#### **RESOLUTION NO. 2018-T**

A RESOLUTION OF THE TOWN OF EATONVILLE, WASHINGTON, AWARDING A SMALL WORKS CONSTRUCTION CONTRACT TO LEAIR CLIMATE CONTROL, INC. FOR THE INSTALLATION OF HEAT PUMP AND AIR HANDLER REMOVAL AND INSTALLATION

WHEREAS, in accordance with the requirements for small public works projects and RCW 39.04.155, the Town of Eatonville solicited bids for installation of a new heat pump at Eatonville Town Hall; and

WHEREAS, the Town received bids from Hermanson Company, Taylor Heating and LeAir Climate Control, Inc; and

WHEREAS, LeAir Climate Control, Inc. has been determined to be the lowest responsible bidder; now, therefore;

THE TOWN COUNCIL OF THE TOWN OF EATONVILLE, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

**THAT:** LeAir Climate Control, Inc. is awarded the contract for the installation of a new heat pump at Eatonville Town Hall and the Mayor is authorized to sign the contract with LeAir Climate Control, Inc.

PASSED by the Town Council of Town of Eatonville and attested by the Town Clerk in authentication of such passage this 23<sup>rd</sup> day of July, 2018.

	Mike Schaub, Mayor	
ATTEST:		
Kathy Linnemeyer, Town Clerk		

# TOWN OF EATONVILLE SMALL WORKS CONSTRUCTION CONTRACT

	THIS Agreement is made effective as of the 23 day ofJuly, 2018, by and between		
and	TOWN OF EATONVILLE, WASHINGTON ("TOWN") 201 Center Street West PO Box 309 Eatonville, Washington 98328 Contact: Town Administrator Phone: 360.832.3361 Ext. 105 Fax: 360.832.3977		
unu	_LeAir Climate Control, Inc ("CONTRACTOR") _11301 17 <sup>th</sup> Ave ETacoma Wa, 98445		
	Contact: Mike McFadden Phone: 253.770.5620 Tax Id No.:		
for th	ne following Project:		
	Heat Pump and air handler removal and install ("PROJECT")		
The T	Town and Contractor agree as follows:		
$\Gamma$	Contract Documents. The Contractor shall complete the Work described in the Contract Documents for the Project. The following documents are collectively referred to as the "Contract Documents":		
a	. This Agreement signed by the Town and Contractor;		
Ъ	b. Division 1 of WSDOT Standard Specifications for Road, Bridge and Municipal Construction, 2016 edition, together with APWA Supplement (1-99), subject to specific provisions contained within the Public Works Terms and Conditions;		
c	. The attached Special Provisions, Plans and Specifications;		
d	. Written change orders or orders for minor changes in the Work issued after execution of this Agreement;		
e	. Public Works Terms and Conditions;		
f.	Insurance and Bonding Requirements: and		

g. The bid proposal submitted by the Contractor, except when inconsistent with the Contract Documents.

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. These Contract Documents complement each other in describing a complete work. Any requirement in one document binds as if stated in all. The Contractor shall provide any work or materials clearly implied in the Contract even if the Contract does not mention it specifically.

	Commencement and Substantial Completion Date. The date of commencement
	. The Contractor shall substantially complete the Work
not later	than, subject to adjustment by change order.

- 3. The Contractor shall do all work and furnish all tools, materials, and equipment in accordance with the above described Construction Contract Documents. The Contractor shall provide and bear the expense of all equipment, work, and labor of any sort whatsoever that may be required for the transfer of materials and for constructing and completing of the work provided for in these Construction Contract Documents, except those items mentioned therein to be furnished by the Town.
- 4. Subject to additions and deductions by change order, the construction Contract Sum is the base bid amount of \$28,649.00 plus applicable sales tax. The construction contract sum shall include all items and services necessary for the proper execution and completion of the work. The Town hereby promises and agrees with the Contractor to employ, and does employ the Contractor to provide the materials and to do and cause to be done the work described in the Construction Contract Documents and to complete and finish the same according to the plans and specifications and the terms and conditions herein contained; and hereby contracts to pay for the same at the time and in the manner and upon the conditions provided for in this contract.
- 5. The Contractor agrees to comply with all state and federal laws relating to the employment of labor and wage rates to be paid. The Contractor agrees to furnish insurance of the types and the amounts set forth in the Construction Contract Documents.
- 6. The Contractor agrees to repair and replace all property of the Town and all property of others damaged by himself, his employees, and sub-contractors.
- 7. The Contractor for himself and for his heirs, executors, administrators, successors, and assigns, does hereby agree to the full performance of all the covenants herein upon the part of the Contractor.
- 8. It is further provided that no liability shall attach to the Town by reason of entering into this Construction Contract, except as expressly provided herein.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be duly executed on the date first written above.

