

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

AGREEMENT
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THIS AGREEMENT is made and entered, as of December 7, 2022, for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on December 6, 2022, by and between WEST COAST BOILER INC., a California corporation. ("Consultant"), with a place of business at 13013 Los Nietos Road, Suite J, Santa Fe Springs, California 90670, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, City requires specialized services requiring unique skills to be performed in connection with the purchase and installation of heat exchangers and boilers for the Queen Mary ("Project"); and

WHEREAS, City authorized a Hotel Management Agreement with Evolution Hospitality, LLC on June 21, 2022, for the reopening and operation of the Queen Mary Hotel; and

WHEREAS, the boilers and heat exchangers require replacement due to age and deterioration and their replacement is critical in meeting the minimum health and safety requirements for public access; and

WHEREAS, City has selected Consultant in accordance with the City's administrative procedures and the City has determined that Consultant can guarantee timely product delivery and installation, its employees are qualified, licensed, and experienced in performing these specialized services; and

WHEREAS, City desires to have Consultant perform these specialized services, and Consultant is willing and able to do so on the terms and conditions in this Agreement;

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions in this Agreement, the parties agree as follows:

- 1. SCOPE OF WORK OR SERVICES.
 - A. Consultant shall furnish specialized ~~services~~ more particularly

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1 described in Exhibit "A", attached to this Agreement and incorporated by this
2 reference, in accordance with the standards of the profession, and City shall pay for
3 these services in the manner described below, in an amount of Five Hundred Eight
4 Thousand Nine Hundred Ten Dollars (\$508,910), with a ten percent (10%)
5 contingency in the amount of Fifty Thousand Eight Hundred Ninety-One Dollars
6 (\$50,891) not to exceed an amount of Five Hundred Fifty-Nine Thousand Eight
7 Hundred One Dollars (\$559,801), at the rates or charges shown in Exhibit "A".

8 B. The City's obligation to pay the sum stated above for any one
9 fiscal year shall be contingent upon the City Council of the City appropriating the
10 necessary funds for such payment by the City in each fiscal year during the term of
11 this Agreement. For the purposes of this Section, a fiscal year commences on
12 October 1 of the year and continues through September 30 of the following year. In
13 the event that the City Council of the City fails to appropriate the necessary funds
14 for any fiscal year, then, and in that event, the Agreement will terminate at no
15 additional cost or obligation to the City.

16 C. Consultant may select the time and place of performance for
17 these services; provided, however, that access to City documents, records and the
18 like, if needed by Consultant, shall be available only during City's normal business
19 hours and provided that milestones for performance, if any, are met.

20 D. Consultant has requested to receive regular payments. City
21 shall pay Consultant in due course of payments following receipt from Consultant
22 and approval by City of invoices showing the services or task performed, the time
23 expended (if billing is hourly), and the name of the Project. Consultant shall certify
24 on the invoices that Consultant has performed the services in full conformance with
25 this Agreement and is entitled to receive payment. Each invoice shall be
26 accompanied by a progress report indicating the progress to date of services
27 performed and covered by the invoice, including a brief statement of any Project
28 problems and potential causes of delay in performance, and listing those services

1 that are projected for performance by Consultant during the next invoice cycle.
2 Where billing is done and payment is made on an hourly basis, the parties
3 acknowledge that this arrangement is either customary practice for Consultant's
4 profession, industry or business, or is necessary to satisfy audit and legal
5 requirements which may arise due to the fact that City is a municipality.

6 E. Consultant represents that Consultant has obtained all
7 necessary information on conditions and circumstances that may affect its
8 performance and has conducted site visits, if necessary.

9 F. CAUTION: Consultant shall not begin work until this
10 Agreement has been signed by both parties and until Consultant's evidence of
11 insurance has been delivered to and approved by City.

12 2. TERM. The term of this Agreement shall commence at midnight on
13 December 7, 2022, and shall terminate at 11:59 p.m. on December 6, 2023, unless sooner
14 terminated as provided in this Agreement, or unless the services or the Project is
15 completed sooner.

16 3. COORDINATION AND ORGANIZATION.

17 A. Consultant shall coordinate its performance with City's
18 representative, if any, named in Exhibit "B", attached to this Agreement and
19 incorporated by this reference. Consultant shall advise and inform City's
20 representative of the work in progress on the Project in sufficient detail so as to
21 assist City's representative in making presentations and in holding meetings on the
22 Project. City shall furnish to Consultant information or materials, if any, described
23 in Exhibit "C", attached to this Agreement and incorporated by this reference, and
24 shall perform any other tasks described in the Exhibit.

25 B. The parties acknowledge that a substantial inducement to City
26 for entering this Agreement was and is the reputation and skill of Consultant's key
27 employee, named in Exhibit "C" attached to this Agreement and incorporated by this
28 reference. City shall have the right to approve any person proposed by Consultant

1 to replace that key employee.

2 4. INDEPENDENT CONTRACTOR. In performing its services,
3 Consultant is and shall act as an independent contractor and not an employee,
4 representative or agent of City. Consultant shall have control of Consultant's work and the
5 manner in which it is performed. Consultant shall be free to contract for similar services to
6 be performed for others during this Agreement; provided, however, that Consultant acts in
7 accordance with Section 9 and Section 11 of this Agreement. Consultant acknowledges
8 and agrees that (a) City will not withhold taxes of any kind from Consultant's compensation;
9 (b) City will not secure workers' compensation or pay unemployment insurance to, for or
10 on Consultant's behalf; and (c) City will not provide and Consultant is not entitled to any of
11 the usual and customary rights, benefits or privileges of City employees. Consultant
12 expressly warrants that neither Consultant nor any of Consultant's employees or agents
13 shall represent themselves to be employees or agents of City.

14 5. INSURANCE.

