

## SURFACE USE AND COMPENSATION AGREEMENT

STATE OF NEW MEXICO §  
COUNTY OF EDDY §

KNOW ALL MEN BY THESE PRESENTS:

**Caroline and Charles Russell**, whose mailing address is 5721 E. County Road 98, Midland, Texas 79706, hereinafter referred to collectively as "Grantor", hereby grants to **Cimarex Energy Co.**, whose mailing address is 600 N. Marienfeld Street, Suite 600, Midland, Texas 79701, hereinafter referred to as "Grantee", its successors and assigns, the right to ingress, egress, easement, rights of way and use of the following described tracts of land (the "Land") situated in Eddy County, New Mexico:

Township 19 South, Range 26 East, N.M.P.M.

Section 6: SE/4

Containing 160 acres of land, more or less, in total

In consideration of the terms, conditions and covenants hereinafter recited, the receipt and sufficiency of which are hereby acknowledged, it is agreed and understood that such consideration shall cover any such matters of ingress, egress, easement and rights of way necessary and any damages resultant from or associated with the drilling and completion of wells located on the Land.

### Drill Site Location:

1.) Grantee shall pay Grantor the cash sum of [REDACTED] for each drill site location that Grantor constructs on the Land. This amount shall represent surface damages for the reasonable use of the surface of the Land for the drill site location, including, without limitation, the drill site and any drilling and production equipment located thereon, including, but not limited to, pumping units, production lines, flow lines and tank batteries.

2.) Grantee shall stockpile, adjacent to the drill site location, any topsoil taken during the construction of the drill site. If the well is a producer, Grantee shall redistribute the topsoil over any portion of the drill site location that Grantee will not continue to use for its operations; however, Grantee shall continue to be entitled to use as much of the Land as is reasonable and prudent for the performance of its operations. If the well is a dry hole, Grantee shall remove the caliche pad and redistribute the topsoil over the drill site location and restore the surface of the Land as near as is reasonably possible to its condition prior to drilling operations.

### Freshwater Pit Station:

3.) Grantee shall pay Grantor the cash sum of [REDACTED] Dollars [REDACTED] for each freshwater pit station that Grantee constructs on the Land. This amount shall represent surface damages for constructing, erecting, installing, operating, maintaining, inspecting, using, replacing, repairing, moving on and removing from the Land a freshwater pit station and any equipment needed to operate same, including structures of whatever kind, machinery, engines, pumps, equipment, appliances, facilities, meters, pipes, lines, regulators, fittings, valves and any other structure as may be necessary to operate a freshwater pit station. Grantee shall consult with Grantor as to the location of the freshwater pit station prior to staking and surveying same.

4.) Grantee shall stockpile, adjacent to the location of the freshwater pit station, all soil that has been excavated during the digging of the pit, and shall line the pit with material of sufficient thickness to prevent the escape of water on or into the Land. Upon written request of Grantor, Grantee shall fence-off the entire location, including the pit, areas where caliche has been laid, roads built around the pit, tank batteries and any

Oil Conservation Division

Case No. 4

Exhibit No. 4

703 704 705 698

equipment that has been placed on the location of the pit station. Within six (6) months after Grantee no longer uses the freshwater pit station, Grantee shall remove all structures and equipment associated with same and level the surface of the Land.

**New Road Construction:**

5.) Grantee shall pay Grantor the cash sum of [REDACTED] Dollars [REDACTED] per rod for any new road constructed by Grantee on the Land. Grantee shall consult with Grantor as to the placement and route of any such road before construction is underway; however, Grantor shall be reasonable in its location. Grantee shall have the right to use any existing road located on the Land but must obtain Grantor's permission before utilizing same.

6.) If any fence located on the Land is cut as a result of Grantee constructing a new road, Grantee shall properly brace same before cutting and, upon written request of Grantor, shall install and maintain a cattle guard across the cut section of fence with a pipe gate capable of being locked.

