

## INTERIM WELL SHARING AGREEMENT

This Interim Well Sharing Agreement ("Agreement") is entered into as of the 8<sup>th</sup> day of APRIL, 2014, by Cactus Lane Farms, a general partnership, ("Cactus Lane"); CK5 Investment, LLC, an Arizona limited liability company (CK5); and the City of Goodyear, an Arizona municipal corporation ("Goodyear").

### RECITALS

1. Goodyear owns the real property described as Maricopa County Assessor's Parcel 502-30-008L in the City of Goodyear, Arizona. Cactus Lane is currently leasing a parcel of land described as Maricopa County Assessor's Parcel 502-31-009F and conducting farming operations on this land with the consent of the owner. CK5 owns the real property described as Maricopa County Assessor's Parcel 502-31-012J and is currently conducting business operations on this property. These parcels are depicted on the map attached hereto as Exhibit A and incorporated herein by reference.

2. There is a water production well located on Goodyear's property, described as Arizona Department of Water Resources Well No. 55-614415 ("Well"). Historically, the three land parcels described above have shared water produced from this Well for use in their individual operations for non-potable purposes. The Well is in a state of disrepair and will require improvements to remain operational. Further, the Well has been determined to be producing water with elevated Nitrate concentrations, beyond that acceptable for drinking, bathing or other forms of human consumption. The Well and related infrastructure, including the distribution system, is not part of Goodyear's municipal water system and there currently is no municipal water system in place in the area.

3. Notwithstanding the difficulties associated with the current status of the Well, the parties to this Agreement have met and conferred and have decided that it is mutually beneficial to perform some repairs on the Well and keep it functioning for all three parcels, to be used only for non-potable uses on those parcels, for a limited period of time, allowing the parties time to obtain a replacement water source for their individual needs.

**NOW, THEREFORE**, in consideration of the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### AGREEMENTS:

1. Accuracy of the Recitals. The parties hereby acknowledge the accuracy of the Recitals which are incorporated herein by this reference.

2. Immediate Capital Improvements to Well. Goodyear has consulted with Hydro Controls and Pump Systems, Inc. to obtain a bid for necessary electrical repairs to the

Well, which bid is attached hereto as Exhibit B and incorporated herein by reference. The parties have reviewed this bid and agree that it is reasonable and acceptable for the necessary work and have agreed on a mutual contribution amount for the repairs. The total estimate for the repairs is \$10,711.46. Therefore, upon execution of this Agreement, each party shall, within 5 business days, contribute the following capital contributions for implementation of these repairs: Goodyear 50% (\$5,355.73); Cactus Lane 45% (\$4,820.16); and CK5 5% (\$535.57). Payments shall be made to Goodyear in good and immediately available funds. Upon receipt of all contributions, Goodyear shall forthwith engage Hydro Controls and Pump Systems, Inc. to perform the work as expeditiously as possible and return the Well to service. In the event that there is any cost overrun in the repairs, Goodyear shall immediately notify the other parties and confer on the course of action. Any additional costs agreed upon shall be borne in the same percentages as described above. The parties recognize and agree that failure to agree on an appropriate course of action on cost overrun may result in delay of the Well returning to service, or may prevent such return altogether. In no event shall Goodyear be liable to any party for non-delivery of water if such conditions occur.

3. Term of this Agreement. This Agreement shall remain in effect until May 1, 2015 subject to obligations stated in paragraphs 5 and 6. Thereafter, any party, including Goodyear, may terminate this Agreement upon providing 60 days written notice to the other parties. If the Agreement is terminated by Goodyear, Goodyear may cease operation of the Well after the 60 day notice period without further notice to the parties, or any continuing obligations to provide water to any other party under this Agreement or in any alternative fashion. If this Agreement is terminated by any party other than Goodyear, water delivery to that party shall cease upon the termination date. The remaining parties may meet and confer on whether to continue water deliveries to the non-terminating parties, but no party, including Goodyear, shall be under any obligation to so agree. If they do not so agree, Goodyear may cease operation of the Well after the 60 day notice. If the parties or any of them agree to extend this agreement beyond May 1, 2015, it shall be extended in one-year increments up to a maximum of four additional years, but any such extension after May 1, 2015 shall still be subject to cancellation by Goodyear upon the 60 days written notice as specified above.

4. Operation of the Well. Cactus Lane shall operate the well in the same fashion as Cactus Lane is currently operating the well, with due care and consideration for all users. Goodyear shall monitor the water production from the Well and pay the costs of electricity for operating the well. Each party shall be solely responsible for any distribution lines or other infrastructure leading from the Well to their individual uses, and shall maintain same in good and functional condition so as to prevent waste or interruption of service to any other party. If any repairs are necessary, the party performing such repairs shall give Goodyear such notice as is reasonable (taking into consideration emergencies) and Goodyear shall cooperate in good faith to facilitate repairs on Goodyear's property or within City streets.