15 A. As a condition precedent to the effectiveness of this
16 Agreement, Consultant shall procure and maintain, at Consultant's expense for the
17 duration of this Agreement, from insurance companies that are admitted to write
18 insurance in California and have ratings of or equivalent to A:V by A.M. Best
19 Company or from authorized non-admitted insurance companies subject to Section
20 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII
21 by A.M. Best Company, the following insurance:

22 i. Commercial general liability insurance (equivalent in
23 scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less
24 than One Million Dollars (\$1,000,000.00) per each occurrence and Two
25 Million Dollars (\$2,000,000.00) general aggregate. This coverage shall
26 include but not be limited to broad form contractual liability, cross liability,
27 independent contractors liability, and products and completed operations
28 liability. City, its boards and commissions, and their officials, employees and

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agents shall be named as additional insureds by endorsement (on City's endorsement form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85 or both CG 20 10 07 04 and CG 20 37 07 04 or both CG 20 33 07 04 and CG 20 37 07 04), and this insurance shall contain no special limitations on the scope of protection given to City, its boards and commissions, and their officials, employees and agents. This policy shall be endorsed to state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.

ii. Workers' Compensation insurance as required by the California Labor Code and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000.00). This policy shall be endorsed to state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.

iii. Professional liability or errors and omissions insurance in an amount not less than One Million Dollars (\$1,000,000.00) per claim.

iv. Commercial automobile liability insurance (equivalent in scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) combined single limit per accident.

B. Any self-insurance program, self-insured retention, or deductible must be separately approved in writing by City's Risk Manager or designee and shall protect City, its officials, employees and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention or deductible provisions.

C. Each insurance policy shall be endorsed to state that coverage shall not be reduced, non-renewed or canceled except after thirty (30) days prior written notice to City, shall be primary and not contributing to any other insurance or self-insurance maintained by City, and shall be endorsed to state that coverage

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maintained by City shall be excess to and shall not contribute to insurance or self-insurance maintained by Consultant. Consultant shall notify City in writing within five (5) days after any insurance has been voided by the insurer or cancelled by the insured.

D. If this coverage is written on a "claims made" basis, it must provide for an extended reporting period of not less than one hundred eighty (180) days, commencing on the date this Agreement expires or is terminated, unless Consultant guarantees that Consultant will provide to City evidence of uninterrupted, continuing coverage for a period of not less than three (3) years, commencing on the date this Agreement expires or is terminated.

E. Consultant shall require that all subconsultants or contractors that Consultant uses in the performance of these services maintain insurance in compliance with this Section unless otherwise agreed in writing by City's Risk Manager or designee.

F. Prior to the start of performance, Consultant shall deliver to City certificates of insurance and the endorsements for approval as to sufficiency and form. In addition, Consultant shall, within thirty (30) days prior to expiration of the insurance, furnish to City certificates of insurance and endorsements evidencing renewal of the insurance. City reserves the right to require complete certified copies of all policies of Consultant and Consultant's subconsultants and contractors, at any time. Consultant shall make available to City's Risk Manager or designee all books, records and other information relating to this insurance, during normal business hours.

G. Any modification or waiver of these insurance requirements shall only be made with the approval of City's Risk Manager or designee. Not more frequently than once a year, City's Risk Manager or designee may require that Consultant, Consultant's subconsultants and contractors change the amount, scope or types of coverages required in this Section if, in his or her sole opinion, the

1 amount, scope or types of coverages are not adequate.

2 H. The procuring or existence of insurance shall not be construed
3 or deemed as a limitation on liability relating to Consultant's performance or as full
4 performance of or compliance with the indemnification provisions of this Agreement.

5 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
6 contemplates the personal services of Consultant and Consultant's employees, and the
7 parties acknowledge that a substantial inducement to City for entering this Agreement was
8 and is the professional reputation and competence of Consultant and Consultant's
9 employees. Consultant shall not assign its rights or delegate its duties under this
10 Agreement, or any interest in this Agreement, or any portion of it, without the prior approval
11 of City, except that Consultant may with the prior approval of the City Manager of City,
12 assign any moneys due or to become due Consultant under this Agreement. Any
13 attempted assignment or delegation shall be void, and any assignee or delegate shall
14 acquire no right or interest by reason of an attempted assignment or delegation.
15 Furthermore, Consultant shall not subcontract any portion of its performance without the
16 prior approval of the City Manager or designee, or substitute an approved subconsultant
17 or contractor without approval prior to the substitution. Nothing stated in this Section shall
18 prevent Consultant from employing as many employees as Consultant deems necessary
19 for performance of this Agreement.

20 7. CONFLICT OF INTEREST. Consultant, by executing this Agreement,
21 certifies that, at the time Consultant executes this Agreement and for its duration,
22 Consultant does not and will not perform services for any other client which would create
23 a conflict, whether monetary or otherwise, as between the interests of City and the interests
24 of that other client. Consultant further certifies that Consultant does not now have and shall
25 not acquire any interest, direct or indirect, in the area covered by this Agreement or any
26 other source of income, interest in real property or investment which would be affected in
27 any manner or degree by the performance of Consultant's services hereunder. And,
28 Consultant shall obtain similar certifications from Consultant's employees, subconsultants

1 and contractors.

2 8. MATERIALS. Consultant shall furnish all labor and supervision,
3 supplies, materials, tools, machinery, equipment, appliances, transportation and services
4 necessary to or used in the performance of Consultant's obligations under this Agreement,
5 except as stated in Exhibit "D".

6 9. OWNERSHIP OF DATA. All materials, information and data
7 prepared, developed or assembled by Consultant or furnished to Consultant in connection
8 with this Agreement, including but not limited to documents, estimates, calculations,
9 studies, maps, graphs, charts, computer disks, computer source documentation, samples,
10 models, reports, summaries, drawings, designs, notes, plans, information, material and
11 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,
12 in a format identified by City, and City shall have the unrestricted right to use and disclose
13 the Data in any manner and for any purpose without payment of further compensation to
14 Consultant. Copies of Data may be retained by Consultant but Consultant warrants that
15 Data shall not be made available to any person or entity for use without the prior approval
16 of City. This warranty shall survive termination of this Agreement for five (5) years.

17 10. TERMINATION. Either party shall have the right to terminate this
18 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days
19 prior written notice to the other party. In the event of termination under this Section, City
20 shall pay Consultant for services satisfactorily performed and costs incurred up to the
21 effective date of termination for which Consultant has not been previously paid. The
22 procedures for payment in Section 1.B. with regard to invoices shall apply. On the effective
23 date of termination, Consultant shall deliver to City all Data developed or accumulated in
24 the performance of this Agreement, whether in draft or final form, or in process. And,
25 Consultant acknowledges and agrees that City's obligation to make final payment is
26 conditioned on Consultant's delivery of the Data to City.

