

# PennWest Exploration

Issued On Behalf of Penn West Petroleum ("Buyer")

ATTN: • Tara Pasveer  
 ADDRESS: • TG Engineering Inc.  
 • 800, 840-8th Ave SW, Calgary, AB T2P 3T1  
 TEL: • 1-403-280-5420  
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 PWV Project Manager: Robin Sehl

DATE: 10-Aug-12

P O NO: A12380147-1801 *T&E-A12380117-001*  
 SHIP TO: DELIVERY INSTRUCTION TBC

FIELD CONTACT: TBA  
 PROJECT NAME: Slave Point 08-02 Water Flood  
 PROJECT NUMBER: P442010  
 AFE #: A12380117  
 GL CODE: 336-1656

ADDITIONAL INFORMATION: Invoices to be mailed directly to Penn West  
 Exploration Suite 200, 207 9th Ave SW Calgary AB T2P 1K3  
 Attention to Robin Sehl

VENDOR: Candyna Pump Services Inc. ("Seller")  
 ATTN: John Podorlaszcak  
 ADDRESS: 3018 - 57th Ave SE  
 Calgary, AB, T2C 0B2  
 TEL: 1-403-463-7772  
 E-MAIL: john.pod@candyna.com

SHIPPING METHOD			PO Number must appear on all Invoices, shipping papers, bills of lading and packages			DELIVERY DATE		
Hold for Pickup			FOB Calgary, AB			30-Nov-12 (14-18 Weeks ARO) <i>15-17 weeks</i>		
ITEM #	QTY	UOM	DESCRIPTION	CURR.	UNIT PRICE	LINE TOTAL		
One (1) Water Injection Skid as per Candyna Pump Services Inc. Quote Ref 3896-W130M-TP-Rev.1  Package unit will conform to the following PennWest Specification								
1	1.00	Lot	<ul style="list-style-type: none"> <li>• CE.S.001 - Structural Steel</li> <li>• CE.S.002 - Steel Buildings</li> <li>• FDP 007 - Line Strng</li> <li>• JE.S.001 - Instrumentation</li> <li>• ME.S.001 - Pressure Vessel</li> <li>• ME.S.008 - Positive Displacement Pumps</li> <li>• ME.S.008 - Piping Material Guidelines</li> <li>• ME.S.011 - Insulation</li> <li>• ME.S.012 - Painting</li> </ul>	CAD	\$494,386.00	\$ 494,386.00		
2	1.00	Lot	Bag Filters Make: ESS Corp. Model: BGS Number of Bags: 3 Filter Size: 50/25/10 micron Internal Coating: Davco 283 Corrosion Allowance: 1/8" ANSI Rating: 150 ANSI CRN: Included Sour (Yes/No): Yes	CAD	Included	Included		
3	1.00	Lot	Two (2) Main Injection Pumps Make: Weatherford Type: Triplex Plunger Model: W130M Plunger Size: 2" Tungsten Carbide Plunger Connections: 3" 150 ANSI FF Suction 1.5" API 6000 RJ Discharge Material: Duplex Stainless Steel Sour Service (Yes/No): Yes Handles Chlorides (Yes/No): Yes Pollution Damper: 300 cuin 3" 300 ANSI Suction 300 cuin 2" 1500 ANSI Discharge Lubrication System: Included Suction Pressure: 250 psi Discharge Pressure: 2538 psig (17600 kPa) Capacity: 60 gpm (270 m³/d) Motor Make: TECO Westinghouse Motor Rating: 1200 RPM @ 100 HP Motor V/Hz/Ph: 460/60/3 Enclosure: TEFC Motor Orientation: Horizontal Motor Classification: Class I, Division II VFD Compatible (Yes/No): Yes	CAD	Included	Included		

ITEM #	QTY	UOM	DESCRIPTION	CURR.	UNIT PRICE	LINE TOTAL
4	1.00	Ea	<b>Building and Skid</b> Building Size: 31'-6" L x 17'-11" W x 8'-6" H Exterior: 22 Gauge Galvanized Steel Interior: 24 Gauge White Fluted Alum Lining Vapour Barrier: 6 mil Poly Building Insulation: R12 walls, R20 roof Doors: (2) 3'x7' Windows: (2) 40" x 40" double glazed wire glass with slide, screen and lock Ventilators: (4) 12" x 16" louvers with bugscreen Fan: (2) 18" EXP Heater: (2) 15 kW Ruffneck/Mazroc electric Ice Recks: Included Skid Connection: 4" 180 ANSI RF Suction 3" 1800 ANSI RF Discharge Skid Size: 31'-6" L x 17'-11" W Floor: 1/4" Checker Plate Containment Lip: 2" Floor Drain: Open Sump and Floor Drain Sump Pump: (option) Yes Skid Underlaid Insulation: 3" Fire Retardant Spray Foam Lifting Lugs: 4 Civil P Eng Stamp: Included	CAD	Included	Included
5	1.00	Lot	<b>Manual Valves</b> Ball: Meridian Globe: None Check Valve: Durable Needle/Gauge: Century or Equal	CAD	Included	Included
6	1.00	N/A	Internal Coating for Valves	CAD	\$9,288.34	\$ 9,288.34
7	1.00	N/A	Eng Stamp for Skid	CAD	Included	Included
8	1.00	Ea	<b>Spare Main Injection Pump</b> Make: Weatherford Type: Triples Plunger Model: W180M Plunger Size: 2" Tungsten Carbide Plunger Connections: 3" 180 ANSI PF Suction 1.5" API 8000 RJ Discharge Material: Duplex Stainless Steel	CAD	\$70,362.00	\$ 70,362.00
9	1.00	N/A	Enlarge to 6" Suction Header	CAD	\$3,068.00	\$ 3,068.00
10	1.00	Lot	Two (2) - Eagle Compressors Model PV02A	CAD	\$10,000.00	\$ 10,000.00
11	1.00	Ea	Deltech Permeable Membrane Dryer	CAD	\$2,908.00	\$ 2,908.00
12	1.00	Ea	Upgrade 3'x7' Door to 6'x7'	CAD	\$1,030.00	\$ 1,030.00
13	1.00	Lot	Two (2) - Spool Pieces for Future Charge Pumps	CAD	\$4,885.00	\$ 4,885.00
14	1.00	N/A	Building Enlargement 31'-6" L x 17'-11" W to 37'-11" L x 17" W (for two additional charge pumps in future)	CAD	\$12,300.00	\$ 12,300.00
15	1.00	N/A	Building Enlargement 37'-11" L x 17'-11" W to 42' L x 17" W (for adding fourth filter)	CAD	\$8,200.00	\$ 8,200.00
16	1.00	N/A	Change from Galvanized Steel to Galvalume Exterior (42' L x 17' W)	CAD	\$1,010.00	\$ 1,010.00