TOWN OF EATONVILLE	CONTRACTOR
Mike Schaub, Mayor	By:
ATTEST:	Its:
Kathy Linnemeyer, Town Clerk	
APPROVED AS TO FORM:	
Gregory A. Jacoby, Town Attorney	

# TOWN OF EATONVILLE PUBLIC WORK PROJECT TERMS AND CONDITIONS

The following terms and conditions shall be used in conjunction with the Standard Specifications for Road, Bridge and Municipal Construction, 2000 edition, together with the APWA Supplement (Section 1-99), as issued by the Washington State Department of Transportation and American Public Works Association, Washington State Chapter, hereinafter referred to as the "standard specifications." The standard specifications, except as they may be modified or superseded by these provisions, shall govern all phases of work under this contract, and they are by reference made an integral part of these specifications and contract as if herein fully set forth.

When the provisions of the standard specification conflict with the terms and conditions as contained herein, the terms and conditions shall prevail.

- 1. BID PRICE: The bid price(s) shall include all necessary permits, and fees and items of labor, material, equipment, tools, overhead and compensation, supplies, taxes, utilities and other incidentals necessary to complete the work in a fully functional and operational state. All prices including bid prices are in US funds.
- 2. DEFINITIONS: The term "Town" means Eatonville, Washington, "successful bidder" means the apparent lowest and best responsible bidder to whom an award is made, and "Contractor" means the successful bidder who has satisfied the requirements for the award and who receives a contract executed by the Town. "Bidder" means the person, firm or corporation that has made an offer in response to the invitation to bid. "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations.
- 3. LICENSING AND REGISTRATION: The Contractor must have a Washington State certificate of registration per chapter 18.27 RCW; a current state unified business identifier number; and if applicable, industrial insurance coverage for the bidder's employees working in Washington, an Employment Security Department number, and a state excise tax registration number. In addition, the bidder must not be disqualified from bidding on any public works contracts under RCW 39.06.010 or 39.12.065(3).
- 4. PUBLIC WORK REQUIREMENTS: This project constitutes a public work under state law. Bidders are warned to take into consideration statutory legal requirements, particularly, the payment of prevailing wages and fringe benefits, payment and performance bonds and sales tax implications in making their bids. It is the sole responsibility of the bidder to insure that the appropriate labor classification(s) are identified and that the applicable wage and benefit rates are taken into consideration when preparing their bid according to these specifications. The Contractor shall complete and file State of Washington, Department of Labor & Industries, Statement of Intent to Pay Prevailing Wages and Affidavit of Wages Paid forms and shall familiarize itself with their requirements. The Contractor shall also be responsible for and pay all costs pertaining to the processing of these forms.
- 5. INSURANCE REQUIREMENT: The successful bidder will furnish insurance as stipulated in the Attachment entitled "Insurance Requirements."
- 6. RECEIPT OF ADDENDA: All official clarifications or interpretations of the bid documents will be by written addenda only.