27 11. CONFIDENTIALITY. Consultant shall keep all Data confidential and
28 shall not disclose the Data or use the Data directly or indirectly, other than in the course of

1 performing its services, during the term of this Agreement and for five (5) years following
2 expiration or termination of this Agreement. In addition, Consultant shall keep confidential
3 all information, whether written, oral or visual, obtained by any means whatsoever in the
4 course of performing its services for the same period of time. Consultant shall not disclose
5 any or all of the Data to any third party, or use it for Consultant's own benefit or the benefit
6 of others except for the purpose of this Agreement.

7 12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for
8 a breach of confidentiality with respect to Data that: (a) Consultant demonstrates
9 Consultant knew prior to the time City disclosed it; or (b) is or becomes publicly available
10 without breach of this Agreement by Consultant; or (c) a third party who has a right to
11 disclose does so to Consultant without restrictions on further disclosure; or (d) must be
12 disclosed pursuant to subpoena or court order.

13 13. ADDITIONAL COSTS AND REDESIGN.

14 A. Any costs incurred by City due to Consultant's failure to meet
15 the standards required by the scope of work or Consultant's failure to perform fully
16 the tasks described in the scope of work which, in either case, causes City to request
17 that Consultant perform again all or part of the Scope of Work shall be at the sole
18 cost of Consultant and City shall not pay any additional compensation to Consultant
19 for its re-performance.

20 B. If the Project involves construction and the scope of work
21 requires Consultant to prepare plans and specifications with an estimate of the cost
22 of construction, then Consultant may be required to modify the plans and
23 specifications, any construction documents relating to the plans and specifications,
24 and Consultant's estimate, at no cost to City, when the lowest bid for construction
25 received by City exceeds by more than ten percent (10%) Consultant's estimate.
26 This modification shall be submitted in a timely fashion to allow City to receive new
27 bids within four (4) months after the date on which the original plans and
28 specifications were submitted by Consultant.

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1 14. AMENDMENT. This Agreement, including all Exhibits, shall not be
2 amended, nor any provision or breach waived, except in writing signed by the parties which
3 expressly refers to this Agreement.

4 15. LAW. This Agreement shall be construed in accordance with the laws
5 of the State of California, and the venue for any legal actions brought by any party with
6 respect to this Agreement shall be the County of Los Angeles, State of California for state
7 actions and the Central District of California for any federal actions. Consultant shall cause
8 all work performed in connection with construction of the Project to be performed in
9 compliance with (1) all applicable laws, ordinances, rules and regulations of federal, state,
10 county or municipal governments or agencies (including, without limitation, all applicable
11 federal and state labor standards, including the prevailing wage provisions of sections 1770
12 *et seq.* of the California Labor Code); and (2) all directions, rules and regulations of any fire
13 marshal, health officer, building inspector, or other officer of every governmental agency
14 now having or hereafter acquiring jurisdiction.

15 16. WORK DAY. Contractor shall comply with Sections 1810 through
16 1815 of the California Labor Code regarding hours of work. Contractor shall forfeit, as a
17 penalty to City, the sum of Twenty-Five Dollars (\$25) for each worker employed by
18 Contractor or any subcontractor for each calendar day such worker is required or permitted
19 to work more than eight (8) hours unless that worker receives compensation in accordance
20 with Section 1815.

21 17. LABOR COMPLIANCE. Contractor is advised that this work
22 constitutes a public work subject to California Labor Code Division 2, Part 7, Chapter 1,
23 Articles 1-5, §§1720-1861. Pursuant to Labor Code Section 1771.1, Contractor or
24 subcontractors shall not be qualified to bid on, be listed in a bid proposal, subject to the
25 requirements of Section 4104 of the Public contract Code, or engage in the performance
26 of any contract for public work, as defined in the California Labor Code, unless currently
27 registered and qualified to perform public work pursuant to Section 1725.5. Contract (or
28 associated subcontracts) shall not be entered into without proof of the Contractor's (or

1 subcontractor's) current registration to perform public work pursuant to Section 1725.5. All
2 work conducted in support of this public work is subject to compliance monitoring and
3 enforcement by the Department of Industrial Relations. Contractor will abide by all
4 applicable apprenticeship requirements in the California Labor Code Section 1777.5 and
5 will be responsible for subcontractor apprenticeship compliance to the same.

6 18. PREVAILING WAGE RATES. Contractor is directed to pay the
7 general rate of per diem wages for each craft, classification, or type of worker needed to
8 execute the contract (prevailing wage rates). Copies of the current prevailing rate of per
9 diem wages are on file at its principal office (Labor Compliance Division, 411 W. Ocean
10 Boulevard, 6th Floor, Long Beach, California, 90802), and shall be made available to any
11 interested party upon request. Contractor is required to post a copy of the determination of
12 the director of the prevailing rate of per diem wages and other posting required by law at
13 each job site. Pursuant to Labor Code Section 1775, Contractor shall forfeit, as a penalty
14 to the City, up to Two Hundred Dollars (\$200) for each laborer, worker or mechanic
15 employed for each calendar day, or portion thereof, that such laborer, worker or mechanic
16 is paid less than the prevailing wage rates for any work done by Contractor, or any
17 subcontractor, under this Contract. The difference between the prevailing wage rates and
18 the amount paid to each worker for each calendar day or portion thereof for which each
19 worker was paid less than the prevailing wage rate shall be paid to each worker by the
20 Contractor or subcontractor.

21 19. CERTIFIED PAYROLL RECORDS.

22 A. Pursuant to the provisions of Labor Code Section 1776,
23 Contractor shall keep and shall cause each subcontractor performing any portion of
24 the work under this Contract to keep an accurate payroll record, showing the name,
25 address, social security number, work classification, straight time and overtime
26 hours worked each day and week, and the actual per diem wages paid to each
27 journeyman, apprentice, worker, or other employee employed by Contractor or
28 subcontractor in connection with the work. Contractor shall maintain all other payroll

1 records as identified in Labor Code Section 1812 and as defined by Title 8 California
2 Code of Regulation Section 16000. Payroll records for Contractor and all
3 subcontractors shall be available for inspection at all reasonable hours at the
4 principal office of Contractor and provided to the City or its authorized Labor
5 Compliance representative within ten (10) days of request. Contractor's failure to
6 furnish such records to City or City's authorized Labor Compliance representative
7 in the manner provided herein for notices shall entitle City to withhold the penalty
8 prescribed by law from progress payments due to Contractor.

