



City of Gahanna

200 South Hamilton
Road
Gahanna, Ohio 43230

Signature

Ordinance: ORD-0064-2024

File Number: ORD-0064-2024

**AN ORDINANCE WAIVING COMPETITIVE BIDDING FOR RENTAL OF A
TEMPORARY BOILER SYSTEM FOR THE CITY OF GAHANNA AND
GAHANNA-JEFFERSON PUBLIC SCHOOLS' FLEET AND TRANSPORTATION
FACILITY; AUTHORIZING THE MAYOR TO ENTER INTO CONTRACT WITH
WARE, INC FOR PROVISION OF TEMPORARY BOILER SERVICES; WAIVING
SECOND READING; AND DECLARING AN EMERGENCY**

WHEREAS, the City of Gahanna ("City") and the Gahanna-Jefferson Public Schools ("School District") entered into an agreement on February 21, 1996 to construct and operate a vehicle maintenance facility on the property located at 785 Science Boulevard; and

WHEREAS, per the agreement, the "maintenance facility shall be the responsibility of the (School District) with the cost to be borne by the individual parties on their portion of the building and divided equally for the common areas;" and

WHEREAS, in September, 2024, it came to the School District's attention that the boiler system providing heat to the facility had reached the end of its useful life, requiring immediate maintenance to make it serviceable for the coming winter season; and

WHEREAS, the most cost-effective approach to the project is a total replacement; and

WHEREAS, the City has been advised that the project will require rental of a temporary boiler system, and further agrees to procure these services as part of the shared cost between the agencies; and

WHEREAS, it is anticipated that the approximately 3-month rental, installation, and removal of the temporary boiler system will not exceed \$105,000; and

WHEREAS, pursuant to Gahanna Code 133.02(c)(6), the Administration requests Council approval to waive formal bidding for the emergency procurement of these necessary services, authorizing the Mayor to enter into contract with WARE Inc. to provide temporary boiler services, and recommending passage of this Ordinance as an emergency measure immediately necessary to the preservation of the public peace, health, safety, and welfare of the City of Gahanna.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GAHANNA, COUNTY OF FRANKLIN, STATE OF OHIO:

Section 1. That this Council hereby waives the competitive bidding requirements pursuant to Gahanna Code 133.02(c)(6) for emergency circumstances necessitating the immediate rental of a temporary boiler system for the provision of heat to the City of Gahanna and Gahanna-Jefferson Public Schools' fleet and transportation facility located at 785 Science Boulevard.

Section 2. That this Council hereby authorizes the Mayor to enter into contract with WARE, Inc., whose primary offices are located at 3401 Bashford Ave Court, Louisville, KY 40218, pursuant to the Terms and Conditions of the contract as more particularly described in EXHIBIT A, attached hereto and made a part herein.

Section 3. That for the reasons set forth in the preamble above, the second reading is hereby waived and this Ordinance is declared an emergency measure which shall be in full force and effect immediately upon passage by this Council and on date of signature of approval by the Mayor.

President Merisa K Bowers
Merisa K. Bowers

Date 10/21/24

Attest by Jeremy A. VanMeter
Jeremy A. VanMeter
Clerk of Council

Date 10/21/2024

Approved by the Mayor Laurie A. Jadwin
Laurie A. Jadwin

Date 10-21-2024

Approved as to Form PDT
Priya D. Tamilarasan
City Attorney

Date 10/21/24

At a regular meeting of the City Council on October 21, 2024, a motion was made by Schnetzler, seconded by Jones, that the Second Reading of the Ordinance be Waived. The vote was as follows:

Ms. Bowers, yes; Ms. Jones, yes; Ms. McGregor, yes; Ms. Padova, yes; Mr. Renner, Absent; Mr. Schnetzler, yes; Mr. Weaver, yes.

A motion was made by Schnetzler, seconded by Jones, that the Ordinance be Adopted as an Emergency. The vote was as follows:

Ms. Bowers, yes; Ms. Jones, yes; Ms. McGregor, yes; Ms. Padova, yes; Mr. Renner, Absent; Mr. Schnetzler, yes; Mr. Weaver, yes.



October 21, 2024

City Of Gahanna
Kevin Schultz
200 S. Hamilton Rd.
Gahanna, OH 43230

Dear Kevin,

Thank you for the opportunity to offer our services. Your consideration of the following is appreciated.

All equipment in this proposal has been selected using information provided by Kevin Schultz.

