

**THIS PRINT COVERS CALENDAR ITEM NO. : 10.5**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Sustainable Streets

**BRIEF DESCRIPTION:**

Approving a non-exclusive license with Recycle for Change, a California nonprofit corporation, to authorize placement of textile-recycling donation receptacles at designated parking garages and parking lots administered by the SFMTA, at no cost to the City.



**SUMMARY:**

- In support of the City’s Climate Action Strategy and Zero Waste goals, the San Francisco Department of the Environment has endorsed and provided grants to Recycle for Change, a nonprofit organization, to work with the City to reduce the approximately 85% of textiles discarded in the City that wind up in landfills.
- Recycle for Change (RFC) collects donated textiles and packages and sells them in order to support the training of volunteers to support medical care, education and sustainable development efforts in underdeveloped countries around the world, and RFC has found that parking facilities are good locations for its collection bins.
- The SFMTA manages 38 public parking garages and parking lots.
- The proposed license agreement would authorize Recycle for Change to place textile donation receptacles in designated locations within the footprint of designated City-owned parking garages and parking lots.
- Recycle for Change would be responsible for maintaining the receptacles, which could be removed at any time by either party.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Agreement with Recycle for Change

**APPROVALS:**

	<b>DATE</b>
DIRECTOR  _____	<u>2/27/2018</u>
SECRETARY  _____	<u>2/27/2018</u>

**ASSIGNED SFMTAB CALENDAR DATE:** March 6, 2018

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## **PURPOSE**

Requesting SFMTA Board of Directors' approval for the Director of Transportation to execute a license agreement with Recycle for Change to authorize placement of textile-recycling donation receptacles at designated parking garages and parking lots administered by the SFMTA.

## **STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES**

The goal of the proposed non-exclusive license agreement is to reduce the amount of textiles being discarded in the City's wastestream, which supports the following goals and objectives in the SFMTA's Strategic Plan:

Goal 3: Improve the quality of life and environment in San Francisco.

Objective 3.1: Reduce the Agency's and the transportation system's resource consumption, emissions, waste, and noise

Objective 3.4: deliver services efficiently.

None of the Transit First Policy Principles are relevant to this item.

## **DESCRIPTION**

The City and County of San Francisco supports full consideration of ways in which City government policies, procedures and operations can support long-term sustainability and combat the effects of climate change. The San Francisco Department of the Environment (SFE) is a lead agency in the City for analyzing relevant policy alternatives and among its efforts, the SFE has produced the Climate Action Strategy and the Zero Waste goals. To achieve outcomes that align with these policies, SFE staff work with the staff of departments as these departments develop their own plans for how their policies and programs can support citywide goals.

The SFMTA works with SFE to analyze ways that SFMTA policies and programs can support the Climate Action Strategy and Zero Waste goals. One relevant policy SFE supports is the redirecting of textiles out of the landfill wastestream. SFE reports that in San Francisco, about 85 percent of discarded textiles currently end up in the wastestream. As a more sustainable alternative, SFE in 2014 initiated its Textile Recycling Initiative, which supports efforts to redirect discarded textiles to non-profit entities that make money from donated textiles and use the proceeds to support medical care, education and sustainable development efforts in underdeveloped countries around the world.

Among the non-profits selected by SFE to partner with the City on textile-recycling efforts is Recycle for Change (RFC). RFC already has collection bins at the Recreation and Park Department and at the Public Utilities Commission's Community Center, as well as at City College, the Ella Hill Hutch Community Center, the City's Housing Department, and various other commercial and multi-family

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sites in the City. RFC collection boxes in San Francisco have greatly reduced the amount of textile waste going to Bay Area landfill. Last year alone, 880,000 pounds of textiles were diverted by RFC boxes strategically placed for collection throughout San Francisco.

RFC, with the support of SFE, recently approached the SFMTA about allowing the placement of textile-donation bins in several City-owned parking facilities. RFC has found that parking facilities are an efficient and desirable location in which to host donation bins. The SFMTA manages 38 public parking garages and parking lots (parking facilities). Many of these parking facilities are highly visible and easily accessed by the public.

Implementing textile recycling at selected SFMTA parking facilities would support the Zero Waste goals by reducing greenhouse gas emissions and waste. Textiles decaying in the landfill add to greenhouse gases entering the atmosphere and in San Francisco, distance and transportation are often barriers to recycling. Allowing RFC to place recycling receptacles on SFMTA properties will support the City's ability to achieve its zero waste goals and reduce trip distances taken by San Francisco residents to drop off their textile donations.

