## TIMNATH TOWN COUNCIL COMMUNICATION

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**EXECUTIVE SUMMARY:** As owner of certain mineral rights, the Town has had the opportunity to negotiate certain terms with Peterson Energy (“Peterson”), the operator, and Cimmaron Resources (“Cimmaron”) concerning wells to be drilled outside of Town boundaries. These terms are memorialized in three agreements: an Oil and Gas Operator Agreement (“MOU”), a Site Access Agreement, and Oil and Gas Lease (“Lease”). The MOU and Access Agreement were approved by the Council on March 10, 2015. The Lease is attached here to the proposed approval resolution (the “Resolution”).

**STAFF RECOMMENDATION:**
Staff recommends approval of the attached Resolution.

**KEY POINTS/SUPPORTING INFORMATION:**

The Lease provides:
- For a three year primary term, extended by production for so long as oil or gas is produced in paying quantities;
- For the following consideration to the Town, as lessor: $850/net mineral acre (approx. 30 acres = $25,500) plus 20% royalty without deduction of costs incurred to condition the gas and/or oil for market and incurred to deliver it to the first commercial market;
- That the Town will not occupy or use the surface of the leased lands for its oil and gas operations, and drilling and production of oil and gas will be from wellpads on other property;
- That Cimmaron as lessee may pool the leasehold with other lands included in a COPGCC spacing unit, but may not unitize the leasehold with other lands without the prior written consent of the Town;
- That Cimmaron will indemnify and defend the Town against all damage and liability resulting from Cimmaron’s operations; and
- For perimeter fencing and other provisions, consistent with the requirements of the MOU entered into between Peterson and the Town.

**ADVANTAGES:**
The Lease is in lieu of “forced pooling” under § 34-60-116, Colorado Revised Statutes, in which case the terms of any lease agreements between Town, Operator, and Cimmaron would be dictated by statute under less favorable terms than are contained in the Lease.

**DISADVANTAGES:**
Potential environmental impacts in the event of a spill.

**FINANCIAL IMPACT:**
$25,500 in immediate revenue. Potential future royalty revenue.
RECOMMENDED MOTION:
I move approval of Resolution No. 25, Series 2015 entitled A Resolution Approving an Oil and Gas Lease with Cimmaron Resources.

ATTACHMENTS:
1. Resolution
A RESOLUTION APPROVING AN OIL AND GAS LEASE WITH CIMMARON RESOURCES

WHEREAS, the Town Council of the Town of Timnath ("Town") pursuant to C.R.S. § 31-15-103, has the power to pass resolutions; and

WHEREAS, attached hereto as Exhibits A is the Oil and Gas Lease with Cimmaron Resources, Inc. (the "Lease"); and

WHEREAS, the Town Council is familiar with the Lease and finds it to be in the best interest of the Town, its residents, and the general public.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO as follows:

Section 1. Approval

The Lease is hereby approved in substantially the form as attached hereto, subject to technical or otherwise minor modifications, as deemed necessary by the Town Manager in consultation with the Town Mayor, Planner, Engineer, Legal Counsel, and other applicable staff or consultants.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON APRIL 14, 2015.

TOWN OF TIMNATH, COLORADO

____________________________________
Jill Grossman-Belisle, Mayor

ATTEST:

____________________________________
Milissa Peters, Town Clerk
OIL AND GAS LEASE

THIS AGREEMENT, Made and entered into the ______ day of _________________, 2015, by and between, TOWN OF TIMNATH, A Home Rule Municipality of the State of Colorado, as Lessor, whose address is 4800 Goodman Road, Timnath, Colorado 80547, hereinafter called Lessor (whether one or more) and CIMMARON RESOURCES, INC., whose post office address is P.O. Box 103310, Denver, CO 80250, hereinafter called Lessee:

WITNESSETH:

