Pamies Norris Weeks Powell, PLLC  
City Attorney

CONTRACTOR

WITNESSES:

Kim Morrow

Print Name: Kim Morrow-Lopez

\_\_\_\_\_

Print Name: \_\_\_\_\_

By: [Signature]

Date: 2/5/20