SFMTA Parking staff worked with RFC to assess the desirability and feasibility of placing textile-donation bins at various parking facilities. Following this assessment, staff reached agreement with RFC on three parking facilities for initial placement of the collection bins and developed a non-exclusive license agreement to govern the placement and maintenance of these bins. The three locations are the California/Steiner parking lot, 2450 California Street; Mission Bartlett Garage, 3255 21<sup>st</sup> Street; and Noe Valley parking lot, 4061 24<sup>th</sup> Street.

Should both parties agree to expand the program in the future, an amendment to the license will be developed to cover the additional facilities.

### **STAKEHOLDER ENGAGEMENT**

SFMTA staff conferred with staff from SFE, which is responsible for supporting agencies' efforts to support the City's Zero Waste goals. SFE staff recommended that SFMTA consider partnering with RFC.

No outreach to the public was conducted related to the proposed agreement with RFC.

### **ALTERNATIVES CONSIDERED**

The alternative to entering into the licensing agreement would be not to allow textile recycling boxes at SFMTA parking facilities, which would mean a missed opportunity for SFMTA to support the City's Zero Waste goals.

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**FUNDING IMPACT**

Recycle for Change will be providing its services at no cost to the City; accordingly there is no impact to the budget.

**ENVIRONMENTAL REVIEW**

On February 7, 2018, the SFMTA, under authority delegated by the Planning Department, determined that the proposed agreement is not defined as a “project” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

No other approvals are required. The City Attorney’s Office has reviewed this report.

**RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors approve the non-exclusive license with Recycle for Change, a California nonprofit corporation, to authorize placement of textile recycling donation receptacles at designated parking garages and parking lots administered by the SFMTA at no cost to the City.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, The City and County of San Francisco (City) and the San Francisco Municipal Transportation Agency (SFMTA) support the adoption of government policies and programs that support long-term sustainability and combat the effects of climate change; and,

WHEREAS, to help guide the development of sustainable local policies, the San Francisco Department of the Environment (SFE) has produced the Climate Action Strategy and Zero Waste goals; and,

WHEREAS, SFE in 2014 initiated a Textile Recycling Initiative to support efforts to reduce the approximately 85 percent of discarded textiles that currently go into the landfill wastestream; and,

WHEREAS, Recycle for Change (RFC) is a non-profit organization selected by SFE to partner with City agencies on efforts to reduce the amount of textiles going into the wastestream; and,

WHEREAS, RFC has found that parking facilities are a convenient and efficient location in which to place its textile-recycling bins; and,

WHEREAS, SFMTA manages 38 public parking garages and lots owned by the City or the Parking Authority of the City and County of San Francisco, and SFMTA and RFC staff assessed these facilities and selected three locations for initial installation of RFC textile-donation bins; and

WHEREAS, RFC will provide its donation bins at no cost, and the ongoing placement of the bins will be governed by a non-exclusive license agreement that governs RFC's responsibilities for making collections from bins and maintaining the bins and the immediately surrounding areas; and,

WHEREAS, Implementing textile recycling at SFMTA-managed garages and lots will support the City's sustainability and climate-action goals; and,

WHEREAS, On February 7, 2018, the SFMTA, under authority delegated by the Planning Department, determined that the proposed agreement is not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors, and is incorporated herein by reference; now, therefore, be it

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RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors approves a non-exclusive license with Recycle for Change, a California non-profit corporation, to authorize placement of textile-recycling donation receptacles at designated parking garages and parking lots administered by the SFMTA, including California/Steiner parking lot, 2450 California Street; Mission Bartlett Garage, 3255 21<sup>st</sup> Street; and Noe Valley parking lot, 4061 24<sup>th</sup> Street, at no cost to the City.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of March 6, 2018.