9 B. Contractor shall submit to the City certified payroll records for
10 Contractor and all subcontractors performing any portion of the work under this
11 Contract on a monthly basis. Certified payroll records for Contractor and all
12 subcontractors shall be maintained during the course of the work and shall be kept
13 by Contractor for up to three (3) years after completion of the work.

14 C. The foregoing is in addition to, and not in lieu of, any other
15 requirements or obligations established and imposed by any department of the City
16 with regard to submission and retention of certified payroll records for Contractor
17 and subcontractors.

18 20. ENTIRE AGREEMENT. This Agreement, including all Exhibits,
19 constitutes the entire understanding between the parties and supersedes all other
20 agreements, oral or written, with respect to the subject matter in this Agreement.

21 21. INDEMNITY.

22 A. Consultant shall indemnify, protect and hold harmless City, its
23 Boards, Commissions, and their officials, employees and agents ("Indemnified
24 Parties"), from and against any and all liability, claims, demands, damage, loss,
25 obligations, causes of action, proceedings, awards, fines, judgments, penalties,
26 costs and expenses, arising or alleged to have arisen, in whole or in part, out of or
27 in connection with (1) Consultant's breach or failure to comply with any of its
28 obligations contained in this Agreement, including any obligations arising from the

1 Project's compliance with or failure to comply with applicable laws, including all
2 applicable federal and state labor requirements including, without limitation, the
3 requirements of California Labor Code section 1770 *et seq.* or (2) negligent or willful
4 acts, errors, omissions or misrepresentations committed by Consultant, its officers,
5 employees, agents, subcontractors, or anyone under Consultant's control, in the
6 performance of work or services under this Agreement (collectively "Claims" or
7 individually "Claim").

8 B. In addition to Consultant's duty to indemnify, Consultant shall
9 have a separate and wholly independent duty to defend Indemnified Parties at
10 Consultant's expense by legal counsel approved by City, from and against all
11 Claims, and shall continue this defense until the Claims are resolved, whether by
12 settlement, judgment or otherwise. No finding or judgment of negligence, fault,
13 breach, or the like on the part of Consultant shall be required for the duty to defend
14 to arise. City shall notify Consultant of any Claim, shall tender the defense of the
15 Claim to Consultant, and shall assist Consultant, as may be reasonably requested,
16 in the defense.

17 C. If a court of competent jurisdiction determines that a Claim was
18 caused by the sole negligence or willful misconduct of Indemnified Parties,
19 Consultant's costs of defense and indemnity shall be (1) reimbursed in full if the
20 court determines sole negligence by the Indemnified Parties, or (2) reduced by the
21 percentage of willful misconduct attributed by the court to the Indemnified Parties.

22 D. The provisions of this Section shall survive the expiration or
23 termination of this Agreement.

24 22. AMBIGUITY. In the event of any conflict or ambiguity between this
25 Agreement and any Exhibit, the provisions of this Agreement shall govern.

26 23. FORCE MAJEURE. If any party fails to perform its obligations
27 because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain
28 labor or materials or reasonable substitutes for labor materials, governmental restrictions,

1 governmental regulations, governmental controls, judicial orders, enemy or hostile
2 governmental action, pandemic, civil commotion, fire or other casualty, or other causes
3 beyond the reasonable control of the party obligated to perform, then that party's
4 performance will be excused for a period equal to the period of such cause for failure to
5 perform.

6 24. NONDISCRIMINATION.

7 A. In connection with performance of this Agreement and subject
8 to applicable rules and regulations, Consultant shall not discriminate against any
9 employee or applicant for employment because of race, religion, national origin,
10 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or
11 disability. Consultant shall ensure that applicants are employed, and that
12 employees are treated during their employment, without regard to these bases.
13 These actions shall include, but not be limited to, the following: employment,
14 upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or
15 termination; rates of pay or other forms of compensation; and selection for training,
16 including apprenticeship.

17 B. It is the policy of City to encourage the participation of
18 Disadvantaged, Minority and Women-Owned Business Enterprises in City's
19 procurement process, and Consultant agrees to use its best efforts to carry out this
20 policy in its use of subconsultants and contractors to the fullest extent consistent
21 with the efficient performance of this Agreement. Consultant may rely on written
22 representations by subconsultants and contractors regarding their status.
23 Consultant shall report to City in May and in December or, in the case of short-term
24 agreements, prior to invoicing for final payment, the names of all subconsultants
25 and contractors hired by Consultant for this Project and information on whether or
26 not they are a Disadvantaged, Minority or Women-Owned Business Enterprise, as
27 defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

28 25. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in

1 accordance with the provisions of the Ordinance, this Agreement is subject to the
2 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the
3 Long Beach Municipal Code, as amended from time to time.

4 A. During the performance of this Agreement, the Consultant
5 certifies and represents that the Consultant will comply with the EBO. The
6 Consultant agrees to post the following statement in conspicuous places at its place
7 of business available to employees and applicants for employment:

8 "During the performance of a contract with the City of Long Beach, the
9 Consultant will provide equal benefits to employees with spouses and its
10 employees with domestic partners. Additional information about the City of
11 Long Beach's Equal Benefits Ordinance may be obtained from the City of
12 Long Beach Business Services Division at 562-570-6200."

13 B. The failure of the Consultant to comply with the EBO will be
14 deemed to be a material breach of the Agreement by the City.

15 C. If the Consultant fails to comply with the EBO, the City may
16 cancel, terminate or suspend the Agreement, in whole or in part, and monies due or
17 to become due under the Agreement may be retained by the City. The City may
18 also pursue any and all other remedies at law or in equity for any breach.

19 D. Failure to comply with the EBO may be used as evidence
20 against the Consultant in actions taken pursuant to the provisions of Long Beach
21 Municipal Code 2.93 et seq., Contractor Responsibility.

22 E. If the City determines that the Consultant has set up or used its
23 contracting entity for the purpose of evading the intent of the EBO, the City may
24 terminate the Agreement on behalf of the City. Violation of this provision may be
25 used as evidence against the Consultant in actions taken pursuant to the provisions
26 of Long Beach Municipal Code Section 2.93 et seq., Contractor Responsibility.

