

**SECTION VI  
TOWN OF CUTLER BAY  
UTILITY INVOICE AUDITING SERVICES  
RFP #17-03**

**AGREEMENT**

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by and between the Town of Cutler Bay, Florida (the "Town") and Troy & Banks, Inc. (the "Contractor").

The parties, for the consideration provided for below, mutually agree as follows:

**1. SCOPE OF WORK**

The Contractor shall furnish all labor, materials, supervision, equipment, supplies, and incidentals required to perform the Scope of Work as outlined in the Request for Proposal No. 17-03 for UTILITY INVOICE AUDITING SERVICES ("RFP"), including the Detailed Specifications set forth herein, which RFP is incorporated herein by reference and made a part hereof, and the terms and conditions of this Agreement (the "Work").

**2. COMPENSATION/PAYMENT**

**2.1** The Contractor shall be compensated in the following manner:

\_\_\_\_\_ A lump sum amount of \$\_\_\_\_\_, regardless of the number of hours or length of time necessary for Contractor to complete the Scope of Services. Contractor shall not be entitled to any additional payment for any expenses incurred in completion of the Scope of Services. A breakdown of costs used to derive the lump sum amount, including but not limited to hourly rates, estimated travel expenses and other applicable rates, is specified in the Scope of Services. Upon completion of the work, Contractor shall submit its bill[s] for payment in a form approved by the Town. The bill[s] shall identify the services completed and the amount charged.

X On a time and material/expense basis to complete the Scope of Services, provided, however, that total payments to Contractor shall not exceed \$ \$0.00\*\*, without the prior written approval of the Town. Contractor shall submit its bills in arrears upon the completion of each task or deliverable in accordance with the Project Schedule or on a monthly basis in a form approved by the Town. The bills shall show or include: (i) the task(s) performed; (ii) the time devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed.

**\*\*See Attached Performance Based Pricing**

**2.2** The Town shall pay Contractor in accordance with the Florida Prompt Payment Act.

**2.3** If a dispute should occur regarding an invoice submitted, the Town Manager may withhold payment of the disputed amount and may pay to the Contractor the undisputed portion of the invoice. Upon written request of the Finance Director, the Contractor shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the Town Manager whose decision shall be final.

## 2. **TERM**

This Agreement shall be effective upon execution by both parties and shall continue for a term of three (3) years. At its sole discretion, the Town shall have an option to renew this Agreement upon the same terms and conditions for up to three (3) additional one (1) year terms (the "Renewal Option"). This Renewal Option may be exercised at the sole discretion of the Town Manager. Such Renewal Option(s) shall be effective upon written notice from the Town Manager to the Contractor no later than thirty (30) days prior to the date of termination of the initial term or the applicable Renewal Option term. Contractor agrees that time is of the essence and Contractor shall perform and complete the Work within the time frames set forth in the RFP and as provided in this Agreement, unless extended by the Town Manager.

## 3. **PROTECTION OF PROPERTY AND THE PUBLIC; SAFETY**

The Contractor shall continuously maintain adequate protection of all his Work from damage and shall protect public and private property from injury or loss arising in connection with this Agreement as follows:

- 4.1 The Contractor shall take all necessary precautions for the safety of employees in the performance of the Work on, about or adjacent to the Work sites, and shall comply with all applicable provisions of Federal, State, and Local laws, including, but not limited to the requirements of the Occupational Safety and Health Act of 1970, and amendments thereto, and building codes to prevent accidents or injury to persons on, about or adjacent to the work site where the Work is being performed.

## 5. **INDEMNIFICATION**

- 5.1 The parties agree that 1% of the total compensation paid to the Contractor for the performance of this agreement shall represent the specific consideration for the Contractor's indemnification of the Town as set forth in this Section 1.5 and in the Terms and Conditions.
- 5.2 To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless the Town and their consultants, agents and employees from and against any and all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of attorneys and other professionals and court costs) arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom and (b) is caused in whole or in part by any acts or omission of Contractor, any subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by Law and Regulations regardless of the negligence of any such party.