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

REVOCABLE PERMIT TO ENTER AND USE PROPERTY

by and between

THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY, A DEPARTMENT  
OF THE CITY AND COUNTY OF SAN FRANCISCO

and

RECYCLE FOR CHANGE,  
Permittee

to enter and use properties located at  
3255 21<sup>st</sup> Street; 2450 California Street; and 4061 24<sup>th</sup> Street,  
San Francisco, California

March 15, 2018

**CITY AND COUNTY OF SAN FRANCISCO  
REVOCABLE PERMIT  
TO ENTER AND USE PROPERTY  
(Designated SFMTA Parking Garages and Lots)**

THIS REVOCABLE PERMIT TO ENTER AND USE PROPERTY (this "Permit"), dated for reference purposes only as of March 15, 2018, is made by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA") and RECYCLE FOR CHANGE, a California non-profit corporation ("Permittee").

City and Permittee agree as follows:

**1. LICENSE**

City confers to Permittee a revocable, personal, unassignable, non-exclusive and non-possessory privilege to enter upon and use that certain real property owned by City located at designated parking garages and parking lots administered by the SFMTA in the City and County of San Francisco, more particularly described in Exhibit A attached hereto (the "Permit Areas"), for the limited purpose and subject to the terms, conditions and restrictions set forth below. This Permit gives Permittee a license only, revocable at any time at the will of City, and notwithstanding anything to the contrary herein, this Permit does not constitute a grant by City of any ownership, leasehold, easement or other property interest or estate whatsoever in the Permit Areas, or any portion thereof. The privilege given to Permittee under this Permit is effective only insofar as the rights of City in the Permit Areas are concerned, and Permittee shall obtain any further permission necessary because of any other existing rights affecting the Permit Areas.

**2. USE OF PERMIT AREAS**

**2.1 Scope of Permitted Use**

Permittee may enter and use the Permit Areas for the sole purpose of placing, maintaining and servicing one textile recycling box measuring 3' wide x 4' deep x 6'8" tall at each designated locations in the Permit Areas, and for no other purpose whatsoever.

**2.2 Exercise of Due Care**

Permittee shall use, and shall cause its Agents (as defined in Section 15 below) to use, due care at all times to avoid any damage or harm to City's property. Permittee shall do everything reasonably within its power, both independently and upon request by City, to prevent and suppress fires on and adjacent to the Permit Areas attributable to Permittee's use hereunder.

**2.3 Cooperation with City Personnel**

Permittee and its Agents shall work closely with City personnel to avoid disruption (even if temporary) of City property in, under, on or about the Permit Areas and City uses of the Permit Areas.

**2.4 Work Schedule**

Permittee must begin any permitted installation work, if at all, within 30 days after the commencement of the term of this Permit. At least three days prior to the commencement of any work on the Permit Areas Permittee shall notify the SFMTA's David Dunham, Principal Analyst (telephone number: (415) 701-4604; email: david.dunham@sfmta.com) of the date such work shall commence and the intended schedule. Permittee shall complete all work within 30 days after the date specified above for commencement of the work.



## **2.5 Restoration of Permit Areas**

Immediately following completion of any work permitted hereunder, Permittee shall remove all debris and any excess dirt and restore the Permit Areas to its condition immediately prior to Permittee's use hereunder, to the satisfaction of City.

## **2.6 Responsibility for Maintenance of Facilities**

Permittee shall be solely responsible for maintaining all facilities or equipment placed in or on the Permit Areas pursuant hereto in good and safe condition, and City shall have no duty whatsoever for any maintenance of the Permit Areas or any such facilities therein. Permittee shall empty and service each textile recycling box placed by permittee at least once per week and more frequently if required. Permittee shall also be responsible for removing any other household waste that is left at the recycling boxes. Permittee shall respond to maintenance or repair issues, including incidents of graffiti, within 48 hours of being notified of the issue or incident. SFMTA shall provide such notification by contacting the person specified in Section 30.

## **2.7 Revocability**

Permittee acknowledges and agrees that the installation of the facilities permitted hereunder shall not in any way whatsoever limit City's right to revoke this Permit pursuant to the terms hereof or any of City's other rights hereunder.

## **3. RESTRICTIONS ON USE**

Permittee agrees that, by way of example only and without limitation, the following uses of the Permit Areas by Permittee or any other person claiming by or through Permittee are inconsistent with the limited purpose of this Permit and are strictly prohibited as provided below:

### **3.1 Improvements**

Except as otherwise expressly provided in this Permit, Permittee shall not construct or place any temporary or permanent structures or improvements on the Permit Areas, nor shall Permittee alter any existing structures or improvements on the Permit Areas.