1. That the Lessor, for and in consideration of Ten or more dollars ($10.00+) in hand paid, receipt and sufficiency of which is hereby acknowledged, and of the agreements of Lessee hereinafter set forth, hereby grants, demises, leases and lets exclusively unto Lessee its interest in oil and gas underlying the lands described below for the purpose of investigating, prospecting, exploring (by geophysical and other methods), drilling, mining, operating for producing oil or gas, or both (as defined below), locations situated off the leased lands, said lands being situated in the County of Larimer, State of Colorado, described as follows, to-wit:

   a) Township 6 North, Range 68 West, 6th P.M.,
      Section 1: Tract E (11.286) of the Timnath Ranch Subdivision First Filing Second Amendment,
      recorded at Reception #20130031457
      Containing 11.286000 acres, more or less
      Mineral Interest: 50.00000%
      Net Mineral acres: 5.64300

   b) Township 6 North, Range 68 West, 6th P.M.,
      Section 1: Tract K of the Timnath Ranch Subdivision Third Filing,
      recorded at Reception #20070046249, which is lying in the east half of Section 1
      Containing 25.28400 acres, more or less
      Mineral Interest: 100.00000%
      Net Mineral acres: 25.28400

   c) Township 6 North, Range 68 West, 6th P.M.,
      Section 1: Lot 11, Block 1 of the Timnath Ranch Subdivision Fourth Filing, Final Plat,
      recorded at Reception #20070067927 in Larimer County
      also known as 4800 Goodman Street, Timnath Colorado 80547
      Containing 1.85500 acres, more or less
      Mineral Interest: 100.00000%
      Net Mineral acres: 1.85500

Comprising approximately 32.7820 total net mineral acres underlying the said Section 1; and together with Lessor's mineral interest in oil and gas underlying road and street rights-of-way and easements located in the E/2 and E/2NW/4, Section 1, T6N, R68W, 6th PM in Larimer County, Colorado.

In addition to the land described above, Lessor hereby grants, leases and lets exclusively unto Lessee, to the same extent as if specifically described, its interests in oil and gas underlying the lands which are owned or claimed by Lessor by one of the following reasons: (1) all lands and rights acquired or retained by Lessor by avulsion, accretion, reliction or otherwise as the result of a change in the boundaries or centerline of any river or stream traversing or adjoining the lands described above; (2) all riparian lands and rights which are or may be incident, appurtenant, related or attributed to Lessor in any lake, stream or river traversing or adjoining the lands described above by virtue of Lessor's ownership of the land described above; and (3) all strips or tracts of land adjacent or contiguous to the lands described above owned or acquired by Lessor through adverse possession or other similar statutes of the state in which the lands are located.

For the purpose of calculating non-royalty payments provided for herein, it shall be deemed that the lands covered by this lease contain 59.27 acres more or less, hereinafter called “leased premises,” whether there actually be more or less. In the event that the Parties hereto determine that it is necessary to conduct a resurvey of the lands described herein and the Parties determine that the above stated legal description or the identified total number of acres is non-conforming, whether identifying more or less acreage,
then to the extent the results of such resurvey are accepted by the Parties, this lease shall be deemed to conform to and apply to all of the lands described in the resurvey and any payments accruing under the terms of this lease, including bonus, delay rentals, and shut-in royalties, shall be calculated to conform to the resurvey.

2. Subject to the other provisions herein contained, this lease shall remain in force for a term of three (3) years from this date (herein called "primary term") and as long thereafter as oil and gas, or either of them, is produced in paying quantities from the leased premises or drilling operations are continuously prosecuted. For purposes of this lease, "drilling operations" shall include operations for the drilling of a new well and operations for the reworking, deepening or plugging back of a well or other operations conducted in an effort to establish, resume or re-establish production of oil and gas from the leased premises; drilling operations shall be considered to be "continuously prosecuted" if no more than one hundred twenty (120) days shall elapse between the completion and abandonment of one well and the commencement of drilling operations on another well; the Lessee shall be "engaged in drilling operations" or shall have commenced drilling operations for a new well at such time as Lessee has begun the construction of the wellsite location or the road which provides access to the wellsite location; and Lessee shall be "engaged in drilling operations" or shall have commenced drilling operations with respect to reworking, deepening, plugging back or other operations conducted in an effort to resume or re-establish production of oil and gas at such time as Lessee has the requisite equipment for such operations at the wellsite. This is a PAID-UP LEASE and all cash consideration recited above and annual rentals have been paid to Lessor in advance to keep this lease in full force and effect throughout the primary term. In consideration of the above cash payment, Lessor agrees that Lessee shall not be obligated, except as otherwise provided herein, to commence or continue any operations during the primary term. Lessee may at any time or times during or after the primary term surrender this lease as to all or any portion of said land and as to any strata or stratum by delivering to Lessor or by filing for record a release or releases, and be relieved of all obligation thereafter accruing as to the acreage surrendered.

