SETTLEMENT AGREEMENT & RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims (the “AGREEMENT”) is entered into by and among Plaintiff MARCO RIVERA, an individual dba RIVERA RECYCLING CENTER, (“RIVERA”), and Defendant CITY OF BELL, (“CITY”), (RIVERA and CITY are collectively referred to herein as the “PARTIES”, and individually as a “PARTY”), to terminate fully and finally all disputes arising out of, or related to, the LAWSUIT (defined hereinafter).

RECITALS

WHEREAS, on July 1, 2011, CITY administratively issued Special Use Permit 2011-01 (“SUP 2011-01”) to RIVERA to operate a small recycling facility at 6805 Salt Lake Avenue, Bell, CA; and

WHEREAS, in addition to SUP 2011-01 issued to RIVERA, CITY issued four (4) other permits for recycling facilities in 2011;

WHEREAS, prior to these approvals, there were no recycling facilities in the City of Bell; and

WHEREAS, in light of this sudden proliferation of recycling facilities, the City Council for CITY adopted a moratorium on December 11, 2011 on the issuance of further permits pending a study to examine the adequacy of then-current development standards and to determine whether there was a need to establish new regulations for recycling facilities; and

WHEREAS, at the conclusion of the moratorium period, the City Council for CITY adopted Ordinance 1199 on January 8, 2014; and

WHEREAS, Ordinance 1199, which became effective on February 7, 2014, established new development standards including a requirement that recycling collection facilities must be located at least one hundred feet away from any residentially zoned property or residential use; and

WHEREAS, Ordinance 1199 also provided that “Existing special use permits for recycling collection facilities will be deemed expired one year from the effective date of the ordinance codified in this chapter. For an existing recycling facility to continue operating, the owner(s) of existing recycling facilities must do both of the following: (i) Apply for a conditional use permit within 90 days of the effective date of these regulations; and (ii) Receive approval of a conditional use permit from the Planning Commission within one year of the effective date of these regulations and comply with the provisions of the conditional use permit”; and

WHEREAS, RIVERA timely submitted an application for a conditional use permit in accordance with Ordinance 1199, but requested an extension on the time for the Planning Commission to act pending the submittal of a variance application; and

WHEREAS, RIVERA’s conditional use permit application remains pending before the CITY’s Planning Commission as RIVERA has yet to submit an application for variance; and

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WHEREAS, on or about June 26, 2015, RIVERA commenced a lawsuit entitled *Marco Rivera, an individual dba Rivera Recycling Center v. City of Bell, et al.*, in the Los Angeles Superior Court of the State of California, Case No. BC586398 (the “LAWSUIT”) seeking a declaratory judgment that Ordinance 1199 is not enforceable as to RIVERA; and

WHEREAS, the PARTIES agree to resolve, fully and finally, all remaining disputes concerning the LAWSUIT including an acknowledgement and agreement by the PARTIES that Ordinance 1199 is a valid and enforceable ordinance.

**AGREEMENT**

NOW, THEREFORE, for full and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and based upon the foregoing recitals and the terms, conditions, covenants, and agreements contained herein, all PARTIES hereto agree as follows:

1. **Recitals are Part of AGREEMENT.** The preceding Recitals are part of this AGREEMENT.

2. **Effective Date.** This AGREEMENT shall become effective after approval by the City Council at a public meeting and thereafter as of the first day it has been executed by or on behalf of all the Parties hereto (“EFFECTIVE DATE”).

3. **Validity and Enforcement of Ordinance 1199.** Both PARTIES agree and acknowledge that Ordinance 1199 is a valid and enforceable ordinance as adopted by the CITY.

4. **Right to Future Exercise of Police Powers.** Nothing herein would prevent the CITY from a future exercise of its police powers pertaining to these properties, either for code enforcement to deal with violations of code or nuisances or otherwise, or to adopt an abatement program amending or superseding Ordinance 1199 or taking any other action within its police powers, but RIVERA retains the right to challenge such action on all appropriate legal grounds or causes of action.

5. **Operation of Rivera Recycling Center.** The PARTIES agree that RIVERA may continue to operate the Rivera Recycling Center at 6805 Salt Lake Avenue, Bell, CA subject to the following conditions:

   a. RIVERA shall comply with the terms and conditions of SUP 2011-01, this AGREEMENT, the Bell Municipal Code, as applicable and as may be amended, and any other applicable law, as applicable and as may be amended, at all times. Should any Bell Municipal Code be amended in the future which applies to Rivera Recycling Center at 6805 Salt Lake Avenue, Bell, CA, RIVERA retains the right to challenge that enactment in any administrative and/or legal proceeding, as applicable.

   b. Rivera Recycling Center at 6805 Salt Lake Avenue, Bell, CA shall be deemed a legal, non-conforming use inconsistent with Ordinance 1199.