### **3.2 Permits and Approvals**

Before beginning any work to install textile recycling boxes, Permittee shall obtain all permits, licenses and approvals (collectively, "approvals") of any regulatory agencies required to commence and complete such work. Promptly upon receipt of such approvals, Permittee shall deliver copies of them to City. Permittee recognizes and agrees that no approval by City under this Permit for purposes of this work shall be deemed to constitute the approval of any federal, state or local regulatory authority with jurisdiction required for the work, and nothing herein shall limit Permittee's obligation to obtain all such regulatory approvals, at Permittee's sole cost.

### **3.3 Dumping**

Permittee shall not dump or dispose of refuse or other unsightly materials on, in, under or about the Permit Areas.

### **3.4 Hazardous Material**

Permittee shall not cause, nor shall Permittee allow any of its Agents or Invitees (as defined in Section 15 below) to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated or disposed of in, on or about the Permit Areas, or transported to or from the Permit Areas. Permittee shall immediately notify City when Permittee learns of, or has

reason to believe that, a release of Hazardous Material has occurred in, on or about any of the Permit Areas. Permittee shall further comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination. In the event that Permittee or its Agents or Invitees cause a release of Hazardous Material, Permittee shall, without cost to City and in accordance with all laws and regulations, return the Permit Areas to the condition immediately prior to the release. In connection therewith, Permittee shall afford City a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material. For purposes hereof, "Hazardous Material" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Permit Areas or are naturally occurring substances in the Permit Areas, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Permit Areas.

### **3.5 Nuisances**

Permittee shall not conduct any activities on or about the Permit Areas that constitute waste, nuisance or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises or lights) to City, to the owners or occupants of neighboring property or to the public.

### **3.6 Damage**

Permittee shall not do anything about the Permit Areas that will cause damage to any of City's property.

## **4. TERM OF PERMIT; REVOCABILITY**

The privilege given to Permittee pursuant to this Permit is temporary only and shall commence on March 15, 2018, and shall expire on 5:00 p.m. on February 28, 2019, unless sooner terminated pursuant to the terms hereof. Without limiting any of its rights hereunder, City may at its sole option freely revoke this Permit at any time prior to such expiration date, without cause and without any obligation to pay any consideration to Permittee.

## **5. INSURANCE**

(a) Permittee shall procure and keep in effect at all times during the term of this Permit, at Permittee's expense, insurance as follows:

(i) General Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Independent Permittees, Explosion, Collapse and Underground (XCU), Broad Form Property Damage, Products Liability and Completed Operations;

**(ii)** Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired automobiles, as applicable; and

**(iii)** Workers' Compensation Insurance with Employer's Liability Coverage with limits of not less than One Million Dollars (\$1,000,000) each accident.

**(b)** All liability policies required hereunder shall provide for the following: **(i)** name as additional insureds the City and County of San Francisco, its officers, agents and employees; and **(ii)** specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Permit and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. [Sudden and accidental pollution coverage in the liability policies required hereunder shall be limited to losses resulting from Permittee's activities (and Permittee's Agents and Invitees) under this Permit (excluding non-negligent aggravation of existing conditions with respect to Hazardous Materials).]

**(c)** All insurance policies required to be maintained by Permittee hereunder shall be endorsed to provide for thirty (30) days' prior written notice of cancellation for any reason, non-renewal or reduction in coverage to both Permittee and City. Notice to City shall be mailed to the address(es) for City set forth in Section 35 below.

**(d)** Prior to the commencement date of this Permit, Permittee shall deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverages required hereunder, together with complete copies of the policies at City's request. In the event Permittee shall fail to procure such insurance, or to deliver such policies or certificates, City may procure, at its option, the same for the account of Permittee, and the cost thereof shall be paid to City within five (5) days after delivery to Permittee of bills therefor.

**(e)** Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

**(f)** Should any of the required insurance be provided under a claims made form, Permittee shall maintain such coverage continuously throughout the term of this Permit and, without lapse, for a period of three (3) years beyond the Permit expiration, to the effect that, should any occurrences during the Permit term give rise to claims made after expiration of the Permit, such claims shall be covered by such claims-made policies.

**(g)** Upon City's request, Permittee and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Permittee for risks comparable to those associated with the Permit Areas, then City in its sole discretion may require Permittee to increase the amounts or coverage carried by Permittee hereunder to conform to such general commercial practice.

