

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS AGREEMENT made effective as of the _____ day of February, 2020 (the "**Effective Date**")

BETWEEN:

**ERNST & YOUNG INC., in its capacity as
Court-appointed receiver and manager of PETRO WEST LIMITED PARTNERSHIP and PETRO
WEST LTD., and not in its personal or corporate capacity,**

(the "**Discloser**")

AND:

(the "**Recipient**")

RECITALS:

- A. By Order (the, "**Receivership Order**") pronounced on January 30, 2020 in proceedings commenced in the Court of Queen's Bench for Alberta (the "**Court**") bearing Action No. 2001-01349 (the "**Receivership Proceedings**"), the Court granted an order appointing Ernst & Young Inc. as Receiver and Manager (the "**Receiver**") in the Receivership of Petro West Limited Partnership and Petro West Ltd. (collectively, the "**Companies**").
- B. Royal Bank of Canada applied for and obtained the Receivership Order and approving a Sales Process (the "**SP**") on January 30, 2020, including the SP procedures (the "**SP Procedures**"). The Receiver, is responsible for preparing, conducting and implementing the SP and the SP Procedures.
- C. The Recipient, in accordance and subject to the terms of the SP procedures, is desirous of evaluating a potential transaction (the "**Transaction**") with the Discloser that may involve a Person making an offer to purchase some or all of the assets of the Companies, including the property municipally located at 1210 – 8th Street SW, Calgary, Albert (each an "**Asset Bid**");
- D. The Discloser is willing to make certain Confidential Information (as defined below) available to the Recipient for the sole purpose of permitting the Recipient to consider, evaluate, and if a Transaction proceeds, implement a Transaction (the "**Permitted Purpose**") all subject to the terms and conditions of this Agreement (as defined below);
- E. As a pre-condition to the Discloser, its representatives or agents providing information concerning the Companies, their business, its property and the assets for the purposes of making an Asset Bid (collectively, the "**Opportunity**") to the Recipient, the Discloser requires, and the Recipient has agreed, to execute and deliver to the Receiver, a confidentiality agreement in form and substance satisfactory to the Receiver.

NOW THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Discloser and the Recipient (collectively, the "**Parties**") agree as follows:

1. **Definitions and Interpretation**

1.1 **Definitions:** In this Agreement, except as otherwise expressly provided:

- (a) **"Agreement"** means this Confidentiality and Non-Disclosure Agreement and the expressions "herein", "hereby", "hereof", "hereto", "hereunder" and similar expressions refer to this Agreement and not to any particular article, section or other subdivision of it;
- (b) **"Asset Bid"** has the meaning set out in Recital C;
- (c) **"Closing"** shall have the meaning set out in section 4.1(b);
- (d) **"Confidential Information"** means
 - (i) all data and information, in whatever form communicated or maintained, whether orally, in writing, electronically, in computer readable form or otherwise, that the Discloser or any of its Representatives (in each case on behalf of the Discloser) and/or the Companies or any of the Companies' Representatives discloses or has disclosed to, or that is gathered by inspection by, the Recipient or any of the Recipient's Representatives, whether provided before or after the date of this Agreement, including, information that contains or otherwise reflects information concerning the Companies, the Opportunity, the business or affairs, operations, prospects, activities, and intellectual property rights of the Companies and specifically includes, without limitation, all data, records, reports, studies, projections, knowledge, patents, theories, information (financial, corporate, business or otherwise), intellectual property, designs, drawings, plans, opportunities, prototypes, specifications, manuals, photographs, software, hardware, equipment, printouts, reports, market research, business plans, customer lists, supply sources, trade secrets, information relating to existing and potential financiers and investors, trade lists, processes, techniques, ideas, improvements, innovations, know-how, research and development, calculations, opinions, and documents, and any information provided to the Discloser or any of their Representatives by third parties under circumstances in which the Discloser or any of their respective Representatives has an obligation to protect the confidentiality of such information, including all information received by the Discloser and/or the Discloser's Representatives in connection with the Companies, the Opportunity, or its business and disclosed and communicated to, or gathered by, the Recipient or any of the Recipient's Representatives;
 - (ii) all plans, proposals, reports, analyses, notes, studies, forecasts, compilations or other information, in any form, that are based on, contain or reflect any Confidential Information regardless of the identity of the Person preparing same ("**Notes**");
 - (iii) the existence and terms of this Agreement and any other agreements related to a possible Transaction;
 - (iv) the fact that information has been disclosed or made available to the Recipient or the Recipient's Representatives; and