The quantities listed are approximate only and are based on Penn West's anticipated annual usage. The actual quantities may vary considerably and Penn West will not guarantee the quantities listed will be purchased.

All fitting designs must be registered with ABSA, BCSA, Saskatchewan and Manitoba Boiler Branch (if applicable).

SUBTOTAL \$ 617,462.34  
 GST \$ 30,874.12  
 OTHER  
 TOTAL \$ 648,336.46

Date:

Accepted by Vendor:

Title:

*09/12/12*  
*President*  
*with clarifications to Terms & Conditions*

TECHNICAL SIGN OFF

Authorized by (Signature):

Name:

Date:

*[Signature]*

Les Smyth

10-Aug-12

By signing and returning this order, the Buyer agrees to perform in accordance with all provisions set forth on this Purchase Order and the document entitled Terms and Conditions for the provision of Goods or Services, which is attached and incorporated.

Penn West Authorized By (Signature):

Name:

Title:

Date:

*[Signature]*

Robin Sehti

Facilities Engineer

10-Aug-12

1. Payment Terms: Net 60 Days

2. Seller shall notify Buyer immediately if it is unable to ship as specified

*[Signature]*  
 Lorna Morishita, P. Eng.  
 Sr. Manager, Facilities Engineering  
*Aug 22, 2012*