RB-814 a RBI Domestic/Heating Hot Water Mobile Boiler

Rental price on a (3) three month minimum is \$8,910.00
Per month

10' Hose Sections

Rental price on a (3) three month minimum is \$260.00
Per month

Installation and Tear Down

Time and Materials basis, **estimate for budgeting only** \$65,000.00

Start-up Services

Time and Materials basis, **estimate for budgeting only** \$6,000.00

One (1) month is based on (28) days. Portions of a month will be prorated after minimum rental is met.

Prices do not include, inspection or operation. Startup of equipment can be provided by one of our service technicians on a time and material basis. See the enclosed Conditions and Rate sheet.

Freight can be provided at \$1,650.00 each way, FOB Origin.
Fuel surcharge, if any, will be determined at time of shipment.

Feedwater chemical treatment is required and is the responsibility of the Customer.

NOTE: Please see attached specification sheets on all equipment listed above.

Terms:

Prices are firm for 28 days. Rental of equipment is subject to availability.

Payment terms: One month's refundable damage deposit, first month's rent, outbound and inbound freight due



in advance or upon delivery of equipment. Each successive month's rent is due at the beginning of rental period. Applicable taxes are not included in prices. There will be a 25% cancellation fee charged if the order is cancelled after the Purchase Order is received.

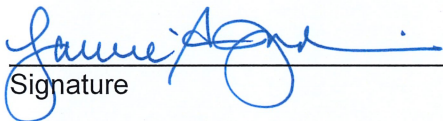
If you have any questions, please call.

Sincerely,

Jacob Knight

Rental and Equipment Sales
Enclosures

Confirmation: P O Number 24001250


Signature

Laurie A. Jadwin - Mayor
Title

City Of Gahanna
Company

Quote#: 25252



RB-814 a 50HP RBI Domestic/Heating Hot Water Mobile Boiler

One (1) enclosed trailer equipped with a 2mmBtu input RBI hot water boiler, model MW2000, 88% maximum efficiency, natural gas fired, vertical 4-pass heat exchanger, with expansion tank and 1 hp pump.

Connection sizes:

- Supply water* 2-1/2" 150# flanged
- Return water* 2-1/2" 150# flanged
- Natural gas 2" 150# flanged
- Electrical One (1) 25' power cord is provided with NEMA 14-50P (male) plug.
Customer to supply power with a NEMA 14-50R(female) plug to connect to power cord.

**Unit ships with two (2) 10' long sections of stainless steel braided hoses with 2.5" 150# flanges includes nuts, bolts & gaskets.*

Additional 10' sections of hose may be rented for \$65 per week, 2 week minimum, subject to availability.

- Gas Pressure: 4" w.c. Minimum, and 14" w.c. Maximum
(2,000 SCFH Nat. Gas or 800 SCFH LPG)
- Voltage/Amperage: Trailer requires 220V, 30 amp service.
(Boiler: 120v/1ph/15 amps -- Pump: 120v/1ph/15 amps)
- Water pressure: 120 psi max
- Recovery: 139 gpm with a 25°F rise or 99 gpm with a 35°F rise
(*35°F max temp. rise; return temp. must be ≥ 135°F)
- Hardness Allowance: Customer must maintain water hardness between 8 & 18 grains for domestic water applications
- Efficiency: 88%
- Emissions: < 20 ppm

In the event the water side of this boiler is contaminated or utilized in a non-domestic heating application there may be a **\$4,000.00** clean up fee. For additional contaminated or non-domestic use of hoses, there may be a cleanup fee of **\$400.00 ea.**

Trailer Dimensions:

- Length 19.25 feet
- Width 8.5 feet
- Height 9 feet (trailer), 11.5 feet (top of stack)
- Weight 4,300 lbs.
- Trailer ball 2-5/16 inches



10' long sections of stainless steel braided hoses with 2.5" 150# flanges includes nuts, bolts & gaskets.



RENTAL EQUIPMENT AGREEMENT

1. DESCRIPTION OF EQUIPMENT LEASED

THIS EQUIPMENT RENTAL AGREEMENT (this "Agreement"), by and between IVAN WARE AND SON, LLC, a Kentucky corporation d/b/a WARE (the "Lessor") and the person, partnership, limited liability company, corporation or other entity listed on the SCHEDULE A to which this Agreement is attached (the "Lessee"). **WARE, referred to as Lessor**, whose address is 3401 Bashford Avenue Court, Louisville KY 40218 agrees to lease to person, partnership, limited liability company, corporation or other entity listed on the SCHEDULE A to which this Agreement is attached (the "Lessee") for use only at Lessee's place of business at the above address, subject to the following terms and conditions, the Equipment identified in SCHEDULE A.