## 6. **AGREEMENT DOCUMENTS**

The following documents shall, by this reference, be incorporated and made a part of this Agreement:

- Request for Proposals No. 17-03 for UTILITY INVOICE AUDITING SERVICES;
- All Addendums issued to the RFP;
- Agreement;
- Proposal of Contractor;
- Detailed Specifications;
- Qualification Statement;
- Public Entity Crime Form;
- Insurance Certificates

## **7. CONTRACTOR'S EMPLOYEES**

- 7.1** The Contractor shall at all times have a competent English-speaking supervisor on site who thoroughly understands the Work, who shall, as the Contractor's agent, supervise, direct and otherwise conduct the Work. Contractor's employees shall serve the public in a courteous, helpful, and impartial manner.
- 7.2** Contractor's employees shall wear a clean uniform that provides identification of both the Contractor's company and the name of the employee.
- 7.3** Contractor shall, upon receipt of a written request from the Town, immediately exclude any employee of Contractor from providing Work under this Agreement.
- 7.4** The Work contemplated in this Agreement is on public property, accordingly no alcoholic beverages shall be allowed.
- 7.5** All references in this Agreement to the Contractor shall include Contractor's employees or subcontractors, wherever applicable.

## **8. INSURANCE**

The Contractor shall secure and maintain throughout the duration of this Agreement, insurance of such type and in such amounts necessary to protect its interest and the interest of the Town against hazards or risks of loss as specified below. The underwriter of such insurance shall be qualified to do business in Florida, be rated AB or better, and have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the Town, its officials, employees, agents and volunteers. Any insurance maintained by the Town shall be in excess of the Contractor's insurance and shall not contribute to the Contractor's insurance. The insurance coverages shall include a minimum of:

### **8.1 Worker's Compensation and Employer's Liability Insurance**

Coverage to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy (ies) must include Employer's Liability with minimum limits of \$500,000.00 each accident.

### **8.2 Comprehensive Automobile and Vehicle Liability Insurance**

This insurance shall be written in comprehensive form and shall protect the Contractor and the Town against claims for injuries to members of the public and/or damages to

property of others arising from the Contractor's use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsement, as filed by the Insurance Services Office.

### **8.3 Commercial General Liability**

This insurance shall be written in comprehensive form and shall protect the Contractor and the Town against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the Contractor or any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent contractors and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement.

### **8.4 Certificate of Insurance**

Contractor shall provide the Town Manager with Certificates of Insurance for all required policies. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The Town reserves the right to require the Contractor to provide a certified copy of such policies, upon written request by the Town. If a policy is due to expire prior to the completion of the services, renewal Certificates of Insurance or policies shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Town before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Town Manager.

### **8.5 Additional Insured**

The Town is to be specifically included as an Additional Insured for the liability of the Town resulting from operations performed by or on behalf of Contractor in performance of this Agreement. Contractor's insurance, including that applicable to the Town as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Town shall be in excess of and shall not contribute to Contractor's insurance. Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each. All deductibles or self-insured retentions must be declared to and be approved by the Town Manager. The Contractor shall be responsible for the payment of any deductible or self-insured retention in the event of any claim.

**9. ASSIGNMENT AND AMENDMENT**

No assignment by the Contractor of this Agreement or any part of it, or any monies due or to become due, shall be made, nor shall the Contractor hire a subcontractor to perform its duties under this Agreement without prior written approval of the Town. This Agreement may only be amended, by the parties, with the same formalities as this Agreement. Contractor represents that is an entity validly existing and in good standing under the laws of Florida. The execution, delivery and performance of this Agreement by Contractor has been duly authorized, and this Agreement is binding on Contractor and enforceable against Contractor in accordance with its terms. No consent of any other person or entity to such execution, delivery and performance is required.

**10. TERMINATION**

**10.1** The Town Manager, without cause, may terminate this Agreement upon thirty (30) calendar days written notice to the Contractor, or immediately with cause is the Contractor defaults on any material term of this Agreement. Upon receipt if the Town's written notice of termination, Contractor shall immediately stop all Work as of the date specified in the notice of termination, unless directed otherwise by the Town Manager.

**10.2** Upon notice of such termination, the Town shall determine the amounts due to the Contractor for services performed up to the date of termination. The Contractor shall not be entitled to payment of any lost profits or for Work performed after the date of termination.