5. Cost Sharing for Water Deliveries. The parties acknowledge that there is no water flow meter currently on the Well and that precise determination of each party's use of water is impractical. Therefore, the parties agree that they shall pay the following biannual amounts to Goodyear to represent their relative share of the cost of the water produced: Cactus Lane shall pay \$600.00 to the City and CK5 shall pay \$600.00 to the City upon execution of this



Agreement representing the first six-month cost. The second such payment shall be due on or before November 1, 2014, and the third such payment shall be due on or before May 1, 2015. Such payments shall be made and continue until the termination of this Agreement, but if this Agreement is terminated in accordance with Paragraph 3 above, Goodyear shall pro-rate and refund to the respective parties the advance payment for any month in which water is not delivered. If any party fails to pay, Goodyear may, in addition to any other remedy available, cease delivery of water to that party.

6. Additional Capital Contributions for Well Repairs. If at any time during the term of this Agreement the Well becomes non-operational, is in immediate danger of becoming non-operational, or is in a condition posing a threat to human health and safety, Goodyear may, in its discretion, perform maintenance or service to the Well to repair the malfunction. Costs shall be allocated as follows:

- a. If such repairs are made in good faith, and for a total amount not to exceed \$5,000.00, the parties shall pay the cost in the same percentages expressed above: Goodyear 50%, Cactus Lane 45%, and CK5 5%. Goodyear shall prepare an itemized invoice for the repairs and shall submit it to the other parties for payment. Payment shall be due within 15 business day of the date of the invoice.
- b. If such repairs are estimated to cost in excess of \$5,000 the City will contact all parties and discuss the financial arrangements necessary for repair. The parties recognize and agree that failure to agree on an appropriate course of action if necessary Well repairs exceed \$5,000.00 may result in the Well becoming or remaining non-operational for the duration of this Agreement. In no event shall Goodyear be liable to any party for non-delivery of water if such conditions occur.

7. Non-Potable Quality of Water; Indemnification. The parties are aware that the water produced from the Well is non-potable and unfit for human consumption. The parties have read the warning issued for the high level of Nitrate found to be present in this water, which notice is attached to this Agreement as Exhibit C and incorporated herein by reference. Each party agrees that it shall take adequate precautions on their individual properties to prevent human contact or consumption of this water and Goodyear shall in no way be liable to any party for the quality of the water delivered (including constituents other than Nitrate) or its fitness for any purpose. Further, to the extent that any party allows the consumption or potable use of this water on its property and such results in injury, death or other damage, that party shall indemnify and hold Goodyear harmless from any liability, cost or damage arising from such unintended use.

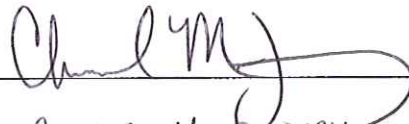
8. Notices. Any notice allowed or required under this Agreement shall be in writing and delivered to the parties as required to the address listed under the party's respective signature block below. Such address may be updated by notice to the other parties. Notice may be given by hand-delivery and shall be deemed given on the date delivered. Notice may also be sent by United States Certified Mail, or reputable overnight carrier such as UPS or Federal Express and shall be deemed given on the date delivery was made or attempted if delivery is refused.

9. Successors in Interest. This Agreement shall be binding on the successors in interest to each party in their individual operations on their respective lands. Any party that transfers such interest in the land to a successor shall notify the other parties to this Agreement of such transfer and shall disclose the nature of this Agreement and its terms to any transferee.

10. Miscellaneous Provisions. This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed and original and all of which, taken together, shall constitute one and the same agreement. This Agreement represents the entire agreement among the parties, and no other representation, statement or understanding shall be of any effect on the subject matter herein. Time is of the essence in the performance of this Agreement. If legal action is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to recover all costs of such litigation, including attorneys' fees and expert witness fees.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year set forth in the introductory paragraph above.

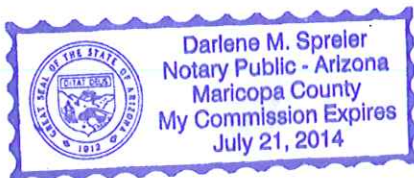
**Cactus Lane Farms, a general partnership,**

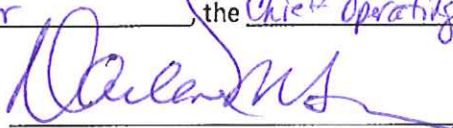
By:   
Name: CHARLES MONTGOMERY  
Its: COO

Address: PO Box 100  
Tolleson, AZ 85353  
Attn. Charlie Montgomery 623-936-7100

STATE OF ARIZONA       )  
                                      )ss.  
COUNTY OF MARICOPA )

On this 8<sup>th</sup> day of April, 2014, personally appeared before me  
Charles E. Montgomery, Jr. the Chief Operating Officer of  
Cactus Lane Farms, a general partnership.



