



London N. Breed, Mayor
Philip A. Ginsburg, General Manager

USE PERMIT

by and between

CITY AND COUNTY OF SAN FRANCISCO

and

SkyStar Wheel, LLC

to enter and use a portion of the Music Concourse at Golden Gate Park San Francisco, California

February 28, 2020

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CITY AND COUNTY OF SAN FRANCISCO USE PERMIT

(Portion of Music Concourse at Golden Gate Park, San Francisco)

THIS USE PERMIT (this "**Permit**"), dated for reference purposes only as of, February, 2020, is made by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), acting by and through its Recreation and Park Commission (the "**Commission**"), and SkyStar Wheel, LLC, a Missouri Corporation ("**SkyStar**" or "**Permittee**").

RECITALS

A. City owns that certain real property commonly known as Golden Gate Park in San Francisco, California, which is between Stanyan Street, the Great Highway, Lincoln Way, and Fulton Street (the "**Park**"), under the jurisdiction of the Commission, and managed by City's Recreation and Park Department (the "**Department**").

B. To enhance the public recreational use of the Park, SkyStar and the Commission wish to permit an observation wheel on the portion of the Park depicted on Exhibit A, on the terms and conditions of this Permit.

AGREEMENT

City and SkyStar agree as follows:

1. PERMIT

City confers to SkyStar a temporary, personal, non-exclusive and non-possessory privilege to enter on and use the center portion of the Park as depicted in Exhibit A, plus additional portions of the Park on Bowl Drive for the location of the Wheel Generator (as hereinafter defined), plus additional portions of Bowl Drive for temporary food concessions provided that such use for temporary food concessions does not interfere with refueling of the Wheel Generator and such use for concessions is approved in writing by the Department (all of such areas, collectively, the "**Permit Area**"), and the officers, agents, employees, contractors or subcontractors (collectively, "**Agents**") of SkyStar, to enter on and use the Permit Area, for the limited purpose and subject to the terms, conditions and restrictions set forth below. This Agreement gives SkyStar a permit only, 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 any portion of the Permit Area or the Park. The privilege given to SkyStar pursuant to this Permit is effective only insofar as the rights of City in the Permit Area are concerned. SkyStar shall obtain any further permission necessary because of any other existing rights affecting the Permit Area; provided however to the best knowledge of City there are no such other existing rights

2. USE OF PERMIT AREA

2.1 Scope of Permitted Use

SkyStar and its Agents may enter and use the Permit Area to construct, maintain, operate, manage, and deconstruct an observation wheel and related structures, as depicted on Exhibit A (the “Wheel”) on the terms and conditions of this Permit.

2.2 Operational Requirements

(a) SkyStar will comply with the Project Description described in the Certificate of Appropriateness application submitted for the January 15, 2020 Historic Preservation Commission approval (the “Certificate of Appropriateness”). See <https://commissions.sfplanning.org/hpcpackets/2019-022126COA.pdf>.

(b) SkyStar shall provide the Department a structural engineering report to verify that the Music Concourse can adequately support the Wheel; along with maximum capacity of riders allowed.

(c) SkyStar shall operate the Wheel in compliance with this Permit and all applicable rules, regulations and codes.

(d) The Wheel is one hundred thirty feet (130’) in diameter by one hundred thirty-eight feet (138’) in height, on a base structure that is seventy-two feet (72’) by fifty-seven feet (57’) and is accompanied by ancillary structures as described on Exhibit A. The Wheel will be installed and operated by SkyStar in connection with the 150th Anniversary of Golden Gate Park (“GGP”). The Wheel features 36 climate-controlled cabins; with a total maximum occupancy not to exceed 216 persons. See Attachment D for complete Specifications. Rides on the Wheel consist of four rotations lasting a total of twelve (12) minute (generally referred to herein as “Rides”).

(e) Permittee shall conduct Rides daily from 10:00am to 10:00pm with slight adjustments for weather, weekends and special events.

(f) SkyStar shall provide overnight security each night for the duration of the activation from set up through the breakdown and cleanup. Only licensed security guards may stay overnight in the Park. No vendors or other event staff may stay on site overnight.

(g) SkyStar shall be allowed to sell food, non-alcoholic beverages, photos and wheel related merchandise within the Permit Area; provided that such food service will not offer the following food items: hot dogs, sausages or pretzels and that the installations, pricing and locations are approved by the Department’s General Manager or his or her designee (each, the “RPD Manager”). Additionally, SkyStar, directly or through a concessionaire, may sell alcoholic beverages as approved specifically by the RPD Manager, provided SkyStar or its concessionaire has appropriate alcoholic beverage licenses.

(h) SkyStar or its food and beverage concessionaires shall obtain a health permit for sales of food and beverages. Please contact San Francisco Department of Health, Special

Events, 1390 Market Street, Suite 210, San Francisco, CA 94102, (415) 252-3837, to secure the appropriate health permit(s).

(For more information go to:

<https://www.sfdph.org/dph/EH/Food/Permits/permitSpecEvents.asp>)

(i) If SkyStar wishes to sell alcoholic beverages directly through its own employees, Sky Star shall present this Use Permit together with a specific letter from the Department authorizing the specific use to the Department of Alcoholic Beverage Control at 33 New Montgomery, Suite 1230, San Francisco, CA 94104, (415) 356- 6500, and shall obtain all required alcoholic beverage permits and approvals. Otherwise, any concessionaire engaged by SkyStar to sell alcoholic beverages shall have all necessary permits and approvals. Alcoholic beverages may not be sold to anyone under 21 years of age. No glass containers or cans may be used for serving the beverages. Conditions for serving alcohol will be described in the alcohol permit and must be provided to Department's Permits & Reservations office and Park Patrol. Beer and wine will be permitted subject to obtaining and keeping in force all required alcoholic beverage sales licenses.

(For more information go to <http://www.abc.ca.gov/forms/PDFlist.html>)

(j) SkyStar may use amplified sound for background music and PA system for announcements during operating hours, so long as such sound levels are only slightly above ambient sound.