- (v) the fact that discussions or negotiations are or may be taking place with respect to a possible Transaction, the proposed terms of any such Transaction and the status of any discussions or negotiations under this Agreement or in connection with any possible Transaction;

"**Confidential Information**" does not include any information that:

- (vi) is available to the Recipient or the Recipient's Representatives on a non-confidential basis from a source other than the Discloser or any of the Discloser's Representatives, provided that such source is not known by the Recipient, after reasonable investigation, to be bound by a contractual, legal or fiduciary obligation of confidentiality to the Discloser or any other person with respect to such information; or
- (vii) is at the time of disclosure known to the Recipient or thereafter becomes generally available to the public, other than as a result of a disclosure by the Recipient or any of the Recipient's Representatives in breach of this Agreement.

The foregoing exclusions do not apply to Confidential Information that is personal information;

- (e) "**Definitive Agreement**" means a binding definitive written agreement to consummate a Transaction;
- (f) "**Effective Date**" means the date of this Agreement as set forth at the top of the first page of this Agreement;
- (g) "**Notes**" has the meaning set out in the definition of Confidential Information;
- (h) "**Opportunity**" shall have the meaning set out in Recital E;
- (i) "**Parties**" shall have the meaning set out in the preamble;
- (j) "**Permitted Purpose**" shall have the meaning set out in Recital D;
- (k) "**Person**" means a natural person; sole proprietorship; syndicate; estate; an individual in his capacity as trustee, executor, administrator or other legal or personal representative; firm; trust; pension plan; partnership; joint venture; association; corporation; unincorporated organization; union; governmental body; or other entity and a successor to any such Person;
- (l) "**Personal Information**" shall have the meaning set out in section 4.1;
- (m) "**Representatives**" means, in respect of a party, such party's agents, directors, officers, employees, representatives, consultants and advisers (including legal counsel);
- (n) "**SP**" shall have the meaning set out in Recital B;
- (o) "**SP Procedures**" shall have the meaning set out in Recital B; and
- (p) "**Transaction**" shall have the meaning set out in Recital C

1.2 **Interpretation:** In this Agreement, except as otherwise expressly provided:

- (a) all words and personal pronouns will be read and construed as the number and gender of the party or parties require and the verb will be read and construed as agreeing with the required word and pronoun;
- (b) any reference in this Agreement to the Discloser or the Recipient will include and will be deemed to be a reference to such party's successors, affiliates and permitted assigns; and
- (c) the division of this Agreement into articles and sections and the use of headings is for convenience of reference only and will not modify or affect the interpretation or construction of this Agreement or any of its provisions.

1.3 Any article, section or other subdivision or any other provision of this Agreement which is, is deemed to be, or becomes void, illegal, invalid or unenforceable will be severable from this Agreement and ineffective to the extent of such voidability, illegality, invalidity or unenforceability and will not invalidate, affect or impair the remaining provisions of this Agreement which will be severable from any void, illegal, invalid or unenforceable article, section or other subdivision or provision.

1.4 This Agreement and its application and interpretation will be governed by and construed in accordance with the laws in force in the Province of Alberta, and each of the parties irrevocably submits to the jurisdiction of the courts of the Province of Alberta for the interpretation and enforcement of this Agreement.

2. **Confidentiality and Non-Disclosure**

2.1 As a condition to receiving the Confidential Information, the Recipient agrees to treat confidentially, and not to disclose, and to cause the Recipient's Representatives to treat confidentially and not disclose (except as permitted herein), any Confidential Information.

2.2 The Recipient hereby recognizes and acknowledges the competitive value and confidential nature of the Confidential Information and the damage that would result to the Companies, if any of the Confidential Information is disclosed to any third party. Accordingly, the Recipient hereby agrees that the Confidential Information will be used solely for the Permitted Purpose and not any other purpose.