- 7. PROJECT COMPLIANCE: In compliance with the request for quotation, Bidder hereby proposes to perform all work for this project in strict accordance with the Contract Documents, at the Contract Sum, and within the time set forth herein with the understanding that time is of the essence in the performance of this contract.
- 8. TAXES: Proposals shall include all applicable taxes except sales tax which is a separate bid item. It shall be the Bidder's responsibility to furnish Federal Excise Tax Exemption Certificate, when applicable.
- 9. ERROR IN EXTENSION: Unit price, when used, shall govern in case of extension error.
- 10. PERMITS AND FEES: The Contractor shall furnish all permits, inspection fees, and fees required in the performance of this contract, including those charged under RCW 39.12.070 by the Department of Labor and Industries works for the approval of statements of intent to pay prevailing wages and the certification of affidavits of wages paid, etc. The Department may also charge fees to persons or organizations requesting the arbitration of disputes under RCW 39.12.060. The Contractor is responsible for all fees resulting from these statutes.
- 11. CONTRACT: The Contract, when properly signed, will be the only form which will be recognized by the Town as an award. The executed Contract supersedes all previous communications and negotiations, except as referenced herein, and constitutes the entire agreement between the Town and Contractor (parties), except as provided herein. The Contractor shall not make any changes, alterations, or variations in the terms of the contract without the written consent of the Town. No terms stated by the Bidder in its proposal shall be binding on the Town unless accepted in writing by the Town. The successful bidder may not assign the Contract resulting from this invitation to bid without the Town's prior written consent. No waiver by the Town of a breach of any provision of the terms and conditions outlined in the invitation to bid shall constitute a waiver of any other breach of such provision or of any other provisions.
- 12. CHANGE ORDERS: If the Town or the Contractor requests a change in the Work, or either party believes that a change is necessary, then the parties shall comply with the following procedure to document and reflect a change in the Work: (a) The party requesting the change shall write a description of the change and give the description to the other party (the "Change Notice"); (b) Before proceeding with the change in Work, unless otherwise excused by emergency, the Contractor shall provide the Town with a fixed-price written estimate of the cost and time impact of the change in Work; and (c) The Town and the Contractor shall execute a Change Order confirming their agreement as to the change in Work, the fixed-price cost, and the extension of the Substantial Completion Date, if any. If the change in Work cannot be performed on a fixed-price basis, the Change Order shall identify the agreed method of compensation.
- 13. CHANGE DIRECTIVES: A "Change Directive" is a written order signed by the Town, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Substantial Completion Date, or both. The Town may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Substantial Completion Date being adjusted accordingly. A Change Directive shall only be used in the absence of total agreement on the terms of a Change Order. Upon receipt of a Change Directive, the Contractor shall promptly proceed with the change in the Work and advise the Town of its agreement or disagreement with the proposed method for determining the proposed adjustment in the Contract Sum and/or Substantial Completion Date, if any, provided in the Change Directive. A Change Directive

signed by the Contractor indicates agreement with all terms set forth in the Change Directive. Such agreement shall be effective immediately and shall be recorded as soon as practical with a Change Order. If the parties are unable to agree on an adjustment to the Contract Sum and/or Substantial Completion Date, if any, then either party may submit the matter for determination in accordance with Section 21.