(k) SkyStar shall (i) operate the Wheel in accordance with the terms of this Permit, use experienced, qualified, competent and adequate staff therefor, all of whom shall be the SkyStar's Agents and none of whom shall be deemed for any purpose whatsoever to be City's employees, (iii) keep the Permit Area free of food, spills, and debris and in a neat, clean, orderly and attractive condition at all times, (iv) maintain the Permit Area in a neat, clean, orderly and attractive condition at all times, and (v) provide adequate garbage, compost and recycling receptacles for Wheel customers. If SkyStar fails to maintain the Permit Area in the condition required hereunder and City provides written notice to SkyStar or oral notice to the SkyStar's manager or senior employee then on duty at the Wheel, describing such deficiency, then SkyStar shall promptly cause the deficiency to be corrected.

(l) SkyStar acknowledges the Park is an iconic San Francisco landmark, and the equipment, fixtures, signage and garbage receptacles used by SkyStar, or its Agents at the Permit Area must maintain and complement the Park and will require the prior written approval of the RPD Manager, which approval shall be in the RPD Manager's reasonable discretion.

(m) SkyStar shall not do, nor permit its Agents to do, anything in the Permit Area that conflicts with any law or any of the Commission's rules and regulations applicable to the Park (as set forth in Article 3 of the San Francisco Park Code or otherwise adopted by the Commission), and shall not use, or permit its Agents to use, the Permit Area in an unsafe manner.

(n) SkyStar shall comply with all operational limitations and requirements of this Permit including not allowing vehicles on grass areas in the Park unless prior approval is

obtained from the RPD Manager. City acknowledges that SkyStar will be seeking approval of the RPD Manager to use certain grass areas to erect, operate and/or dismantle the Wheel, and SkyStar acknowledges the requirement to restore these grass areas and any other areas that are damaged as provided in Section 13.

(o) SkyStar shall obtain a fire permit for tenting or installing canopies or booths and for generators; provided however that this requirement shall not apply to the Wheel Generator. SkyStar must contact the San Francisco Fire Department Permit Bureau, 698- 2nd Street

#109, San Francisco, CA 94107, (415) 558-3300, for the appropriate fire and tenting permit(s).

(For more information go to: <http://www.sf-fire.org/index.aspx?page=1006#condit>)

(p) SkyStar agrees to comply (and will cause its agents to comply) with Section 1009.81 of the San Francisco Health Code, which provides: "Smoking is prohibited on any unenclosed area of property in the City and County of San Francisco that is open to the public and under the jurisdiction of the Recreation and Park Commission or any other City department if the property is a park, square, garden, sport or playing field, pier, or other property used for recreational purposes, or a farmers' market."

2.3 Americans with Disabilities Act

SkyStar acknowledges that the Americans with Disabilities Act (the "ADA") requires that programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. SkyStar further acknowledges its obligation to comply with the ADA and any other federal, state or local disability rights legislation. SkyStar warrants that it will fulfill that obligation and that not discriminate against disabled persons in the provision of services pursuant to this Permit.

2.4 Days and Hours of Operation

During the activation (as defined in Section 7.1), SkyStar shall use its best efforts to maximize public and local community use of the Wheel. The Wheel will operate seven days a week from 10:00 AM to 10:00 PM; provided however that based on demand and impact hours of operations may be adjusted.

2.5 Admission Fees

SkyStar shall charge the following admission and rental fees for use of the Wheel:

- General Admission - \$18.00
- Seniors, Children under 13 years of age - \$12.00
- VIP Experience - \$50.00
- San Francisco Resident Rates (these only apply to residents of San Francisco):
 - 15 percent discount
 - Children (under the age of 12) will be two-for-one on Tuesdays and Wednesdays
- Opening Day April 4 - no charge

Any increase to these fees must be approved in advance and in writing by the Department's General Manager.

2.6 Special Events

SkyStar acknowledges the Park is a popular location for races and walks and other events (each, a "**Special Event**") and may be partially or completely closed to accommodate those other events including road closures. In addition, roads around the Permit Area are closed as part of regular weekly road closures. The Department will notify SkyStar of expected road closures for Special Events at least 30 days in advance except in exigent circumstances.

2.7 Existing Concessions

SkyStar acknowledges there are numerous concessions currently operating within the Park. These concessions will continue to operate under their existing agreements with the Department, and the Department may enter into other agreements for food and beverage or other uses within the Park. City has identified in Section 2.2(g) any food and beverage concessions that may limit food and beverage sales by SkyStar or its concessionaires.

2.8 Personnel

SkyStar shall, consistent with commercially reasonable standards and the requirements of this Permit, hire, employ and/or contract for experienced, qualified maintenance, repair, management and any other persons necessary or advisable for the proper management and performance of SkyStar's obligations under this Permit, as determined by SkyStar in its reasonable discretion. Any such persons shall be employees or contractors of SkyStar and not those of City. SkyStar shall direct and supervise all such employees, contractors, subcontractors or other Agents in their performance of SkyStar's duties under this Permit. SkyStar shall use due care in the selection of the employees, contractors, subcontractors or other Agents it hires, employs, or otherwise engages to perform SkyStar's responsibilities under this Permit, and hire, employ, or otherwise engage an adequate number of people for such performance. SkyStar shall pay all wages and other benefits properly payable to any such employees, contractors, subcontractors or other Agents it hires, employs, or engages in connection with the performance of SkyStar's obligations under this Permit, maintain adequate payroll records, remit to the proper authorities all required income and social security withholding taxes, unemployment insurance and workers compensation payments, and such other amounts with respect to other wages or benefits of such employees, contractors, subcontractors or other Agents under applicable laws or this Permit.