2. RENTAL PERIOD AND OPTION TO RENEW

The term of this Lease shall be for a period of (SEE SCHEDULE A), commencing (SEE SCHEDULE A), and terminating on (SEE SCHEDULE A). Subject to Lessor's sole discretion, Lessor grants to Lessee an option to renew this Lease under the same terms and conditions on a month to month basis as requested by Lessee in its written notice of its intention to exercise the option. Lessee's written notice of its desire to exercise its option to renew the Lease shall be delivered to Lessor at least 15 days before the expiration of the Lease. This Lease shall not be subject to termination before the end of its term except for Lessee's default.

3. RENT

The rent for the equipment leased shall be as provided on SCHEDULE A and shall be payable based on a 28 day month by Lessee to Lessor at Lessor's address. Rent shall not be pro-rated for any cause or reason except as herein specifically provided. Each month's rent is billed in advance and due at the beginning of each monthly rental period. Any past due payment of rent shall bear interest from the date that payment is due at the rate of 18% per annum.

4. SECURITY DEPOSIT

At its sole discretion, Lessor may require a security deposit of (See SCHEDULE A). Lessor at any time without prejudice to any other rights under the Lease and without requiring the consent of the Lessee may use this deposit at Lessor's sole discretion (1) to apply and offset such deposit against any monies owed by Lessee, whether or not a default has occurred (2) to make good any arrears of rent or any liability owed by Lessee to Lessor. **The deposit is not an advance payment of rent nor a measure of Lessor's damages in case of default by Lessee.**

5. TAXES

Lessee shall be obligated to pay all taxes, assessments, or charges of whatever nature imposed by any governmental authority on the Equipment during the term of the Lease and upon written demand furnish to Lessor satisfactory proof that such taxes, assessments, or charges have been timely made. Lessee shall promptly notify Lessor regarding any tax levies, tax notices, tax reports on inquiries from tax authorities regarding the Equipment. Lessee shall indemnify Lessor for, and hold Lessor harmless from and against all such taxes, assessments, or charges imposed during the term of the Lease. As applicable, Lessee's obligations hereunder extends to (1) direct payment by Lessee of such taxes, assessments, or charges to the taxing authority or (2) payment by Lessee to Lessor of such taxes, assessments or charges in the event Lessor has made payment to the taxing authority.

6. TITLE

Title to the Equipment shall remain in Lessor at all times during the term of the Lease. Lessee shall not remove from the Equipment any serial number, model, name, or other indicia of ownership. Lessee shall give Lessor immediate written notice of any claim, levy, lien or other legal process issued against the Equipment. Lessee further agrees to cooperate with Lessor and take whatever action may be necessary at Lessee's sole expense to allow Lessor to file or record this Lease in such offices as may be necessary in order to protect Lessor's interests in the Equipment.

7. OWNER OR CONTRACTOR CONSENT

In the event that Lessee is utilizing the Equipment on premises owned by others, Lessee shall obtain the written consent and acknowledgment of the owner ("Owner") of such premises to the terms of this Lease and further the written agreement of the Owner to be bound by the terms of this Lease to the extent its interests may appear. In the event that Lessee is utilizing the Equipment in connection with a separate contract, Lessee shall obtain the written consent and acknowledgment of the contractor ("Contractor") to the terms of this Lease and further the written agreement of the Contractor to be bound by the terms of this Lease to the extent its interests may appear. Payment by Owner or Contractor to Lessee of any sums due Lessee shall not constitute a defense to an exercise of Lessor's rights hereunder.

8. TRANSPORTATION

Lessee shall insure and further pay all transportation costs for the Equipment from WARE, 4005 Produce Rd, Louisville KY 40218 and/or the place of shipment to Lessee's facility and all such transportation costs for the return of the Equipment to same or to a location identified by Lessor.

9. INSPECTION AND ACCEPTANCE BY LESSEE

Lessee shall inspect the Equipment within 2 days after delivery. Lessee shall notify Lessor in writing within that period of any defects or other objections to the Equipment. If Lessor receives no written notice of defects or objections within that period, Lessee will be conclusively presumed to have accepted the Equipment in good condition and repair.

