

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is made this 13th day of August 2019, among the New Mexico Environment Department, Ground Water Quality Bureau (“NMED”), Abel Villalpando (“Villalpando”), Creekside Dairy, LLC (“Creekside”), Rockhill Dairy, LLC (“Rockhill”), Dexter Dairy, LLC (“Dexter”), Starry Night Dairy, LLC a/k/a El Vista Dairy II (“Starry Night”), Orchard Park Dairy, LLC (“Orchard Park”), J&M Dairy (“J&M”), Greenfield Dairy (“Greenfield”), Epicenter Dairy (“Epicenter”), Cottonwood Dairy (“Cottonwood”), Willard Dairy, LLC (“Willard”), and Valley View Dairy, LLC (“Valley View”). The foregoing are sometimes referred to herein individually as a “Party”, or collectively as “Parties”. Rockhill, Creekside, Dexter, Starry Night, Orchard Park, J&M, Greenfield, Epicenter, Cottonwood, Willard, and Valley View are sometimes referred to individually as “Dairy” and collectively as “Dairies”.

RECITALS

WHEREAS, NMED issued an Administrative Compliance Order (“Creekside ACO”) against Creekside and Villalpando, and Creekside and Villalpando appealed the Creekside ACO in Case No. WQCC 17-07(A) before the New Mexico Water Quality Control Commission (“WQCC”) for certain alleged violations of the New Mexico Water Quality Control Act (“WQCA”) and related regulations and obtained a final order against Creekside and Villalpando which is now the subject of an appeal (“Creekside Appeal”) pending before the Court of Appeals of the State of New Mexico (“Court of Appeals”) in Docket No. A-1-CA-37623; and

WHEREAS, NMED issued an Administrative Compliance Order (“Rockhill ACO”) against Rockhill and Villalpando, and Rockhill and Villalpando appealed the Rockhill ACO in Case No. WQCC 17-08(A) before the WQCC for certain alleged violations of the WQCA and

related regulations and obtained a final order against Rockhill and Villalpando which is now the subject of an appeal ("Rockhill Appeal") pending before the Court of Appeals in Docket No. A-1-CA-37619.

WHEREAS, the WQCC granted a stay of collection of the final orders in Case No. WQCC 17-07(A) and Case No. WQCC 17-08(A) pending the resolution or outcome of the pending appeals before the Court of Appeals in Docket No. A-1-CA-37623 and Docket No. A-1-CA-37619; and

WHEREAS, NMED has alleged that the various Dairies are in non-compliance with the WQCA and related regulations variously for, including but not limited to, failure to submit timely Stage 1 Abatement Plans, failure to submit timely applications for renewals of NMED discharge permits, and failure to submit timely notices of transfer of ownership and notifications of closure (collectively "Alleged Claims"); and

WHEREAS, NMED, Villalpando and the Dairies wish to resolve the Rockhill Appeal, the Creekside Appeal, and all Alleged Claims on a global basis on the terms set forth in this Settlement Agreement; and

WHEREAS, the Parties acknowledge that this Settlement Agreement requires individual Dairies to undertake specified compliance actions by specified deadlines and that the deadlines set forth in this Settlement Agreement have been agreed to after due consideration of the resource limitations of both the contractors for the Dairies and NMED personnel;

NOW, THEREFORE, in consideration of the following terms and conditions, NMED, Villalpando and the Dairies hereby agree as follows:

1. **Parties' Stipulation as to Dairies and NMED Discharge Permits:** For purposes of clarification and in furtherance of the terms of the settlement under this Settlement Agreement, the Parties stipulate and agree that the following NMED discharge permits are applicable with

respect to each of the following Dairies: Creekside, DP-913; Rockhill, DP-952; Dexter, DP-606; Starry Night, DP-738; Orchard Park, DP-689; J&M, DP-765; Greenfield, DP-633; Epicenter, DP-717; Cottonwood, DP-740; Willard, DP-1004; and Valley View, DP-921.