27 26. NOTICES. Any notice or approval required by this Agreement shall
28 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,

1 postage prepaid, addressed to Consultant at the address first stated above, and to City at
2 411 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy
3 to the City Engineer at the same address. Notice of change of address shall be given in
4 the same manner as stated for other notices. Notice shall be deemed given on the date
5 deposited in the mail or on the date personal delivery is made, whichever occurs first.

6 27. COPYRIGHTS AND PATENT RIGHTS.

7 A. Consultant shall place the following copyright protection on all
8 Data: © City of Long Beach, California _____, inserting the appropriate year.

9 B. City reserves the exclusive right to seek and obtain a patent or
10 copyright registration on any Data or other result arising from Consultant's
11 performance of this Agreement. By executing this Agreement, Consultant assigns
12 any ownership interest Consultant may have in the Data to City.

13 C. Consultant warrants that the Data does not violate or infringe
14 any patent, copyright, trade secret or other proprietary right of any other party.
15 Consultant agrees to and shall protect, defend, indemnify and hold City, its officials
16 and employees harmless from any and all claims, demands, damages, loss, liability,
17 causes of action, costs or expenses (including reasonable attorney's fees) whether
18 or not reduced to judgment, arising from any breach or alleged breach of this
19 warranty.

20 28. COVENANT AGAINST CONTINGENT FEES. Consultant warrants
21 that Consultant has not employed or retained any entity or person to solicit or obtain this
22 Agreement and that Consultant has not paid or agreed to pay any entity or person any fee,
23 commission or other monies based on or from the award of this Agreement. If Consultant
24 breaches this warranty, City shall have the right to terminate this Agreement immediately
25 notwithstanding the provisions of Section 10 or, in its discretion, to deduct from payments
26 due under this Agreement or otherwise recover the full amount of the fee, commission or
27 other monies.

28 29. WAIVER. The acceptance of any services or the payment of any

1 money by City shall not operate as a waiver of any provision of this Agreement or of any
2 right to damages or indemnity stated in this Agreement. The waiver of any breach of this
3 Agreement shall not constitute a waiver of any other or subsequent breach of this
4 Agreement.

5 30. CONTINUATION. Termination or expiration of this Agreement shall
6 not affect rights or liabilities of the parties which accrued pursuant to the Sections titled
7 "Ownership of Data", "Confidentiality", "Breach of Confidentiality", "Law", "Certified Payroll
8 Records", "Indemnity", and "Audit" prior to termination or expiration of this Agreement.

9 31. TAX REPORTING. As required by federal and state law, City is
10 obligated to and will report the payment of compensation to Consultant on Form 1099-
11 Misc. Consultant shall be solely responsible for payment of all federal and state taxes
12 resulting from payments under this Agreement. Consultant shall submit Consultant's
13 Employer Identification Number (EIN), or Consultant's Social Security Number if
14 Consultant does not have an EIN, in writing to City's Accounts Payable, Department of
15 Financial Management. Consultant acknowledges and agrees that City has no obligation
16 to pay Consultant until Consultant provides one of these numbers.

17 32. ADVERTISING. Consultant shall not use the name of City, its officials
18 or employees in any advertising or solicitation for business or as a reference, without the
19 prior approval of the City Manager or designee.

20 33. AUDIT. City shall have the right at all reasonable times during the
21 term of this Agreement and for a period of five (5) years after termination or expiration of
22 this Agreement to examine, audit, inspect, review, extract information from and copy all
23 books, records, accounts and other documents of Consultant relating to this Agreement.

24 34. THIRD PARTY BENEFICIARY. This Agreement is not intended or
25 designed to or entered for the purpose of creating any benefit or right for any person or
26 entity of any kind that is not a party to this Agreement.

27 ///

28 ///

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

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IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

WEST COAST BOILER INC., a California corporation

DECEMBER 9TH, 2022

By [Signature]
Name BARON YOUNG
Title PRESIDENT

DECEMBER 9TH, 2022

By [Signature]
Name JAMES GEHRKE
Title SECRETARY

"Consultant"

CITY OF LONG BEACH, a municipal corporation

December 13, 2022

By [Signature]
City Manager

"City"

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

This Agreement is approved as to form on December 12, 2022.

CHARLES PARKIN, City Attorney

By [Signature]
Deputy

EXHIBIT A

Scope of Work and Rates



13013 Los Nietos Suite J Santa Fe Springs, CA 90670 + Voice 714.904.4178 + chuck@westcoastboiler.com
CSLB# 1078962 + National Board R1 Certificate #11940 + Office No. 562 800-4024

August 23, 2022

The Queen Mary
1126 Queens Highway
Long Beach CA, 90802

Attn: Stephen Clarke – Stephen.clark@queenmary.com

Subject: Supply and install Two (2) Heat Exchangers with Valves and Controls Package for each Heat Exchanger – Double Wall – Turnkey Project

West Coast Boiler is pleased to submit the following quote for your review and approval. This proposal includes all labor, materials to perform the following scope of work. In addition to a C4 License for all Boiler Repairs and 24-Hour Service for all your after-hour needs. We also carry an R1 Certificate for all your Boiler Certified Weld Repairs. We look forward to serving you.

Scope of Work:

- Arrive on site and check in with the customer (Stephen Clarke)

Phase #1 – Demo

- Demo the two (2) old Aerco Heat Exchangers from both locations (#1 and #2) and haul away
- Equipment moves will be utilized

Heat Exchanger #1

- Isolate and remove electrical and pneumatics
- Isolate and remove all piping
- Torch cut roof above the heat exchanger (3' x 5') where the passed out drunk guy is laying on the table on the floor above the heat exchanger, he will need to move to get the old heat exchanger out and the new heat exchanger in
- Reinstall floor/roof with full penetration welding
- Prep area to receive the New Heat Exchangers

Heat Exchanger #2

- Isolate and remove electrical and pneumatics
- Isolate and remove all piping
- Torch cut roof above the heat exchanger (3' x 4') to get the old heat exchanger out and the new heat exchanger in
- Reinstall floor/roof with full penetration welding
- Prep area to receive the New Heat Exchangers

Phase #2 – Install Two (2) New Heat Exchangers with Control Packages – Skid Mounted