  
Notary Public

CK5 Investment, LLC, an Arizona limited liability company

By: 

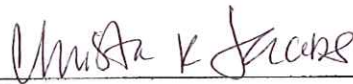
Name: CRAIG A. KENNEDY

Its: MANAGER

Address:  
4354 N. Cotton Lane  
Goodyear, AZ 85395  
Attn: Craig Kennedy 602-618-2324

STATE OF ARIZONA     )  
                                  )ss.  
COUNTY OF MARICOPA )

On this 9 day of April, 2014, personally appeared before me  
Christina K. Jacobs, the Manager of  
CK5 Investment, LLC, an Arizona limited liability company.

  
Notary Public





**City of Goodyear, Arizona**, an Arizona municipal corporation

By: \_\_\_\_\_  
Brian Dalke, City Manager

P.O. Box 5100  
Goodyear, AZ 85338  
Attn: Engineering Department,  
Real Estate Division, 623-882-3110

**ATTEST:** \_\_\_\_\_

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

STATE OF ARIZONA       )  
                                  )ss.  
COUNTY OF MARICOPA   )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Brian Dalke, the City Manager of the CITY OF GOODYEAR, an Arizona municipal corporation, on behalf of the City of Goodyear.

\_\_\_\_\_  
Notary Public

EXHIBIT A

PARCEL MAP DESCRIPTION OF THE PROPERTY

EXHIBIT B

HYDRO CONTROLS AND PUMP SYSTEMS, INC.  
PROPOSAL FOR WELL REPAIR WORK





12/30/13

**Proposal:** City of Goodyear – Duncan Family Farms Well and Booster Upgrades.

To: City of Goodyear, Water Resources Department.  
Attn: Ruben Veloz

**Scope of Work:** Upgrade the Electrical for the Well Pump, Booster Pump and Controls.

**Demo existing controls on the wood panel:** ..... \$ 350.00

- Remove the existing disconnects and controls from the wood back board and dispose of the old equipment.
- Remove any existing wire gutters and conduit leaving the existing controls.

**Design/Build a new Well, Booster Pump and Compressor Control Panel:** ..... \$ 4,640.00

- Supply a NEMA 4 Enclosure with lockable handle.
- Supply fuses and disconnect means for pumps, the compressor and the control power.
- Supply 3 new Warrick Relays, one for the Well On/Off, one for the Storage Tank Low Level and one for the Hydro Tank Compressor Controls.
- Supply Hand/Off/Auto Switches for all three units.
- Supply a Panel Light for the Low Level Warning and Pump Faults.
- Supply a Voltage Monitor to protect pumps from single phase conditions.
- Drawings.

**Replace Hydro Tank Probe Holder and Probes:** ..... \$ 530.00

- Supply and replace the probe holder and probes for the compressor On/Off Control.

**Replace Storage Tank Probe Holder and Probes:** ..... \$ 690.00

- Supply and replace the probe holder and probes for the compressor On/Off Control.

2202 W Lone Cactus Dr. Ste. 11  
Phoenix, Az. 85027



Office: 602-944-0845  
Fax: 602-944-0853



**Conduit and Wire replacement: ..... \$ 3,600.00**

- Supply and install/replace new conduits from the new Control Panel to the Booster Pump, Well Pump, Storage Tank and the Hydro Tank.

**Project Management: ..... \$ 260.00**

**PRICE: \$ 10,070.00**

**Tax: \$ 641.46**

**Exclusions:**

- Permits
- Pumps
- Motors
- SCADA Equipment and Software, PLC Software.
- Instruments

Our estimate/proposal is predicated and based on the current equipment, wire, and conduit pricing. We have the option to raise our pricing (if the above-mentioned products are increased) to the adjusted level after 30 days or during the project, unless we are approved to purchase at those locked levels in the beginning of the project.

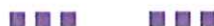
This estimate is good for 30 days. Terms per Arizona Prompt Payment. If you have any questions please call me at 602-944-0845.

Acceptance: \_\_\_\_\_

Date: \_\_\_\_\_

Jim Lugar  
President  
Hydro Controls and Pump Systems, Inc.

2202 W Lone Cactus Dr. Ste. 11  
Phoenix, Az. 85027



Office: 602-944-0845  
Fax: 602-944-0853

EXHIBIT C

WARNING STATEMENT FOR HIGH NITRATE  
LEVELS



## Instructions for Nitrate MCL Exceedance Notice – Template 1-1

### Template on Reverse

Since exceeding the nitrate maximum contaminant level is a Tier 1 violation, you must provide public notice to persons served as soon as practical but no more than 24 hours from learning of the violation [40 CFR 141.202(b)]. During this time period you must also contact your primacy agency. You should also coordinate with your local health department. This template is also applicable to nitrite and total nitrate and nitrite violations. You must use one or more of the following methods to deliver the notice to consumers [40 CFR 141.202(c)]:

- Radio
- Television
- Hand or direct delivery
- Posting in conspicuous locations

You may need to use additional methods (e.g., newspaper, delivery of multiple copies to hospitals, clinics, or apartment buildings), since notice must be provided in a manner reasonably calculated to reach all persons served. If you post or hand deliver, print your notice on your system's letterhead, if available.

The notice on the reverse provides suggested public notice content and format and is appropriate for hand delivery or for publication in a newspaper. However, you may wish to modify it before using it for a radio or TV broadcast. If you do modify the notice on the reverse, you must still include all required PN elements from 40 CFR 141.205(a) and leave the mandatory language unchanged (see below).

### Mandatory Language

Mandatory language on health effects (from Appendix B to Subpart Q) must be included as written (with blanks filled in) and is presented in this notice in italics and with an asterisk on either end.

You must also include standard language to encourage the distribution of the public notice to all persons served, where applicable [40 CFR 141.205(d)]. This language is also presented in this notice in italics and with an asterisk on either end.

### Alternative Sources of Water

If you are selling or providing bottled water, your notice should say where it can be obtained. Remember that bottled water can also be contaminated. If you are providing bottled water, make sure it meets US Food and Drug Administration (FDA) and/or state bottled water safety standards.

### Repeat Notices

If this is a repeat notice (as required by your primacy agency), or if your system's nitrate levels fluctuate around the MCL, you may wish to include an explanation similar to the following:

You were initially notified of high nitrate levels on [give date]. Since that time we have been monitoring the nitrate concentration every three months. Seasonal fluctuations in nitrate concentrations have been observed, due to nitrates contained in fertilizer. It appears that high nitrates occur during the later summer and fall. Note that prior to [give year] we were meeting drinking water standards for nitrate.

### Corrective Action

In your notice, describe corrective actions you are taking. The bullet below describes one action commonly taken by water systems with nitrate/nitrite violations. You can use the following language, if appropriate, or develop your own:

- We are investigating water treatment and other options. These may include drilling a new well, mixing the water with low-nitrate water from another source, or buying water from another water system.

### After Issuing the Notice

Send a copy of each type of notice and a certification that you have met all the public notice requirements to your primacy agency within ten days after you issue the notice [40 CFR 141.31(d)].

You should notify health professionals in the area of the violation. People may call their doctors with questions, and the doctors should have the information they need to respond appropriately. They also need to make sure the water is not provided to infants in their care.

It is also a good idea to issue a "problem corrected" notice when the violation is resolved. See Template 1-6.

## DRINKING WATER WARNING

[System] water has high levels of nitrate -

**DO NOT GIVE THE WATER TO INFANTS UNDER 6 MONTHS OLD  
OR USE IT TO MAKE INFANT FORMULA**

On [give date], we received notice that the sample collected on [give date] showed nitrate levels of [level and units]. This is above the nitrate standard, or maximum contaminant level (MCL), of [state/federal MCL]. Nitrate in drinking water is a serious health concern for infants less than six months old.

Nitrate in drinking water can come from natural, industrial, or agricultural sources (including septic systems and run-off). Levels of nitrate in drinking water can vary throughout the year.

### What should I do? What does this mean?

- **DO NOT GIVE THE WATER TO INFANTS.** *\*Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.\** Blue baby syndrome is indicated by blueness of the skin. Symptoms in infants can develop rapidly, with health deteriorating over a period of days. If symptoms occur, seek medical attention immediately.
- Water, juice, and formula for children under six months of age should not be prepared with tap water. Bottled water or other water low in nitrates should be used for infants until further notice.
- **DO NOT BOIL THE WATER.** Boiling, freezing, filtering, or letting water stand does not reduce the nitrate level. Excessive boiling can make the nitrates more concentrated, because nitrates remain behind when the water evaporates.
- Adults and children older than six months can drink the tap water (nitrate is a concern for infants because they can't process nitrates in the same way adults can). However, if you are pregnant or have specific health concerns, you may wish to consult your doctor.

### What is being done?

[Describe corrective action and when system expects to return to compliance.]

For more information, please contact [name of contact] at [phone number] or [mailing address].

*\*Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.\**

This notice is being sent to you by [system]. State Water System ID#: \_\_\_\_\_.  
Date distributed: \_\_\_\_\_.