**11. GOVERNING LAW**

The law of the State of Florida shall govern this Agreement and venue for and any action shall be brought in Miami-Dade County, Florida. In the event of any litigation arising out of this Agreement or to settle issues arising hereunder, the prevailing party in such litigation shall be entitled to recover against the other party its costs and expenses, including reasonable attorneys' fees, which shall include any fees and costs attributable to appellate proceedings arising on and of such litigation.

**12. PUBLIC RECORDS LAW**

The Town Contractor acknowledges that the public shall have access, at all reasonable times, to certain documents and information pertaining to Town contracts, pursuant to the provisions of Chapter 119. Contractor agrees to keep and maintain public records in Contractor's possession or control in connection with Contractor's performance under this Agreement. Contractor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Contractor shall ensure that public records that are exempt or confidential and exempt from public record disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Town. Upon request from the Town's custodian of public records, Contractor shall provide the Town with a copy of the 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 by Chapter 119, Florida Statutes, or as otherwise provided by law.

Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Town. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Contractor shall be delivered by the Contractor to the Town Manager, at no cost to the Town, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the Town in a format that is compatible with the Town's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosures requirements. Any compensation due to Contractor shall be withheld until all records are received as provided herein. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Town.

Section 119.0701(2)(a), Florida Statutes

If the Contractor has questions regarding the application of Chapter 119, Florida Statutes, to the Contractor's duty to provide public records relating to this contract, contact the Custodian of Public Records.

Custodian of Debra E. Eastman, MMC, Town Clerk  
Records:  
Mailing address: 10720 Caribbean Boulevard, Suite 105  
Cutler Bay, Florida 33189

Telephone number: (305) 234-4262

Email: [deastman@cutlerbay-fl.gov](mailto:deastman@cutlerbay-fl.gov)

**13. INSPECTION AND AUDIT**

During the term of this Agreement and for three (3) years from the date of termination the Contractor shall allow Town representatives access, during reasonable business hours, to Contractor's and, if applicable, subcontractor's records related to this Agreement for the purposes of inspection or audit of such records. If upon audit of such records, the Town determines the Contractor was paid for services not performed, upon receipt of written demand by the Town, the Contractor shall remit such payments to the Town.

**14. SEVERABILITY**

If a term, provision, covenant, contract or condition of this contract is held to be void, invalid, or unenforceable, the same shall not affect any other portion of this Agreement and the remainder shall be effective as though every term, provision, covenant, contract or condition had not been contained herein.

**15. WAIVER OF JURY TRIAL**

The parties irrevocably, knowingly agree to waive their rights to a trial by jury in any action to enforce the terms or conditions of this Agreement.

**16. COUNTERPARTS**

This Agreement may be signed in one or more counterparts, each of which when executed shall be deemed an original and together shall constitute one and the same instrument.

**17. INDEPENDENT CONTRACTOR**

It is expressly agreed and understood that the Contractor shall be in all respects an independent contractor as to Work, and that Contractor is in no respect an agent, servant or employee of the Town. Accordingly, Contractor shall not attain, nor be entitled to, any rights or benefits of the Town, nor any rights generally afforded classified or unclassified employees. Contractor further understands that Florida Worker's Compensation benefits available to employees of the Town are not available to Contractor, and agrees to provide worker's compensation insurance for any employee or agent of Contractor rendering services to the Town under this Agreement.

All employees and subcontractors of the Contractor shall be considered to be, at all times, the sole employees or contractors of Contractor, under its sole discretion and not an employee, contractor or agent of the Town.

**18. ACCIDENT PREVENTION AND REGULATIONS**

Precautions shall be exercised at all times for the protection of persons and property. The Contractor and subcontractors shall conform to all OSHA, Federal, State, County and Town regulations while performing under the terms and conditions of this Agreement. Any fines levied by the above-mentioned authorities, because of inadequacies to comply with these requirements, shall be borne solely by Contractor responsible for same.

**19. BACKGROUND CHECKS**

The Contractor will be responsible for maintaining current background checks on all employees and subcontractor employees involved in the performance of this Work. Background checks must be performed prior to the performance of any Work by the employee under this Agreement. Written verification of any background checks must be provided to the Town at the request of the Town Manager.