3. INSTALLATION OF FACILITIES

3.1 Wheel Work

SkyStar or its Agents may construct and install the Wheel and related electrical or utility hookups on the Permit Area in accordance with plans and specifications set forth in Exhibit A or as approved by the Department in writing and the terms and conditions of this Permit. SkyStar shall obtain all required construction, health and safety permits prior to installation and use of the Wheel. SkyStar acknowledges and agrees that installation of the Wheel shall not in any way whatsoever limit City's right to revoke this Permit pursuant to its terms, or any of City's other

rights hereunder.

SkyStar will provide the Department with stamped structural engineer reports showing the installation and confirming that it will not impact any other structures and that after removal it will not have any impact. In addition, SkyStar will provide structural engineer certifications confirming that the work was performed as designed both for installation and removal.

City will provide at its sole cost and expense (a) an electric generator with sufficient capacity to operate the Wheel and related facilities and related equipment but not to operate any food or other concessions; (b) all fuel required to operate the generator for the Wheel and related facilities and equipment; (c) all repairs and maintenance needed to keep the generator in good operating condition and repair during the Term; and (d) if for any reason that the generator provided by City fails to operate properly, a replacement generator (such obligations, collectively, the “**Wheel Generator**”) SkyStar has reviewed the proposed generator and it is sufficient to operate the Wheel. Notwithstanding the foregoing, City will not be liable for any failure of the generator except as specifically provided in Section 14(5).

3.2 Alterations

SkyStar shall not construct or place any temporary or permanent structures or improvements on the Permit Area except as set forth in Exhibit A (each, an “**Alteration**”), without the prior written consent of the RPD Manager.

3.3 Minimum Wage

SkyStar will ensure that all workers in connection with the construction, operation, management, and operation of the Wheel (either directly or through a contractor or subcontractor) who perform services within the geographic boundaries of the City and County of San Francisco are paid at least the San Francisco Minimum Wage. For more details, please go to the Office of Labor Standards Enforcement website at <http://sfgsa.org/index.aspx?page=411>.

3.4 Prevailing Wages and Working Conditions

(a) Prevailing Wage Requirements. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. SkyStar will require its contractors and subcontractors performing (i) labor in connection with a “public work” as defined under California Labor Code Section 1720 et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction at the Permit Area to (1) pay workers performing such work not less than the highest prevailing rate of wages, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, “**Prevailing Wage Requirements**”). SkyStar shall cooperate with City in any action or proceeding against any contractor or subcontractor of SkyStar, as applicable, if such party fails to comply with the Prevailing Wage Requirements to the extent applicable. Prevailing Wage Requirements apply to Covered Construction only if the estimated cost exceeds the Threshold Amount. The current Threshold Amount as of 2018 that is applicable to payment of

prevailing wages for Covered Construction is \$600,000.

(b) Construction Contracts. SkyStar shall include and shall require any contractor and subcontractors (regardless of tier) of SkyStar to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract for any Alteration subject to the Prevailing Wage Requirements with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third-party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any contractor or subcontractor in accordance with San Francisco Administrative Code Section 23.61. SkyStar's failure to comply with its obligations under this Section shall constitute a material breach of this Permit. A contractor's or subcontractor's failure to comply with this Section will enable City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For current Prevailing Wage rates, see www.sfgov.org/olse/prevailingwages or call City's Office of Labor Standard Enforcement at 415-554-6235.

(c) Miscellaneous Prevailing Wage Requirements.

Permittee will also pay, and will require its contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities at the Permit Area as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11). The provisions of Chapter 21C are hereby incorporated by reference and made a part of this agreement. If Permittee or its contractors (or any subcontractors) fail to comply with these terms, to the extent applicable, then City will have all available remedies against Permittee to secure compliance and seek redress for workers who performed these activities, together with the remedies set forth in this Permit. Permittee shall cooperate fully with the Labor Standards Enforcement Officer (OLSE) and any other City official or employee, or any of their respective agents, in the administration and enforcement of the requirements of Chapter 21C, including, without limitation, any investigation of noncompliance by Permittee or its Subcontractors. City may also inspect and/or audit any workplace, job site, books, and records pertaining to the performance of this Permit, and may interview any individual who is performing, or has performed, such activities at the Permit Area. Permittee will provide City (and will require any contractor or subcontractor who maintains those records to provide to City), on request, immediate access to all workers' time sheets, payroll records, and paychecks for inspection in so far as they relate such activities at the Permit Area. Permittee may obtain a copy of the current Prevailing Rate of Wages from City by contacting OLSE. Permittee acknowledges that City's Board of Supervisors may amend such Prevailing Rate of Wages and agrees that Permittee and any Subcontractors shall be bound by and shall fully comply with any such amendments adopted by the Board of Supervisors."

3.5 Local Hire Requirements for Improvements and Alterations

Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the "**Local Hiring Requirements**"). An Alteration will be subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit or (ii) meets any of the other exemptions in the Local Hiring Requirements. SkyStar agrees that it shall comply with the Local Hiring Requirements to the extent applicable. Before starting any Alteration other than the Wheel Work, SkyStar shall contact OEWD to verify if the Alteration is a Covered Project.

SkyStar shall include and shall require its contractors and subcontractors to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third-party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. SkyStar shall cooperate, and as applicable, shall require its contractors and subcontractors to cooperate, with City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. SkyStar's failure to comply with its obligations under this subsection shall constitute a material breach of this Permit. A contractor's or subcontractor's failure to comply with this Section will enable City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

3.6 Exercise of Due Care

SkyStar shall use, and shall cause its Agents to use, due care at all times to avoid any damage or harm to City's property. SkyStar shall take such soil and resource conservation and protection measures with the Permit Area as City may request. SkyStar may not undertake any excavation work without City's prior written approval and City's supervision, which approval has been given in connection with the Alterations and the excavation for the concrete piers needed in connection therewith, with SkyStar's restoration obligation in connection with such piers as set forth in Section 13 hereof. SkyStar shall do everything reasonably within its power, both independently and on request by City, to prevent and suppress fires on and adjacent to the Permit Area attributable to SkyStar's use hereunder.