**(h)** Permittee's compliance with the provisions of this Section shall in no way relieve or decrease Permittee's indemnification obligations under this Permit or any of Permittee's other

obligations hereunder. Notwithstanding anything to the contrary in this Permit, this Permit shall terminate immediately, without notice to Permittee, upon the lapse of any required insurance coverage. Permittee shall be responsible, at its expense, for separately insuring Permittee's personal property.

## **6. COMPLIANCE WITH LAWS**

Permittee shall, at its expense, conduct and cause to be conducted all activities on the Permit Areas allowed hereunder in a safe and prudent manner and in compliance with all laws, regulations, codes, ordinances and orders of any governmental or other regulatory entity (including, without limitation, the Americans with Disabilities Act and any other disability access laws), whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties. Permittee shall, at its sole expense, procure and maintain in force at all times during its use of the Permit Areas any and all business and other licenses or approvals necessary to conduct the activities allowed hereunder. Permittee understands and agrees that City is entering into this Permit in its capacity as a property owner with a proprietary interest in the Permit Areas and not as a regulatory agency with police powers. Nothing herein shall limit in any way Permittee's obligation to obtain any required regulatory approvals from City departments, boards or commissions or other governmental regulatory authorities or limit in any way City's exercise of its police powers.

## **7. COVENANT TO MAINTAIN PERMIT AREAS**

In connection with its use hereunder, Permittee shall at all times, at its sole cost, maintain the Permit Areas in a good, clean, safe, secure, sanitary and sightly condition, so far as the Permit Areas may be affected by Permittee's activities hereunder.

## **8. SURRENDER**

Upon the expiration of this Permit or within 10 days after any sooner revocation or other termination of this Permit, Permittee shall surrender the Permit Areas in the same condition as received, and broom clean, free from hazards, and clear of all debris. At such time, Permittee shall remove all of its property from the Permit Areas and any signs permitted hereunder, and shall repair, at its cost, any damage to the Permit Areas caused by such removal. Permittee's obligations under this Section shall survive any termination of this Permit.

## **9. WAIVER OF CLAIMS**

(a) Neither City nor any of its Agents or their employees shall be liable for any damage to the property of Permittee, its Agents, or their employees, or for any bodily injury or death to such persons, resulting or arising from the condition of the Permit Areas or its use by Permittee.

(b) Permittee acknowledges that this Permit is freely revocable by City and in view of such fact, Permittee expressly assumes the risk of making any expenditures in connection with this Permit, even if such expenditures are substantial. Without limiting any indemnification obligations of Permittee or other waivers contained in this Permit and as a material part of the consideration for this Permit, Permittee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its Agents, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that City exercises its right to revoke or terminate this Permit.

(c) Permittee acknowledges that it will not be a displaced person at the time this Permit is terminated or revoked or expires by its own terms, and Permittee fully RELEASES,

WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its Agents, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws.

(d) In connection with the foregoing releases, Permittee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

Permittee acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Permittee realizes and acknowledges that it has agreed upon this Permit in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Permit.

#### **10. REPAIR OF DAMAGE**

If any portion of the Permit Areas or any property of City located on or about the Permit Areas is damaged by any of the activities conducted by Permittee hereunder, Permittee shall immediately, at its sole cost, repair any and all such damage and restore the Permit Area or property to its previous condition.

#### **11. SIGNS**

Permittee shall not place, erect or maintain any sign, advertisement, banner or similar object on or about the Permit Areas, except for signage on the textile recycling boxes related to the use and purpose of said boxes, and any temporary sign that is necessary for Permittee's use, without first obtaining SFMTA's written consent, which SFMTA may give or withhold in its sole discretion.

#### **12. UTILITIES**

City has no responsibility or liability of any kind with respect to any utilities that may be on, in or under the Permit Areas. Permittee has the sole responsibility to locate such utilities and protect them from damage. Permittee shall arrange and pay for any necessary temporary relocation of City and public utility company facilities, subject to the prior written approval by City and any such utility companies of any such relocation. Permittee shall be solely responsible for arranging and paying directly for any utilities or services necessary for its activities hereunder.