4. Royalties on oil, gas and other substances produced and saved hereunder shall be paid by Lessee to Lessor as follows: (a) For oil and other liquid hydrocarbons separated at Lessee's separator facilities, the royalty shall be One-Fifth (20.00%) of such production, to be delivered in-kind at Lessor's option to Lessor at the wellhead or to Lessor's credit without deduction at the oil purchaser's transportation facilities (and subject to the provisions of subpart c, d) and e)); (b) for gas (including casinghead gas, natural gas liquids and other valuable substances extracted therefrom) and all other substances covered hereby, the royalty shall be One-Fifth (20.00%) of the actual gross proceeds realized by the Lessee at the place of the first arms length sale of gas by Lessee, less Lessor's proportionate share (calculated as a percentage of mmbtus transported) of reasonable and necessary transportation costs incurred by the Lessee to transport such gas or other substance from the first actual commercial market for such product downstream to the actual point of sale (and subject to the provisions of subpart c, d) and e)); (c) in calculating royalties on production hereunder, Lessee shall bear all costs incurred to condition such oil or gas for the first commercial market for each product sold and incurred to deliver such oil or gas to each such first commercial market, whether such costs are incurred before or after sale of such oil and gas by Lessee, and the Lessor shall be reimbursed in the royalty calculation with its proportionate share of any and all such costs incurred by Lessee or third party purchasers after the point of sale, which are deducted directly or indirectly from the royalty or from the gross proceeds received by the Lessee; d) provided however that, for royalty calculation purposes, the royalty paid to Lessor shall never be less than One-Fifth (20.00%) of the entire actual market value of such product, without deduction, delivered to the first commercial market for such product, in a condition which satisfies the specifications of such market for product quality and pressure; and (e) Lessee may deduct Lessor's proportionate part of any ad valorem, production and excise taxes.

5. If at any time, either before or after the expiration of the primary time, there is a well capable of producing oil or gas on the leased premises, or on other lands with which the leased premises are pooled or unitized, but the well is shut-on, whether before or after production therefrom, and this lease is not being maintained otherwise as provided herein, this lease shall not terminate (unless released by Lessee) and it shall nevertheless be considered that oil or gas is being produced from lands covered by this lease during all times while the well is so shut-in. Lessee shall use reasonable due diligence to market the oil or gas capable of being produced from such shut-in well. When the lease is continued in force in this manner, Lessee shall pay or tender to the Lessor or Lessor's successors or assigns, an amount equal to Five Dollars ($5.00) per year per net mineral acre covered by the lease. Such payments shall be made on or before the shut-in royalty payment date, as defined below, next occurring after the expiration of one hundred twenty (120) days from the date the well was shut-in, unless prior to such date oil or gas from the wells is sold or used or the lease is otherwise maintained as provided herein. In like manner, on or before each succeeding shut-in royalty payment date while such well remains shut-on, Lessee shall make payment of shut-in royalty in the same amount and manner. The term “shut-in royalty payment date” shall mean the anniversary date of this lease. Any shut-in royalty payment may be made in cash, good funds, or check, mailed or tendered on or before the shut-in royalty date. This shut-in royalty clause may not be utilized by the Lessee to maintain the Lease in effect for a period, or cumulative periods taken together, of more than two years during the life of this Oil and Gas Lease.