4. RESTRICTIONS ON USE

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

4.1 Generators

SkyStar shall not place any generators on the Permit Area without (i) first obtaining all required permits and approvals for generators, and (ii) the prior written consent of the RPD Manager. If the RPD Manager approves of the installation any generator, SkyStar shall comply with the RPD Manager's conditions for such installation. The foregoing restriction does not apply to the Wheel Generator or its replacement, which is being installed and maintained by City.

4.2 Dumping

SkyStar shall not dump or dispose of refuse or other unsightly materials on, in, under or about the Permit Area; provided, however, that SkyStar may dispose of refuse in the garbage, compost and recycling receptacles provided by SkyStar in the Permit Area pursuant to Section 2.2(b).

4.3 Hazardous Material

SkyStar shall not cause, nor shall SkyStar allow any of their respective Agents or invitees, guests or business visitors (collectively, "**Invitees**") to cause, any Hazardous Material (as defined below) to be brought on, kept, used, stored, generated or disposed of in, on or about the Permit Area, or transported to or from the Permit Area; with the sole exception that SkyStar may use and store Hazardous Materials in the Permit Area in such reasonably limited amounts as are reasonably required for the maintenance and operation of the Wheel provided that such Hazardous Materials are used and stored in a manner that complies with applicable law. SkyStar shall immediately notify City when SkyStar learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on or about the Permit Area. SkyStar shall further comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take commercially reasonable efforts to mitigate the release or minimize the spread of contamination. In the event that SkyStar or any of their respective Agents or Invitees cause a release of Hazardous Material, SkyStar shall, without cost to City and in accordance with all laws and regulations, return the Permit Area to the condition immediately prior to the release. In connection therewith, SkyStar 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.

"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 Area or are naturally occurring substances in the Permit Area, 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 Area.

4.4 Nuisances

SkyStar shall not conduct any activities on or about the Permit Area that constitute waste, nuisance, unreasonable annoyance or offensive use, or in any unlawful manner or for any illegal purpose.

4.5 Damage

SkyStar shall not do anything on or about the Permit Area that will damage any of City's property ; provided however that the grass in the Permit Area underneath the Wheel is expected to be damaged, but will be restored after the removal of the Wheel as set forth in Section 13.

4.6 No Sale of Lottery Tickets

SkyStar shall not sell any lottery tickets on the Permit Area.

4.7 No Smoking

SkyStar agrees to comply with Section 1009.81 of the San Francisco Health Code, which provides: "Smoking is prohibited on any unenclosed area of property in the City and County of San Francisco that is open to the public and under the jurisdiction of the Recreation and Park Commission or any other City department if the property is a park, square, garden, sport or playing field, pier, or other property used for recreational purposes, or a farmers' market."

5. REPAIRS AND MAINTENANCE

5.1 Wheel and Permit Area

(a) SkyStar shall maintain all aspects of the Permit Area in good operating condition at all times using experienced and qualified persons. Such maintenance shall include all necessary repairs and replacements, and be performed (i) at no cost to City (other than the Wheel Generator), (ii) by licensed contractors or qualified mechanics, (iii) in a manner and using equipment and materials that will not interfere with or impair the operations, use or occupation of the remainder of the Park, and (iv) in accordance with all applicable laws, rules and regulations. During the hours the Wheel is open for business, SkyStar shall keep the Permit Area in a clean, safe, attractive and sanitary condition to City's reasonable satisfaction. If any portion of the Permit Area or any of City's property located on or about the Permit Area is damaged by any activities conducted by SkyStar or their Agents or Invitees, SkyStar shall immediately, at no cost to City, repair any and all such damage and restore such damaged Permit Area or City's property to its previous condition.

(b) SkyStar's maintenance obligations pursuant to this Section shall include all routine maintenance of the Permit Area, including but not limited to removing graffiti and inspecting the Wheel components for structural integrity.

(c) During the hours the Wheel is open for business, SkyStar shall to provide adequate and accessible waste, compost and recycling receptacles for Wheel customers in the Permit Area and secure or store such receptacles when the Wheel is closed for business.

(d) Other than maintenance and repair of the Wheel Generator, City shall not be responsible for the security, maintenance, or repair of, or any damage to, the Permit Area including any Alterations, equipment, accessories, or inventory therein.

5.2 Park and Playgrounds

During the hours the Wheel is open for business and within one (1) hour of the Wheel closing for business each day, SkyStar shall keep the portion of the Park within an approximate 50 feet radius of the Wheel clean and free of garbage arising from Wheel operations.

5.3 No City Obligations; Limited SkyStar Obligations

Other than its obligations with respect to the Wheel Generator, City shall not under any circumstances be responsible under this Permit for the maintenance of the Permit Area, including the Wheel, nor shall City be liable for any portion of SkyStar's costs in performing its maintenance obligations pursuant to this Permit.

6. ACCOUNTS; FINANCIAL STATEMENTS

6.1 Definitions

(1) **"Revenue"** means all amounts received and receivable by the SkyStar from all SkyStar's ticket sales and private or special event fees conducted in, from or attributable to the Permit Area, but shall exclude (i) the amount of any refund made or credit (not to exceed the actual selling price of the item returned) allowed due to a bona fide complaint from a customer concerning the quality of items sold by SkyStar at the Permit Area; (ii) sums collected for any sales or excise tax imposed directly on SkyStar by any duly constituted governmental authority, but only if stated separately from the selling price of the goods or merchandise, or services, and collected from customers and such amounts are in fact paid to the appropriate governmental entities for which they are collected; and (iii) tips paid by the Wheel customers to the employees of SkyStar, as long as such tips go directly to such employees (and not to SkyStar or management of SkyStar).

(2) **"Opening Date"** shall mean the first date the Wheel is open to the general public.

6.2 Reporting

SkyStar shall provide an accounting of all income including number of adult and children's tickets sold, as well as VIP tickets sold or special event fees at the end of each month for the Term. The accounting shall include any complimentary tickets included in sponsorship or trade agreements. Accounting should be broken down on a per day, weekly, and monthly and event basis.

6.3 Cash Register Requirements

SkyStar shall use a system that registers every transaction made in, on, about or from the Permit Area, including every type of income, and the tape or digital record of each such cash register shall be accessible to and subject to inspection by the RPD Manager or his/her agent, provided that such inspection shall be conducted in a manner reasonably designed to minimize interference with the conduct of business at the Permit Area, and City shall not perform such inspection unless the Wheel manager is present. SkyStar shall make a manager

available to City for such inspection during business hours on request (which may be oral) by City. Each sale or other transaction generated in the Permit Area must be recorded at the time of each sale or other transaction, in the presence of the customer or by phone or internet order.

6.4 Books and Records; Audits

SkyStar agrees to keep accurate books and records with respect to its Revenue according to generally accepted accounting principles. For purposes herein "books and records" shall include, but not be limited to, daily sales journals, cash register tapes, pre-numbered receipts, guest checks, sales tickets, monthly sales summaries summarizing daily sales, general ledgers, income statements, sales tax returns, income tax returns and any other bookkeeping documents SkyStar, as applicable, utilizes in its business operations. SkyStar shall not co-mingle personal funds or other funds with the Revenue.

SkyStar agrees to make its books and records available to City, or to any City auditor, or to any auditor or representative designated by City, for the purpose of examining such books and records to determine the accuracy of SkyStar's reports. Such books and records shall be kept for four (4) years and shall be maintained and/or made available in San Francisco to City's representative for the purpose of auditing or re-auditing these accounts; except that, if an audit is made within such four-year period and City claims that errors or omissions have occurred, the books and records shall be retained and made available until those matters are resolved. If an audit reveals that SkyStar has understated its Revenue, SkyStar will immediately remit a check for the underpayment to the Department.

SkyStar shall participate in City's Patrons Audit program whereby signs provided by City will be clearly posted at each point of sale, stating that receipts are to be given for each purchase, and that if a receipt is not given, the patron shall be allowed some form of compensation as mutually agreed on by City and SkyStar.

6.5 Late Charge

SkyStar hereby acknowledges that late payment by SkyStar to City or the Parks Alliance of any sums due hereunder will cause City to incur costs not contemplated by this Permit, the exact amount of which will be extremely difficult to ascertain. Accordingly, if any sums due to City hereunder are not paid by the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to five percent (5%) of the amount due, in each instance. The late payment charge has been agreed on by City and SkyStar, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur as a result of any such failure by SkyStar, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate City for its damages resulting from such failure to pay and SkyStar shall promptly pay such charge to City together with such unpaid amount. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs City will incur by reason of late payment by SkyStar. Acceptance of such late charge by City neither constitutes a waiver of SkyStar's default with respect to such overdue amount, nor prevents City from exercising any of the other rights and remedies available to City.

6.6 Default Interest

If any payment owed by SkyStar to City under this Permit is not paid on the due date, such unpaid amount shall bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under applicable law. However, interest shall not be payable on late charges incurred for any amounts on which late charges are paid to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default for the late payment of any amount due to City under this Permit.

6.7 No City Costs

Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, shall City be expected or required to make any payment of any kind whatsoever with respect to SkyStar' use or occupancy of the Permit Area, the Wheel, any Alterations, or this Permit, except with regard to the Wheel Generator and as may otherwise be expressly set forth herein.

7. TERM OF PERMIT

7.1 Term

The privilege given to SkyStar pursuant to this Permit (the "Term") is temporary only as follows. Permittee may in coordination with RPD begin installation on Monday, March 2, 2020. The Wheel will have its Grand Opening to the General Public on April 4, 2020. Prior to the Grand Opening on April 4, 2020, SkyStar may in coordination with RPD have a series of Soft Openings of the Wheel to allow for operational preparedness. SkyStar will begin dismantling the Wheel on Monday, March 1, 2021. SkyStar will fully remove the Wheel by March 15, 2021.

7.2 City Revocation

City shall have the right to revoke this Permit (i) at any time with or without notice to SkyStar if City reasonably determines that an emergency requires such revocation or if such revocation is required by law, or (ii) immediately if SkyStar fails to carry the insurance specified in this Permit and such failure is not cured within two business days after notice from City to SkyStar. SkyStar will cease to operate the Wheel immediately in the event City determines an emergency exists or in the event of a lapse of insurance. Should City exercise one of such rights to revoke the Permit and further determines that the Wheel cannot remain in the Permit Area, SkyStar authorizes City, at SkyStar's sole cost, to remove and dispose of the Wheel, provided that SkyStar first shall have a reasonable opportunity and right to remove the Wheel and any improvements and personal property consistent with the provisions of Section 13 below. Any revocation of this Permit for the reasons set forth above shall terminate the future obligations of SkyStar under this Permit, except as otherwise provided.

8. PERMIT FEES

8.1 Revenue Sharing Fees

For each calendar month throughout the Term Permittee shall pay to the San Francisco Parks Alliance to help fund the celebration of the 150th Anniversary of Golden Gate Park, a monthly Permit Fee generated through Permittee's use of the Permit Area during said calendar month equal to:

- \$1.00 per General Admission ticket sold or provided as part of any sponsorship or in-kind exchange; provided however that tickets provided to media partners for their use shall not be included.
- \$0.75 for each Senior, Children's ticket sold or provided as part of any sponsorship or in-kind exchange; provided however that tickets provided to media partners for their use shall not be included.
- 6% of VIP Experience tickets sold or gross receipts received from any sponsorship or other revenue received provided however that tickets provided to media partners for their use shall not be included.
- 5% of gross receipts received from customers for all food and beverage concession revenues but in the event that a third party provides the service, the Department will receive 10% of the amount received by SkyStar

SkyStar will pay the Revenue Sharing Fee to the Parks Alliance within 30 days of the end of the month, without prior demand and without any deduction, setoff or counterclaim whatsoever.

SkyStar must pay all amounts payable under this Permit in cash or by good check and delivered to Department's Director of Permits and Property Management at the primary address for notices to City specified below, or such other place as City may designate in writing.