2.3 The Recipient may disclose Confidential Information only to the limited group of the Recipient's Representatives, who are actually engaged in and need to know the Confidential Information for the Permitted Purpose, who have been informed of the confidential nature of the Confidential Information, and who agree to keep such information confidential and not use such Confidential Information for any purpose other than the Permitted Purpose. The Recipient shall ensure that each of the Recipient's Representatives will observe all terms and conditions of this Agreement. The Recipient further agrees that it shall be responsible for any breach of this Agreement by any of the Recipient's Representatives, and that the Recipient shall take all reasonable measures, including, without limitation, court proceedings, at the Recipient's sole expense, to restrain the Recipient's Representatives from making unauthorized disclosure or use of the Confidential Information.

2.4 The Confidential Information shall remain at all times the property of the Companies. No rights to use, license, or otherwise exploit the Confidential Information are granted to the Recipient, by implication or otherwise, by virtue of Confidential Information being made available to the Recipient or any of the Recipient's Representatives.

3. **Enforcement**

- 3.1 The Recipient acknowledges and agrees that the Companies would not have an adequate remedy at law and would be irreparably damaged by any unauthorized disclosure or use of any Confidential Information or in the event that any of the provisions of this Agreement were not performed by the Recipient and the Recipient's Representatives in accordance with their specific terms or were otherwise breached by the Recipient or any of the Recipient's Representatives.
- 3.2 Without prejudice to the rights and remedies otherwise available to the Discloser, the Recipient agrees that the Discloser shall be entitled, without the requirement of posting a bond or other security, to equitable relief, including an injunction or specific performance, in the event of any breach or threatened breach of the provisions of this Agreement by the Recipient or the Recipient's Representatives. Such remedies shall not be deemed to be exclusive remedies but shall be in addition to all other remedies available at law or equity to the Discloser. In the event of litigation relating to this Agreement, if a court of competent jurisdiction determines that the Recipient or any of the Recipient's Representatives have breached this Agreement, then the Recipient shall be liable and pay to the Discloser the reasonable costs and expenses (including attorney's fees on a full indemnity solicitor and his own client basis) incurred by the Discloser in connection with such litigation, including any appeal therefrom. The Recipient shall indemnify and hold harmless the Discloser and the Discloser's directors, officers, employees, consultants, representatives, advisors and agents from all damages and losses of any nature whatsoever (including consequential damages) arising out of a breach by the Recipient or any of the Recipient's Representatives of any of the terms and conditions of this Agreement.

4. **Personal Information**

- 4.1 The Recipient agrees that the Discloser shall not disclose to the Recipient or any of the Recipient's Representatives information about identifiable individuals forming part of the Confidential Information ("**Personal Information**") unless required by the Recipient, acting reasonably, for the purpose of evaluating the Transaction. If Personal Information is provided to the Recipient, then:
- (a) the Recipient shall comply with the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as amended, and any similar provincial legislation governing the protection of personal information in the private sector applicable to the Recipient in the course of collecting, using and disclosing Personal Information in connection with the Transaction;
 - (b) prior to the closing of the Transaction (the "**Closing**"), the Recipient shall: (i) collect and use Personal Information only for the purpose of evaluating the Transaction; (ii) only disclose Personal Information to those of the Recipient's Representatives who need to know such Personal Information for the purpose of evaluating the Transaction; and (iii) use appropriate security measures to safeguard all Personal Information against unauthorized collection, access, use or disclosure; and
 - (c) if the Transaction proceeds, following the Closing, the Recipient shall, and shall cause its Representatives to, use or disclose Personal Information obtained as a result of the Transaction only for purposes of carrying on the business conducted by the Companies or the carrying out of the objects for which the Transaction took place or otherwise for purposes for which such Personal Information was collected by the Companies, unless the consent for other use or disclosure has been obtained from the individuals to whom such Personal Information relates has been obtained as permitted or required by law.

5. Disclosure

- 5.1 In the event the Recipient or any of the Recipient's Representatives become legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigation, demand, order or other legal process) to disclose any of the contents of the Confidential Information, or either the fact that discussions or negotiations are taking place concerning a possible Transaction between the Companies and the Recipient, or any of the terms, conditions or other facts with respect to any such possible Transaction, including the status thereof, the Discloser agrees that the Recipient and the Recipient's Representatives may do so without liability, provided the Recipient (i) cooperates with the Discloser in any attempts it may make to obtain a protective order or other appropriate assurance that confidential treatment will be afforded the Confidential Information, and (ii) if no protective order is obtained and disclosure is required, (a) furnish only that portion of the Confidential Information that, in the Recipient's counsel's opinion, the Recipient is legally compelled to disclose, and (b) take all reasonable measures to obtain reliable assurance that confidential treatment will be accorded the Confidential Information.