- Supply and install Two (2) New Heat Exchangers to match all efficiency guidelines of the old Aerco heat exchangers (2) plus 20%
- Supply and install Valves 2" and 4" included and Control Package for each heat exchanger
- Secure and install the new Heat Exchangers (2) to the floor
- Supply and install all supply and piping to POC in each heat exchanger room (2)

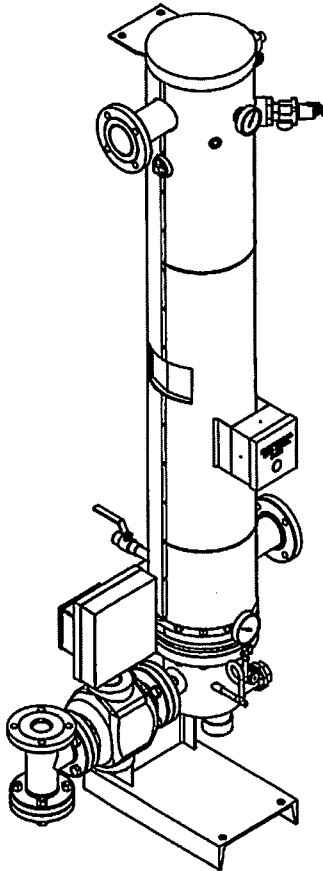
- Reroute and install all steam lines to POC – Turn-key install x2
- Supply and install all electrical to POC as needed
- Supply and install New Temp Control Valves and isolation for each unit
- Supply and install all controls needed for a complete install
- Training will be provided for the new controls for the heat exchangers
- See Heat Exchanger Specifications

MINI-PACK PRODUCT SPECIFICATIONS – See attached Submittals

Job Name: Queen Mary

Performance:

Unit is designed to heat 120 gpm from 60 F to 140 F, using 4,876 lb/hr of steam at 14 psig to the control valve.



Shell: 150 psi design per ASME Section VIII, SA312-316L and SA240-316L austenitic stainless steel. All threaded couplings SA182-304L stainless steel forgings. All pipe nipples SA312-304L stainless steel. Flanged connections are SA182-304L stainless steel, 150# forged.

Double Wall Tube Bundle:

Seamless vented tubing. SB111 cupro-nickel inner and outer 5/8" O.D. x 0.040" inside wall expanded into solid SA516-70 carbon steel tubesheet, 3/4" O.D. x 0.040" outside wall expanded into solid SA240-304 stainless steel tubesheet, 3/8" gap between tubesheets for tube leak detection. Bolting consists of alloy steel studs, SA193-B7, with alloy steel nuts, SA194-2H. Gaskets of permanite fluoroseal expanded Teflon (PTFE). Independent bolting design so that either gasket may be examined and replaced independently.

Steam Control Valve:

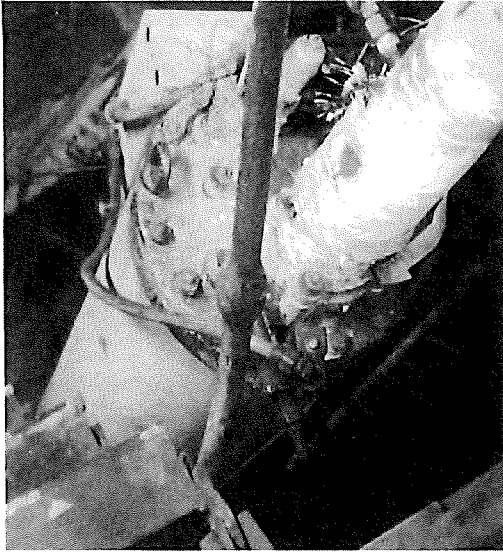
4" Warren control valve with ARIA electric fail-safe actuator. Series ARC. Operating Cv = 111.54. Max Cv = 170.

Steam Bonnet:

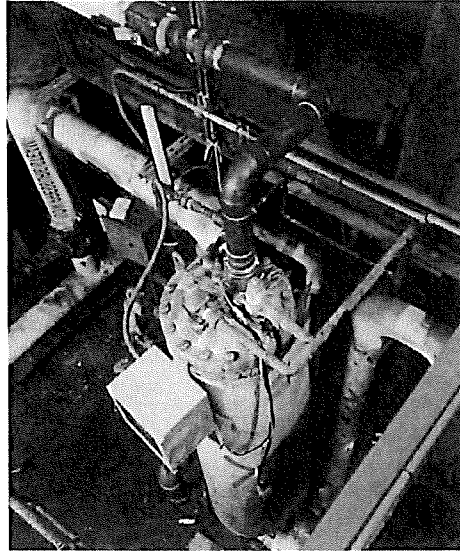
150# steel design per ASME Section VIII. Includes 150# flanges connection for valve. Accessory couplings are 3000# forged SA105.

See attached Submittals

- West Coast Boiler Certified Welder and Fire-watch will be utilized
- Welding and pipe fitting will be done using ASME Guideline and practices
- West Coast Boiler will prepare and submit a written report (i.e. work order or service ticket) for each service and repair to include date/time of service, work performed, additional work required, labor hours, materials, recommendations, etc.
- Leave system online and in service
- Leave workspace in broom clean condition



Heat Exchanger #1



Heat Exchanger #2

- West Coast Boiler will prepare and submit a written report (i.e. work order or service ticket) for each service and repair to include date/time of service, work performed, additional work required, labor hours, materials, recommendations, etc.
- Leave system online and in service
- Leave workspace in broom clean condition

Total price installed – freight included tax TBD.....\$235,730.00
(Two Hundred Thirty-five Thousand Seven Hundred Thirty Dollars)

Lead-time:

8-10 weeks from the factory – Demo and prep will start right away

Terms and Conditions:

Proposal: Firm 30 Days:

50% deposit will be invoiced upon PO

25% when the equipment is ready to ship

15% upon completion and punch-list done

10% balance will be billed net 30days along with sales tax upon completion

Exclusions: Clogged piping that may need to be replaced, Electrical – pre-existing wiring issues

Note: All permits, AQMD and or City Permits if needed must be pulled by customer.

Terms and Conditions:

Proposal: Firm 30 Days

This quotation is firm for acceptance within thirty days for work to begin as noted. Any applicable taxes and freight have not been included except as noted. All labor is at normal working hours. Night, weekend or holiday work is not included unless otherwise noted. Permits if required are not included, unless otherwise noted.