10. RISK OF LOSS; INSURANCE

A. Risk of loss of, damage to, or destruction of the Equipment or any part thereof shall at all times during the period of this Lease be on Lessee and no such loss, damage, or destruction will release Lessee from its obligations under the Lease. Risk of loss of, damage to, or destruction of the Equipment or any part thereof shall be on the Lessee starting at the time and at the place of shipment to Lessee's facility.

B. The Lessee, at its own cost and expense, shall procure, maintain and carry in full force and effect general liability, public liability, workers' compensation liability, property damage, all risk coverage, and boiler and machinery coverage insurance with respect to the actions and operations of the Equipment to such extent, in such amounts and with such deductibles as are carried by prudent businesses similarly situated, but in any event not less than coverage for \$1 million per occurrence and \$5 million in the aggregate. The Lessor shall be named as an additional insured and loss payee on all such policies. Without limiting the foregoing, such insurance shall insure against any liability for loss, injury, damage or claims caused by or arising out of or in connection with the Lessee's operation of the Equipment including injury to or death of the Lessee's employees, agents or any other persons, damage to or destruction of public or private property, and any damage relating to the transportation, installation and operation of the Equipment. Such insurance shall also cover the accepted hazards relating to the operation of a boiler as related to third party and other claims and shall protect the Lessor against any loss whatsoever from theft, damage, fire, flood, negligence, or vandalism by any person or entity. Unless otherwise agreed in writing, insurance for loss or damage to the Equipment shall be in an amount or amounts equal to the Agreed Value for Insurance Purposes set forth on SCHEDULE A.

C. Upon execution of this Lease and at any time thereafter as requested by Lessor, Lessee shall immediately deliver to Lessor evidence acceptable to Lessor at Lessor's sole discretion that all policies referred to herein have been obtained and subsequently renewed throughout the term of the Lease. Lessor, however, shall be under no duty or obligation to ascertain the existence or adequacy of the insurance. In the event that Lessee fails to provide evidence of insurance acceptable to Lessor, Lessor shall have no obligation to make delivery of the Equipment.



D. Applicable insurance proceeds received by Lessor may, as Lessor's sole discretion, be applied towards repair or replacement of the Equipment or towards payment of Lessee's unpaid obligations under the Lessee.

E. In the event that Lessee fails to obtain and/or maintain insurance as required by Lessor, Lessor may obtain such insurance, the cost of which plus an additional fifteen (15) percent which will be the sole responsibility of Lessee.

F. In the event that Lessee self-insures its obligations hereunder, upon execution of this Lease and at any time thereafter as requested by Lessor, Lessee shall deliver to Lessor adequate and sufficient evidence (at the sole discretion of Lessor) that Lessee is a licensed self-insurer and has the financial ability to self-insure to the satisfaction of Lessor.

11. USE AND MAINTENANCE OF EQUIPMENT

Lessee at all times shall cause the Equipment to be operated strictly in accordance with the manufacturer's and Lessor's instructions and manuals and standard industry practice, by competent, qualified, and licensed (as applicable) personnel and in strict compliance with all governmental requirements. Lessee shall keep the Equipment in good repair and operating condition, allowing only for reasonable wear and tear. Lessee shall pay all expenses of maintaining and repairing the Equipment at Lessee's own expense. In the event that the Equipment is stored outdoors, Lessee shall provide adequate protection from the elements. All repairs or alterations shall be made in strict accordance with Lessor's instructions (as applicable); ASME, National Board, State and City Codes governing fired pressure vessels. Lessee assumes all risks associated of whatever nature associated with the use and operation of the Equipment during the period of the Lease and shall indemnify and hold harmless Lessor for all costs of whatever nature arising from or related to the use and operation of the Equipment during the period of the Lease. To the extent Lessor service personnel or technicians provide advice and consultation to Lessee, it shall be for information only, shall not constitute operation of the Equipment, shall not alter Lessee's obligations hereunder in any way whatsoever, and shall not operate to create Lessor's liability for direct, indirect, consequential, or punitive damages.

12. INTERCONNECTION, UTILITIES, AND DISCONNECTION

Lessee shall be solely responsible for the interconnection of the Equipment with its existing facilities and for the supply of all utilities and permits required for installation and operation of the Equipment. Lessee shall maintain sufficient and adequate boiler feedwater treatment and chemical control to prevent the formation of waterside scale and/or corrosion. Such treatment and control methods must be approved by Lessor who may, at its sole discretion, furnish and supply treatment and engineering services for prevention of scale, all costs of which are to be paid by Lessee. Lessor at its sole discretion shall have the right to inspect the Equipment for scale and/or corrosion and if removal is necessary, as determined by Lessor in its sole discretion, removal shall be performed with the approval of Lessor and all costs of which are to be paid by Lessee. Lessee shall be responsible for the disconnection of the Equipment from its facilities and preparation of the Equipment. Rent shall continue to be payable notwithstanding Lessor's exercise of its rights hereunder.

13. NO WARRANTIES

LESSOR NEITHER MAKES NOR SHALL BE DEEMED TO HAVE MADE ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, CONCERNING THE EQUIPMENT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR REPRESENTATION AS TO DESIGN, QUALITY, OR CONDITION OF THE EQUIPMENT, OR AS TO THE MERCHANTABILITY OR FITNESS OF THE EQUIPMENT FOR ANY PARTICULAR PURPOSE OR TO ANY OTHER MATTER RELATING TO THE EQUIPMENT. LESSEE AGREES THAT THE EQUIPMENT IS OF A SIZE, DESIGN AND CAPACITY SELECTED BY LESSEE AND THAT LESSEE IS SATISFIED FOR ITS PURPOSES AND THAT LESSOR HAS MADE NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE SUITABILITY OR DURABILITY OF THE EQUIPMENT FOR THE PURPOSES OF USES OF LESSEE, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OF IMPLIED WITH RESPECT THERETO. LESSEE HEREBY AGREES TO WAIVE AND MAKE NO CLAIM FOR BREACH OF WARRANTY ARISING FROM ANY CAUSE WHATSOEVER.

14. DAMAGE TO EQUIPMENT

If Lessee damages the Equipment during the period of the Lease, Lessee shall remain liable as direct damages for rent at the daily rate under the Lease for each day that the Equipment is undergoing repair and is unavailable for rental by Lessor. In the event that the Equipment is destroyed during the period of the Lease, Lessee shall be liable for its stipulated loss value.

15. REMOVAL OF EQUIPMENT; FREE FROM LIENS

Without Lessor's prior written consent, Lessee shall not remove the Equipment from Lessee's place of business or permit it to be removed from Lessee's possession. Lessee shall keep the machine free of all taxes, claims, liens, and encumbrances.

16. PERSONAL PROPERTY

Lessee shall not permit the Equipment to become attached or affixed to real property or otherwise to become a fixture, and even if the Equipment shall become attached or affixed to real property in violation of this Lease, the parties intend that the Equipment shall at all times be deemed to be personal property.

17. ASSIGNMENT

Without Lessor's prior written consent, Lessee shall not transfer, assign or otherwise dispose of this Lease or any interest created by this Lease or transfer, sublet or otherwise dispose of the Equipment or any interest in the Equipment, or permit the Equipment to be used by anyone other than the Lessee, or make any material change or modification in the Equipment, or make any addition to the Equipment. Lessor at its sole discretion shall have the right to demand adequate assurances of financial ability to perform from Lessee, its assigns, or its successors in interest.

18. INSPECTION BY LESSOR

The Lessor shall have the right at any time during the term of the Lease to enter the premises occupied by the Equipment and shall be given free access to the premises and afforded necessary facilities for the purposes of inspection. Lessee agrees to obtain the consent of any third parties as applicable to the exercise by Lessor of its rights hereunder.

19. LESSEE'S RIGHT TO POSSESSION

Lessee shall have the right to retain possession of the leased Equipment only so long as Lessee shall not be in default under this Lease.

20. SURRENDER OF EQUIPMENT AT END OF LEASE

Lessee agrees on expiration of this Lease to deliver at Lessee's sole expense the Equipment in good condition and free of encumbrances to 4005 Produce Rd, Louisville KY 40128 or to any other location that Lessor may designate without increasing the cost of delivery.

21. DEFAULT

A. The occurrence of any of the following shall constitute a default under this Lease:

1. Lessee fails to pay when due any obligation under this Lease or otherwise breaches any provision in this Lease and that failure or breach continues for 28 days;
2. Lessee fails to obtain Owner or Contractor Consent as required by Section 7
3. Lessee fails to secure or maintain insurance as required by Lessor and this Lease;
4. Lessee fails to maintain, operate or return the Equipment as provided by this Lease;
5. Lessee fails to discharge its obligations under Assignment, Section 18 above
6. Any warranty or representation of Lessee contained in this Lease proves to be false or incorrect at any time;
7. Lessee becomes insolvent, ceases to do business as a going concern, or becomes unable to pay its debts generally as they become due; or a petition for relief under bankruptcy or insolvency laws or for reorganization is filed by or against Lessee; or Lessee makes an assignment for benefit of creditors or a receiver or liquidator is appointed for Lessee, or any court of competent jurisdiction orders the winding up or liquidation of the affairs of Lessee;
8. The Equipment is damaged beyond repair, destroyed, encumbered, levied upon, confiscated, condemned, seized, or attached: Whenever the Lessor believes the prospect for payment or performance under this Lease or under any agreement with Lessee is impaired or Lessor believes the Equipment is insecure.



B. On the occurrence of any default, Lessor may declare to be immediately due and payable to Lessor as direct damages all rents due and to become due under the Lease plus all other amounts (including, without limitation, late charges and attorney fees) due under the Lease, all without presentment, demand, protest, notice of intent to accelerate, notice of acceleration or other notice of any kind, all of which are expressly waived by Lessee.

C. Further on the occurrence of any default, Lessor may enter the premises where the Equipment is located and take immediate possession of and remove the Equipment without process or notice; all without liability to Lessee, whether for the restoration of damage to any property caused by the taking or otherwise, for or by reason of the entry or taking of possession or otherwise. Lessor may require Lessee at Lessee's sole expense to assemble the Equipment and to return it, fully insured against all risks, to a place that Lessor designates. Lessor is further entitled to pursue any other remedy or combination of remedies legally or equitably available.

D. Lessee shall pay all expenses incurred by Lessor in exercising its remedies under this Lease, including, without limitation, costs of collection and repossession and attorney's fees.

E. Lessor's acceptance of payment or performance after it is due shall not constitute waiver of any default. Lessor's remedies are cumulative and not alternative. No exercise or partial exercise of any remedy shall preclude exercise of any other remedy or of the remainder of any partially exercised remedy.

22. TERMINATION OF LEASE

When Lessor takes possession of the Equipment pursuant to the provisions of DEFAULT, this Lease shall terminate without prejudice to any right or claim for arrears of rent, if any, or on account of any preceding breach or breaches of this Lease.

23. EFFECT OF WAIVER

No delay or omission to exercise any right, power, or remedy of Lessor on any breach or default by Lessee shall impair any such right, power, or remedy of Lessor, nor shall it be construed to be a waiver of any such breach or default. No waiver by Lessor of a single breach or default by Lessee shall be deemed to be a waiver of any other breach or default. Any waiver or consent or approval of Lessor of any breach or default or any waiver on the part of Lessor of any term or condition of this Lease must be in writing and shall be effective only to the extent set forth in the writing. All remedies, either under this Lease or by law or equity, or otherwise provided to Lessor, shall be cumulative and not alternative.

24. ATTORNEY'S FEES

In the event of any action filed by Lessor in relation to this Lease, Lessee, in addition to all other sums that Lessee might be required to pay, shall pay to Lessor the amount of Lessor's attorney's fees.

25. GOVERNING LAW AND VENUE

This Lease shall be governed by and construed in accordance with the laws of the State of Ohio without regard to principles of conflicts of law. The place of execution of this Lease is Lessor's principal place of business which in addition is the place where payments due hereunder shall become due. Any lawsuit arising out of or relating to this Lease shall be brought only in the state or federal courts located in Franklin County, Ohio. Lessee expressly consents to the personal and subject matter jurisdiction of the state and federal courts located in Franklin County, Ohio for all lawsuits arising out of or related to this Lease.

26. LEASE AS ENTIRE AGREEMENT; SEVERABILITY

This lease embodies the entire agreement between the parties. It may not be modified or terminated except as provided in this Lease or by other written agreement between the parties. If any provision of the Lease is invalid, it shall be considered deleted from the Lease and shall not invalidate the provisions of the Lease.

27. EXECUTION OF THE LEASE

This lease is not binding on Lessor until executed by an authorized official of Lessor and until receipt and acceptance of the initial monthly rental provided for under the Lease. Lessee's performance hereunder prior to its signature shall constitute its binding agreement to all the terms and conditions of this Lease. Signatures required hereunder shall include electronic versions of the originals.

28. NOTICES

All notices under this lease must be in writing and shall be delivered via hard copy to an authorized representative of the other party at the principal place of business of that other party. Notices shall be effective only when received. Requirements of written notice may not be waived and such written notices are a condition precedent to the exercise of all rights and remedies under this Lease.

29. EFFECT

This Lease shall inure to the benefit of and be binding on Lessee, Lessor and their respective legal and personal representatives, administrators, successors, agents, and permitted assigns.

30. LESSEE'S AUTHORITY

Lessee has full authority and legal right to execute, deliver, and perform this Lease and Lessee has duly authorized such action. Lessee's execution of, delivery, and performance of this Lease shall not contravene any applicable law, regulation or judgment or the articles of incorporation, bylaws, or partnership agreement of Lessee and shall not constitute a default under any agreement to which Lessee is a party.

31. NO SET-OFF BY LESSEE

Lessee's obligation to pay all rent and other amounts due under this Lease is absolute and unconditional under all circumstances whatsoever and shall not be subject to any set-off or reduction for any reason whatsoever.

32. WAIVER OF JURY TRIAL

The parties expressly agree that all disputes, claims, and counterclaims relating to or arising from this Lease shall be litigated or otherwise resolved without a jury. The parties expressly, voluntarily, and unequivocally waive any right they may have to a jury trial in connection with all disputes, claims, and counterclaims relating to or arising from this Lease.

33. WAIVER OF CONSEQUENTIAL DAMAGES/LIMITATION OF LIABILITY

In no event shall Lessor be liable to Lessee, under any circumstances whatsoever, whether in contract, tort, strict liability, negligence, warranty or claim of any type whatsoever and regardless of whether arising before, during or after the Lease, for punitive damages or for consequential, incidental, indirect, or punitive damages, including, without limitation, loss of use, loss of sales, loss of production, loss of profits or revenue, loss of business opportunity, interest charges, or cost of capital. In no event shall Lessor be liable to Lessee, under any circumstances whatsoever, whether in contract, tort, strict liability, fraud, negligence, warranty or claim of any type whatsoever and regardless of whether arising before, during or after the Lease, for any amounts of whatever nature in excess of amounts paid to Lessor by Lessee under this Lease. In the event that the term of this Lease exceeds one year, then Lessor's maximum liability to Lessee under any circumstances whatsoever, whether in contract, tort, strict liability, fraud, negligence, warranty or claim of any type whatsoever and regardless of whether arising before, during or after the Lease, shall not exceed the amounts paid by Lessee to Lessor during the first year of the Lease.

____ PAYMENT GUARANTEE – INTERNATIONAL LETTER OF CREDIT – check if required

At Lessor's sole discretion, Lessor may require that Lessee deliver to Lessor no later than seven (7) working days following the execution of this Lease, an irrevocable, on-demand Letter of Credit in substantially the same form as Exhibit XXXX issued by a United States bank or confirmed by United States bank, in each case with a long-term credit rating of "A" or better, for a



sum equal to XXXXXX. Lessor's obligations under this Lease are expressly conditioned on the timely provision of the Letter of Credit. Such Letter of Credit shall remain valid until payment of all Lessee's obligations under this Lease. Lessor shall provide Lessee with at least three (3) business days notice of an intended drawdown of the Letter of Credit by Lessor. Upon the expiration of this three (3) day period, Lessor shall be entitled to make a drawdown of the Letter of Credit.



RENTAL CONDITIONS & RATES

Service includes consultation, inspection, technical direction of installation or repair, start up, initial adjustment, readjustment, tests, and instruction of plant personnel for operation and maintenance of gas/oil burners, firetube or electric boilers, and related equipment in a plant system.

Service is performed only on the basis of a bona fide purchase order issued by the customer or his authorized representative, covering the specific service desired.

1. Rates

All prices quoted are those in effect as of the date of proposal. Billing will be based on rates in effect at the time service is rendered. Field Service is at the rate of **\$225** per hour during normal working hours. There will be a minimum charge of eight (8) hours per day for any service requiring an overnight stay. Travel time is working time. Transportation and living expenses are additional at cost plus 18% handling fee.

2. Normal Working Hours

Eight hours per day, 8:00 a.m. through 4:30 p.m., with a half hour for lunch, Monday through Friday except observed holidays, which include: New Year's Day, Good Friday, Memorial Day, July Fourth, Labor Day, Thanksgiving, and Christmas (or alternate day selected by WARE for official observance as holidays when the normally observed holiday occurs during a weekend).