*AUG 21, 2012*

*[Signature]*  
 Bob Surawski  
 SVP Eng + Construction

## STANDARD TERMS AND CONDITIONS FOR THE PURCHASE OF OFFSITE GOODS AND SERVICES ("Terms and Conditions")

- 1. Definitions and Interpretation**
- 1.1 "Contractor": the party identified as the Contractor in the Purchase Order; "Effective Date": the date upon which Contractor returns to Penn West a fully executed copy of the Purchase Order form or other document acknowledging Contractor's acceptance; "Goods": any goods, materials and supplies required to be furnished to Penn West by Contractor (including any part or parts thereof) under the Purchase Order; "Losses": all damages, claims, losses, expense, liabilities, injuries, fines, penalties, settlements, awards, judgments, or other costs, obligations and causes of action of every kind and nature whatsoever (including legal expenses and solicitor and its own client costs); "MSA": the Penn West Master Services Agreement or other Penn West standard form services agreement in place between the parties, as amended, if any; "Penn West": Penn West Petroleum, a general partnership and any Affiliate, where "Affiliate" shall mean any other person that directly or indirectly controls, is controlled by or is under common control with Penn West; "Penn West Policies": the current version of all of Penn West's policies, procedures and guidelines available at [www.pennwest.com](http://www.pennwest.com) or supplied to Contractor by Penn West, as may be amended or updated from time to time, insofar as same relate to the supply of the Goods or performance of Services hereunder; "Purchase Order": the Penn West standard purchase order form or other agreement between Penn West and Contractor relating to the Goods and/or Services, which shall include these Off-site Terms and all other documents which have been identified as forming part of the agreement between the parties hereto relating to the Goods and/or Services, including without limit, any change orders, specifications, drawings or other descriptions supplied by Penn West or produced by Contractor or its Representatives; "Representative": each of a party's officers, directors, employees, agents, servants and subcontractors; "Services": the services required to be furnished to Penn West by Contractor under the Purchase Order, including without limit, services associated with the Goods, including design, engineering, fabrication, packing, shipping, installation and testing of the Goods; "Worksite" means a Penn West lease site, facility or other field operation or office, including without limit, non-operated facilities and undeveloped sites.
- 1.2 The Purchase Order, including these Off-site Terms, shall be supplementary to the MSA and both such agreements shall collectively embody the entire understanding between the parties with respect to the Goods and Services and supersede and replace any prior agreements between the parties with respect to same. To the extent that there is any gap or inconsistency between the Purchase Order and the MSA, the provisions of the MSA shall take precedence to the extent necessary to resolve such gap or inconsistency except as explicitly stated and agreed in the Purchase Order. Contractor shall submit in writing any conflicts in interpretation to Penn West for clarification.
- 1.3 The Purchase Order becomes binding as of the Effective Date.
- 1.4 No terms or conditions endorsed upon, delivered with or contained in Contractor's quotation, acceptance or other documents shall form part of the Purchase Order unless explicitly agreed to in writing by an authorized representative of Penn West.
- 1.5 To the extent that the Purchase Order is only in respect of Goods, or only in respect of Services, the terms solely in respect of the other (Services or Goods, as the case may be) shall not apply.
- 2. Scope of Services**
- 2.1 The Contractor shall supply the Goods and/or Services in strict accordance with the Purchase Order and acknowledges that timely supply is of utmost importance to Penn West.
- 2.2 Penn West may at any time make changes to the Services or any portion of the Services, including, without limitation, additions, deletions and rescheduling by submitting a change order to Contractor, which Contractor shall immediately review, execute and return to Penn West. Contractor is not entitled to payment for unauthorized Goods supplied or Services performed, provided that if Contractor starts to supply Goods or Services described in the change order, Contractor will be deemed to have accepted the change order. No allowance shall be made to Contractor for loss of anticipated profit as a result of any change.
- 2.3 Contractor shall make progress reports to Penn West as specified in the Purchase Order and Penn West shall be entitled at all reasonable times to inspect the Goods and/or Services, but shall not be obliged to do so and inspection or acceptance by Penn West shall not release Contractor from any obligation under the Purchase Order. If a defect or deficiency becomes apparent during inspection, Contractor shall promptly remedy at its own expense.
- 3. Services Location and Access**
- 3.1 No Services, including delivery, shall be performed at a Worksite under these Off-site Terms. Contractor agrees that any Services performed at a Worksite, including delivery, are subject to and will be performed in accordance with any existing MSA and/or the Penn West Standard Terms and Conditions for On-site Goods and Services (Field or Office, as applicable), and it will comply fully with all Penn West vendor management requirements prior to attending at a Worksite.
- 4. Ethics, Performance and Safety**
- 4.1 The Contractor shall comply with and ensure all of its Representatives comply with the more stringent or higher standard of applicable law and applicable Penn West Policies at all times during the performance of Contractor's obligations under the Purchase Order. Contractor agrees that non-compliance with the material provisions of any Penn West Policy may result in termination of the Purchase Order with cause and without notice or payment in lieu of notice.
- 4.2 The Contractor and its subcontractors, suppliers and manufacturers shall not pay any commission or fee, or grant any rebate or other remuneration, consideration or gratuity to any Representative of Penn West. Further, the Contractor and its subcontractors, suppliers and manufacturers shall not grant any secret rebates, one to the other, or pay any secret commissions or fees to the Representatives of the other in connection with the Goods and/or Services.