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c. Within three (3) months of the EFFECTIVE DATE, Rivera shall install, and thereafter maintain, appropriate landscaping at the site to mitigate any noise, odor and view impacts. The type, size, and location of the screening shall be subject to the review and approval of CITY. No permanent irrigation shall be required to be installed by this requirement.

d. CITY may take appropriate action to compel RIVERA to cease operation if RIVERA is determined to have violated SUP 2011-01, this AGREEMENT, the Bell Municipal Code, as applicable and as may be amended, and any other applicable law, as applicable and as may be amended, or if the subject property is deemed a nuisance following a legal proceeding, if applicable.

6. Withdrawal of Conditional Use Permit Application. RIVERA agrees to withdraw his pending application for conditional use permit for operation of Rivera Recycling Center. The PARTIES agree that the execution of this AGREEMENT shall constitute the formal withdrawal of the application.

7. Waiver of Future Claims Regarding Ordinance 1199. RIVERA agrees to waive and release any and all current and future claims against CITY involving Ordinance 1199, including the adoption, implementation, and enforcement by CITY thereof.

8. Dismissal of Action. RIVERA shall cause the LAWSUIT to be dismissed in its entirety against CITY, with prejudice, with all PARTIES to bear their own respective costs and attorneys’ fees, within ten (10) calendar days of the EFFECTIVE DATE.

9. Mutual Release. For valuable consideration, the receipt and adequacy of which are hereby acknowledged, CITY and RIVERA do hereby release and forever discharge each other and their respective “Releasees” hereunder, consisting of their respective board members, officers, agents, owners, trustors, settlors, trustees, members, employees, attorneys, co-owners, spouses, and/or any other person(s) acting on their behalf of and from any and all manner of action or actions, cause or causes of action, in law or in equity, suits, debts, liens, contracts, agreements, promises, liability, claims, demands, damages, losses, cost or expenses, of any nature whatsoever, known or unknown, fixed or contingent (hereinafter called “Claims”), which the PARTIES now have or may hereafter may have against each other and/or the Releasees, or any of them, by reason of any matter, cause, or thing whatsoever from the beginning of time to the date hereof including, without limiting the generality of the foregoing, the LAWSUIT as well as any matters, causes, or things whatsoever that were, or have been, could in any way have been, alleged in the LAWSUIT.

10. Release of Unknown Claims. The PARTIES intend and agree that the Release set forth above in Paragraph 9 of this AGREEMENT is to be interpreted as broadly as possible, and is a release of ALL claims, demands, causes of action, obligations, damages, and liabilities of any nature whatsoever that are described in the Release and is intended to encompass all known and unknown, foreseen and unforeseen claims which the PARTIES may have as a result of the LAWSUIT, except for any claims which may arise from the terms of this AGREEMENT.

11. Waiver of Civil Code Section 1542. Further, the PARTIES expressly agree to waive and relinquish all rights and benefits they may respectively have against each other and

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the Released PARTIES under Paragraph 9 of this AGREEMENT based on Section 1542 of the Civil Code of the State of California. That section reads as follows:

"§1542. [General release; extent] A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

RIVERA’s initials:  MR

CITY’s initials: _______

12. Discovery of Different or Additional Facts. The PARTIES acknowledge that they may hereafter discover facts different from or in addition to those that they now know or believe to be true with respect to the claims, demands, causes of action, obligations, damages, and liabilities of any nature whatsoever that are the subject of this AGREEMENT, and expressly agree to assume the risk of the possible discovery of additional or different facts, injuries, damages and/or claims and the PARTIES agree that this AGREEMENT shall be and remain effective in all respects regardless of such additional or different facts, injuries, damages and/or claims.

13. Non-Admission of Liability. The PARTIES acknowledge and agree that this AGREEMENT is a settlement of disputed claims. Neither the fact that the PARTIES have settled nor the terms of this AGREEMENT shall be construed in any manner as an admission of any liability by any PARTY hereto, or any of its employees, or an affiliated person(s) or entity/ies, including the CITY’s attorneys, all of whom have consistently taken the position that they have no liability whatsoever to the other PARTIES.

14. No Assignment Of Claims. The PARTIES each warrant that they have made no assignment, and will make no assignment, of any claim, chose in action, right of action or any right of any kind whatsoever, embodied in any of the claims and allegations referred to herein, and that no other person or entity of any kind had or has any interest in any of the demands, obligations, actions, causes of action, debts, liabilities, rights, contracts, damages, attorneys’ fees, costs, expenses, losses or claims referred to herein.

15. Successors And Assigns. This AGREEMENT, and all the terms and provisions hereof, shall be binding upon and shall inure to the benefit of the PARTIES and their respective heirs, legal representatives, successors, officers, owners, members and assigns.

16. Knowing And Voluntary. This AGREEMENT is an important legal document and in all respects has been voluntarily and knowingly executed by the PARTIES hereto. The PARTIES specifically represent that prior to signing this AGREEMENT they have been provided a reasonable period of time within which to consider whether to accept this AGREEMENT. The PARTIES further represent that they have each carefully read and fully understand all of the provisions of this AGREEMENT, and that they are voluntarily, knowingly, and without coercion entering into this AGREEMENT based upon their own judgment.