3. Overtime

Time spent working and/or traveling in excess of our normal working hours (8:00 a.m. through 4:30 p.m.) during a normal day will be invoiced at 1-1/2 times the prevailing rate. Any time spent working or traveling on Saturday will be invoiced at 1-1/2 times the prevailing rate.

4. Holidays

Any time spent working or traveling on Sundays or Holidays, as defined above, will be invoiced at 2 times the prevailing rate.

5. Expenses

A. Travel

1. Actual plane, train or rental automobile costs from WARE, Louisville, Kentucky, to job site and return, plus a handling fee.
2. Vehicle travel at the rate of \$1.25 per mile.
3. Expenses also to include local travel required.
4. Where our service representative goes from job to job, rather than returning to his headquarters, an equitable distribution of travel charges will be made.

B. Living

Actual expenses for lodging and incidental costs, plus a 18% handling fee. Meals are \$70 per day.

C. Telephone & Wires

Telephone calls and wires, as required in connection with the details of the job, plus a handling fee.

6. Limitation of Liability

WARE shall not be liable for any claims, losses, labor, and expenses or damages, direct or consequential, resulting directly or indirectly from the service performed hereunder or for other consequential loss or damage of any nature arising from any cause.

7. Insurance

Insurance certificates are available upon request.



COMMON QUESTIONS & THEIR ANSWERS ON BOILER RENTALS

1. WHO PROVIDES THE INSURANCE?

The Lessee agrees to provide full protection for the boilers. Generally your boiler insurance policy and general liability will automatically pick up the risk.

2. WHO PAYS THE FREIGHT?

This is the Lessee's financial responsibility. WARE may make the arrangements. Lessee pays the shipping charge from the storage location to the plant site and return.

3. WHO PAYS FOR THE LOADING AND UNLOADING?

Lessee must arrange and pay for the unloading and reloading at the plant site. Any crane charges are considered a loading or unloading charge.

4. WHO PROVIDES THE OIL PUMP?

The oil pump and automatic equipment is generally provided as an integral part of the boiler units. Heaters for #6 oil must be provided by Lessee.

5. WHAT ABOUT OIL TANKS?

If the Lessee does not have fuel storage facilities, then a local oil company can usually supply a temporary storage tank at no charge. This tank can be located on the ground alongside the boiler.

6. WHO SUPPLIES THE GAS REGULATOR?

Regulated gas pressure must be supplied to the boiler by the Lessee. See specification sheet for exact pressure required by the boiler selected for the purpose.

7. WHO PROVIDES SMOKESTACKS?

Stub stacks are provided on most units. These are usually sufficient if ample building clearance exists.

8. WHO PROVIDES THE HOOKUPS?

Connection and disconnection are done by plant personnel or a local boiler shop. This is Lessee's responsibility.

9. WHO PROVIDES START-UP SERVICE?

WARE provides this service at an additional charge for all watertube units. This service is optional for firetube units.

10. WHAT ABOUT FUEL AND POWER?

These are supplied by Lessee.

11. WHAT ABOUT FEEDWATER TREATMENT?

Normal boiler feedwater treatment which is regularly used at the plant site may be suitable for the rental boiler. WARE recommends consulting a water treatment professional to ensure that the equipment is not damaged by scale or corrosion. Removal of any scale that might develop during operation is the responsibility of Lessee.

12. WHO SHOULD OPERATE BOILERS?

Boilers should be operated by competent engineers and in accordance with the Lessor's Instruction Book. Any occurrence or damage other than normal wear and tear is the responsibility of the Lessee. With proper training, boiler operators on site can handle our automatic boilers along with their existing duties.

13. HOW ABOUT DISCONNECTING?

Plant or local boiler shop personnel perform this work. It is the responsibility of the Lessee.

14. HOW IS BOILER TO BE PREPARED FOR SHIPMENT?

Boiler should be opened, washed out and inspected by the boiler inspector and plant personnel. Inspection Report (found in the Instruction Book) should be completed and forwarded to WARE office at completion of the rental. This work is the responsibility of the Lessee.

15. WHAT ABOUT PARTS THAT FAIL DURING OPERATION?

Parts that fail due to normal wear and tear will be supplied by WARE. Labor is the responsibility of Lessee.

16. WHO PAYS FOR REMOVAL OF GOOSENECKS AND AXLES IF NEEDED?

Customer will pay for crane to remove goosenecks and axles if needed