

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (this "**Agreement**") is entered into the ___ day of _____, 20___ (the "Effective Date") between Cimarex Energy Co. ("**XEC**") and _____ ("**Recipient**"). XEC and Recipient are sometimes hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**".

WHEREAS, Recipient wishes to review Information (as hereinafter defined) for the purpose of an evaluation with respect to a potential sale by XEC to Recipient of the Properties (as hereinafter defined); and

WHEREAS, XEC has agreed to disclose the Information to Recipient on the condition that the Information be retained in confidence and dealt with in accordance with the following provisions;

NOW THEREFORE, in consideration of the disclosure of the Information to Recipient and of the mutual covenants and agreements of the Parties contained herein, the Parties agree as follows:

1. **Definitions.** Terms set forth below have the following meanings:

- a. "**Affiliate**" means any entity that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the Person specified. The term "control" means the power to direct or cause the direction of the management of such Person, whether through the ownership of voting securities, by contract, agency or otherwise.
- b. "**Information**" means any and all confidential, non-public information and data (whether written, electronic, video or oral) associated with the Properties or the Transaction (as hereinafter defined) which XEC or its Representatives (as hereinafter defined), in its sole discretion, chooses to provide to Recipient or Recipient's Representatives pursuant to this Agreement including, without limitation, analyses, interpretations, compilations, reports, reservoir data, geologic and geophysical data, maps, models, financial data, economic data, commercial data, contractual data, environmental data and other information and data, whether written, electronic, video or oral (including the existence of the discussions between the Parties) relating to the Properties or the Transaction. Information also includes, without limitation, copies, notes, analyses, compilations, studies, excerpts and other materials prepared by Recipient or its Representatives that contain, reflect or are based upon, in whole or in part, the Information.
- c. "**Person(s)**" will be interpreted broadly to include, without limitation, corporations, entities, trusts, groups, partnerships or individuals.
- d. "**Properties**" means the oil and gas properties owned by XEC, or any of its Affiliates, located in Crawford, Johnson, and Pope Counties, Arkansas, Beaver, Beckham, Blaine, Bryan, Caddo, Carter, Coal, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Harper, Hughes, Kingfisher, Kiowa, Latimer, Le Flore, Logan, Major,

Marshall, Noble, Oklahoma, Payne, Pittsburg, Roger Mills, Stephens, Texas, Washita, Woods, and Woodward Counties, Oklahoma, and Hansford, Hemphill, Lipscomb, Moore, Ochiltree, Roberts, and Wheeler Counties, Texas, (including leases, gathering systems, pipelines, equipment, facilities and other interests relating thereto).

- e. **"Representatives"** means the Affiliates, directors, officers, managers, members, shareholders, partners, owners, employees, lenders, agents, principals, financial advisors, technical and other consultants, attorneys and accountants of the Party.
- f. **"Transaction"** means the potential sale, transfer or other disposition of all or a portion of the Properties to Recipient or an Affiliate of Recipient.

2. Confidentiality Obligation.

A. In connection with Recipient's evaluation of the Properties and a potential Transaction, XEC or its Representatives may disclose to Recipient and its Representatives certain Information. In consideration of any disclosure of Information, Recipient shall, except as otherwise provided in Sections 3, 4 and 5 of this Agreement:

- a. treat the Information as strictly confidential, and shall not sell, trade, publish or otherwise disclose the Information to anyone in any manner whatsoever, including by means of photocopy, photography, scanning, reproduction or electronic media, without XEC's prior written consent;
- b. not use the Information, directly or indirectly, for any purpose other than in connection with evaluating the potential Transaction; and
- c. not disclose the fact that: (i) Information exists or has been made available, (ii) XEC or Recipient is considering a potential Transaction, or (iii) discussions or negotiations are taking or have taken place between XEC and Recipient and Recipient's Affiliates concerning a potential Transaction, or the content of any such discussions or negotiations.