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17. **Assistance Of Counsel.** The PARTIES each specifically represent that they have consulted to their satisfaction with and received independent advice from their respective counsel prior to executing this AGREEMENT concerning the terms and conditions of this AGREEMENT.

18. **Translation.** To the extent that RIVERA requires this AGREEMENT to be translated to Spanish for his understanding and comprehension, RIVERA agrees and acknowledges that this AGREEMENT has been fully translated to him and explained to him by his legal counsel prior to his execution below. RIVERA further waives any claim or defense that he failed to understand the terms and conditions of this AGREEMENT.

   [Initials of Marco Rivera] [Initials of Aldo Flores]

19. **Counterparts.** This AGREEMENT may be executed in multiple counterparts, each of which shall be considered an original but all of which shall constitute one agreement.

20. **Singular And Plural.** Whenever required by the context, as used in this AGREEMENT the singular shall include the plural, and the masculine gender shall include the feminine and the neuter.

21. **Enforcement of AGREEMENT.** The PARTIES agree that the Court shall retain jurisdiction and that the AGREEMENT may be enforced pursuant to California Code of Civil Procedure section 664.6. Pursuant to Evidence Code section 1123, et seq., the PARTIES agree that the AGREEMENT is admissible in evidence to enforce the AGREEMENT. Should any legal action be required to enforce the terms of this AGREEMENT, the prevailing PARTY in such action shall be entitled to reasonable attorneys’ fees and costs pertaining to such action, in addition to any other relief to which that PARTY may be entitled.

22. **Severability.** Should any portion, word, clause, phrase, sentence or paragraph of this AGREEMENT be declared void or unenforceable, such portion shall be considered independent and severable from the remainder, the validity of which shall remain unaffected.

23. **Headings.** Headings at the beginning of each numbered section of this AGREEMENT are solely for the convenience of the PARTIES and are not a substantive part of this AGREEMENT.

24. **Ambiguity.** The PARTIES acknowledge that this AGREEMENT was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against any of the PARTIES, but otherwise shall be interpreted according to the application of the rules on interpretation of contracts.

25. **Waiver.** Failure to insist on compliance with any term, covenant or condition contained in this AGREEMENT shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power contained in this AGREEMENT at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.
26. **Governing Law.** This AGREEMENT is made and entered into in the State of California, and shall in all respects be interpreted, enforced and governed under the laws of said State without giving effect to conflicts of laws principles.

27. **Entire Agreement.** This AGREEMENT constitutes the entire agreement between the PARTIES who have executed it and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied between the PARTIES to this AGREEMENT for the subject matter herein. The PARTIES to this AGREEMENT each acknowledge that no representations, inducements, promises, agreements, or warranties, oral or otherwise, have been made by them, or anyone acting on their behalf, which are not embodied in this AGREEMENT, that they have not executed this AGREEMENT in reliance on any such representation, inducement, promise, agreement or warranty, and that no representation, inducement, promise, agreement or warranty not contained in this AGREEMENT, including, but not limited to, any purported supplements, modifications, waivers, or terminations of this AGREEMENT shall be valid or binding, unless executed in writing by all of the PARTIES to this AGREEMENT.

28. **Modifications.** Any alteration, change, or modification of or to this AGREEMENT shall be made by written instrument executed by each PARTY hereto in order to become effective.

29. **No Third Party Beneficiaries.** No person or entity shall be deemed to be a third party beneficiary hereof, and nothing in this AGREEMENT (either express or implied) is intended to confer upon any person or entity that is not a party to this AGREEMENT any rights, remedies, obligations or liabilities under or by reason of this AGREEMENT.

30. **Authority To Sign.** The person executing this AGREEMENT on behalf of each PARTY hereto warrants that (i) such PARTY is duly organized and existing, (ii) they are duly authorized to execute and deliver this AGREEMENT on behalf of said PARTY and to bind that PARTY, including its members, agents and assigns, (iii) by so executing this AGREEMENT, such PARTY is formally bound to the provisions of this AGREEMENT, and (iv) the entering into this AGREEMENT does not violate any provision of any other agreement to which said PARTY is bound.

[SIGNATURE PAGE FOLLOWS]
IN WITNESS WHEREOF, the undersigned have read, understand and agree to all of the
above terms and conditions of this AGREEMENT, consisting of a total of 8 pages, by executing
it on the dates set forth below.

Dated: 02-28, 2017 MARCO RIVERA dba RIVERA RECYCLING
CENTER

By: Marco Rivera
Marco Rivera, an individual dba Rivera
Recycling Center

Dated: March 2, 2017 CITY OF BELL

By: Alicia Romero, Mayor

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APPROVED AS TO FORM

For MARCO RIVERA dba RIVERA RECYCLING CENTER:

Dated: 2/21/2017

FLORES LAW, APLC

By: [Signature]
    Aldo A. Flores, Esq.

For CITY OF BELL:

Dated: 3/1/2017

ALESHIRE & WYNDER, LLP

By: [Signature]
    Dave Aleshire, City Attorney

[END OF SIGNATURE]

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