#### **13. CITY'S RIGHT TO CURE DEFAULTS BY PERMITTEE**

If Permittee fails to perform any of its obligations under this Permit, to restore the Permit Areas or repair damage, or if Permittee defaults in the performance of any of its other obligations under this Permit, then City may, at its sole option, remedy such failure for Permittee's account and at Permittee's expense by providing Permittee with three days' prior written or oral notice of City's intention to cure such default (except that no such prior notice shall be required in the event of an emergency as determined by City). Such action by City shall not be construed as a waiver of any rights or remedies of City under this Permit, and nothing herein shall imply any duty of City to do any act that Permittee is obligated to perform. Permittee shall pay to City upon demand, all costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such default. Permittee's obligations under

this Section shall survive the termination of this Permit.

#### **14. NO COSTS TO CITY**

Permittee shall bear all costs or expenses of any kind or nature in connection with its use of the Permit Areas, and shall keep the Permit Areas free and clear of any liens or claims of lien arising out of or in any way connected with its use of the Permit Areas.

#### **15. INDEMNITY**

Permittee shall indemnify, defend and hold harmless City, its commissions, departments, boards, officers, agents, employees, contractors or subcontractors (collectively, "Agents"), and each of them, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind (collectively, "Losses"), arising in any manner out of (a) any injury to or death of any person or damage to or destruction of any property occurring in, on or about the Permit Areas, or any part thereof, whether the person or property of Permittee, its Agents, its invitees, guests or business visitors (collectively, "Invitees"), or third persons, relating in any manner to any use or activity under this Permit, (b) any failure by Permittee to faithfully observe or perform any of the terms, covenants or conditions of this Permit, (c) the use of the Permit Areas or any activities conducted thereon by Permittee, its Agents or Invitees, or (d) any release or discharge, or threatened release or discharge, of any Hazardous Material caused or allowed by Permittee, its Agents or Invitees, on, in, under or about the Permit Areas, any improvements permitted thereon, or into the environment; except solely to the extent of Losses resulting directly from the [gross negligence or] willful misconduct of City or City's authorized representatives. The foregoing indemnity shall include, without limitation, reasonable attorneys' and consultants' fees, investigation and remediation costs and all other reasonable costs and expenses incurred by the indemnified parties, including, without limitation, damages for decrease in the value of the Permit Areas and claims for damages or decreases in the value of adjoining property. Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Permittee by City and continues at all times thereafter. Permittee's obligations under this Section shall survive the expiration or other termination of this Permit.

#### **16. "AS IS" CONDITION OF PERMIT AREAS; DISABILITY ACCESS; DISCLAIMER OF REPRESENTATIONS**

Permittee accepts the Permit Areas in their "AS IS" condition, without representation or warranty of any kind by City, its officers, agents or employees, including, without limitation, the suitability, safety, or duration of availability of the Permit Areas or any facilities on the Permit Areas for Permittee's use. Without limiting the foregoing, this Permit is made subject to all applicable laws, rules and ordinances governing the use of the Permit Areas, and to any and all covenants, conditions, restrictions, easements, encumbrances, claims of title and other title matters affecting the Permit Areas, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey. It is Permittee's sole obligation to conduct an independent investigation of the Permit Areas and all matters relating to its use of the Permit Areas hereunder, including, without limitation, the suitability of the Permit Areas for such uses. Permittee, at its own expense, shall obtain such permission or other approvals from any third parties with existing rights as may be necessary for Permittee to make use of the Permit Areas in the manner contemplated hereby.

Under California Civil Code Section 1938, to the extent applicable to this Permit, Permittee is hereby advised that the Permit Areas have not undergone inspection by a Certified Access Specialist ("CASp") to determine whether it meets all applicable construction-related accessibility requirements. A CASp can inspect the Permit Areas and determine if it complies with all the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Permit Areas, City may not prohibit Permittee from obtaining a CASp inspection of the Permit Areas for the occupancy or potential occupancy of Permittee if requested by Permittee. City and Permittee shall mutually agree on the arrangements for the time and manner of such CASp inspection, the payment of the CASp inspection fee, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Permit Areas

## **17. NO ASSIGNMENT**

This Permit is personal to Permittee and shall not be assigned, conveyed or otherwise transferred by Permittee under any circumstances. Any attempt to assign, convey or otherwise transfer this Permit shall be null and void and cause the immediate termination and revocation of this Permit.

## **18. CESSATION OF USE**

Permittee will not terminate its activities on the Permit Areas pursuant hereto without prior written notice to City.