B. Notwithstanding any other provision in this Agreement, the Parties understand and agree that the Recipient or its Representatives who review the Information provided hereunder may now or in the future be working on other projects in the area of the Properties and may retain general mental impressions of such Information. XEC agrees that Recipient shall not be precluded from working on or acquiring interests in any properties or projects in the area of the Properties because of such retained general mental impressions so long as the Information is not used in connection with working on or acquiring any such properties or projects.

C. Notwithstanding Paragraph 2.B., above, Recipient and its Representatives who receive Information agree not to acquire or cause to be acquired, solely to the extent constituting part of the Properties, (i) any top-leases on oil and gas leases, which XEC owns an interest as of the date of this Agreement, and/or (ii) any agreements to lease, options to lease or assignment of leases, covering oil and gas mineral interests which are subject to oil and gas leases or assignments of oil and gas leases in which XEC owns an interest as of the date of this Agreement until, in any case, such lease(s) or agreements have expired by

its own terms if within its primary term or until such lease(s) or agreements are released by XEC if within its secondary term.

For the avoidance of doubt, the intent of this Paragraph 2.C. is to protect XEC from Recipient top-leasing and establishing agreements to lease, options to lease or assignments of leases upon which XEC has a current lease as of the execution date of this agreement and which interests constitute part of the Properties. Recipient shall assign to XEC any such top-leases, agreements to lease, options to lease or assignments of leases Recipient executes in violation of this Paragraph at no cost to XEC, and shall reimburse XEC any attorneys' fees or costs XEC incurs to enforce this Paragraph.

3. **Limitation on Confidentiality.** Recipient has no obligation under this Agreement with regard to the Information that, other than by breach of this Agreement: (i) is or becomes available to the public other than as a result of an unauthorized disclosure by the Recipient or its Representatives, (ii) is in lawful possession of the Recipient prior to disclosure by XEC or XEC's Representatives, (iii) is obtained from a third party who is not known, after a reasonable inquiry, by Recipient to be prohibited from disclosing such information, or (iv) is developed by Recipient independently of the Information received from the XEC.
4. **Authorized Disclosure.** Subject to the restrictions set forth in this Agreement, Recipient may disclose the Information to its Representatives only to the extent necessary to evaluate the potential Transaction. Recipient shall require any Representative who receives the Information under this Agreement to keep the Information strictly confidential and comply with all terms of this Agreement. **Recipient shall be responsible for any and all claims, demands, causes of action, liabilities, losses or damages related to a breach of this Agreement by Recipient or any of its Representatives, including court costs and reasonable attorneys' fees.**
5. **Compelled Disclosure.** If Recipient or any Representative is required by law, order, decree, rule or regulation (including without limitation, those of any court, regulatory agency, securities commission or stock exchange) to disclose any Information or if any Person seeks to legally compel (by interrogatories, document requests, subpoena or otherwise) Recipient or any of its Representatives to disclose any Information, Recipient shall, unless prohibited by law or regulation, promptly provide XEC with written notice of the same so XEC may (a) seek a protective order or other remedy (including, without limitation, participation in any proceeding), or (b) waive compliance with the terms of this Agreement in XEC's sole discretion (but such waiver will be limited to the Information required to be disclosed). Recipient shall be entitled to furnish only such Information as Recipient is advised by its legal counsel that it is legally required to disclose and will use all commercially reasonable efforts to obtain confidential treatment of any and all Information disclosed.
6. **Ownership and Return of Information.** The Information shall at all times remain the property of XEC. Recipient shall acquire no proprietary interest in or right to the Information and XEC may demand the return or the destroying of the Information thereof at any time by giving written notice to Recipient (the "**Return Notice**"). Within thirty (30) calendar days of Recipient's receipt of the Return Notice, Recipient shall;