We look forward to working with you and thank you once again for the opportunity to be of service.
Please do not hesitate to contact me should you have any questions regarding the above or if I can be of further assistance.

Sincerely;

Chuck Anthony

Chuck Anthony
Cell: 714.904.4178

Purchase Order # _____

Signature: _____

Print: _____

*Please sign, print and include purchase order and return Email to
chuck@westcoastboiler.com*



13013 Los Nietos Suite J Santa Fe Springs, CA 90670 + Voice 714.904.4178 + chuck@westcoastboiler.com
CSLB# 1078962 + National Board R1 Certificate #11940 + Office No. 562 800-4024

August 9, 2022

The Queen Mary
1126 Queens Highway
Long Beach CA, 90802

Attn: Stephen Clarke – Stephen.clark@queenmary.com

Subject: Boiler Room Upgrade – Turn key install

Reference: Install Two (2) Rite Boilers 15 PSI Low Pressure Steam Boilers with (1) Rite CR-250 - 246 Gallon Condensate Return/Boiler Feed system, triplex, with (3) MTH T41J turbine feed-water pumps

West Coast Boiler is pleased to submit the following quote for your review and approval. This proposal includes all labor, materials to perform the following scope of work. In addition to a **C4 License** for all Boiler Repairs and **24-Hour Service** for all your after-hour needs. We also carry an **R1 Certificate** for all your Boiler Certified Weld Repairs. We look forward to serving you.

Scope of Work:

- Arrive on site and check in with the customer (Stephen Clarke)

Phase #1 - Demo

- Demo old Parker Boilers (4) and (1) old Feed-tank in the adjacent room
- Haul away all old equipment and prep room
- Isolate lockout and tag out electrical
- Isolate all gas, steam, and water lines (cap)
- Demo – Four (4) housekeeping pads and prep floors to receive new housekeeping pads
- **Supply and install four (4) Housekeeping pads** (5'x 9'x 5" thick rebar reinforced - 3000psi)
- All gigning and demo of old equipment and piping is included in this proposal

Phase #2 – Rite Boiler install (2)

- Heavy Equipment Mover will be used to move the old boilers (4) out and set the New Rite boilers (2) and feed tank into place
- **Supply and install New Rite Boilers (2)** into place and anchor (2 Boilers)
- **Supply and install 16" barometric damper** reusing the existing stack
- **Supply and install all gas, water and steam lines** to the Rite Boilers (2) to the point of contact
- **Supply and install Electrical** to POC for the boiler (2) and Burner (2)
- Start up and commission the Rite Boiler and Burner system (2) after the Feed-tank is installed
- **(2) Rite Boilers sample coolers** installed on the left side of each boiler for taking water samples.
- Check flame safeguard control for pilot and main flame ignition, detection and proper lockout
- Run amp to verify motor is in tolerance and document;
- Check operation and adjust all boiler operating limit pressure controls and running interlocks, adjust for control and minimal burner cycling;

- Check burner pilot and main flame ignition;
- Verify and calibrate for smooth and reliable light;
- Check and calibrate the boiler/burner for optimum air/fuel mixture and burner firing to be fine-tuned and adjusted to its maximum efficiency level throughout the entire modulation range;
- Flue gas analysis and monitoring of temperature, o₂, Co₂, Co, NO_x, and excess air to be monitored;
- Complete combustion and efficiency testing to be monitored and recorded at all firing rates of boiler/burner capacity;
- Combustion efficiency must be calculated and recorded at each position;
- Training is included for the Queen Mary Staff two (2) classes as needed

EMISSIONS GUARANTEE

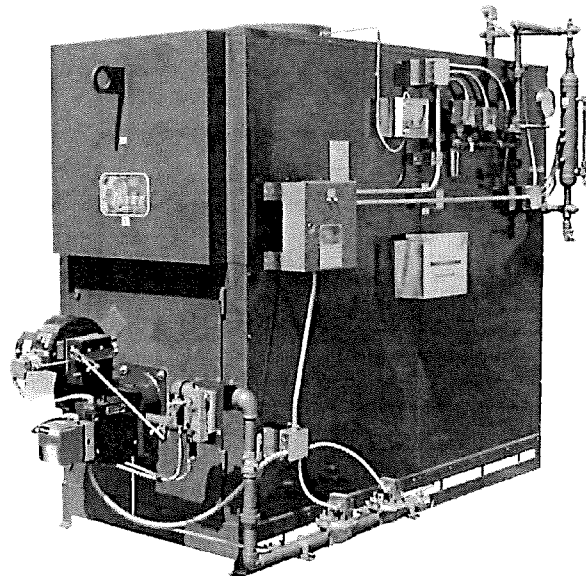
The Boiler/burner will include an emission control package designed and supplied by Rite Boiler to meet a SCAQMD NO_x emission limit of 20 ppm while firing natural gas.

The Rite Boiler and Powerflame Burners will meet all AQMD Guides.

Emissions Guarantees; NO_x <20 ppm

Install and Delivery Time:

- The Rite Boilers (2) and the Feed-tank (1) install will take 20-25 Days to complete
- Delivery is 6-8 weeks



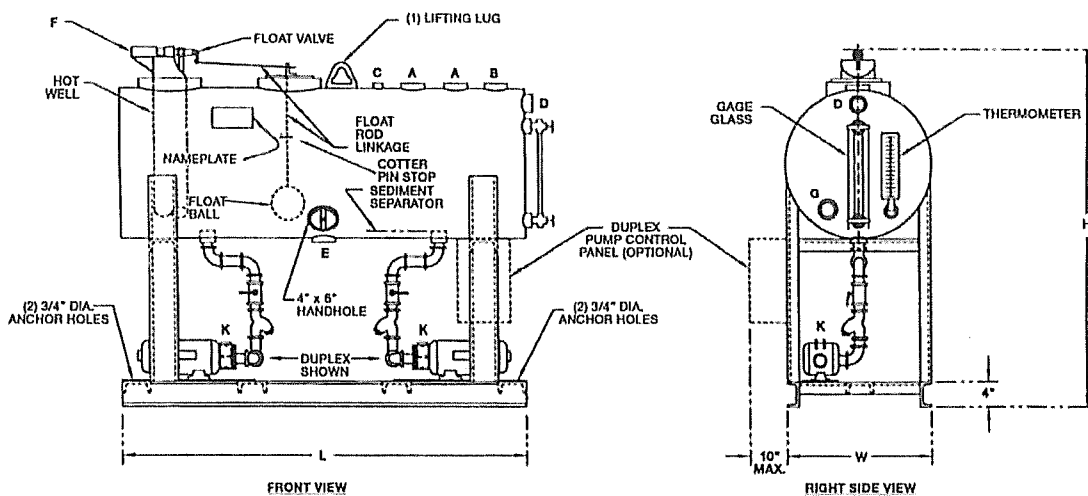
New Rite Boiler (A180-SG) with Powerflame Burner Specifications:

- The gas trains on all 2 boilers will be "stacked" parallel in front - approximately 4-1/2" centerline above grade to "line up" with existing natural gas POC's on the left side when facing the burner(s). Burner door and headplates will be hinged to open right-hand side on all three boilers away from the vertical gas piping to avoid interference when opening.
- Controls will be on right hand side when facing the burners on two boilers.

- 15 PSI Low Pressure Steam Boiler trimmed for 10-15 PSI operating pressure.
- Powerflame NPMR50-12-120 20 PPM low NOx burner to meet TCEQ rules requiring 8-14" water column supply natural gas pressure,
- 1 HP blower motor, 230/60/3 motor and controls, UL, CSD-1,
- low-high-low firing** with 1,800,000 input at high fire;
- 1,400,000 BTUH input at low fire and 2:1 turndown.
- Ceramic fiber combustion chamber, hinged and insulated headplates,
- 30 amp disconnect switch on side of boiler,
- Low water alarm, Magnehelic draft gauge
- (1) 16" barometric damper

Phase #3 – Feed-tank install

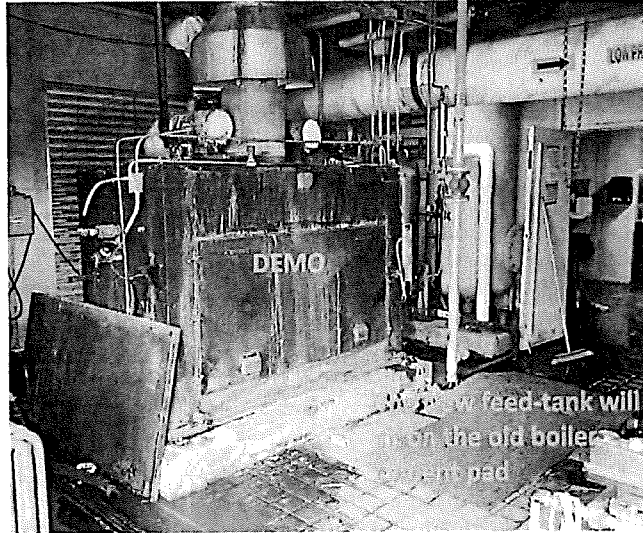
- **Supply and install (1) Rite Boiler CR-250 246 Gallon Condensate Return/Boiler Feed system**
- **Supply and install Triplex, with (3) MTH T41J turbine feed-water pumps, 1/2 HP, 120-240/60/1 with ODP motors. One pump will be dedicated to each boiler and one backup or can be used for a third boiler. With NEMA 4 panel to house DP contactors for all three pumps along with pilot lights and HOA switches. Construction is 3/8" thick carbon steel throughout.**
- **Supply and install insulation (1") with aluminum siding over the complete the feed-tank**
- **Supply and install sparge tube with automatic steam temperature control valve installed.**



Rite Boiler CR-250 Condensate Return/Boiler Feed system. Your system will have three (3) pumps

- The New Feed-tank will be delivered to the Queen Mary Boiler Room and put on the newly renovated cement pad
- Secure and install the new Feed-tank to the floor of the cement pad and anchor
- Supply and install all supply and discharge lines to POC over head for each Rite Boiler (2) Reroute and install all steam lines to POC
- Electrical quick disconnects (3) will be needed for each of the new pumps supplied by the customer which can be taken from the old pumps for each of the three (3) new pumps. Should be install about 10 feet away from the new feed-tank.

- Supply and install all electrical to POC to a quick disconnect
- West Coast Boiler Welder and Fire-watch will be utilized
- Welding and pipe fitting will be done using ASME Guideline and practices
- Hydro test all lines and tank checking for leaks.
- You will receive engineering report for review and for your records; and Corrective actions required. If we notice any other leak's we will notify and recommend solutions at the time of service.
- West Coast Boiler will prepare and submit a written report (i.e. work order or service ticket) for each service and repair to include date/time of service, work performed, additional work required, labor hours, materials, recommendations, etc.
- Leave system online and in service
- Leave workspace in broom clean condition



Total price installed – freight included tax TBD.....\$273,180.00
(Two Hundred Seventy-three Thousand One Hundred Eighty Dollars)

Lead-time:

6-8 weeks from the factory – Demo and prep will start right away

Terms and Conditions:

Proposal: Firm 30 Days:

50% deposit will be invoiced upon PO

25% when the equipment arrives on site

15% upon completion and punch-list done

10% balance will be billed net 30days along with sales tax upon completion

Exclusions: Clogged piping that may need to be replaced, Electrical – pre-existing wiring issues

Note: All permits, AQMD and or City Permits if needed must be pulled by customer.

Terms and Conditions:

Proposal: Firm 30 Days

This quotation is firm for acceptance within thirty days for work to begin as noted. Any applicable taxes and freight have not been included except as noted. All labor is at normal working hours. Night, weekend or holiday work is not included unless otherwise noted. Permits if required are not included, unless otherwise noted.

We look forward to working with you and thank you once again for the opportunity to be of service. Please do not hesitate to contact me should you have any questions regarding the above or if I can be of further assistance.

Sincerely;

Chuck Anthony

Chuck Anthony
Cell: 714.904.4178

Purchase Order # _____

Signature: _____

Print: _____

*Please sign, print and include purchase order and return Email to
chuck@westcoastboiler.com*

EXHIBIT B

City Representative is

Joseph Rodriguez-Jozwiak, Administrative Analyst II,

Joseph.Rodriguez-Jozwiak@longbeach.gov

562-335-8882

EXHIBIT C

Contractor Representative is

Chuck Anthony, Engineer
chuck@westcoastboiler.com
714-904-4178

EXHIBIT D

City Provided Services – None