## **19. NO JOINT VENTURES OR PARTNERSHIP; NO AUTHORIZATION**

This Permit does not create a partnership or joint venture between City and Permittee as to any activity conducted by Permittee on, in or relating to the Permit Areas. Permittee is not a State actor with respect to any activity conducted by Permittee on, in, or under the Permit Areas. The giving of this Permit by City does not constitute authorization or approval by City of any activity conducted by Permittee on, in or relating to the Permit Areas.

## **20. MACBRIDE PRINCIPLES - NORTHERN IRELAND**

The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Permit. By signing this Permit, Permittee confirms that Permittee has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

## **21. NON-DISCRIMINATION**

### **21.1 Covenant Not to Discriminate**

In the performance of this Permit, Permittee agrees not to discriminate against any employee of, any City employee working with Permittee, or applicant for employment with Permittee, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

### **21.2 Subcontracts**

Permittee shall include in all subcontracts relating to the Permit Areas a non-discrimination clause applicable to such subcontractor in substantially the form of Subsection 25.1 above. In

addition, Permittee shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Permittee's failure to comply with the obligations in this Subsection shall constitute a material breach of this Permit.

### **21.3 Non-Discrimination in Benefits**

Permittee does not as of the date of this Permit and will not during the term of this Permit, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

### **21.4 Condition to Permit**

As a condition to this Permit, Permittee shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco San Francisco Contract Monitoring Division (the "CMD"). Permittee hereby represents that prior to execution of this Permit, (i) Permittee executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and (ii) the CMD approved such form.

### **21.5 Incorporation of Administrative Code Provisions by Reference**

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the use of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Permittee shall comply fully with and be bound by all of the provisions that apply to this Permit under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Permittee understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Permit may be assessed against Permittee and/or deducted from any payments due Permittee.

## **22. TROPICAL HARDWOODS AND VIRGIN REDWOOD BAN**

The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code. Permittee agrees that, except as permitted by the application of Sections 802(b) and 803(b), Permittee shall not use or incorporate any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product in the performance of this Permit.

## **23. NOTIFICATION OF LIMITATIONS ON CONTRIBUTIONS**

Through its execution of this Permit, Permittee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that



individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Permittee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Permittee further acknowledges that the prohibition on contributions applies to each Permittee; each member of Permittee's board of directors, and Permittee's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Permittee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Permittee. Additionally, Permittee acknowledges that Permittee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Permittee further agrees to provide to City the names of each person, entity or committee described above.

#### **24. POSSESSORY INTEREST TAXES**

Permittee recognizes and understands that this Permit may create a possessory interest subject to property taxation and that Permittee may be subject to the payment of property taxes levied on such interest under applicable law. Permittee agrees to pay taxes of any kind, including possessory interest taxes, if any, that may be lawfully assessed on Permittee's interest under this Permit or use of the Permit Areas pursuant hereto and to pay any other taxes, excises, licenses, permit charges or assessments based on Permittee's usage of the Permit Areas that may be imposed upon Permittee by applicable law. Permittee shall pay all of such charges when they become due and payable and before delinquency.

#### **25. PESTICIDE PROHIBITION**

Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "IPM Ordinance") describes an integrated pest management ("IPM") policy to be implemented by all City departments. Permittee shall not use or apply or allow the use or application of any pesticides on the Permit Areas or contract with any party to provide pest abatement or control services to the Permit Areas without first receiving City's written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Permittee may need to apply to the Permit Areas during the term of this Permit, (ii) describes the steps Permittee will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Permittee's primary IPM contact person with the City. Permittee shall comply, and shall require all of Permittee's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Permittee were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Permittee to keep certain records and to report to City all pesticide use at the Permit Areas by Permittee's staff or contractors.

If Permittee or Permittee's contractor will apply pesticides to outdoor areas at the Permit Areas, Permittee must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation ("CDPR") and any such pesticide application shall be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City's current Reduced Risk Pesticide List and additional details about pest management

on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

## **26. PROHIBITION OF TOBACCO SALES AND ADVERTISING**

Permittee acknowledges and agrees that no sale or advertising of cigarettes or tobacco products is allowed on the Permit Areas. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (a) communicate the health hazards of cigarettes and tobacco products, or (b) encourage people not to smoke or to stop smoking.

## **27. PROHIBITION OF ALCOHOLIC BEVERAGE ADVERTISING**

Permittee acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Permit Areas. For purposes of this Section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product.