- 14. MINOR CHANGES IN THE WORK: The Town shall have the authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Substantial Completion Date and not inconsistent with the Contract documents. The Contractor shall promptly carry out such written orders for minor changes in the Work.
- 15. COMPLIANCE WITH LAWS AND REGULATIONS: The Contractor warrants full compliance with all applicable local, state or federal laws and regulations and agrees to indemnify and defend the Town against any loss, cost, liability or damage, including reasonable attorney's fees, by reason of successful bidder's violation of this paragraph.
- 16. INDEMNIFICATION: All services to be rendered or performed under contract will be rendered or performed entirely at the Contractor's own risk. The Contractor expressly agrees to defend, indemnify and hold harmless the Town and all its officers, agents, employees or otherwise from any and all claims, including but not limited to reasonable attorney fees, demands, losses and liabilities to or by third parties arising from, resulting from or connected with the express or implied obligations of the Contractor, its agents or employees under this contract to the fullest extent permitted by law. The Contractor's duty to indemnify the Town shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Town, its agents or employees. The Contractor's duty to indemnify the Town for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) the Town, its agents or employees, and (b) Contractor, its agents or employees shall apply only to the extent of negligence of the Contractor or its agents or employees. Contractor's duty to defend, indemnify and hold the Town harmless shall include, as to all claims, demands, losses and liability to which it applies, the Town's personnel-related costs, reasonable attorney's fees, court costs and all other claim-related expenses. The Contractor's indemnification shall specifically include all claims for loss liability because of wrongful payments under the Uniform Commercial Code, or other statutory or contractual liens or rights or third parties, including taxes, accrued or accruing as a result of this contract or work performed or materials furnished directly or indirectly because of this contract. Contractor further agrees that this duty to indemnify Town applies regardless of any provisions in RCW Title 51 to the contrary, including but not limited to any immunity of Contractor for liability for injuries to Contractor's workers and employees, and/or Worker's Compensation; and Contractor hereby expressly waives any such immunity.
- 17. TERMINATION: This Contract may be terminated in whole or in part, without penalty, under the following conditions: 1) by mutual written agreement; 2) by the Town for breach by the Contractor of any of the obligations or requirements set forth in the contract documents which would, at the option of the Town, require the Contractor to assume liability for any and all damages, including the excess of re-procuring similar products or services; 3) for convenience of the Town; or 4) by the Town for non-appropriation of funds.
- 18. TERMINATION BY THE TOWN WITHOUT CAUSE: Notwithstanding any other provisions contained herein, the Town, without cause, may terminate the contract between the parties by providing notice to the Contractor. Upon termination under this section: 1) All

remaining obligations of the parties are discharged, but any right based upon breach or performance occurring prior to termination survives; 2) If the reasonable costs of performance incurred by the Contractor prior to termination exceed the amount paid by the Town to the Contractor on the Contract Sum, the Town shall reimburse the Contractor in the amount of such excess; 3) If the amount paid by the Town to the Contractor on the Contract Sum exceeds the reasonable costs of performance incurred by the Contractor prior to termination, the Contractor shall reimburse the Town in the amount of such excess; 4) Any funds obtained or retained by the Contractor as provided in subsections 2) or 3), above, shall constitute full payment and consideration for the services performed by the Contractor prior to termination.

- 19. COMPLIANCE WITH TERMS: The Town may at any time insist upon strict compliance with these terms and conditions, not withstanding any previous custom, practice, or course of dealing to the contrary.
- 20. PAYMENT: Contractor shall maintain time and expense records and provide them to the Town along with monthly invoices in a format acceptable to the Town for work performed to the date of the invoice. All invoices shall be paid by the Town within 45 days of receipt of a proper invoice. If the services rendered do not meet the requirements of the Contract, Contractor will correct or modify the work to comply with the contract. Town may withhold payment for such work until work meets the requirements of the Contract.
- 21. DISPUTE RESOLUTION: In the event there is a dispute between the parties, the parties agree to resolve that dispute in the following manner: (a) The parties shall attempt in good faith to resolve any dispute promptly through negotiation. Either party may give the other party written notice that a dispute exists (a "Notice of Dispute"). The Notice of Dispute shall include a statement of such party's position. Within ten (10) days of the delivery of the Notice of Dispute, the parties shall meet at a mutually acceptable time and place and attempt to resolve the dispute; (b) If the parties are unable to resolve the dispute, they may elect to submit the dispute to mediation. The cost of the mediation shall be borne equally by each party. The mediator shall be selected by the mutual agreement of the parties; (c) If the mediation does not result in a settlement of the dispute, the dispute shall be settled by binding arbitration by the Judicial and Arbitration Mediations Service ("JAMS") in accordance with the then operative construction rules of JAMS. The parties may select an arbitrator by mutual agreement, or if unable to agree, the arbitrator will be selected pursuant to the rules of JAMS. The parties shall be bound by the decision of such arbitrator. The arbitration shall be conducted in Pierce County, Washington; provided, if JAMS is unable to conduct the arbitration in Pierce County, then the arbitration shall be held in such location as the parties may agree after consulting with JAMS.