8.2 Additional Services and Compensation

In addition to the Revenue Sharing, SkyStar shall provide the following:

- Website linkage to SF Recreation and Park Department homepage (<http://sfrecrepark.org>) with logo; and City agrees to provide a link from the SF Recreation and Park Department website to the SkyStar webpage.
- Conspicuous placement of San Francisco Recreation and Park Logo on:
 - All on-site banners and posters
 - All magazine, newspaper, and other advertising of the Wheel
 - Inclusion in all press releases
- 500 complimentary General Admission tickets per month for the Term of the Agreement to be used primarily to benefit underserved communities in San Francisco, as well as

RPD partners. These tickets may not be re-sold; however, they may be used for community-building, and fundraising opportunities. The 500 tickets will be issued on the first day of each month of the Term and will be valid for such month only.

- Twenty five (25) VIP Experience Packages to be used at any time during the Term of the Agreement.
- Grand Opening on April 4, 2020 shall include free rides to the general public from 10:00am to 10:00pm.

9. INSURANCE

9.1 SkyStar's Insurance

SkyStar, at no cost to City, shall procure and keep in effect the following insurance at all times during the Term, and cause its contractors to maintain such insurance during the performance of any maintenance work or construction activities at the Permit Area:

(a) Commercial general liability insurance with limits not less than Twenty Million Dollars (\$20,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Independent Contractors, and Products Liability Coverages. Excess or umbrella coverage that follows form may be used to comply with this requirement. Four Million Dollars (\$4,000,000) aggregate, combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Two Hundred Fifty Thousand Dollars (\$250,000)), personal injury, products and completed operations, and explosion, collapse and underground (XCU). If the operation of SkyStar's business includes food sales by SkyStar, such coverage shall include Food Products Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence. If the operation of SkyStar's business includes the sale of alcoholic beverages by SkyStar, such coverage shall include legal liquor liability coverage with limits not less than One Million Dollars (\$1,000,000) each occurrence.

(b) Workers' Compensation Insurance with Employer's Liability Coverage with limits of not less than One Million Dollars (\$1,000,000) each accident. The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of City for all work performed by the Contractor, its employees, agents and subcontractors.

(c) Business 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 owned, non-owned and hired vehicles, as applicable, if automobiles will be used in connection with its use of the Permit Area.

(d) SkyStar shall require all providers of professional services, including architectural, design, engineering, geotechnical, and environmental professionals under contract with SkyStar for any Wheel work to maintain professional liability (errors or omissions) insurance, with limits not less than One Million Dollars (\$1,000,000.00) each claim and aggregate, with respect to all professional services provided to SkyStar therefor.

(e) Such other risks in such amounts as City's Risk Manager may from time to time reasonably require.

9.2 General Requirements

All insurance provided for under this Permit shall be affected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by City.

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

(b) 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.

(c) All liability insurance policies shall be endorsed to provide the following:

(i) Name SkyStar as the insured and the City and County of San Francisco, its Recreation and Park Commission and Recreation and Park Department, and their officers, agents and employees, as additional insureds, as their respective interests may appear hereunder.

(ii) 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.

(iii) All policies shall be endorsed to provide thirty (30) days' advance written notice to City of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for City set forth in Section 44 below.

(d) Each insurance policy required hereunder shall be issued by an insurance company licensed in the State of California and with a general policyholders' rating of "A-" or better and a financial size ranking of "Class VII" or higher in the most recent edition of Best's Insurance Guide.

9.3 Proof of Insurance

SkyStar shall deliver to City certificates of insurance and additional insured policy endorsements in form and with insurers satisfactory to City, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly on City's request, and SkyStar shall provide City with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. If SkyStar fails to procure such insurance, or to deliver such policies or certificates, City may, at its option, procure the same for the account of SkyStar, and the cost thereof shall be paid to City within five (5) days after delivery to SkyStar of bills therefor. The certificates of insurance attached hereto as Exhibit C-1 and Exhibit C-2 and the coverages shown thereon are acceptable and satisfactory to City.

9.4 Review of Insurance Requirements

SkyStar 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 SkyStar with respect to risks comparable to those associated with the Permit Area, then at City's option, SkyStar shall increase at its sole cost the amounts or coverages carried by SkyStar to conform to such general commercial practice.

9.5 No Limitation on Indemnities

SkyStar's compliance with the provisions of this Section shall in no way relieve or decrease SkyStar's indemnification obligations under Section 19 or any of SkyStar's other obligations or liabilities under this Permit.

9.6 Lapse of Insurance

Notwithstanding anything to the contrary in this Permit, City may elect, in City's sole and absolute discretion, to terminate this Permit on the lapse of any required insurance coverage by written notice to SkyStar after first providing written notice to SkyStar if such failure is not cured within two business days after notice from City to SkyStar. Notwithstanding the foregoing, SkyStar will cease to operate the Wheel immediately in the event of a lapse of insurance.

9.7 SkyStar's Personal Property, Wheel, and Alterations

SkyStar shall be responsible, at its expense, for separately insuring SkyStar's personal property, the Wheel, and any Alterations made by or on behalf of SkyStar.

9.8 City's Self-Insurance

SkyStar acknowledges that City self-insures against casualty, property damage and public liability risks and agrees City shall not be required to carry any third-party insurance with respect to the Permit Area or otherwise.

9.9 Waiver of Subrogation

Notwithstanding anything to the contrary contained herein, (each a **“Waiving Party”**) each waives any right of recovery against the other party for any loss or damage relating to the Permit Area or any operations or contents, whether or not the loss is caused by the fault or negligence of the other party, to the extent the loss or damage is covered by third party insurance that is required to be purchased by the Waiving Party under this Lease or is actually covered by insurance held by the Waiving Party or its Agents. Each Waiving Party agrees to obtain waiver of subrogation rights endorsement from applicable insurance carriers issuing policies relating to the Permit Area; provided, the failure to obtain the endorsement will not affect the above waiver.

10. DAMAGE OR DESTRUCTION; EMINENT DOMAIN

10.1 Damage or Destruction

With respect to any damage to or destruction by fire or any other casualty to the Wheel or any Alterations permitted hereunder made by or on behalf of SkyStar during the Term hereof, SkyStar may, at its option and at its sole cost, restore, repair, replace or rebuild the Wheel and such Alterations to the condition such Wheel or Alterations were in prior to such damage or destruction. If SkyStar determines that it will not restore, repair, replace or rebuild the Wheel, it will provide written notice of such decision to City within 30 days after the casualty and shall thereafter promptly at its sole cost, demolish the Wheel and such Alterations and remove them (including all debris) from the Permit Area in compliance with the provisions of this Permit.

In the case of damage to or destruction of any Department property including without limitation the real property occupied by the Wheel by fire or any other casualty, whether insured or uninsured, SkyStar shall, at its sole cost and with reasonable promptness and diligence, restore, repair, replace or rebuild such property as nearly as possible to the same condition, quality and class as it was in immediately before such damage or destruction, unless such damage or destruction was caused solely and directly by the gross negligence or willful misconduct of City or its Agents.

The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Permit Area, Wheel, or any Alterations, and City and SkyStar each hereby waives and releases any right to terminate this Permit in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar laws now or hereafter in effect, to the extent such rights apply and are inconsistent with the provisions of this Permit.

10.2 Eminent Domain

(a) If there is any taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under law (a **“Taking”**) of all or any part of the Permit Area during the Term, the rights and obligations of the Parties hereunder shall be determined pursuant to this Section. A Taking may occur by the recording of a final order of condemnation or by voluntary sale or conveyance in lieu of or in settlement of a condemnation action. City and SkyStar intend that the provisions of this Section govern fully in the event of a Taking and accordingly, the Parties each hereby waives any right to

terminate this Permit in whole or in part under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

If a total Taking of the Permit Area occurs, then this Permit shall terminate as of the earlier date ("**Date of Taking**") to occur of (i) the date title to such taken portion passes to and vests in the condemnor, or (ii) the date SkyStar is dispossessed of such taken portion. On any such termination of this Permit pursuant to the foregoing sentence, City shall be entitled to the entire award in connection therewith (including, but not limited to, any portion of the award made for the value of the leasehold estate created by this Permit), and SkyStar shall have no claim against City for the value of any unexpired term of this Permit, provided that SkyStar may make a separate claim for compensation, and SkyStar shall receive any Award made specifically to SkyStar for its relocation expenses, the interruption of or damage to its business, or damage to its personal property.

(b) If a partial Taking of the Permit Area occurs, then this Permit shall terminate as to such taken portion and shall terminate in its entirety if (i) the partial Taking renders the remaining portion of the Permit Area untenable or unsuitable for continued use by SkyStar, and (ii) such condition either is not curable or is curable but SkyStar is unwilling or unable to cure such condition. If a partial Taking of the Permit Area occurs and this Permit is not terminated in its entirety under the foregoing sentence, then this Permit shall remain in full force and effect as to the portion not taken, and City shall be entitled to the entire award in connection therewith. SkyStar shall have no claim against City for the value of any unexpired portion of the Term, provided that SkyStar may make a separate claim for compensation. SkyStar shall retain any award made specifically to SkyStar for its relocation expenses, the interruption of or damage to its business, or damage to its Personal Property.

(c) City shall have the right to terminate this Permit if there is a partial Taking of a substantial portion of any of City's real property adjoining the Permit Area, even if the Taking does not directly affect the Permit Area. If City elects to so terminate this Permit, City shall do so by giving written notice to SkyStar on or before the thirtieth (30th) day after the Date of Taking, and thereafter this Permit shall terminate on the later of the thirtieth (30th) day after such written notice is given or the Date of Taking.

(d) Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Permit Area for a limited period of time not in excess of sixty (60) consecutive days, this Permit shall remain unaffected thereby, and SkyStar shall continue to perform all of the terms, conditions and covenants of this Permit. In the event of such temporary Taking, SkyStar shall be entitled to receive that portion of any award representing compensation for the use or occupancy of the Permit Area during the Term.

11. COMPLIANCE WITH LAWS

SkyStar shall, at its expense, conduct and cause to be conducted all activities on the Permit Area 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. SkyStar shall, at its sole expense, procure and maintain in force at all times during its use of the Permit Area any and all business and other licenses or approvals necessary to conduct its activities at the Permit Area pursuant to this Permit, at its sole expense, to procure and maintain in force at all times during its use of the Permit Area any and all business and other licenses or approvals necessary to conduct its activities at the Permit Area. SkyStar understands and agrees that City is entering into this Permit in its capacity as a property owner with a proprietary interest in the Permit Area and not as a regulatory agency with police powers. Nothing herein shall limit in any way SkyStar'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.

12. RESERVED.

13. SURRENDER AND RESTORATION

As part of the permit to operate the observation wheel, the Permittee will incorporate Public Works Standard Construction Measures in relation to the removing fill material.

Within one (1) month of the last day of operation, The Permittee is also required to restore the site to original conditions, which includes removing of the top six to eight feet of the piers, backfilling with the original soil that had been previously removed, replacement of any irrigation lines or sprinklers and restoration of any other park grounds or native vegetation impacted by Permittee in the immediate vicinity of the Wheel. City will resod the immediate area under the Wheel (approximately 7,896 square feet) and any other areas impacted by SkyStar's staging, set up, and operations. . SkyStar shall pay City such cost of the resodding within 30 days of request. On the expiration of this Permit, or any earlier termination or revocation of this Permit, SkyStar shall surrender the Permit Area in the same condition as received (subject to the provision above that City will undertake the resodding at the cost to SkyStar of \$1.25 per square foot), broom clean, free from hazards, and clear of all debris. At such time, SkyStar shall have removed all of its property from the Permit Area. Such removed property shall include, but not be limited to, any signs or any other improvements permitted hereunder, and shall repair, at its cost, any damage to the Permit Area caused by such removal.