6. If Lessee drills a well which is incapable of producing in paying quantities (hereinafter called "dry hole") on the leased premises or lands pooled or unitized therewith, or if all production (whether or not in paying quantities) permanently ceases from any cause, including a revision of unit boundaries pursuant to the provisions of Paragraph 8 or the action of any governmental
authority, then in the event this lease is not otherwise being maintained in force it shall nevertheless remain in force if Lessee commences further operations for reworking, deepening or plugging back an existing well or for drilling an additional well or for otherwise obtaining or restoring production on the leased premises or lands pooled or unitized therewith within one hundred twenty (120) days after completion of operations on such dry hole or within one hundred twenty (120) days after such cessation of all production, or, should the lease be within the primary term, if Lessee commences such further operations; provided that should completion of operations on the dry hole or cessation of all production occur during the last year of the primary term no further operations shall be required to maintain this lease for the remainder of the primary term. If during or after the primary term this lease is not otherwise being maintained in force, but Lessee is then engaged in drilling, reworking or any other operations reasonably calculated to obtain or restore production therefrom, this lease shall remain in force so long as any one or more of such operations are prosecuted with no interruption of more than one hundred twenty (120) consecutive days, and if any such operations result in the production of oil or gas or other substances covered hereby, and as long thereafter as there is production in paying quantities from the leased premises or lands pooled or unitized therewith. After completion of a well capable of producing in paying quantities hereunder, Lessee shall drill such additional wells on the leased premises or lands pooled or unitized therewith as a reasonably prudent operator would drill under the same or similar circumstances to (a) fully develop the leased premises as to reservoirs then capable of producing in paying quantities on the leased premises or lands pooled or unitized therewith, or (b) fully protect the leased premises from uncompensated drainage by any well or wells located on other lands not pooled or unitized therewith. Lessee’s duty to further explore the leased premises shall be governed by applicable Colorado law related to implied covenants in oil and gas leases.

7. Lessee may use in its operations located on the applicable remote wellsite(s), free of cost, reasonable oil, gas, water and/or other substances produced from the leased premises for the purpose of conducting operations necessary to produce such oil and gas from the leased premises.

8. If Lessor owns less than the full mineral estate in all or part of the leased premises, royalties shall be paid to Lessor in proportion to the mineral interest actually owned by Lessor. To the extent any royalty payment attributable to the mineral estate covered by this lease is required by law to be paid to someone other than Lessor, that portion of such royalty due to such other person or entity shall be thereafter paid to such other person and payments to the Lessor shall be proportionately reduced.

9. Lessee shall have the right but not the obligation to pool and include in a spacing unit all or any part of the leased premises or interest therein with any other lands or interests, as to any or all depths or zones, and as to any or all substances covered by this lease, either before or after the commencement of drilling or production, whenever Lessee deems it necessary or proper to do so in order to prudently develop or operate the leased premises. The creation of a unit by such pooling shall be based on the following criteria (hereinafter called "pooling criteria"): A unit for an oil well (other than a horizontal completion) shall not exceed 40 acres plus a maximum acreage tolerance of 10%; and for a gas well (other than a horizontal completion) shall not exceed 160 acres plus a maximum acreage tolerance of 10%; and such spacing unit shall be approved by the Colorado Oil and Gas Conservation Commission. For the purpose of the foregoing, the terms "oil well" and "gas well" shall have the meanings prescribed by applicable law or the appropriate governmental authority, or, if no definition is so prescribed, "oil well" means a well with an initial gas-oil ratio of less than 100,000 cubic feet per barrel and "gas well" means a well with an initial gas-oil ratio of 100,000 cubic feet or more per barrel, based on a 24-hour production test conducted under normal producing conditions using standard lease separator facilities or equivalent testing equipment; and the term "horizontal completion" means an oil and/or gas well in which the horizontal component of the gross completion interval in the reservoir exceeds the vertical component thereof. In exercising its pooling rights hereunder, Lessee shall file of record a written declaration describing the unit and stating the effective date of pooling. Production, drilling or reworking operations anywhere on a spacing unit, which includes all or any part of the leased premises, shall be treated as if it were production, drilling or reworking operations on the leased premises, except that the production on which Lessor's royalty is calculated shall be that proportion of the total unit production which the net acreage covered by this lease and included in the spacing unit bears to the total gross acreage in the spacing unit. In the event a unit is formed hereunder before the spacing unit well is drilled and completed, so that the applicable pooling criteria are not yet known, the spacing unit shall be based on the pooling criteria Lessee expects in good faith to apply upon completion of the well; provided that within a reasonable time after completion of the well, the spacing unit shall be revised if necessary to conform to the pooling criteria that actually exist. Pooling in one or more instances shall not exhaust Lessee's pooling rights hereunder, and without exceeding the size limits set out above, Lessee shall have the recurring right but not the obligation to revise any spacing unit formed hereunder by expansion or contraction or both, either before or after commencement of production, in order to conform to the well spacing or density pattern prescribed or permitted by the governmental authority having jurisdiction, or to conform to any productive acreage determination made by such governmental authority. To revise a spacing unit hereunder, Lessee shall file of record a written declaration describing the revised unit and stating the effective date of revision. To the extent any portion of the leased premises is included in or excluded from the spacing unit by virtue of such revision, the proportion of spacing unit production on which royalties are payable hereunder shall thereafter be adjusted accordingly. In the absence of production in paying quantities from a spacing unit, or upon permanent cessation thereof, Lessee may terminate the spacing unit by filing of record a written declaration describing the spacing unit and stating the date of termination. Pooling hereunder shall not constitute a cross-conveyance of interests.
10. Other than as set out in Paragraph 9 above, the Lessee shall not space, pool or unitize the Leased Premises without the prior, express and voluntary written consent of the Lessor; Lessor’s approval is not to be unreasonably withheld.