- 4.3 Without limiting the application of 4.1 and 4.2, Contractor certifies that it has read Penn West's Code of Business Conduct and Ethics ("Code") and acknowledges the obligations of Penn West Representatives under the Code, and agrees that in its supply of the Goods and/or Services, it will comply with and ensure compliance by the Contractor's Representatives with the provisions of the Code that apply to each and to ensure that its provision of the Goods and/or Services does not put any individual or organization in breach of the Code.
- 4.4 Contractor shall only collect, use, retain and disclose personal information (as may be defined by applicable privacy legislation) regarding Penn West Representatives in accordance with applicable law and for the purposes specified in the Purchase Order and shall keep all such information securely, notify Penn West of any unauthorized disclosure and return such information and all copies thereof upon request by Penn West or termination of this Purchase Order.
- 5. Insurance**
- 5.1 Contractor shall be responsible for all insurance coverage and costs against all risk of loss for Goods and/or Services while in Contractor's care, custody and control prior to acceptance and physical possession by Penn West.
- 5.2 If specified in the Purchase Order, Contractor shall obtain and carry Commercial General Liability Insurance of not less than \$2,000,000 for bodily injury including death and/or property damage, on terms consistent with industry practice having regard to the nature of the Goods and Services, including, where applicable, but not limited to contractual liability and products/completed operations liability.
- 5.3 If specified in the Purchase Order, Contractor shall maintain throughout the course of performance of Services and for a period of 2 years thereafter, professional liability insurance with limits not less than \$2,000,000 per claim.
- 5.4 To the extent of liabilities assumed under the Purchase Order, the Contractor shall ensure that "Penn West Petroleum Ltd. and all of its subsidiaries" is expressly added and included as an additional insured to Contractor's comprehensive general liability policy (if any) and that such policy does not prohibit cross liability coverage. Contractor's insurance shall be primary and non-contributory. Contractor shall provide Penn West with current proof of insurance prior to commencing Services and prompt notice of any cancellation or material change. Contractor shall be responsible for all deductibles and ensure that subcontractors carry insurance equivalent to Contractor's insurance. Contractor shall provide Penn West with prompt notice and full particulars of any claims or incidents that may result in a claim that are related to the Services.
- 5.5 Contractor waives all rights against Penn West and the Penn West Representatives for recovery of damages to the extent these damages are covered by insurance maintained in accordance with the requirements hereof and shall not permit its insurers to have rights of subrogation against Penn West and its Representatives for claims that are related to the Services.
- 6. Title, Risk and Delivery (applicable only with respect to the supply of Goods, if any)**
- 6.1 If no delivery date is specified in the Purchase Order, Contractor shall deliver Goods within 28 days of the Effective Date. If Penn West agrees in writing to accept delivery by installments, this Purchase Order shall be construed as a single purchase order in respect of each installment. If delivery terms are not otherwise specified in the Purchase Order, delivery shall be FOB the Worksite specified in the Purchase Order and delivered by a Penn West-approved on-site contractor.
- 6.2 Subject to Penn West's right to refuse acceptance, all title, rights and interest in and to the Goods shall pass to Penn West on the earlier of delivery at the location specified in the Purchase Order and payment for the Goods by Penn West, provided that prior to delivery and full payment, Penn West shall acquire a property interest and partial title in the Goods proportionate to any payments made. Goods shall not be deemed accepted until finally inspected by Penn West after delivery.
- 6.3 Goods shall remain at sole risk of Contractor until physical possession and acceptance of the Goods by Penn West, at which time risk shall pass to Penn West, except to the extent that, notwithstanding delivery or payment, the Goods remain in Contractor's care, custody or control.
- 6.4 Contractor shall have affixed to each case, skid, crate or container used to supply Goods to Penn West one copy of packing slip firmly affixed to the exterior and a second copy included on the inside, with a copy of the complete set of packing lists for the entire shipment included and affixed to the first case, skid, crate or container in the shipment, which shall be properly marked and identified as containing same.
- 6.5 Contractor shall comply with applicable law, Penn West Policy and industry standards in respect of the safe and proper handling, transport and use of the Goods and shall provide all relevant information with respect to same, including warning labels and health and safety data with respect to hazardous or toxic Goods.
- 6.6 Upon delivery, should Penn West notify Contractor of any damage, shortages or non-conformities, Contractor shall immediately take all necessary measures to rectify same. Penn West shall have the right to return any Goods in whole or in part at Contractor's expense that are delivered in error, defective, deficient or not in conformance with the Purchase Order and return them to Contractor at Contractor's risk and expense on the basis that a full refund for the Goods and/or Services so returned shall be paid forthwith by Contractor.
- 7. Contractor Warranties**
- 7.1 Contractor warrants to Penn West, and understands that Penn West is relying upon same in entering into the Purchase Order that as of the Effective Date and throughout the term:
- (a) if the Contractor purports to be incorporated, Contractor is an entity duly constituted and validly subsisting under the laws of its jurisdiction of incorporation and has all requisite power, legal capacity and authority to enter into this Purchase Order and to perform its obligations in accordance with the terms of the Purchase Order and in the jurisdiction where the