# TOWN OF EATONVILLE INSURANCE REQUIREMENTS

Contractor shall furnish and maintain all insurance as required herein (or by attachment) and comply with all limits, terms and conditions stipulated therein (or by that attachment), at their expense, for the duration of the contract. Any exclusions must be pre-approved by the Town. Work under this contract shall not commence until evidence of all required insurance and bonding is provided to the Town. The Contractor's insurer shall have a minimum A.M. Best's rating of A- and shall be licensed to do business in the State of Washington. The insurance policy or policies will not be canceled, materially changed or altered without forty five (45) days prior notice submitted to the Town. The policy shall provide and the certificate shall reflect that the insurance afforded applies separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability. The policy shall be endorsed and the certificate shall reflect that the insurance afforded therein shall be primary insurance and any insurance or self-insurance carried by the Town shall be excess and not contributory insurance to that provided by the contractor.

REQUIRED COVERAGE: The insurance shall provide the minimum coverage as set forth below, all coverage \$1,000,000.00 per occurrence with no deductible.

GENERAL LIABILITY INSURANCE: The Contractor shall have Commercial General Liability with limits of \$1,000,000.00 per occurrence and at least \$2,000,000.00 in the annual aggregate, which includes general aggregate, products, completed operation, personal injury, fire damage and medical expense.

ADDITIONAL INSURED ENDORSEMENT: General Liability Insurance must state that the Town of Eatonville, it's officers, agents and employees, and any other entity specifically required by the provisions of the Agreement will be specifically named additional insured(s) for all coverage provided by this policy of insurance and shall be fully and completely protected by this policy from all claims. Language such as the following should be used "TOWN OF EATONVILLE, ITS OFFICERS, AGENTS AND EMPLOYEES ARE NAMED ADDITIONAL INSURED AS RESPECTS TO PROJECT NUMBER (insert project number here)."

PROOF OF BUSINESS AUTOMOBILE INSURANCE: The Contractor shall have Business Automobile Liability with limits of \$1,000,000.00 combined single limit.

WORKERS COMPENSATION: If applicable, the Contractor shall show proof of Worker's Compensation coverage by providing its State Industrial Account Identification Number. Provision of this number will be the Contractor's assurance that coverage is in effect.

PROOF OF INSURANCE: The Contractor shall not commence work, nor shall the Contractor allow any subcontractor to commence work on any subcontract until a Certificate of Insurance, meeting the requirements set forth above, has been provided to the Town. Upon request, the Contractor shall forward to the Town the original policy, or endorsement obtained, to the Contractor's policy currently in force.

FAILURE OF COVERAGE: Failure of the Contractor to fully comply with the above insurance requirements during the term or the contract shall be considered a material breach of contract and cause for immediate termination of the contract at the Town's discretion. Alternatively the Town may procure and maintain, at the Contractor's sole expense, insurance to the extent deemed proper up to the amount of the required coverage(s). The Town may offset the cost of such insurance against payment due to the Contractor under this contract.

# TOWN OF EATONVILLE DECLARATION OF OPTION FOR PERFORMANCE BOND OR ADDITIONAL RETAINAGE

## (CONTRACTS UNDER \$35,000 ONLY)

Note: This form <u>must</u> be submitted at the time the Contractor executes the Contract. The Contractor shall designate the option desired by checking the appropriate space.

The Contractor elects to:
(1) Furnish a performance bond in the amount of the total contract sum. An executed performance bond on the required form is included with the executed contract documents.
(2) Have the Town retain, in lieu of the performance and payment bonds, fifty percent (50%) of the total contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the department of revenue and the department of labor and industries and settlement of any liens filed under chapter 60.28 RCW, whichever is later. RCW 39.08.010.
In choosing option 2, the Contractor agrees that if the Contractor, its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract, and shall faithfully perform all the provisions of such contract and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of the Contract that may hereafter be made, at the time and in the manner therein specified, and shall pay all laborers, mechanics, subcontractors, and materialmen, and all persons who shall supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work, on his or her part, and shall defend, indemnify, and save harmless the Town of Eatonville, Washington, its officers and agents from any claim for such payment, then the funds retained in lieu of a performance bond shall be released at the time provided in said option 2; otherwise, the funds shall be retained until the Contractor fulfills the said obligations.
Contractor Signature, Date Bond No

# CERTIFICATE AS TO CORPORATE PRINCIPAL

Ι,	(Corporate Officer (Not Contract
I, Signer)) certify that I am the Title) of the corporation named as Contractor	(Corporate
, (Contract Si	igner) who signed said Agreement on behalf
of the Contractor, was then corporation; that said Agreement was duly signed	(Corporate Title) of said
corporation; that said Agreement was duly signed	t for and in behalf of said corporation by
authority of its governing body, and is within the sco	ope of its corporate powers.
Corporate Seal	
Corp. officer signature (not contract	et signer)
Printed	
Title	
State of) County of)	
	porate officer (not contract signer)) being
duly sworn, deposes and says that he/she is	e of Corporation) (Corporate
	me this,
20	
: :	Notary Public (Signature)
	Notary Public (Print)
	My commission expires

Town of Eatonville
PO BOX 309
201 – Center St. W.
Eatonville, WA. 98328
Attn: Abby Gribi
360-832-3361 ext. 105

## Administration Comfort System

**PROPOSAL:** We are pleased to submit our proposal to provide labor & materials to remove and dispose of existing equipment, install new equipment in lower level mechanical room. Relocate back lot heat pump cooling system, refrigerant lines, and condensate removal lines. Relocate outdoor heat pump electrical disconnect box(s) to back wall corner area of fire hall per request.

#### BASIC

1. Quantity of (2) new TRANE XR15 15.0/9.5 SEER/HSPF, 1 Stage heat pump & TEM4, 1 Speed air handler: \$23,555.00 + tax

### GOOD

2. Quantity of (2) new TRANE XL16i 17.0/9.6 SEER/HSPF 1 Stage heat pump & TAM7 Variable Speed air handler: \$28,649.00 + tax

#### BETTER

3. Quantity of (2) new TRANE XL18i 18.0/9.5 SEER/HSPF, 2 Stage heat pump & TAM8 Variable Speed air handler: \$29.899.00 + tax

#### BEST

4. Quantity of (2) new TRANE XV18i 18.0/10.0 SEER/HSPF, Variable Stage heat pump & TAM8 Variable Speed air handler: \$31,925.00 + tax

#### **FANTASTIC**

5. Quantity of (2) new XV20i 21.0/10.0 SEER/HSPF Variable Stage heat pump & TAM8 Variable Speed air handler: \$34,945.00 + tax



Town of Eatonville PO BOX 309 201 – Center St. W. Eatonville, WA. 98328 Attn: Abby Gribi 360-832-3361 ext. 105

## Administration Comfort System

Exclusions: 1.) Any work not listed above. 2.) Any parts or work on any additional units other than unit specified above. All permit fees, and / or changes to our design, all coring to outside walls.

Prices do not include Sales Tax. It is understood these charges will be added when applicable. SEER and HSPF are "up-to" and to be used as a comparison only.

PAYMENT TERMS: 50% due at completion. And 50% balance net 30 days.

If this bill has to be referred to an attorney for collection, then it is agreed that the customer will pay, in addition to the bill, reasonable attorney fees & cost. Payment terms as noted above. This Proposal may change due to market, state, energy code or manufacturer's conditions or requirements, and terminates if not accepted within in 30 days.

Acceptance of Proposal: The above prices, specifications and Conditions are satisfactory and are hereby accepted. You are Authorized to do the work as specified. Payment will be made as outlined above.				
Date:	Signature			
All materials are guaranteed to be as specified. All work to be completed in a Workmanlike manner according to standard practices. Any alteration or Deviation from above specifications involving extra cost will be executed. Only Upon written orders, and will become an extra charge over and above this proposed estimate. All agreement's contingent upon strikes, accidents, or delays beyond our control Owner to carry fire, tornado, and other insurance.				
Authorized Signature:		_ Date Proposed: 06/14/2018		
	cFadden, Equipment & Air Quality Specialist of L.C.C. owner and may be withdrawn if not accepted within 30 days.			