**20. LAWS, RULES & REGULATIONS**

Contractor shall be held responsible for any violation of laws, rules, regulations or ordinances affecting in any way the Work and the conduct of all persons engaged in or the materials or methods used by him, on the Work. Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this Agreement. At all times during the Term of this Agreement, the Contractor shall secure and maintain all permits, fees, licenses, and inspections necessary for the execution of the Work, and upon termination of this Agreement for any reason, Contractor shall transfer such permits, if any, and if allowed by law, to the Town.

**21. POLICY OF NON-DISCRIMINATION**

The Contractor shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work and shall not discriminate on the grounds of race, color, religion, sex, age, marital status, national origin, physical or mental disability in the performance of work under this Agreement.

**22. NON-WAIVER**

The approval, and/or acceptance of any part of the Work by the Town shall not operate as a waiver by Town of any other terms and conditions of the Agreement.

**23. NOTICES**

Whenever any party is required to give or deliver any notice to any other party, or desires to do so, such notices shall be sent via certified mail or hand delivery to:

Town:

Town of Cutler Bay  
10720 Caribbean Blvd., Suite# 105  
Cutler Bay, FL 33189  
Attention: Town Clerk

Contractor:

Troy & Banks, Inc.  
2216 Kensington Ave.  
Buffalo, NY 14226  
Attn.: Thomas Ranallo

IN WITNESS WHEREOF the parties hereto have executed this agreement on the day and date first above written.

Attest:

TOWN OF CUTLER BAY, a Florida Municipal Corporation

By: \_\_\_\_\_  
Debra E. Eastman, MMC, Town Clerk

By: \_\_\_\_\_  
Rafael G. Casals, Town Manager

By: \_\_\_\_\_  
Town Attorney

Town Resolution # \_\_\_\_\_

Signed, sealed and witnessed in the  
presence of:

CONTRACTOR: Troy & Banks, Inc.

By: \_\_\_\_\_

By: \_\_\_\_\_

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

Print Name: Thomas T. Ranallo

(\*) In the event that the Contractor is a corporation, there shall be attached to each counterpart a certified copy of a resolution of the board of the corporation, authorizing the officer who signs the contract to do so in its behalf.

TROY & BANKS, INC.

## ALTERNATIVE PRICING OPTION

For Utility Invoice Auditing Services, Troy & Banks proposes the following contingency based pricing:

1. Town of Cutler Bay, Florida ("Town") engages T&B to conduct an audit or survey of the Town's telephone, electric, gas, water, cable, etc. accounts for the purpose of securing refunds, credits and cost reductions resulting from discovery of charges or costs in excess of those permitted or allowed by applicable contracts, tariffs, statutes, rules and regulations and/or from overcharges or billing errors. T&B agrees to conduct such audit.
2. Overcharges – For any refunds, credits or rebates obtained by T&B for prior overcharges, billing errors or costs in excess of those permitted by applicable contracts, tariffs, statutes, rules or regulations, T&B shall be paid 29% of all monies refunded or credited to the Town.
3. Future Cost Reductions - For any reductions in future costs for telephone, electric, gas, water, cable, etc. accounts services resulting from T&B analysis, the fee is 29% of the amount saved each month for 12 months shall be paid to T&B. T&B will document actual monthly savings obtained by analysis of tariff cost applications.
4. T&B has made and makes no guarantee or assurance of any credit or refund amount or cost saving results.
5. **If the Town does not receive refunds, credits, or reductions in future billings, there will be no fee for T&B services.**

For future savings, to measure the savings on which payments will be made, the existing bill which will be under the new rate or tariff will be recalculated using the old rate or tariff; the difference between the bill under the new rate or tariff and the bill recalculated under the old rate or tariff shall be the savings.

T&B shall identify supplemental incentive programs for which the Town may be qualified for with current suppliers. Further, we will identify alternative utility services or providers which may result in cost savings; including the use of deregulated and open market providers.

Troy & Banks' compensation will be based on the discrepancies found that the Town chooses to move forward with. T&B is only compensated on findings the Town approves and actually receives. In the event the Town declines to move forward with any or all discrepancies, the Town will not pay for any of the services performed.

T&B will issue invoices to the Town when a refund and/or credit is seen on the bill or a check is sent to the Town for the recovered amount.

Further, Troy & Banks may also determine whether ongoing utility charges can be reduced by application of new rate schedules, rate options or other billing adjustments. The firm will work with the utility providers to implement the rate changes and other billing adjustments it identifies.