6. General

- 6.1 This Agreement will continue for a period of two (2) years, unless otherwise agreed in writing by the Discloser. Notwithstanding the forgoing, or the destruction of the Confidential Information as contemplated herein, the Recipient agrees that its covenants in Articles 2, 3, 4, and 6 hereof shall survive the termination of this Agreement.
- 6.2 The Discloser may elect at any time to terminate further access by the Recipient to the Confidential Information. If at any time the Recipient determines not to proceed with the possible Transaction, the Recipient will promptly notify the Discloser in writing. Following any request by the Discloser or any of its Representatives, the Recipient agrees (i) to promptly re-deliver to the Discloser all written Confidential Information and any other written material containing or reflecting any of the Confidential Information in the possession of the Recipient or the Recipient's Representatives, (ii) the Recipient and the Recipient's Representatives will not retain any copies, extracts or other reproductions in whole or in part, mechanical or electronic, of such written material, and (iii) all Notes prepared by the Recipient or the Recipient's Representatives will be destroyed, with all such destruction being confirmed by the Recipient to the Discloser in writing.
- 6.3 Except to the extent necessary to carry out the Permitted Purpose, none of the Recipient or its Representatives are allowed to make copies of Confidential Information without the prior written approval of the Discloser (excepting that copies made by virtue of electronic communications or storage or printed copies for review by a permitted individual shall not be a breach of this prohibition).
- 6.4 Notwithstanding Section 6.3 or anything to the contrary in this Agreement, the Recipient and its Representatives are not required to destroy any computer files containing the Confidential Information that are created during automatic computer system backup, provided that such files are stored securely by the Recipient and its Representatives, cannot be destroyed without undue efforts, and access to such files are limited. With respect to such backup computer files, the non- use and confidentiality obligations set forth in this Agreement shall apply in perpetuity and survive expiration or termination of this Agreement.
- 6.5 If the Recipient or any of the Recipient's Representatives are provided with physical access to any properties or facilities of the Companies, the Recipient agrees that neither the Recipient nor any of the Recipient's Representatives shall have, and shall not make, any claims whatsoever against the Discloser, or any of its Representatives as a result of such access including, without limitation, any

and all claims and causes of action for personal injury, death or property damage occurring as a result of the Recipient or any of the Recipient's Representatives' access to such properties or facilities and the Recipient agrees to indemnify, defend and hold harmless the Discloser, or any of its Representatives from and against any and all liabilities, claims and causes of action for personal injury, death or property damage occurring on or to such property or facility as a result of entry onto the premises by the Recipient or any of the Recipient's Representatives. The Recipient shall, and shall cause the Recipient's Representatives to, comply fully with all rules, regulations and instructions issued by the Discloser regarding the Recipient or the Recipient's Representatives' access to such properties or facilities.

6.6 The Recipient understands and acknowledges that neither the Discloser nor any of its Representatives makes any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information. The Recipient agrees that neither the Discloser nor any of its Representatives shall have any liability to the Recipient or any of the Recipient's Representatives relating to or resulting from use of the Confidential Information by the Recipient or the Recipient's Representatives. The Recipient further understands and agrees that (i) the Discloser (a) shall be free to conduct the process for a Transaction as it in its sole discretion shall determine (including changing or terminating such process, providing any information to any other Person, negotiating with any other Person or entering into a Definitive Agreement with any other Person with respect to any transaction, in each case, at any time and without notice to the Recipient or any other Person) and (b) shall be free at its sole discretion to at any time accept or reject any proposal relating to the Opportunity for any reason without notice to the Recipient or any other Person, and (ii) the Recipient shall have no claim against the Discloser or any of its Representatives in connection with any of the foregoing.