7.) When Grantee no longer uses a road, or portion thereof, to access its wells located on the Land, Grantee shall, upon written request of Grantor, remove the materials utilized to construct the road and restore the surface of the Land as near as reasonably possible to its condition prior to the construction of same.

**Pipelines:**

8.) Grantee shall pay Grantor the cash sum of [REDACTED] Dollars [REDACTED] per rod for any permanent pipeline, eight inches (8") or larger in diameter, that Grantee installs on the Land. In the event all or a portion of any such pipeline is laid across cultivated land, upon written request of Grantor, Grantee shall bury the pipeline below ordinary plow depth or twenty-three inches (23"), whichever is the shallower depth.

**Power Lines:**

9.) Grantee shall pay Grantor the cash sum of [REDACTED] Dollars [REDACTED] per hole for each hole drilled or dug on the Land for the installation of electrical poles used to support power lines.

**Purchased Materials:**

10.) Grantee has the option to purchase caliche, sand and topsoil owned by Grantor for the construction, modification or remediation of drill site locations and access roads located on the Land at a rate of [REDACTED] Dollars [REDACTED] per cubic yard.

11.) Grantee has the option to purchase fresh water produced from Grantor's water well for its drilling and completion operations at a rate of [REDACTED] per barrel, provided that Grantor's water well is capable of producing the quantity and quality of freshwater required by Grantor for its operations. Grantee shall furnish all equipment needed to operate and accurately meter the water well and shall obtain the necessary permits from the governmental agency having jurisdiction over same.

**Equipment Removal and Restoration:**

12.) If any well located on the Land is plugged and abandoned, Grantee shall, within six (6) months thereof, remove any and all equipment used directly or indirectly by Grantee as it pertains to the abandoned well and shall thereafter restore the site as near a reasonably possible to its original condition.

**Indemnification:**

13.) Grantee shall be solely responsible and liable for any harm or injuries caused to persons or property as a result of Grantee's operations, and shall indemnify and hold Grantor and their trustees, officers, employees and agents harmless from and against any and all claims, charges, assessments, damages, expenses, fines or penalties incurred in defense of Grantor as a result of Grantee's operations; provided, however that nothing herein shall be construed to require or obligate Grantee to indemnify Grantor against, or hold Grantor harmless from Grantor's own negligent acts or omissions. Further, Grantee shall indemnify and save Grantor and his trustees, officers, employees and agents harmless from any and all damages, cleanup expenses, fines, or penalties, resulting from a fire or any violation of, or non-compliance with, applicable local, state, or federal laws and regulations resulting from Grantee's operations.

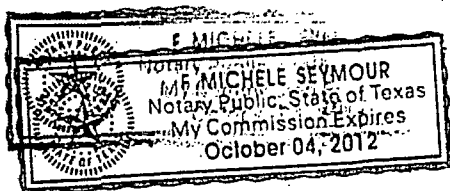
**Grantee's Rights:**

14.) Notwithstanding anything herein contained to the contrary, this Agreement is made without prejudice as to the rights of Grantee pursuant to any existing Oil, Gas and Mineral Lease or other agreement covering the Land and nothing herein shall be construed to lessen or alter Grantee's rights under any such Oil, Gas and Mineral Lease or agreement.

THIS AGREEMENT shall be binding on the party's successors, assigns, agents and representatives. Grantee's agents and/or independent contractors who enter onto the Land shall comply with the terms and conditions set forth herein. The covenants hereunder shall be performable in Eddy County, New Mexico.

IN WITNESS WHEREOF, this Agreement is executed the 20 day of July, 2011.

*Michele Seymour*  
Notary Public



**Grantors:**

**Caroline Russell**

*Caroline Russell*  
By: Caroline Russell  
Carolyn C.R.

**Charles Russell**

*Charles Russell*  
By: Charles Russell

**Grantee:**

**Cimarex Energy Co.**

*Roger Alexander*  
By: Roger Alexander, Attorney-in-Fact

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