

# **MASTER AGREEMENT FOR GENERAL CONSTRUCTION AND/OR CONSULTING RELATED SERVICES**

THIS AGREEMENT is entered into between Webb County (Owner) and TraC-n-trol, Inc. (Contractor), for the following reasons:

1. Owner intends to contract for construction, installation, maintenance, repair, calibration, and related consulting services associated with electronic instrumentation, Supervisory Control and Data Acquisition (SCADA), systems integration, process control, radio telemetry, programming, data logging, security, and electrical services for various design, construction, maintenance, and planning projects; and,
2. Owner requires the Services noted in Item 1 above in connection with the Project which shall be particularly identified in a future Contract Amendment and incorporated herein upon execution; and,
3. Contractor initially designed and installed the SCADA System for the Water Utilities Department and is therefore qualified and prepared to provide the necessary Work and/or Services.

In consideration of the promises contained in this Agreement, Owner and Contractor agree as follows:

## **ARTICLE 1 – TERM & EFFECTIVE DATE.**

The term of this agreement shall be for a three year (3) primary term agreement effective commencing on October 1, 2021 (Effective Date) thru September 30, 2024. Webb County shall have the right to extend the term of this service agreement two (2) additional One year (1yr.) terms by and between Webb County (Owner) and TraC-n-trol, Inc. (Contractor). OWNER intends to contract with CONTRACTOR to provide general construction services and/or related consulting services for various projects as described in the Contract Amendments. OWNER and CONTRACTOR in consideration of their mutual covenants as set forth herein agree as follows:

## **ARTICLE 2 – CONTRACT AMENDMENTS**

Contract Amendments (Amendments) shall describe the Project and the parties' mutual agreement on the scope of the Services, schedule, compensation, and other particulars as stated therein. Amendments are binding only after acceptance and execution by duly authorized representatives of both parties. Each Amendment shall govern the parties' rights and obligations with respect to each assignment, but all within the framework of this Agreement.

## **ARTICLE 3 – SCOPE OF SERVICES**

Contractor shall provide the Services in either of two of the following means:

1. Routine or emergency service and support for which terms, rates, and fees will apply according to the attached Warranty and Technical Support Schedule.
2. Construction Projects or upgrades of existing equipment and software which will include a pre-defined scope of work and pricing described in the Scope of Services and Pricing which will be presented in an Agreement Amendment.

## **ARTICLE 4 – SCHEDULE**

Contractor shall perform those Services within the time frame set forth in the Schedule Section of each Amendment.

## **ARTICLE 5 – COMPENSATION**

Owner shall pay Contractor in accordance with the Compensation Section of each Amendment.

For projects, Contractor will provide a scope of work and quotation for the work to be completed. The scope of work and pricing will be incorporated into a proposed "Amendment" that will be an addendum to this Agreement. The Owner will review and approve the Amendment based on a final negotiated scope of work and price.

For Routine or Emergency Services and Support, Contractor will provide products or services according to the attached Warranty and Technical Support Schedule.

Contractor shall periodically invoice Owner for Services rendered. Invoices shall be due and payable upon receipt, past due Net 30 days from date of invoice.

## **ARTICLE 6 – OWNER'S RESPONSIBILITIES**

Owner shall be responsible for all matters described in the Section describing Owner's Responsibilities, of each Amendment. In addition, Owner shall perform and provide the following in a timely manner so as not to delay the Services of Contractor:

- (a) Place at Contractor's disposal all available information pertinent to the Project, including previous reports, drawings, specifications, or any other data as may be reasonably required by Contractor to perform the Services.

- (b) Give prompt written notice to Contractor whenever Owner becomes aware of any development that affects the scope or timing of Contractor's Services, or any defect in the Services of Contractor.
- (c) Advise Contractor of the identity and scope of services of any independent consultants retained by Owner to provide services in regard to the Project.

#### **ARTICLE 7 – STANDARD OF CARE**

The same degree of care, skill, and diligence shall be exercised in the performance of the Services as is ordinarily possessed and exercised by a member of the same profession, currently engaged in construction services, under similar circumstances. Contractor will provide a one-year warranty on material and workmanship on any Project. In accordance with this warranty, Contractor shall provide repair and/or replacement, as needed, to a level of functionality and appearance as is customarily provided.

#### **ARTICLE 8 – INDEMNIFICATION AND LIABILITY**

**Indemnification.** Having considered the potential liabilities that may exist during the performance of the Services, the relative benefits and risks of the Project, and the Contractor's fee for the Services, and in consideration of the promises contained in this Agreement, **Contractor agrees to indemnify and hold the Owner harmless from and against liability for all claims, losses, damages, or expenses to the extent such claims, losses, damages, or expenses are caused by the Contractor's negligent acts, errors, or omissions arising out of its performance of the work and/or services of this Agreement.**

In addition, **Contractor shall Indemnify and hold Owner harmless from all claims or demands of any sub-contractors, laborers, workmen, mechanics, materialmen and furnishers of machinery and parts thereof, equipment, power tools, and all supplies incurred in the furtherance of the performance of the work and/or services of this Agreement.**

**Also, Contractor agrees to indemnify and hold the Owner harmless from and against liability for all claims, losses, damages, or expenses to the extent such claims, losses, damages, or expenses are caused by the negligent acts, errors, or omissions of Contractor's Subcontractors arising out of the performance of the work and/or services of this Agreement.**

**Survival.** The terms and conditions of this Article shall survive completion of the Services, or any termination of this Agreement.