- Services are to be performed and has duly authorized, executed and delivered this Purchase Order;
- (b) this Purchase Order is a valid and binding agreement enforceable against Seller in accordance with its terms and conditions;
- (c) all Services shall be performed in accordance with the Purchase Order, diligently, skillfully, efficiently, carefully and safely in a good and workmanlike manner and in accordance with good and sound practices, standards and procedures consistent with those currently observed by other experienced and skilled parties (and in the case of professional Services, professionals) practicing in the industry and jurisdiction in which Contractor practices;
- (d) all equipment used in connection with the Services is at all times inspected, calibrated and maintained in accordance with manufacturer's guidelines, applicable law, industry recommended practices and where applicable, good oilfield practices;
- (e) at all times during the performance of the Services, the Contractor shall comply with all applicable laws, orders, rules and regulations and all applicable policies and procedures of Penn West;
- (f) Contractor will provide all permits, certificates and licenses which may be required for the performance of its obligations under the Purchase Order, including any delivery obligations;
- (g) all Contractor Representatives performing the Services have current all required training and certifications relevant to the Services and will provide proof of same upon Penn West's request;
- (h) the Goods and/or Services shall not constitute an infringement or contributory infringement of any patent or any copyright or trademark, or violation of any trade secret when sold or used for its ordinary intended purpose or any special purpose specified in the Purchase Order;
- (i) the Goods will be:
- free and clear of any and all liens, charges and encumbrances and the Contractor has the legal right to transfer title thereto;
  - without fault, defect (including latent defects) or deficiency;
  - of the best design, materials and workmanship and properly assembled;
  - new, unless specified otherwise in the Purchase Order;
  - of good and merchantable quality and fit for use for their ordinary intended purpose as well as any special purpose specified in the Purchase Order;
  - compliant with applicable law; and
  - in strict conformance with the Purchase Order and any specification, drawing or other description supplied or advised by Penn West.
- 7.2 Contractor shall, at its own risk and expense, including all costs of removal, transportation, reinstallation and re-inspection, to the satisfaction of Penn West, acting reasonably, promptly repair, replace, re-perform or otherwise remedy any defect or breach hereof in the Goods reported by Penn West within 30 days from the expiration of the later of 12 months after start-up and 18 months after delivery, as well as remedy any loss or damage to property of Penn West or any other persons resulting from such defect or breach hereof. Such repair, replacement and re-performance shall be warranted for an additional 12 months from the date of such remedial action. Should Contractor fail to promptly perform such remedial action, Penn West may take such action at Contractor's expense and Contractor shall indemnify Penn West from all Losses relating thereto. Contractor shall ensure that all fitting designs (if any) are registered with the appropriate regulatory and governmental authorities in Alberta, British Columbia, Saskatchewan and Manitoba.
- 7.3 The Services shall be free from defects and from deficiencies (including without limit, to the extent Contractor performs engineering Services, free from deficiencies in engineering and design, including failure to be fully integrated and compatible with Penn West's existing facilities, equipment and operations). Upon notice from Penn West within 12 months of the completion of Services, or Contractor's warranty period, whichever is later, Contractor shall, at its own expense, promptly re-perform any the defective or deficient Services to the extent required to correct in a manner satisfactory to Penn West, acting reasonably. Should Contractor fail to promptly perform such remedial action, Penn West may take such action at Contractor's expense and Contractor shall indemnify Penn West from all Losses relating thereto. In no event shall Penn West's remedies in respect of any defect or deficiency be limited to re-performance and these warranty provisions shall apply to re-performed Services.
- 7.4 Nothing herein shall exclude the benefit of any collateral warranty or service guarantee offered by Contractor or any other person in connection with the Goods and/or Services and on Penn West's request, Contractor shall either assign to Penn West or enforce for Penn West's benefit such warranties or guarantees as may have been granted by its suppliers, manufacturers, subcontractors or any other person.
8. **Independent Contractor**
- 8.1 Contractor is an independent contractor is not Penn West's agent or representative and neither party shall be liable for the actions or omissions of the other.
- 8.2 Penn West may appoint an agent with authority to administer this Purchase Order and to the extent consistent with the Purchase Order, Contractor shall comply with any and all directions given by such agent as if such directions were given by Penn West.
9. **Subcontracting**
- 9.1 Contractor may engage a subcontractor to supply and/or perform all or a portion of the Goods and/or Services only with prior written notice to Penn West, provided that Penn West may deny the participation of any subcontractor. Acts and omissions of subcontractors of any tier shall be deemed to be acts or omissions of Contractor and Contractor shall remain fully liable for the performance of its obligations under the Purchase Order. All insurance obligations hereunder shall also apply to such subcontractors.
- 9.2 Penn West strongly supports the use of aboriginal and local businesses and individuals for the provision of goods and/or services. Whenever appropriate, the Contractor shall, in consultation with Penn West, proactively seek out and give preference to aboriginal and local individuals and subcontractors in the provision of the Goods and/or Services. In addition, Contractor shall provide such reasonable business information as may be requested by Penn West from time to time in respect of Contractor's incorporation of aboriginal and local content in the provision of the Goods and/or Services.
10. **Taxes and Government Charges**
- 10.1 Contractor shall be solely responsible for all remittances, taxes, assessments, duties, contributions, deductions and charges in relation to the Goods and/or Services and the persons employed in connection with Contractor's performance of the Services in compliance with all applicable law and in respect of programs benefiting Contractor's Representatives. Penn West shall pay applicable GST, sales and value added tax as purchaser of the Goods and Services.
- 10.2 Contractor shall promptly advise if any Services are performed by a non-resident of Canada, in which case Penn West shall be entitled to withhold any portion of payment as required by law, with no additional payment to Contractor as a result of costs associated with Canadian withholding tax.
11. **Invoicing and Payment**
- 11.1 Contractor shall submit original invoices for the Goods and/or Services in accordance with the Purchase Order specifying GST registration number, delivery location, and name and department of Penn West Representative requesting the Goods and/or Services. Prices shall be in Canadian dollars.
- 11.2 Contractor shall itemize separately on the invoice all taxes, duties, assessments and other like charges required to be paid under the Purchase Order.
- 11.3 Subject to its rights herein to deduct, setoff or withhold, Penn West shall use reasonable commercial efforts to pay all invoices within 60 days of receipt. Payment prior to acceptance of Goods and/or Services shall not be construed as acceptance of non-conforming Goods and/or Services or as relieving Contractor from its obligations under the Purchase Order.
12. **Liens, Setoff and Withholding**
- 12.1 Contractor shall promptly pay all debts incurred by Contractor for labour, services, equipment, materials and supplies used in the supply of the Goods and/or Services and shall promptly effect the discharge of any lien or charge registered in respect of the Goods and/or Services at its sole expense. If so requested by Penn West, Contractor shall not be entitled to receive payment from Penn West until Contractor furnishes evidence satisfactory to Penn West of full payment of such indebtedness and Penn West shall have the right to pay such debts directly and be reimbursed by Contractor or set-off against any amounts owing to Contractor from Penn West.
- 12.2 Penn West may withhold payment in accordance with applicable law and for any portion or portions of the invoice that Penn West, acting reasonably, disputes, until the dispute is settled, during which time there shall be no interruption of the supply of Goods and/or Services by Contractor or interest charged. Penn West may deduct and set-off any amounts owed by Contractor to Penn West under the Purchase Order from any amount due or owing by Penn West under any contract between the parties.
13. **Audit**
- 13.1 Contractor shall keep in accordance with generally accepted accounting principles complete and detailed books, accounts, records and documentation in respect of the Goods and/or Services in respect of all of the Goods and/or Services and at any time upon reasonable notice during normal business hours for a period ending 36 months after the delivery of the Goods and/or Services, Penn West or its nominee shall have the right to inspect and audit same. Contractor shall include a like provision in its contracts with its subcontractors and shall audit its subcontractors on Penn West's reasonable request.
- 13.2 Contractor shall refund to Penn West any overpayment disclosed by such audit, and Penn West shall pay to Contractor the amount of any underpayment, both within 30 days of such finding.
14. **Liability and Indemnity**
- 14.1 The Contractor shall (a) be liable to Penn West (including its Affiliates) and the Penn West Representatives (the "Penn West Group") for any Losses whatsoever which any member of the Penn West Group may suffer, sustain, incur or pay; and (b) indemnify and hold harmless each member of the Penn West Group from and against all Losses whatsoever which may be brought against any member of the Penn West Group or which any member of the Penn West Group may suffer, sustain, incur or pay arising out of or incidental to a breach of any term or condition of the Purchase Order by the Contractor or its Representatives or the negligent acts, negligent omissions or misconduct of the Contractor or its Representatives.
- 14.2 Notwithstanding any other provision of this Purchase Order, neither party shall be liable to compensate or indemnify the other party or its Representatives for any indirect, special, consequential or punitive Losses, or any loss of profit, revenue, business or goodwill, which Losses shall specifically exclude any fines or penalties imposed by governmental authorities.
15. **Suspension and Termination**
- 15.1 Penn West may at any time without liability suspend the provision of Goods and/or performance of Services in whole or in part, and shall pay any reasonable and substantiated costs of Contractor directly related to the suspension, provided that in the event that the suspension is due to the fault of the Contractor, no such compensation shall be payable. Contractor shall resume Services upon request by Penn West and such suspension shall not relieve Contractor of its obligations hereunder.