- a. return and shall cause its Representatives to return all of the original Information provided on behalf of XEC or, at Recipient's option, Recipient shall destroy and shall cause its Representatives to destroy all such original Information with written notification to XEC within fifteen (15) calendar days of such destruction; and
- b. destroy and shall cause its Representatives to destroy all copies, notes, analyses, compilations, studies, excerpts and other materials prepared by the Recipient or its Representatives which contain, reflect or are based on any of the Information (in whatever form including, but not limited to, electronic media except (i) electronic copies of the Information that were automatically created by Recipient's computer back-up system, which electronic copies shall be destroyed in accordance with Recipient's normal back-up procedures, (ii) presentation material based on Information presented by Recipient to its investment committee or similar management body in connection with the evaluation of the Transaction, and (iii) such copies of Information as required by applicable law or government regulation) in its possession and in the possession of persons to whom the Recipient disclosed the Information.

Notwithstanding the foregoing, Recipient agrees on its own behalf and that of its Representatives that all Information shall continue to be subject to the terms of this Agreement.

7. **Express Disclaimer.** Recipient acknowledges and agrees that the Information is being provided solely for the purpose of assisting Recipient in conducting its own independent evaluation of the Properties in connection with a potential Transaction. As a precondition to XEC authorizing Recipient and its Representatives to review the Information, Recipient acknowledges and agrees on behalf of itself and its Representatives, that: (a) XEC and its Representatives expressly disclaim any and all liability and responsibility for and associated with the quality, accuracy, completeness or materiality of the Information, including without limitation: (i) the existence of any and all prospects referenced in the Information, (ii) the geographic, geologic or geophysical characteristics associated with any of the Properties, (iii) the existence, quality, quantity or recoverability of reserves associated with the Properties, (iv) any costs, expenses, accounts payable, revenues, receipts or accounts receivable associated with the Properties, (v) the contractual, economic, financial or tax information and data associated with the Properties, (vi) the continued financial viability or productivity of the Properties, (vii) title to the Properties, and (viii) the environmental or physical condition of the Properties; (b) Recipient shall conduct its own independent evaluation and analysis of the Information and satisfy itself fully as to the quality, accuracy, completeness and materiality of the same; (c) Recipient is fully aware of the inherent risk of error in the acquisition, processing and interpretation of geologic and geophysical data; and (d) Recipient shall rely solely on its own independent evaluation and analysis of the Information when deciding whether or not to submit a bid or offer, enter into a definitive agreement or consummate any Transaction covering one or more of the Properties. Recipient further acknowledges and agrees that only the express

representations and warranties contained in such a definitive written agreement for a Transaction (when and if the same is executed by both Parties) shall be binding on the Parties. Notwithstanding anything to the contrary contained in this Agreement, XEC represents and warrants that it has the right and authority to disclose or make available the Information to Recipient and its Representative as provided in this Agreement without violating the rights of any third party.

8. **Reservation of Rights.** Recipient acknowledges and agrees that XEC has a unilateral right, at its sole discretion and without notice to Recipient, to (a) terminate discussions associated with any potential Transaction, (b) reject any or all offers to purchase one or more of the Properties, or (c) accept any offer to purchase one or more of the Properties whether or not such offer conforms to any procedures that may be established by or on behalf of XEC or includes the greatest consideration.
9. **Definitive Agreement.** Unless and until a definitive written agreement for a Transaction shall have been executed by an authorized representative of each Party having the express authority to bind such Party to a transaction of the size and nature referenced herein, neither Party is or will be under any obligation whatsoever (legal or otherwise) to negotiate or conclude any Transaction or any other transaction whether by virtue of this Agreement or otherwise. Unless included in a definitive written agreement, any communications (written or oral) may not be relied on by either Party as the basis for taking any action, foregoing any opportunity or incurring any costs, and do not and will not create any obligations whatsoever on the part of either Party.
10. **Equitable Relief.** Recipient acknowledges and agrees that XEC may be irreparably injured, such that money damages alone may not be an adequate remedy, and may seek equitable relief (including without limitation, the granting of specific performance and injunctive relief in XEC's favor), if Recipient or any Person to whom Recipient discloses Information breaches or threatens to breach the terms of this Agreement. Recipient agrees that equitable relief is not exclusive of other remedies to which XEC may be entitled at law or in equity. Recipient agrees that it will not oppose the granting of such relief on the basis that the XEC has an adequate remedy at law. Recipient waives the posting of a bond by XEC in connection with the granting of any such relief.
11. **Attorneys' Fees.** If a Party is required to initiate litigation or other proceedings in order to enforce the terms of this Agreement, the Party prevailing in such litigation or proceeding shall be entitled to recover its reasonable attorneys' fees (including court costs) in connection with such litigation or proceedings in an amount determined in such litigation or proceeding.
12. **Governing Law and Waiver of Jury Trial.** This Agreement is governed by and construed in accordance with the laws of the State of Colorado, excluding any choice of law rules that may direct application of laws of another jurisdiction. Each Party agrees that the exclusive venue and forum for any action brought in connection with this Agreement shall be initiated and maintained in any State or Federal court located in Denver County, Colorado and irrevocably waives any right such Party may have to object to such venue and forum. EACH PARTY (ON ITS OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS AFFILIATES) WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION,