11. The interest of either Lessor or Lessee hereunder may be assigned, devised or otherwise transferred in whole or in part, by area and/or by depth or zone, and the rights and obligations of the parties hereunder shall extend to their respective heirs, devisees, executors, administrators, successors and assigns, except that the interest of the Lessee hereunder may be transferred only to a person or entity who has the demonstrated financial and operational ability to prudently operate the lease and to fully comply with all obligations of the Lessee hereunder. No change in Lessor's ownership shall have the effect of reducing the rights or enlarging the obligations of Lessee hereunder, and no change in ownership shall be binding on Lessee until Lessee has been furnished copies of the documents establishing such change of ownership. In the event of the death of any person entitled to shut-in royalties hereunder, Lessee may pay or tender such shut-in royalties to the credit of decedent or decedent's estate. If at any time two or more persons are entitled to shut-in royalties hereunder, Lessee may pay or tender such shut-in royalties to such persons or to their credit, either jointly, or separately in proportion to the interest which each owns. If Lessee transfers its interest hereunder in whole or in part to a person or entity who is accepted in writing by the Lessor as capable of satisfying all the obligations of the Lessee under the terms of this Oil and Gas Lease, Lessee shall be relieved of all obligations thereafter arising with respect to the transferred interest, and failure of the transferee to thereafter satisfy such obligations with respect to the transferred interest shall not affect the rights of Lessee with respect to any interest not so transferred. If Lessee transfers a full or undivided interest in all or any portion of the area covered by this lease, the obligation to pay or tender shut-in royalties hereunder shall be divided between Lessee and the transferee in proportion to the net acreage interest in this lease then held by each.

12. This lease shall be subject to all federal, state, county or municipal laws, executive orders, rules and regulations, and Lessee's obligations and covenants hereunder, whether express or implied, shall be suspended at the time or from time to time as compliance with such obligations and covenants is prevented or hindered by or is in conflict with federal, state, county or municipal laws, rules, regulations or executive orders asserted as official by or under public authority claiming jurisdiction, an Act of God, floods, terrorism, wars, strikes, lockouts, or riots, and this lease shall not be terminated in whole or in part, nor Lessee held liable in damages for failure to comply with any such obligations or covenants if compliance therewith is prevented or hindered by, or is in conflict with any of the foregoing eventualities. The time during which Lessee shall be so prevented from conducting drilling or reworking operations during the primary term of this lease, under the contingencies above stated, shall be added to the primary term of the lease.