#### **ARTICLE 9 – INSURANCE**

During the term of this Agreement, Contractor shall maintain the following insurance:

- (a) General Liability Insurance, with a combined limit of \$1,000,000 per occurrence and \$2,000,000 general aggregate.
- (b) Automobile Liability Insurance, with a combined single limit of \$1,000,000 for each accident.
- (c) Workers' Compensation Insurance in accordance with statutory requirements and Employers' Liability Insurance, with a limit of \$500,000 for each occurrence.
- (d) Professional/Umbrella Liability Insurance, with a limit of \$1,000,000 per claim and \$1,000,000 annual aggregate.

In addition, Contractor shall add Owner as an additional insured and furnish Owner certificates of insurance, which shall include a provision that such insurance shall not be canceled without at least thirty days' written notice to Owner. **Also, Contractor shall ensure that any performance of work or service by Contractor's Subcontractors is covered by Contractor's insurance policy.**

#### **ARTICLE 10 – RESPONSIBILITY OF CONTRACTOR**

In addition to complete performance of a Project pursuant to any Amendment, Contractor shall be responsible for **(a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project; (b) the failure of any subcontractor, vendor, or other Project participant to fulfill contractual responsibilities to Owner or to comply with federal, state, or local laws, regulations, and codes; and (c) procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to Owner in an Amendment.**

#### **ARTICLE 11 – TERMINATION AND SUSPENSION**

This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement.

Owner may also terminate or suspend performance of this Agreement for Owner's convenience upon written notice to Contractor. Contractor shall terminate or suspend performance of the Services on a schedule acceptable to Owner, and Owner shall pay Contractor for all the Services performed.

The provisions of this Article shall also apply to each individual Amendment, separate and apart from any other Amendments, and without terminating or otherwise affecting this Agreement as a whole.

#### **ARTICLE 12 – NOTICES**

Any notice required by this Agreement shall be made in writing to the address specified below:

Owner: Webb County; Attn.  
Tomas Sanchez, Director  
Water Utility Department  
513 Martha Drive  
Rio Bravo, TX 78046

Contractor: Mr. Larry Brown  
President/CEO  
TraC-n-trol, Inc.  
PO Box 5056  
Georgetown, TX 78627

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Owner and Contractor.

#### **ARTICLE 13 – DISPUTES**

In the event of a dispute between Owner and Contractor arising out of or related to this Agreement, or any Amendment, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. If the parties cannot thereafter resolve the dispute, each party shall nominate a senior officer of its management to meet to resolve the dispute by direct negotiation or mediation.

During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder. In the event of a lawsuit between Owner and Contractor, the prevailing party will be entitled to recover reasonable attorney and expert fees.

#### **ARTICLE 14 – EQUAL EMPLOYMENT OPPORTUNITY**

The Contractor hereby affirms its support of affirmative action and that it abides by other applicable local, state and federal laws and regulations.

Contractor affirms its policy to recruit and hire employees without regard to race, age, color, religion, sex, marital status, citizen status, national origin or ancestry, presence of a disability or status as a Veteran of the Vietnam era or any other legally protected status. It is Contractor's policy to treat employees equally with respect to compensation, advancement, promotions, transfers and all other terms and conditions of employment.

#### **ARTILCE 15 – DRUG FREE WORKPLACE AND WORK FORCE**

The Contractor shall maintain a drug free workplace and work force as a condition of this Agreement. While performing this Agreement, Contractor shall ensure that all Contractor's employees, agents, subcontractors, and subcontractor's employees shall not manufacture, distribute, dispense, possess, or use a controlled substance. At no time during the performance of this Agreement shall Contractor's employees, agents, subcontractors, and subcontractor's employees be under the influence of alcohol or any controlled substance. Failure to comply with this provision may justify immediate suspension or termination of this Agreement.

#### **ARTICLE 16 – WAIVER**

A waiver by either Owner or Contractor of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

#### **ARTICLE 17 – SEVERABILITY**

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement or any Amendment. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if it did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

#### **ARTICLE 18 – INTEGRATION**

This Agreement, and subsequently issued Amendments (and their respective attachments, if any), represents the entire and integrated agreement between Owner and Contractor. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement.

#### **ARTICLE 19 – ASSIGNMENT**

Neither Owner nor Contractor shall assign any rights or duties under this Agreement without the prior written consent of the other party. Nothing contained in this Article shall prevent Contractor from engaging independent consultants, associates, and

subcontractors to assist in the performance of the Services.

any rights or benefits to anyone other than Owner and Contractor.

**ARTICLE 20 – NO THIRD-PARTY RIGHTS**

The Services provided for in this Agreement are for the sole use and benefit of Owner and Contractor. Nothing in this Agreement shall be construed to give

**ARTICLE 21 – GOVERNING LAW**

This Agreement shall be governed by the laws of the State of Texas. The venue shall be in Webb County, Texas.

**EXECUTED in duplicate originals this \_\_\_\_ day of SEPTEMBER, 2021.**

**TraC-n-trol, Inc.**  
**(Contractor)**

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**Larry Brown, Trac-n-Trol, Inc.**  
**Title: President & CEO**

**EXECUTED in duplicate originals this \_\_\_\_ day of SEPTEMBER, 2021.**

**WEBB COUNTY, TEXAS**

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**TANO E. TIJERINA**  
**WEBB COUNTY JUDGE**  
**ATTEST:**

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Margie Ramirez Ibarra  
Webb County Clerk

**APPROVED AS TO FORM:**

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Ray Rodriguez, Asst. General Counsel  
Webb County Civil Legal Division

\*By law, the Webb County Civil Legal Division office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).

**Presented for Approval at the Webb County Commissioner's Court meeting held on the 13th day of September, 2021, Item No. .**

Webb County

(Owner)

By: Webb County .

Signature: \_\_\_\_\_

Effective Date: \_\_\_\_\_