PROCEEDING OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) RELATED TO OR ARISING OUT OF THIS AGREEMENT.

13. **No Waiver.** A Party's failure or delay in exercising any rights hereunder shall not operate as a waiver thereof, nor shall a Party's partial exercise preclude any other or further exercise of any such rights. No waiver of any provision of this Agreement shall be effective unless in writing and signed by an authorized representative of the Party against whom the waiver is sought to be enforced.
14. **Assignment.** This Agreement shall inure to the benefit of XEC and its Representatives and their respective successors and assigns, and may be assigned by XEC to any purchaser of all or any portion of the Properties without notice to or consent from Recipient. The Agreement shall be binding upon Recipient and its Representatives and their respective, successors and assigns, provided that Recipient may not assign any of its rights or obligations hereunder to any third party without the prior written consent of XEC. Any attempted assignment by Recipient without such consent (which can be withheld in XEC's sole discretion) shall be null and void.
15. **Severability.** The invalidity of any one or more provisions of this Agreement shall not affect the validity of this Agreement as a whole, and in case of any such invalidity, this Agreement shall be construed as if the invalid provision had not been included herein.
16. **Term.** This Agreement will have a term of two (2) years from the date hereof or until the consummation of the Transaction by the Parties hereto, whichever occurs first. XEC retains the right to terminate this Agreement at anytime for any reason.
17. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which taken together shall constitute one agreement. This Agreement shall be effective when it has been executed and delivered by both Parties. Delivery of a signed copy of this Agreement by email transmission shall be deemed to be delivery of this Agreement for all purposes. Upon execution and delivery of this Agreement by Recipient, Recipient represents to XEC that the Agreement is binding upon Recipient and acknowledges that XEC will only disclose any Information to Recipient and Recipient's Representatives in reliance upon this representation.
18. **Amendment.** No modifications or amendments to this Agreement shall be binding on the Parties unless and until such modifications or amendments are executed in writing by an authorized representative of each Party.
19. **Entire Agreement.** This Agreement supersedes all prior negotiations, understandings and agreements between the Parties relating to the subject matter hereof and constitutes the entire understanding and agreement between the Parties with respect to the same.
20. **Notices.** Any notices to be delivered herein shall be in writing and shall be deemed sufficiently given if delivered by hand, by courier service, sent by registered mail, postage prepaid, or sent by electronic mail (with written confirmation of receipt) to the receiving party at the address listed below:

XEC

1700 Lincoln Street, Suite 3700

Denver, CO 80203

Attention:

Email:

Phone:

RECIPIENT

The Parties have executed this Agreement effective as of the day and year first written above.

Yours truly,

CIMAREX ENERGY CO. ("XEC")

By: _____

Name:

Title:

_____ (**"Recipient"**)

By: _____

Name:

Title: