

## AMENDMENT

### PDVSA Barinas P&W FT4 Twin Pac Power Facility

This Amendment (the "Amendment") is entered into and made effective as of the [redacted] day of May 2012, by and between DERWICK ASSOCIATES CORPORATION (DERWICK) and PROENERGY SERVICES INTERNATIONAL, INC ("PROENERGY") with respect to that certain Engineering, Procurement and Construction Services Agreement, between Derwick and ProEnergy (the "Offshore Agreement") (I THINK THE OFF SHORE AGREEMENT SHOULD ALSO HAVE A DATE), and that certain Engineering, Procurement and Construction Services Agreement dated as of November 10, 2011, between Derwick Associates de Venezuela, S.A. and ProEnergy Services de Venezuela, C.A. (the "Onshore Agreement"). The Offshore Agreement and the Onshore Agreement may collectively be referred to herein as the "Agreements".

For good and valuable consideration, the receipt and sufficiency are hereby acknowledged and confessed, DERWICK and PROENERGY agree to amend the Agreements as follows:

#### 1. CONTRACTOR SUPPLIED EQUIPMENT AND BACK CHARGES

- a. DERWICK will supply, fabricate and install at the Site, two (2) new fuel tanks and one (1) new water tank, and will refurbish one (1) existing raw oil tank at the Site, and install Cathodic Protection for Tanks and Piping, all as further described in Exhibit A to this Amendment (the "Contractor Supplied Equipment"). The Offshore Agreement, including Exhibit A thereto, shall hereby be amended and restated to the extent necessary to reflect that this Contractor Supplied Equipment shall be furnished by DERWICK and not by PROENERGY.
- b. In consideration of DERWICK furnishing the Contractor Supplied Equipment, (described on item a.) PROENERGY accepts a reduction in the contract price in the amount of FOUR MILLION TWO HUNDRED THOUSAND US DOLLARS WITH 00/100 (US\$4,200,000.00).
- c. DERWICK will complete its obligations in furnishing the Contractor Supplied Equipment so that it is completed and tested no later than October 30, 2012.
- d. Based on the above item b., the revised contract value for the OFF-SHORE Agreement is US \$20,658,932.
- e. PROENERGY will start erection of mayor equipment by June 6<sup>th</sup> the latest, provided that the full down payment for the off shore contract has been received.
- f. PROENERGY and DERWICK hereby confirm that no claims or further Back charges exist between the parties in this project in either one of the two contracts up to the execution of this amendment. PROENERGY agrees that any new Change Order will be presented to DERWICK for review and

How was this amount arrived at? It is more than double our budget and I est \$1MM more than comparative cost to Guarenas for equivalent scope. rhl

Is this balance calculated before or after deducting the \$4.2MM? rhl

approval prior to its execution by PROENERGY. Further, the parties agree that the right to recover any costs associated with a Change Order will be forfeited by PROENERGY if it executes the work without an approved Change Order signed by a DERWICK Director, Vice President or President.

**2. PAYMENT OF BALANCE OF ADVANCED PAYMENT:**

DERWICK will pay PROENERGY the Balance of Advanced Payment of the Off-Shore Agreement within the next 15 days from the execution of the Off-Shore Agreement and this Amendment, once PROENERGY complies with the following conditions:

- o PROENERGY delivers a detailed Level IV completion schedule of the pending Engineering, Procurement and Construction for review and approval by DERWICK, considering the following milestones:

- Completion of the project by November 30<sup>th</sup>, 2012. (I don't think this is possible).
- Delivery to Venezuelan Port of all materials and equipment already procured on attachment A (only items marked with an "X") and in country materials on site, by no later than June 30, 2012. ( I DON'T SEE ANY LIST IN ATTACHMENT A, AND THIS MAY NOT BE DOABLE DEPENDING ON THE LIST)
- Completion and delivery of all pending detail engineering activities by June 15, 2012 including answers to all PDVSA comments as of today and their incorporation in the drawings and specifications as required when applicable. One review cycle per main design document for PDVSA comments, PDVSA shall provide their comments to PROENERGY within 7 calendar days after the drawings are submitted by PROENERGY to DERWICK. If comments have not been received within the time frame specified above will be considered accepted and approved by PDVSA.
- Response by PROENERGY to PDVSA's comments on engineering and specifications within 10 days after receipt of comments by PROENERGY.
- Completion of all pending procurement (buying) activities, by June 30, 2012.
- Completion and delivery of all engineering necessary to refurbish and complete works on the existing fuel tank by May 30, 2012. (I DON'T THINK WE HAVE ANY ENGINEERING FOR THIS TANK IS AN EXISTING TANK WHICH IS 25 YEARS OLD.. CHAD WOULD YOU CONFIRM??)

Based on JDM 4 refurbished centrifuges for fuel treatment. rhl

We can start underground fabrication but I don't know about installation. I don't think there is any chance of starting above ground installation by this date. rhl

- Start of underground and aboveground pipe installation by June 15, 2012. (WE CAN START, BUT WE NEED TO MAKE SURE THAT WE HAVE ALL THE PIPING BY THEN. HILDEMARO.. COULD YOU CONFIRM?)

- PROENERGY nominates a new Project Manager within 7 days after signing of this amendment.

Upon receipt of the Balance of Advanced Payment, PROENERGY agrees to the following:

- PROENERGY will provide proof of purchases of all pending materials for the project as per DERWICK's requests and formats at least once a month of signing this amendment.
- PROENERGY will provide proof of purchase of Centrifuge skids and Fuel Water Treatment System within 15 days of receiving Balance of Advanced Payment.
- PROENERGY agrees to use all the Bs needed out of the Bs.46M that are frozen by a Venezuelan tribunal as soon as are made available for the Barinas Project. (WE NEED TO PAY SOME DEBT TO RELIEF THE CONTRACTOR PRESSURE, IF AT ALL POSSIBLE)

Based on JDM 4 refurb centr. rhl

Failure to comply with any of the above items will be sufficient cause for Termination of the Agreements by DERWICK (WHAT ABOUT THE PAYMENT OF ANY WORK COMPLETED AND NOT PAID YET??). If DERWICK fails to provide the Pending Advance payment within 15 days of signing this agreement, it will be sufficient cause for Termination of the Agreements by PROENERGY

**3. PAYMENT SCHEDULE**

PROENERGY and DERWICK agree to modify the Exhibit B: Payment Schedule of the Agreements, as follows:

Down Payment	30%
Milestone 1	20%
<ul style="list-style-type: none"> <li>• Site Preparation Complete</li> <li>• Gas Turbine Foundations Complete</li> <li>• Detailed Engineering submitted for review</li> <li>• QA/QC documentation and Schedule reports up to progress complete</li> <li>• Fuel system piping 50% complete <u>(IT IS GOING TO DEPEND ON THE MATERIAL DELIVERY AND COULD DELAY THE PAYMENT OF THE MILESTONE)</u></li> </ul>	

The last 3 bullets are new and the last one is unreasonable. rhl

All 3 of these bullets are new and the 1st one is unreasonable. rhl

The last 3 bullets are new and the last one is unreasonable. rhl

All of these bullets are new. rhl

<ul style="list-style-type: none"> <li>All procured equipment per Attachment A (items marked with an "X") transported to Venezuelan port and Venezuelan procurement on list on site. <u>(THERE IS NO LIST IN THIS DOCUMENT THIS COULD BE A MAJOR DELAY IN PAYMENT)</u></li> <li>Centrifuges procured, proof of purchase submitted.</li> <li>Water treatment system procured, proof of purchase submitted.</li> </ul>	
Milestone 2 –	20%
<ul style="list-style-type: none"> <li>Gas Turbine Modules Set on Foundations</li> <li>90% Procurement completed including supporting documentation (POs).</li> <li>QA/QC documentation and Schedule reports up to progress complete</li> <li>All Fuel / Water system Piping completed <u>(THIS IS GOING TO DELAY OUR PAYMENT IF COMPARE WITH WHAT WE HAD BEFORE, AND SO OUR CASH FLOW)</u></li> </ul>	
Milestone 3 –	15%
<ul style="list-style-type: none"> <li>100% Assembly of Mayor Gas Turbine Modules Complete</li> <li>Exhaust Stacks Erected</li> <li>100% Procurement completed including supporting documentation (POs).</li> <li>QA/QC documentation and Schedule reports up to progress complete</li> <li>All cables pulled.</li> <li>All grounding complete.</li> <li>All buildings erected and complete.</li> <li>All mayor procurement on site including centrifuges, all fuel system, all water treatment system. <u>(THIS IS GOING TO DELAY PAYMENTS AND THEREFORE AFFECT OUR CASH FLOW)</u></li> </ul>	
Milestone 4 –	10%
<ul style="list-style-type: none"> <li>All Mechanical Equipment Tested and Checked</li> <li>All Hydrostatic Testing Complete</li> <li>All Pumps Rotated and Tested</li> <li>All Mechanical Systems Ready for Startup</li> <li>All Electrical Equipment Statically Tested</li> <li>All Electrical Systems Ready for Startup</li> <li>QA/QC documentation and Schedule reports up to progress complete</li> </ul>	

The problem with Milestones 4 and 5 is that we now know what a poor condition the Owner-furnished equipment is in at no fault of PES. If PDVSA doesn't make the necessary repairs in a timely manner we will not be able to start this equipment or finish the interfaces between our BOP equipment and the Owner-furnished equipment. We might have everything done that we can do and not getting paid because PDVSA didn't repair their equipment. rhl

Milestone 5 –	5%
<ul style="list-style-type: none"> <li>• Gas Turbines Tested and Ready for Commercial Operation</li> <li>• All Electrical Auxiliary Equipment Tested and Ready for Commercial Operation</li> <li>• QA/QC documentation and Schedule reports up to progress complete</li> <li>• Turnover books and as built drawings submitted <del>and accepted.</del> <u>(ACCEPTED UNDER WHAT CONDITIONS THIS IS TOO OPEN)</u></li> <li>• As-Built Drawings, Manuals and Turnover books received <del>and approved.</del></li> <li>• Punch list items completed.</li> </ul>	
	100%

**4. SCHEDULE AND REPORTING:**

PROENERGY and DERWICK agree to implement a detailed schedule to follow and control the Project based on the Level IV plan prepared by PROENERGY and reviewed and approved by DERWICK.

- PROENERGY will update this schedule on a weekly basis and submit reports to DERWICK in PDF and original planning software formats for review and approval.
- PROENERGY will deliver when required, but not less than every two weeks a Status Report of the Procurement of each equipment and Bulk Material of the Project that includes scheduled delivery dates at overseas port and to Venezuelan port and copies of any new Purchase Orders issued for the project in format that protects confidential information but supports final Client requirements for progress reporting.
- PROENERGY and DERWICK will agree on the weights of each part of the scope in order to measure progress. PROENERGY to propose initial distribution for review and approval.

**5. QUALITY ASSURANCE AND QUALITY CONTROL:**

PROENERGY will submit for review and approval by June 15, 2012 a Quality Assurance and Control Plan for the Project that will incorporate monthly reporting and continuous documentation of all work being executed as required by this type of project and in a format which is acceptable to Client (ACCEPTABLE TO THE CLIENT IS TOO VAGE, I WOULD DELETE THIS). This plan must include As-built plans and Spanish

Training and Spanish Manuals when applicable. (THIS IS EXTRA SCOPE – SPANISH TRANSLATION.)

All capitalized terms not defined in this Amendment shall have the meaning set forth in the Agreement.

The terms of the Agreement remain in full force and effect except as expressly modified by the terms of this Amendment, which are hereby incorporated therein by reference.

In witness whereof, the parties have caused this Amendment to be duly executed and delivered as of the date first above written.

**DERWICK ASSOCIATES  
CORPORATION**

**PROENERGY SERVICES  
INTERNATIONAL, INC**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**CONTRACTOR SUPPLIED EQUIPMENT**

DERWICK will provide at the Site, one (1) new 660,000 gallon raw fuel tank, one (1) new 550,000 gallon clean liquid fuel storage tank, and one (1) new 350,000 gallon raw/ fire water storage tank, and will refurbish the existing 660,000 gallon liquid fuel storage tank as a raw oil tank, along with all material, fabrication, installation, construction tools, equipment rental, project management, commissioning, start-up, performance testing, defects and warranty. DERWICK will also responsible for the engineering, procurement and erection of all the cathodic protection system for the project.

The tanks shall be supplied, fabricated, and installed in accordance with the IFC drawings provided by DERWICK and considering PROENERGY IFC as reference for location and sizing of nozzle, manholes, fire protection, support and accessories, unless when PROENERGY. DERWICK will design, supply, fabricate and install the new tanks according to Venezuelan standards and as approved by PDVSA.

The problem here is that the 3 new tank foundations have already been constructed in accordance with PES' design for the PES' IFC tank design - not Derwick's IFC tank design. If Derwick's design has significantly less dead load than the PES design then the current foundations and/or anchor bolts could potentially be under designed for Derwick's design uplift conditions. Any review required of PES due to Derwick's IFC design should be at additional cost to Derwick. rhl

DERWICK's scope of supply shall also include:

- All interior and exterior coatings of the tanks.
- The supply and installation of all process water and fire protection piping supports attached to the tanks.
- Clean, repair, coat and test of the existing 660,000 gallon raw liquid fuel tank
- All tools, cranes, forklifts, back hoes, hydraulic lifts, welding machines, air compressors, generators, temporary lights, trucks and pickups, support equipment, and construction power, water and other utilities required for receiving, erecting and testing of the tanks and cathodic protection.
- Transportation of all equipment, tools and supplies for the tanks and cathodic protection.
- All lubricants, lube oils and chemicals for the tanks.
- Construction offices and storage facilities, portable restrooms for their subcontractors, lay down area, fenced storage, and communication facilities, all as may be needed for DERWICK to carry out its work with respect to the tanks and cathodic protection.
- Project management, quality control/quality assurance, scheduling, administration, warehousing, and expediting.
- Provide a qualified technical representative during erection, testing, start-up, and commissioning of the tanks and cathodic protection.
- Provide one (1) electronic and two (2) hard copies of the test manuals, as-built drawings, and warranty manuals for the tanks. ~~PROENERGY will include and arrange this information in the turnover books to be supplied by PROENERGY as per their scope.~~
- Coordinate all work with other disciplines at the Site to ensure that its scope of work with respect to the tanks is scheduled in accordance with PROENERGY's scope of work as outlined in the master project schedule described in this amendment.
- Release weekly progress updates to PROENERGY.

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**ATTACHMENT A**  
**LIST OF SUPPLIES TO BE DELIVERED TO SITE AS PART OF PAYMENT**  
**MILESTONE 1**

Need to know what these are to agree with this amendment. rhl