13. In obtaining this Oil and Gas Lease and in conducting its operations hereunder Lessee has relied on its own review of applicable title data. Neither the Lessor nor its successors and assigns warrant title to the leased premises for any purpose whatsoever. In the event Lessee is made aware of any claim inconsistent with Lessor's title, Lessee may suspend the payment of royalties and shut-in royalties hereunder, (during such suspension, such royalty and shut-in royalty shall bear interest at the rate of 8% per annum compounded annually, to be paid by Lessee) until Lessee has obtained satisfactory evidence of the identity of the actual owner of the disputed property interest. This lease and all its terms, conditions, and stipulations shall extend to and be binding on all successors in interest, in whole or in part, of said Lessor and Lessee.

14. With respect to and for the purpose of this lease, Lessor, and each of them if there be more than one, hereby release and waive the right of homestead.

15. The term oil as used in this lease shall include any liquid hydrocarbon substances which occur naturally in the earth, including drip gasoline or other natural condensate recovered from gas without resort to manufacturing process. The term gas as used in this lease shall include any substance, either combustible or non combustible, which is produced in a natural state from the earth and which maintains a gaseous or rarified state at ordinary temperature and pressure conditions, including but not limited to helium, nitrogen, carbon dioxide, hydrogen sulphide, gas produced from coal seams or any formations in communication therewith (herein called "coal seam gas"), casinghead gas and sulphur, together with natural gas liquids and other valuable substances extracted from such gas stream.

Additional Provisions

17. The lands covered by this lease described in paragraph 1 above constitute lands owned and administered by the Town of Timnath. It is expressly understood and agreed that that absolutely no oil or gas surface operations, wells, production facilities, pipelines, powerlines, roads, facilities or equipment shall be conducted or located on or upon the lands covered by this lease nor within 1,000 feet thereof as defined by Rule 604.a(3) of the Colorado Oil & Gas Conservation Commission. However, as an express exception to this no surface occupancy provision, this Paragraph 17 shall not preclude the Lessee or other parties from obtaining from Lessor by negotiation rights-of-way or easements for pipelines or utilities along and under roads or streets
and related rights-of-way or easements owned or administered by the Lessor in the E/2 and E/2NW/4 of Section 1, T6N, R68W, 6th PM, Larimer County, Colorado.

18. Lessee agrees to indemnify, defend and hold Lessor, together with Lessor’s property, employees, agents, contractors, guests and invitees, harmless from and against any and all expenses, injury, losses, claims or damages resulting from or relating to Lessee’s operations and activities on, related to or in the area of the leased premises, or lands pooled or unitized therewith. However, such indemnification shall not indemnify the Lessor from that portion of such liability and damage, if any, which is determined to result from Lessor’s negligence or willful misconduct.

19. During drilling and completion operations, Lessee agrees that each Well Site on the leased lands or on lands pooled therewith shall be enclosed with a Temporary Perimeter Sound Wall (including sound blanket panels) at least 24 feet in height, and extending the full length of at least two sides of the Well Site (located to obtain maximum sound reduction benefit). After drilling is completed, a six (6) foot chain link security fence shall be installed around the wellheads, production separators, and oil tanks and monitored in a manner that will preclude entry to those units on the Well Site by members of the public.

WITNESS my hand as of the day and year first above written.

LESSOR: TOWN OF TIMNATH, COLORADO

Signature: ____________________________
By: Jill Grossman-Belisle, Mayor

LESSEE: CIMMARON RESOURCES, INC.

Signature: ____________________________
By: ________________________________
Its: __________________________________

LESSOR ACKNOWLEDGEMENT

STATE OF COLORADO    
COUNTY OF LARIMER    

On this __________ day of __________________, 2015, before me personally appeared Jill Grossman-Belisle, to me known to be the Mayor of the Town of Timnath, Colorado and the same person described herein, and who executed the foregoing instrument, and who acknowledged to me that she executed the same as her free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

_______________________________________________
Notary Public, State of Colorado

My commission expires: _____________________
LESSEE ACKNOWLEDGEMENT

STATE OF COLORADO  
COUNTY OF ____________

On this __________ day of ___________________, 2015, before me personally appeared ________________, to me known to be the __________ of the Cimmaron Resources, Inc., and the same person described herein, and who executed the forgoing instrument, and who acknowledged to me that (s)he executed the same as her/his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

_______________________________________________
Notary Public, State of Colorado

My commission expires: _________________________