- 15.2 Penn West may at any time terminate the Purchase Order in whole or in part by giving Contractor written notice whereupon Penn West shall be relieved of all further obligations under the Purchase Order except for the payment of the balance outstanding for the Goods and/or Services provided in a satisfactory manner to the effective date of termination and those reasonable non-cancellable third party costs approved in advance by Penn West, provided that in no event shall Penn West be liable for Contractor's indirect losses or loss of anticipated profits. If Penn West terminates this Purchase Order because of Contractor's (a) material breach of its obligations under this Purchase Order, or, if such breach is non-material, failure to remedy or commence remedying the breach within 5 days from the date of written notice from Penn West; (b) bankruptcy, insolvency, assignment to creditors or similar event; or (c) cessation of its business, or if Contractor terminates the Purchase Order, in whole or in part, other than in accordance with the terms below, Contractor shall promptly reimburse Penn West for its costs of obtaining substitute Goods and/or Services in excess of the Contractor's contract price to fulfill the Purchase Order obligations. Upon termination, Penn West may remove from Contractor's possession all Goods and/or Services for which Penn West has paid (whether fabricated or not) without hindrance by Contractor or anyone claiming through Contractor.
- 15.3 Contractor may terminate this Purchase Order after giving 14 days written notice should Penn West: (a) be in material breach of its obligations under this Purchase Order and fail to commence, or having commenced, fail to continue to remedy the breach within 14 days from the date of the notice; (b) become bankrupt, insolvent or make an assignment to creditors; or (c) ceased to carry on its business.
- 16. Force Majeure**
- 16.1 Each party is relieved of its obligations under the Purchase Order to the extent and for the time that its performance is delayed or prevented by any cause (except financial or lack of availability of manpower, materials or equipment) beyond its reasonable control and shall immediately notify the other party of the nature, extent, effect and likely duration of any delay or prevention of performance. Penn West may defer the date of delivery or terminate the Purchase Order or reduce the quantity, nature or extent of the Goods and/or Services ordered if it is prevented from or delayed in the carrying on of that part of its business relating to the Purchase Order by circumstances beyond its reasonable control.
- 17. Confidentiality**
- 17.1 Contractor shall maintain and shall ensure that its Representatives maintain in the strictest confidence all information received from Penn West or generated or gained in the course of the performance of the Services, directly or indirectly, that was not previously lawfully known to Contractor, in the public domain, or lawfully obtained from a third party not under an obligation of confidence and shall not disclose it to any third party (except as required by law with prompt prior notice to Penn West) nor use such information for any purpose other than the performance of the Purchase Order. Contractor shall return such confidential information to Penn West and delete or destroy all copies promptly upon request and upon the completion of the provision of Goods and/or Services. Such confidentiality obligations shall continue for a period of 5 years subsequent to the completion of the supply of Services under this Purchase Order.
- 18. Intellectual Property and Ownership of Information**
- 18.1 Except as specifically provided in the Purchase Order, neither party shall acquire any right, title or interest in or to any intellectual property of the other party in existence prior to the Effective Date. Contractor hereby gives Penn West all necessary right and license to use such of Contractor's intellectual property rights as are related to the Services.
- 18.2 Title to all drawings, specifications, documents and data (including without limit any plans, verifications, calculations, notes, studies, reports, computer programs (other than Contractor's proprietary computer programs and engineering documents), data, technical information and other engineering documents) whatsoever supplied to Contractor by Penn West or produced by Contractor or its Representatives in connection with the supply of the Goods and/or Services and all information therein ("Penn West Intellectual Property") and rights thereto shall at all times rest exclusively with Penn West. All such materials shall be considered confidential information and returned to Penn West upon demand or upon the completion of provision of Goods and/or Services. Any modifications, improvements or enhancements to Contractor's pre-existing intellectual property shall, to the extent that same do not embody Penn West Intellectual Property or Penn West confidential information, be owned by Contractor and Penn West shall have a worldwide, perpetual, royalty-free, non-transferable, unrestricted license to use same.
- 18.3 Contractor shall assign or cause to be assigned to Penn West any discovery or invention conceived by Contractor for any material, process, equipment, method or device developed through the performance of the Services (if applicable), without charge.
- 18.4 All emission reductions in respect of the Services shall be the sole and exclusive property of Penn West and Contractor agrees to waive all claims thereto and indemnify and hold harmless Penn West for any losses due to a claim by Contractor Representative relating to emission reductions.
- 19. Proprietary Marks and Publicity**
- 19.1 Contractor shall not use or display Penn West's name, trademarks, logos or any other of Penn West's proprietary marks or designations for any purpose or in any medium, or publish or make any announcement in connection with the Goods and/or Services without first obtaining Penn West's written consent.
- 20. Miscellaneous**
- 20.1 Neither party shall assign this Purchase Order without the prior written consent of the other, not to be reasonably withheld, provided that Penn West may assign to an Affiliate or to a third party in the event of a merger, amalgamation, corporate re-organization or transfer of substantially all of Penn West's assets upon provision of written notice to the Contractor.
- 20.2 The Purchase Order shall be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein and each party irrevocably submits to the exclusive jurisdiction of the courts of the Province of Alberta over any claim or matter arising under or in connection with the Purchase Order.
- 20.3 Penn West's right to require strict performance shall not be affected by any previous waiver or course of dealing.
- 20.4 No amendments to the Purchase Order shall be valid unless they are in writing and signed by authorized representatives of both parties.
- 20.5 Notices shall be in writing and may be delivered personally or by facsimile, courier or registered mail to the party and address set forth in the Purchase Order.
- 20.6 The invalidity or unenforceability of any provision of the Purchase Order shall not affect the validity or enforceability of any other provision of the Purchase Order.
- 20.7 The rights and remedies provided by the Purchase Order are cumulative and are not exclusive of any rights or remedies provided in law, equity or otherwise.
- 20.8 This Purchase Order shall enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.
- 20.9 The covenants, conditions and provisions contained in the Purchase Order, including without limitation, confidentiality obligations, audit rights, warranties and indemnities survive termination and expiry of the Purchase Order for the benefit of the party to whom they are given. In addition, the expiry or termination of the Purchase Order does not discharge or release either party from any liability or obligation accrued at the time of such expiry or termination or continuing beyond or arising out of such expiry or termination.
- 20.10 If Contractor is a joint venture the partners shall be joint and severally liable to Penn West for the joint venture's obligations pursuant to this Purchase Order.
- 20.11 The United Nations Convention on Contracts for the International Sale of Goods and/or Services does not apply to the Purchase Order and shall be disclaimed and excluded from same.
- 20.12 The Purchase Order may be executed and delivered by the parties in counterparts and by facsimile or other electronic transmission.

## Penn West Exploration

### Master Goods & Services Agreement

Initial Clarifications by Greg Pullam Rev 0

(Please feel free to place your rebuttal notes below mine in a different colour if you wish).

Please find enclosed the inclusions, exceptions or questions CanDyne has in regards to the MSA for Penn West:

6.6 Invoice Payment of 60 days. We have found that with authorizations, signatory requirements, and various delays, etc. that there is typically an additional 15-30 days over/above a company's payment terms. We typically request a company payment terms of 30 days, and then it can typically take an additional 15-30 days to actually receive the monies. CanDyne would prefer to set up payment terms for 30 days if that is possible.

Additionally, most of our custom built manufactured products are specifically designed for an individual client (such as Penn West) and are typically over \$50,000. Our past experience with both Penn West and most other customers is to set up a progress payment procedure for the equipment with a typical payment design enclosed:

Twenty five percent (25%) of contract price is invoiced upon the confirmation of the order. Payment expected upon completion of Order Confirmation.

Fifty percent (50%) of contract price is invoiced upon the arrival of the components of pump, driver, or other major equipment, including but not limited to, structural steel, valves, fittings, charge pumps, filters. Payment required upon completion of project prior to shipping.

The final twenty five percent (25%) of the contract price will be invoiced one week prior to expected shipment date.

Full/complete payment must be paid to CanDyne prior to equipment leaving manufacturing facility, or; Seventy five percent (75%) of contract price must be paid to CanDyne prior to equipment leaving manufacturing facility, and those clients with credit facilities with CanDyne will be invoiced for final payment, expected at thirty (30) days - for all contracts \$20,000 or greater.

All balances on account must be paid to CanDyne within thirty (30) days of the invoice date. Any later payments will be charged with a ten (10%) percent interest charge per month until arrears are paid. All legal costs required to collect monies will be borne by the purchaser.

Methods of payment include bank draft, certified company cheque, direct deposit into CanDyne's account, satisfactory irrevocable letter of Credit, payment in escrow with CanDyne lawyer's trust account, or as per pre-arranged with CanDyne.

Please note that we can alter the progress payment percentages for each area if required – we have also done four (4) 25% progress payments for milestone markers during manufacturing as well – simply let us know and we can certainly discuss the various options available to both Penn West and CanDyne in this regard.

This is because said custom make equipment would be extremely difficult to sell on the open market, should a client default on payment for any reason. Due to this we have found our clients amenable to the progress payment situation which safeguards both parties.

Penn West requires that payment terms in the MSA remain at 60 days. We are unable to agree to a global shorter payment term in the MSA unless a global incentive discount is given by CanDyne. That being said, you will be able to negotiate on a per order basis with your Penn West rep payment terms that are reasonable for that specific order, as that Penn West rep is responsible for ensuring the internal process necessary to ensure that payment terms other than the 60 days are honoured. Without looking at any specifics, the progress payment terms presented seem very reasonable.

**CanDyne can agree to this, based upon payment terms for each specific project within the purchase order, or individual order per se.**

8.3 (v) CanDyne is currently acquiring \$2 MM Errors & Omissions insurance (we had \$1MM) originally. First, we don't have a problem in providing this, as we have had in the past as well.

However, our concern is that we have gone to considerable expense to provide this, and yet we know for a fact that other competitors of ours within the Western Canada oil & gas industry do not have this and are still doing business with Penn West. We don't feel this is fair competition in that CanDyne is attempting to abide by the various requirements of Penn West, and yet others do not have to? Can you confirm that Penn West is not doing business with those that do not meet the basic requirements such as insurance?

With respect to professional liability insurance, we ask all engineers and professionals to provide PLI in amounts appropriate for the type of professional services performed. As CanDyne is providing system and pump assembly design, presumably by engineers, you have been asked to provide PLI in the standard amount of \$2MM. This is a standard requirement for all companies doing design/professional services for Penn West. Please address any information you may have regarding non-compliance by your competitors to Dan Love, Manager of Procurement [dan.love@pennwest.com](mailto:dan.love@pennwest.com) or (403)806-3612, or to Penn West's confidential whistleblower compliant line at 1-877-309-9397 or [www.pennwest.ethicspoint.com](http://www.pennwest.ethicspoint.com)

**Thank you for the information – I will make a request the specific parties at Penn West to confirm that our competitors are also in compliance with this situation. As you can imagine, accruing additional costs to work for Penn West and then not having an even playing field in this area makes it very, very difficult to compete evenly.**

8.3 (viii) We are currently confirming if we are covered for equipment floater insurance for loss or damage to construction machinery, tools and equipment owned or non-owned or rental equipment by third parties.

8.4 / 8.5 CanDyne is currently adding Penn West to its insurance and will provide related documentation to that effect.

Thank you for providing the COI.

**This should have been stated in the insurance documentation we have sent previously, which should close these points.**

13.4 CanDyne utilized a sister company (owned by the same company that owns CanDyne) for its welding and assembly labour. This company is called RTS Fabrication Inc. and is covered under the same insurance umbrella and such as CanDyne. RTS is the company that holds the ABSA certification required to weld out pressure piping, but for all intents/purposes it will be CanDyne you are dealing with. We have stated this just so Penn West is aware of the situation.

Please advise your Penn West rep that you will be using a subcontractor and any concerns can be addressed directly. As you are aware, CanDyne will be responsible for its subs' compliance with the requirements of the MSA.

**We don't really think of them as a sub-contractor as we work so closely together, but we'll make those notifications as required.**

17.4 CanDyne designs and manufactures its own systems, and does hold the design rights to the systems it manufactures. CanDyne insists on keeping and maintaining the design rights to these as some are proprietary based upon its experience and expertise in these areas and cannot assign this to anyone.

CanDyne will take exception to this, other than those designs or manufacturing that Penn West or related engineering firms provide to CanDyne. In this circumstance CanDyne will state that Penn West will own the design of the system.

17.5 As shown above in our clarification for 17.4.

Greg, we propose the following wording for 17.4 ,17.5 and 17.6:

17.4 Except as provided herein, neither Party shall acquire any right, title or interest in or to any patents, industrial designs, technology, trade secrets, copyright or other intellectual property of a Party (collectively, the "**Intellectual Property**") of the other Party in existence prior to the effective date of any particular purchase order for the Services. Provided that Penn West shall exclusively own all Intellectual Property prepared or constructed by Vendor if specifically agreed by both Parties in writing in any scope of work document or purchase order, Vendor hereby grants, and warrants that it has the right to grant to Penn West a world-wide, irrevocable, royalty-free, perpetual, non-exclusive and fully sub-licensable right and license to use:

- (a) Vendor's pre-existing Intellectual Property related to the Services; and



- (b) all Intellectual Property produced as a result of the performance of the Services or used in the operation of any part of a facility resulting from the performance of the Services,

which shall be transferable to any future purchaser of any portion of the work product resulting from the Services without accounting to Vendor and Vendor waives its moral rights (and shall require its Representatives to waive their moral rights) in all associated copyrightable material. Vendor agrees to disclose promptly to Penn West and cause its Representatives performing the Services to disclose promptly to Penn West any Intellectual Property conceived during or after the performance of the Service based on the Confidential Information.

**Hilary, I'm having difficulty with this point. You have stated that neither party shall.....and then state that 'Provided Penn West shall exclusively own.....I cannot agree to this because CanDyne has designed this system and will therefore own the rights to the design and paperwork. Penn West has purchase the system to use as required for the purpose they have requested – but they have not purchase the rights to the design otherwise I could not sell this similar type of design, if required, to others.**

**To use an analogy here it similar to you asking Ford that when you purchase their vehicle you acquire all their designs and propriety rights, which I'm sure they do not do. So I don't believe I could allow this either and have not, to date, with any other client.**

**Perhaps we could discuss this over the phone – it may be I'm misinterpreting this?**

17.5 Vendor agrees to release, protect, defend, indemnify and hold harmless Penn West from any and all Claims whatsoever that may be asserted or brought against, or suffered or incurred by Penn West as a result of any or any alleged infringement or misappropriation of any third party's intellectual property rights relating to the Services provided by Vendor or Vendor's Representatives, including without limit, the use by Penn West of any materials resulting from the Services. Vendor shall advise Penn West promptly of all such claims upon discovery and shall provide Penn West with such further information and particulars as Penn West may reasonably request.

**I am okay with this statement.**

17.6 Penn West shall exclusively own all information from or generated in relation to the performance of the Services, including but not limited to, Confidential Information and all work product developed, compiled, prepared, constructed or produced by Vendor or Vendor's Representatives in connection with the performance of the Services and all patterns, dies, tools, diagrams, blueprints, drawings, illustrations and specifications directly or indirectly supplied to Vendor by Penn West (collectively, "**Documents**"). Penn West shall have unlimited rights of use of the Documents and will promptly provide any and all such Confidential Information and Documents, without reproduction, to Penn West upon expiry of this Agreement or any termination of this Agreement, or as earlier requested by Penn West. Notwithstanding the foregoing, the Vendor may make and retain only such copies of the Confidential Information and Documents as are reasonably and minimally required to provide the Vendor with a record of the Services performed pursuant to this Agreement.

**I don't believe we can agree to this for the same reasoning as point 17.4.**

Schedule 'A' Do you require CanDyne's rates for this? Typically our designs are offered on an individual price for each system, but we can also provide field services as well. Please let us know what you may require in this area.

Our intention would be to complete a Schedule A or purchase order for each job, during the negotiation of which your rates can be provided to the Penn West rep and reflected in writing.

Drug & Alcohol Policy CanDyne certainly agrees in principal to the Penn West Drug & Alcohol Policy, and feels that its own policy's will meet those of Penn West. However, if you note any discrepancies within our own policies please notify us immediately and we will either attempt to remedy the discrepancy or advise you what our situation is. But CanDyne believes that the principals of the Penn West policy concur with those of CanDyne's.

To the extent that Candyne's policy conflicts with Penn West's, as determined by Penn West acting reasonably, we will require that Penn West's terms prevail.

**CanDyne will concur with this.**

If further discussion is required on these clarifications please don't hesitate in contacting myself at 403-692-3060, or email at [greg@candyne.com](mailto:greg@candyne.com) Thank you.

Yours Truly,

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Greg Pullam

President