## **28. FOOD SERVICE AND PACKAGING WASTE REDUCTION**

Permittee agrees to comply fully with and be bound by all of the provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Permit as though fully set forth herein. This provision is a material term of this Permit. By entering into this Permit, Permittee agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine. Without limiting City's other rights and remedies, Permittee agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Permit was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Permittee's failure to comply with this provision.

## **29. CONFLICTS OF INTEREST**

Through its execution of this Permit, Permittee acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if Permittee becomes aware of any such fact during the term of this Permit, Permittee shall immediately notify the City.

## **30. NOTICES**

Except as otherwise expressly provided herein, any notices given under this Permit shall be effective only if in writing and given by delivering the notice in person, by sending it first class mail or certified mail, with a return receipt requested, or overnight courier, return receipt requested, with postage prepaid, addressed as follows:

City: San Francisco Municipal Transportation Agency  
1 South Van Ness Avenue, 7th Floor  
San Francisco, California 94103  
Attn: David Dunham/Principal Analyst  
Re: **Recycle for Change, off-street parking locations**

Permittee: Recycle For Change  
1081 Essex Ave.  
Richmond, California 94801  
Attn: Sophia Duus, General Manager

Notices herein shall be deemed given two days after the date when it shall have been mailed if sent by first class, certified or overnight courier, or upon the date personal delivery is made.

### **31. SEVERABILITY**

If any provision of this Permit or the application thereof to any person, entity or circumstance shall be invalid or unenforceable, the remainder of this Permit, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Permit shall be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this Permit without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Permit.

### **32. COUNTERPARTS**

This Permit may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

### **33. COOPERATIVE DRAFTING**

This Permit has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Permit reviewed and revised by legal counsel. No party shall be considered the drafter of this Permit, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Permit.

### **34. GENERAL PROVISIONS**

(a) This Permit may be amended or modified only by a writing signed by City and Permittee. (b) No waiver by any party of any of the provisions of this Permit shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. (c) All approvals and determinations of City requested, required or permitted hereunder may be made in the sole and absolute discretion of the Director of Transportation or other authorized City official. (d) This instrument (including the exhibit(s) hereto) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (e) The section and other headings of this Permit are for convenience of reference only and shall be disregarded in the interpretation of this Permit. (f) Time is of the essence. (g) This Permit shall be governed by California law and the City's Charter. (h) If either party commences an action against the other or a dispute arises under this Permit, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees of City shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience. (i) If Permittee consists of more than one person then the obligations of each person shall be joint and several. (j) Permittee may not record this Permit or any memorandum hereof. (k) Subject to the prohibition against assignments or other

transfers by Permittee hereunder, this Permit shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns. (I) In the event City sells or otherwise conveys the property burdened by this Permit this Permit shall automatically be revoked.

Permittee represents and warrants to City that it has read and understands the contents of this Permit and agrees to comply with and be bound by all of its provisions.

PERMITTEE:

RECYCLE FOR CHANGE,  
a California Nonprofit Corporation

By: \_\_\_\_\_  
Sophia Duus  
General Manager

CITY AND COUNTY OF SAN FRANCISCO,  
SAN FRANCISCO MUNICIPAL  
TRANSPORTATION AGENCY

Approved:

\_\_\_\_\_  
EDWARD D. REISKIN  
Director of Transportation

APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
David A. Greenburg  
Deputy City Attorney  
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San Francisco Municipal Transportation Agency

Board of Directors

Resolution No. \_\_\_\_\_

Dated: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Secretary, SFMTA Board of Directors

## **EXHIBIT A**

### **Description of Permit Areas**

1. California/Steiner parking lot, 2450 California Street, San Francisco. The box will be placed in the far northeast corner of the lot.
2. Mission Bartlett Garage, 3255 21<sup>st</sup> Street, San Francisco. The box will be placed under the overhang of the garage adjacent to the 22<sup>nd</sup> Street entrance.
3. Noe Valley parking lot, 4061 24<sup>th</sup> Street, San Francisco, CA. The box will be placed in the far southeast corner of lot, against the back fence.

*Note: These are general descriptions of the agreed-upon locations of the boxes. Before installation, SFMTA and RFC staff will meet at each site and RFC must obtain SFMTA's written approval of the exact install locations.*