2. **Settlement Amount:** As the total monetary consideration for the settlement of the Creekside Appeal, the Rockhill Appeal and the Alleged Claims, the operators of the Dairies will collectively pay to NMED a total of Three Hundred Thousand and No/100 Dollars (\$300,000.00) ("Settlement Amount") to be paid in twelve (12) quarterly installments of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) each. The first quarterly installment shall be due and payable on the first day of September 2019 with each succeeding quarterly installment due on the first day of the month every three (3) months thereafter until fully paid. The Settlement Amount will be used by NMED to cover costs to monitor and process the compliance activities carried out by the Dairies under this Settlement Agreement. NMED will not seek to assess or impose any monetary or other penalties with respect to Villalpando or the Dairies for any matter that occurred prior to the Effective Date of this Settlement Agreement.

3. **Dismissal of Appeals:** Within ten business (10) days of the Effective Date of this Settlement Agreement, Creekside and Villalpando shall move to dismiss the Creekside Appeal, and Rockhill and Villalpando shall move to dismiss the Rockhill Appeal, on the grounds that all issues in the appeals have been fully and finally settled. NMED and the WQCC shall not oppose the dismissals of the appeals.

4. **Dairy Stage 1 Abatement Plans:** Rockhill, Creekside, Dexter, Starry Night and Orchard Park shall each prepare and submit a Stage 1 Abatement Plan to NMED by the deadlines in this Section 4. Dexter and Starry Night will submit a joint Stage I Abatement Plan based on NMED's request that the two facilities apply for a joint permit, and once combined, both dairies

will share NMED Discharge Permit DP-606. In consideration of the limited resources of the Dairies' contractors to prepare and submit the Stage I Abatement Plans, and NMED personnel to review and administer the Stage 1 Abatement Plans, the following deadlines shall apply:

- a. Rockhill shall file a Stage 1 Abatement Plan no later than 150 days after the Effective Date of this Settlement Agreement.
- b. Creekside shall file a Stage 1 Abatement Plan no later than 180 days after the Effective Date of this Settlement Agreement.
- c. Dexter/Starry Night shall file a Stage 1 Abatement Plan no later than 210 days after the Effective Date of this Settlement Agreement.
- d. Orchard Park shall file a Stage 1 Abatement Plan no later than 240 days after the Effective Date of this Settlement Agreement.

5. **Renewal of Orchard Park Discharge Permit:** Orchard Park will submit an application for renewal of its discharge permit no later than 120 days after the Effective Date of this Settlement Agreement which deadline has been set given consideration of the limits of the resources for the Dairies' contractors and NMED personnel.

6. **Notices of Transfer of Ownership and Applications for Closure and/or Abatement:** Epicenter, Greenfield and J&M shall each prepare and submit a notice of transfer of ownership and provide applications for closure and/or abatement as necessary to NMED by the deadlines in this Section 6. In consideration of the limited resources of the Dairies' contractors to prepare and submit notices of transfer of ownership and applications for closure and/or abatement, and NMED personnel to review the notices of transfer of ownership and applications for closure and/or abatement as necessary, the following deadlines shall apply:

- a. Epicenter shall file a notice of transfer of ownership and submit an application for closure no later than 175 days after the Effective Date of this Settlement Agreement.
- b. Greenfield shall file a notice of transfer of ownership and submit an application for closure no later than 195 days after the Effective Date of this Settlement Agreement.
- c. J&M shall file a notice of transfer of ownership and submit an application for closure no later than 255 days after the Effective Date of this Settlement Agreement. J&M shall also file a Final Site Investigation Report, as required by 20.6.2.4106 NMAC.

In addition, Cottonwood shall submit a notice of transfer of ownership and a letter from the New Mexico Department of Agriculture certifying that milk was never produced on the Cottonwood property to NMED no later than 165 days after the Effective Date of this Settlement Agreement. Receipt by NMED of the notice of transfer of ownership and the letter from the New Mexico Department of Agriculture certifying that milk was never produced on the Cottonwood property shall fully resolve all outstanding compliance issues under the WQCA and related rules with respect to Cottonwood and Cottonwood shall be fully released. Nothing in this Settlement Agreement shall be interpreted to require the foregoing Dairies to obtain any documentation or other materials from prior operators with respect to the transfer of ownership or notification of closure as agreed herein. To the extent any of the foregoing Dairies is required under the applicable regulations to submit a Stage I Abatement Plan, the Dairy will do so not later than 150 days of such determination by NMED. In the event that Stage I Abatement Plans are necessary for more than one of the foregoing Dairies, the deadlines for such plans will be no less than 30 days apart.

7. **No Admission of Liability:** The Parties agree that nothing in this Settlement Agreement shall be deemed or construed as an admission of fault or liability for any purpose. The Parties further agree that this Settlement Agreement shall not be offered or admitted into evidence in any proceeding, except as necessary to enforce the terms of this Settlement Agreement. This Settlement Agreement is an accord and satisfaction of a disputed and unliquidated claim.

8. **Stipulated Penalties for Non-Compliance:** In the event a Dairy fails to timely comply with any applicable reporting requirement or permitting condition required under this Settlement Agreement, the Dairy shall be subject to a stipulated penalty in the amount of Two Hundred Forty and No/100 Dollars (\$240.00) per day until the reporting requirement or permitting condition has been satisfied. As a condition to any Dairy's obligation to pay any stipulated penalty, the Dairy must receive written notice of non-compliance with its respective reporting requirements or permitting conditions from NMED and no penalties shall accrue unless and until such written notice has been provided to the Dairy. A compliance schedule to address any non-compliance with reporting requirements or permitting conditions shall be negotiated between NMED and the Dairy taking into account the limitations of the Dairy's consultants and NMED personnel. The compliance schedule and any obligation to pay a stipulated penalty shall be subject to a Force Majeure Event.

9. **Force Majeure Event:** A Force Majeure Event means an event that has been or likely will be caused by circumstances beyond the control of any Dairy, or its respective contractors, that delays or prevents performance of any provision of this Settlement Agreement despite the Dairy's reasonable efforts to fulfill the performance obligation. The Parties agree that depending on the circumstances related to an event, the following kinds of events, by way of example and not by limitation, are among those that qualify as a Force Majeure Event:

construction, labor or equipment delays; equipment failures; acts of God; acts of war, civil insurrection, or terrorism; restraint by court or government agency; refusal of consent by a property owner for needed access to property belonging to a third-party; failure of a governmental agency to issue a necessary permit or approval, but only if the Dairy has submitted a complete and timely application as required for the permit or approval. Unanticipated or increased costs or expense associated with performance of a Dairy's obligations under this Settlement Agreement shall not constitute a Force Majeure Event. Nothing in this Settlement Agreement shall be construed as requiring a Dairy to resolve any labor strike or labor slowdown as a condition to invoking or claiming a Force Majeure Event. Any Dairy asserting a Force Majeure Event shall provide written notice to NMED as soon as practicable but in no event more than ten (10) business days following the date the Dairy knew of the Force Majeure Event, and failure to timely claim a Force Majeure Event shall be deemed a waiver of such event. Such written notice shall provide a description of the Force Majeure Event, the cause of delay or prevention of performance, the measures taken or to be taken to prevent or minimize the delay or prevention of performance and a proposed schedule by which the Dairy proposes to implement those measures. NMED shall have ten (10) business days to provide written objection to any claim of a Force Majeure Event and failure to timely object shall be deemed acceptance of the Force Majeure Event. If the Dairy and NMED cannot agree on a Force Majeure Event or the proposed schedule to resolve the Force Majeure Event, the Dairy and NMED shall have ten (10) business days to try to reach agreement on a resolution of the claim of Force Majeure Event. In the event the Dairy and NMED cannot reach agreement on the claim of a Force Majeure Event, either Party may seek enforcement of this Settlement Agreement as provided in Section 10, and the Dairy shall have the burden of establishing the existence of a Force Majeure Event.

10. **Enforcement and Governing Law:** After the Effective Date, NMED's sole recourse with respect to claims that are subject to the Creekside Appeal, the Rockhill Appeal and the Alleged Claims shall be through the enforcement of this Settlement Agreement. This Settlement Agreement shall be enforceable exclusively in the First Judicial District Court, Santa Fe County, New Mexico ("Court"). Any Party may file an action in the Court to enforce this Settlement Agreement in accordance with its terms and may seek such remedies, including but not limited to injunctive relief, as allowed by law. The Parties agree that the Court shall have jurisdiction over this Settlement Agreement and the Parties and hereby waive any right to challenge the Court's jurisdiction.

11. **Independent Responsibility and Liability of Each Dairy:** Each Dairy will be independently responsible and liable for that individual Dairy's compliance with the terms of this Settlement Agreement. NMED will deem each Dairy released upon successful completion of each Dairy's individual compliance requirements under this Settlement Agreement. A violation or breach of this Settlement Agreement by one Dairy will not be deemed to be a violation or beach by any other Dairy and this Settlement Agreement shall be enforceable only against the individual Dairy or Party in default under this Settlement Agreement.

12. **NMED Reservation of Rights:** Nothing in this Settlement Agreement shall be construed to extend to any matters other than the Creekside Appeal, the Rockhill Appeal and the Alleged Claims as of the Effective Date of this Settlement Agreement. NMED reserves all enforcement and other rights with respect to all other matters not covered by this Settlement Agreement and which may occur after the Effective Date.

13. **Sale or Transfer of Dairy:** In the case of the sale or transfer of any Dairy or portion thereof, the seller or transferor Dairy shall provide a copy of this Settlement Agreement to

the purchaser or transferee who shall agree in writing to be bound by the terms of this Settlement Agreement with a copy of such written agreement to be provided to NMED within ten (10) business days of closing on the sale or transfer. Notwithstanding any sale or transfer of any Dairy or portion thereof, the seller or transferor Dairy shall remain bound by the terms of this Settlement Agreement in the event any purchaser or transferee fails to comply with the terms of this Settlement Agreement.

14. **Notices:** Any notice required to be given under this Settlement Agreement shall be provided by hand-delivery, overnight delivery through a delivery service or by certified mail, return receipt requested through the U.S. Postal Service, at the addresses that appear for each Party in the signature blocks below. Notice shall be effective upon receipt. Any Party may change the address for notice by providing an alternate address in writing.

15. **Copy of Settlement Agreement to Dairy Contractors:** A copy of this Settlement Agreement shall be provided to all contractors engaged by any Dairy to perform the work under this Settlement Agreement.

16. **Authority and Parties Bound:** Each Party represents and warrants that it is authorized to enter into this Settlement Agreement and to be bound by its terms. This Settlement Agreement shall be binding upon and shall inure to the benefit of each Party's successors, heirs and assigns.

17. **Amendments:** This Settlement Agreement may be amended only in writing by the mutual agreement of all Parties. However, nothing in this Settlement Agreement shall preclude or prevent NMED and any Dairy from entering into such other agreements as they deem appropriate.

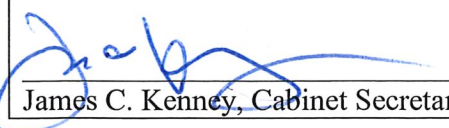
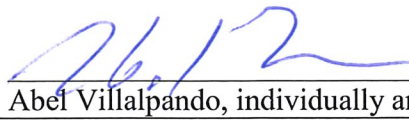
18. **No Third-Party Beneficiaries:** This Settlement Agreement is enforceable by and for the sole benefit of the Parties and nothing herein shall be construed as conferring any rights to any third-parties.


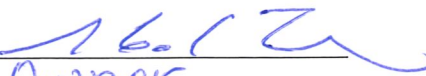
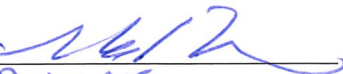
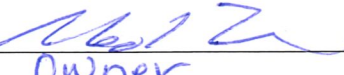
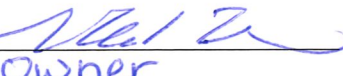
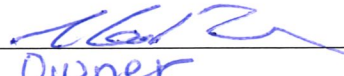

19. **Computation of Time:** If any deadline under this Settlement Agreement fall on a weekend or a State of New Mexico holiday, the deadline shall be extended to the next day which is not a weekend or State of New Mexico holiday.

20. **Condition Precedent and Effective Date:** This Settlement Agreement is expressly conditioned upon approval by the WQCC and its agreement to be bound by the terms of this Settlement Agreement by signing the acknowledgment below. This Settlement Agreement shall become effective on the date approved and signed ("Effective Date") by the WQCC.

21. **Termination and Release:** This Settlement Agreement shall terminate with respect to Creekside, Rockhill and Villapando, and Creekside, Rockhill and Villalpando shall be fully released, upon final completion of all required compliance actions under this Settlement Agreement with respect to Creekside and Rockhill and the payment in full of the Settlement Amount. The Settlement Agreement shall terminate with respect to any Dairy, other than Creekside and Rockhill, upon final completion of all required compliance actions under this Settlement Agreement applicable with respect to each individual Dairy each such Dairy shall be fully released. The releases under this Settlement Agreement include but are not limited to any and all claims arising under statute as well as under common law.

22. **Entire Agreement:** This Settlement Agreement contains all agreements among the Parties and supersedes all prior agreements and understandings whether verbal or written.

 James C. Kenney, Cabinet Secretary	 Abel Villalpando, individually and
---------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------

<p><i>New Mexico Environment Department</i> Harold Runnels Building 1190 St. Francis Dr. Suite N4050 Santa Fe, New Mexico 87505</p>	<p>on behalf of the properties commonly known as Cottonwood Dairy, Epicenter Dairy, J&M Dairy and Greenfield Dairy 304 Ojibwa Rd. Dexter, New Mexico 88230</p>
<p>Creekside Dairy, LLC</p> <p>By: <u></u> Its: <u>Owner</u> 304 Ojibwa Rd. Dexter, New Mexico 88230</p>	<p>Rockhill Dairy, LLC</p> <p>By: <u></u> Its: <u>Owner</u> 304 Ojibwa Rd. Dexter, New Mexico 88230</p>
<p>Dexter Dairy, LLC</p> <p>By: <u></u> Its: <u>Owner</u> 304 Ojibwa Rd. Dexter, New Mexico 88230</p>	<p>Starry Night Dairy, LLC</p> <p>By: <u></u> Its: <u>Owner</u> 304 Ojibwa Rd. Dexter, New Mexico 88230</p>
<p>Orchard Park Dairy, LLC</p> <p>By: <u></u> Its: <u>Owner</u> 304 Ojibwa Rd. Dexter, New Mexico 88230</p>	<p>Willard Dairy, LLC</p> <p>By: <u></u> Its: <u>Owner</u> 304 Ojibwa Rd. Dexter, New Mexico 88230</p>
<p>Valley View Dairy, LLC</p> <p>By: <u></u> Its: <u>Owner</u> 304 Ojibwa Rd. Dexter, New Mexico 88230</p>	

APPROVAL AND ACCEPTANCE BY WQCC

The undersigned, as the authorized agent of the New Mexico Water Quality Control Commission ("WQCC"), hereby confirms the approval of the foregoing Settlement Agreement by the WQCC and by signing below further confirms that the WQCC agrees to be bound by the terms of this Settlement Agreement.



Jennifer J. Pruett, Chair
New Mexico Water Quality Control Commission