6.7 The Recipient hereby represents and warrants that:

- (a) it is not bound by the terms of any agreement with a third party that would conflict with any of the Recipient's obligations under this Agreement and;
- (b) in accepting and reviewing the Confidential Information, the Recipient represents and warrants that it is acting solely for itself. Further, the Recipient represents and warrants that neither the Recipient nor any of the Recipient's Representatives have discussed or shared, and the Recipient hereby covenants that unless it has first received the written consent of the Receiver neither the Recipient nor any of the Recipient's Representatives will discuss or share, with any third party any aspect of the Confidential Information, except in accordance with Section 2.3 or 5.1 of this Agreement;
- (c) the Recipient acknowledges that the effect of this covenant is that without the full disclosure to and the written consent of the Receiver, neither the Recipient nor any of the Recipient's Representatives can act as agent, partner, co-participant or co-venturer for any third party or third parties with respect to a proposed Transaction but the Recipient is entitled to provide financing to a third-party in support of any such third party's bid; and
- (d) in order to obtain the consent of the Receiver, which the Receiver is entitled to withhold in its sole discretion, the Recipient shall notify the Receiver of the identity of each Person for whom or with whom the Recipient or any of the Recipient's Representatives had considered pursuing a possible Transaction and the nature and interest the Recipient or any of the Recipient's Representatives and each such Person would have in respect of such possible Transaction.

- 6.8 The Recipient agrees that, unless and until a Definitive Agreement is entered into between the Companies and the Recipient with respect to the Transaction, neither the Discloser nor the Recipient will be under any legal obligation of any kind whatsoever with respect to the Transaction by virtue of this or any other written or oral expression, except with respect to the matters specifically agreed to herein. Except for the matters set forth in this Agreement or in any Definitive Agreement, neither party shall be entitled to rely on any statement, promise, agreement or understanding, whether oral or written, any custom, usage of trade, course of dealing or conduct.
- 6.9 The Recipient agrees that all (i) communications regarding the Transaction, (ii) requests for additional information, (iii) requests for facility tours or management meetings, and (iv) discussions or questions regarding procedures, will be submitted or directed only to the Receiver. The Recipient further agrees that under no circumstances will the Recipient or the Recipient's Representatives discuss or otherwise communicate any aspect of the Transaction to any member of the management of the Companies without the express written permission of the Receiver. Without the Discloser's prior written consent, the Recipient shall not, and shall direct the Recipient's Representatives not to, make any contact of any nature regarding a proposed Transaction (including inquiries or requests concerning Confidential Information) with any employee, supplier, customer, creditor, bank or other lender of or to the Companies.
- 6.10 The Recipient agrees that the restrictions contained in this Agreement are reasonable in order to protect the legitimate interests of the Discloser and all defences to the strict enforcement of the restrictions by the Discloser are hereby waived by the Recipient.
- 6.11 No waiver of any particular requirement hereunder shall be construed as a general waiver of this Agreement, and any failure by or delay by the Discloser in enforcing its rights against any particular breach of this Agreement shall not limit or affect its rights to enforce its rights against any other breach hereof.
- 6.12 This Agreement may not be assigned by the Recipient without the prior written consent of the Receiver.
- 6.13 This Agreement shall enure to the benefit of the Discloser and their successors and assigns and shall be binding upon the Recipient and its successors and permitted assigns.
- 6.14 This Agreement constitutes the entire agreement between the Parties hereto and supersedes all prior contracts, agreements and understandings pertaining to the subject matter of this Agreement. No amendment, modification or alteration of this Agreement shall be binding unless executed in writing by the parties hereto. There are no representations, warranties, collateral agreements or conditions affecting this transaction other than as are expressed or referred to herein in writing.
- 6.15 Nothing contained in this Agreement shall in any way limit the rights or remedies available to the Discloser at law, in equity or under statute arising in any way in connection with the disclosure of the Confidentiality Information in the event of a breach or a threatened breach of this Agreement.
- 6.16 If the Recipient consists of more than one Person, the covenants of the Recipient will be joint and several covenants of each such Person.
- 6.17 This Agreement may be executed and delivered by facsimile or other electronic means of transmission and the parties hereto may rely upon such copies of the Agreement so delivered as though such copies are originals of this Agreement.

- 6.18 This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered will be deemed to be an original, and all such counterparts together will constitute one and the same instrument and, notwithstanding the date of execution, will be deemed to be dated as of the date written at the beginning of this Agreement.

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Signature page follows.

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the Effective Date.

ERNST & YOUNG INC., in its capacity as court-appointed Receiver and Manager of PETRO WEST LIMITED PARTNERSHIP and PETRO WEST LTD., and not in its personal or corporate capacity,

Per: _____
Pete Chisholm, Senior Vice President

Per: _____
Recipient
Name: