

**PURCHASE CONTRACT  
CITY OF BISBEE**

THIS PURCHASE CONTRACT ("Contract") is made this 5<sup>th</sup> day of **May**, 2020, by and between the CITY OF BISBEE, an Arizona municipal corporation ("City") and Conklin Electric, an electrical contractor ("Vendor").

WHEREAS, the City is in need of certain materials, supplies and/or equipment (hereinafter "Equipment") as more particularly specified in the Notice of Solicitation for **providing and the installation of a QT POD M4000 fuel management system** incorporated herein by reference; and

WHEREAS, the Vendor has offered to provide the requested **work** in accordance with the terms of this Contract.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Vendor hereby agree as follows:

1. Equipment. The Vendor promises and agrees to provide the Equipment as described in the Specifications, Scope of Work or Requirements and the Vendor's Bid each of which is incorporated herein by reference.

2. Warranty. The Vendor further agrees to provide all of the Equipment required by this Contract free from defects in material or workmanship and shall warrant against such defects for a period of one (1) year from the date of acceptance by the City, and shall transfer to the City any other applicable manufacturers' warranties.

3. Term. This Contract shall remain in effect until final inspection and acceptance of the material and installation. It may be renewed for an additional period upon the mutual agreement of the parties.

4. Compensation. The City will compensate the Vendor for its performance, and the Vendor agrees to accept as complete payment for such full performance, a sum not to exceed \$16,900. The City shall have the right to reject all or any Equipment provided under this Contract which does not meet the required specifications. In the event of any such rejection, the Vendor agrees to promptly remedy any and all deficiencies. No compensation shall be due for any rejected Equipment until such deficiencies have been corrected at the Vendor's sole cost and expense.

5. Payment. Payment shall be made by the City to the Vendor on the basis of an invoice following delivery and acceptance of the Equipment.

6. Conflict of Interest. This Contract is subject to the provisions of ARIZ. REV. STAT. § 38-511. The City may cancel this Contract without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Contract on behalf of the City or any of its departments or agencies is, at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a consultant to any other party of the Contract with respect to the subject matter of the Contract.

7. Gratuities. The City may, by written notice to the Vendor, cancel this Contract if it is found by the City that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Vendor or any agent or representative of the Vendor to any officer, agent or employee of the City for the purpose of securing this Contract. In the event this Contract is cancelled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Vendor an amount equal to 150% of the gratuity.

8. Contract Subject to Appropriation. The provisions of this Contract for payment of funds by the City shall be effective when funds are appropriated for purposes of this Contract and are actually available for payment. The City shall be the sole judge and authority in determining the availability of funds under this Contract and the City shall keep the Vendor fully informed as to the availability of funds for the Contract. The obligation of the City to make any payment pursuant to this Contract is a current expense of the City, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the City. If the City Council fails to appropriate money sufficient to pay the amounts as set forth in this Contract during any immediately succeeding fiscal year, this Contract shall terminate at the end of then-current fiscal year and the City and the Vendor shall be relieved of any subsequent obligation under this Contract.

9. Termination.

9.1 For City's Convenience. This Contract is for the convenience of the City and, as such, may be terminated without cause after receipt by Vendor of written notice by the City.

9.2 For Cause. This Contract may be terminated by either party upon 120 days' written notice should the other party fail to substantially perform in accordance with this Contract's terms, through no fault of the party initiating the termination.

10. Amendment. This Contract may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Vendor.

11. Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Contract will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract will promptly be physically amended to make such insertion or correction.

12. Entire Contract; Interpretation; Parol Evidence. This Contract represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Contract are hereby revoked and superseded by this Contract. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Contract. This Contract shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Contract. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Contract.

13. Assignment. No right or interest in this Contract shall be assigned by Vendor without prior, written permission of the City signed by the City Manager and no delegation of any duty of Vendor shall be made without prior, written permission of the City signed by the City Manager. Any attempted assignment or delegation by Vendor in violation of this provision shall be a breach of this Contract by Vendor.

14. Subcontracts. No subcontract shall be entered into by the Vendor with any other party to furnish any of the material or services specified herein without the prior written approval of the City. The Vendor is responsible for performance under this Contract whether or not subcontractors are used.

15. Rights and Remedies. No provision in this Contract shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Contract. The failure of the City to insist upon the strict performance of any term or condition of this Contract or to exercise or delay the exercise of any right or remedy provided in this Contract, or by law, or the City's acceptance of and payment for services, shall not release the Vendor from any responsibilities or obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Contract.

16. Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

17. Liens. All materials or services shall be free of all liens and, if the City requests, a formal release of all liens shall be delivered to the City.

18. Offset.

18.1 Offset for Damages. In addition to all other remedies at law or equity, the City may offset from any money due to the Vendor any amounts Vendor owes to the City for damages resulting from breach or deficiencies in performance or breach of any obligation under this Contract.

18.2 Offset for Delinquent Fees or Taxes. The City may offset from any money due to the Vendor any amounts Vendor owes to the City for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

19. Notices and Requests. Any notice or other communication required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if (a) delivered to the party at the address set forth below, (b) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, (c) given to a recognized and reputable overnight delivery service, to the address set forth below or (d) delivered by facsimile transmission to the number set forth below:

If to the City:           City of Bisbee  
                                  915 S. Toreaville Rd.  
                                  Bisbee, Arizona, 85603  
                                  Facsimile: (520) 432-6069  
                                  Attn: Jesus Haro

With copy to:           James Ledbetter  
                                  City Attorney  
                                  915 S. Toreaville Rd.  
                                  Bisbee, Arizona, 85603  
                                  Facsimile: (520) 432-6069

If to Vendor:           Conklin Electric LLC  
                                  P.O. Box 1514  
                                  Bisbee, AZ 85603  
                                  Facsimile: \_\_\_\_\_  
                                  Attn: Todd Conklin

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (a) when delivered to the party, (b) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (c) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day, or (d) when received by facsimile transmission during the normal business hours of the recipient. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

20. E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Vendor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Vendor's or its subcontractor's failure to comply with such

warranty shall be deemed a material breach of this Contract and may result in the termination of this Contract by the City.

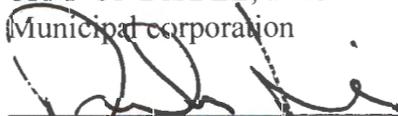
21. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the Contract, the Specifications, Scope of Work or Requirements and the Vendor's Bid, the documents shall govern in the order listed herein.

22. Cooperative Purchasing. This Contract shall be for the use of the City. In addition, specific eligible political subdivisions and nonprofit educational or public health institutions may also participate, at their discretion and with the agreement of the awarded Vendor. In order to participate in this Contract, a political subdivision or nonprofit educational or public health institution must agree to the terms and conditions in the solicitation and the Vendor must be in agreement with the cooperative transaction. Any orders placed to the successful Vendor will be placed by the specific agencies participating in this purchase. Payment for purchases made under this Contract will be the sole responsibility of each participating agency. The City shall not be responsible for any disputes arising out of transactions made by others.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date and year first set forth above.

“City”

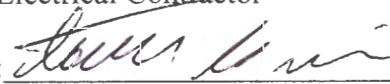
CITY OF BISBEE, an Arizona  
Municipal corporation



David Smith, Mayor

“Vendor”

Conklin Electric LLC,  
an Electrical Contractor

By: 

Name: Todd Conklin

Title: Owner

ATTEST:



Ashlee Coronado, City Clerk

APPROVED AS TO FORM:



James Ledbetter, City Attorney