14. WAIVER OF CLAIMS; WAIVER OF CONSEQUENTIAL AND INCIDENTAL DAMAGES

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

(2) SkyStar acknowledges that this Permit is revocable by City as provided in Section 7.2 and in view of such fact, SkyStar 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 SkyStar or other waivers contained in this Permit and as a material part of the consideration for this Permit, SkyStar fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and

covenants not to sue, City, its commissions, departments, boards, 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, if City exercises its right to revoke or terminate this Permit as permitted hereunder.

(3) SkyStar 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 SkyStar fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its commissions, departments, boards, 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.

SkyStar expressly acknowledges and agrees that the fees payable hereunder do not take into account any potential liability of City for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to the facilities or SkyStar's uses hereunder. City would not be willing to give this Permit in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of City or its Agents, and SkyStar expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of SkyStar or other waivers contained in this Permit and as a material part of the consideration for this Permit, SkyStar fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against for consequential and incidental damages (including without limitation, lost profits) and covenants not to sue for such damages, City, its Agents, and all persons acting by, through or under each of them, arising out of this Permit or the uses authorized hereunder, including, without limitation, any interference with uses conducted by SkyStar pursuant to this Permit, regardless of the cause, and whether or not due to the negligence of City or its Agents, except solely to the extent of Losses resulting directly from the gross negligence or willful misconduct of City or its Agents.

(4) In connection with the foregoing releases, SkyStar 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.

SkyStar acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. SkyStar realizes and acknowledges that it has agreed on 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.

(5) If City fails to fully and timely perform its obligations hereunder with respect to the Wheel Generator, then upon five business days notice SkyStar may remedy such failure by

City. The actual and reasonable cost of such remedy shall be borne by City and may be offset on a dollar for dollar basis against any sums that SkyStar may owe City or the San Francisco Parks Alliance under Section 8.1 hereof.

15. REPAIR OF DAMAGE

Subject to the terms of Section 10 and Section 13 hereof, if any portion of the Permit Area or any property of City located on or about the Permit Area is damaged by any of the activities conducted by SkyStar hereunder, SkyStar shall immediately, at its sole cost, repair any and all such damage and restore the Permit Area or property to its previous condition.

16. SIGNS

SkyStar may install the SkyStar name on the Wheel as shown on Exhibit A and may further install safety, directional and operational signs within the Permit Area (collectively, the “**Permitted Signs**”). Other than the Permitted Signs, SkyStar shall not place, erect or maintain any sign, advertisement, banner or similar object on or about the Permit Area or elsewhere in the Park without City’s written approval, which City may give, condition, or withhold in its sole discretion, and in so approving, City shall have the right to condition its approval on SkyStar adding the Department logo to the requested sign, advertisement, banner or similar object.

17. UTILITIES

17.1 Utilities and Services.

SkyStar acknowledges that City will be providing power through the Wheel Generator. City will not be responsible for any lost revenue resulting from failure of the Wheel Generator, but SkyStar may recover the cost of the rental of a replacement generator as provided in Section 14(5).

17.2 Interruption of Services

City’s obligations to provide utilities and services for the Permit Area are subject to applicable laws (including the rules or actions of the public utility company furnishing the utility or service), and shutdowns for maintenance and repairs, for security purposes, or due to strikes, lockouts, labor disputes, fire or other casualty, acts of God, or other causes beyond the control of City. If there is an interruption in, or failure or inability to provide any service or utility for the Permit Area for any reason, such interruption, failure or inability shall not impose on City any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by SkyStar, except that SkyStar can recover the cost of the rental of a replacement generator as provided in Section 14.5. SkyStar hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future law permitting the termination of this Permit due to such interruption, failure or inability.

17.3 Water and Energy Conservation; Mandatory or Voluntary Restrictions

If any law, ordinance, code or governmental or regulatory guideline imposes mandatory or voluntary controls on City or any part of the Permit Area relating to the use or conservation of

energy, water, gas, light or electricity or the reduction of automobile or other emissions, or the provision of any other utility or service provided with respect to this Permit, or if City is required or elects to make alterations to any part of the Wheel in order to comply with such mandatory or voluntary controls or guidelines, such compliance and the making of such alterations shall not entitle SkyStar to any damages, relieve SkyStar of the obligation to perform each of its obligations under this Permit or constitute or be construed as a constructive eviction of SkyStar; however in such event SkyStar may at its option remove the Wheel and terminate its obligations under the Permit. City shall have the right at any time to install a water meter in the Permit Area or otherwise to measure the amount of water consumed on the Permit Area.

17.4 Public Restrooms.

During the hours that GGP is open, City will provide SkyStar's employees with access to public restrooms with the exception that City will at all times, on a 24 hour a day basis, provide access to public restrooms to SkyStar's security guards.

18. CITY'S RIGHT TO CURE SKYSTAR DEFAULTS

If SkyStar fails to perform any of its obligations under this Permit, including but not limited to its obligation to surrender the Permit Area, remove the Wheel, restore the Permit Area or repair damage, or if SkyStar defaults in the performance of any of its other obligations under this Permit, then City shall have the right, at its sole option, to remedy such failure for SkyStar's account and at SkyStar's expense by providing SkyStar with ten (10) days' prior written 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 SkyStar is obligated to perform. SkyStar shall pay to City on demand, all costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such default.

19. NO COSTS TO CITY

Except for City's obligations regarding the Wheel Generator, , SkyStar shall bear all costs or expenses of any kind or nature in connection with its use of the Permit Area and shall keep the Permit Area free and clear of any liens or claims of lien arising out of or in any way connected with the use of the Permit Area by SkyStar.

20. INDEMNITY

SkyStar shall indemnify, defend and hold harmless City, its commissions, departments, boards, and Agents, and each of them, from and against all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties, and expenses, including, without limitation, direct and vicarious liability of every 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 or about the Permit Area, or any part thereof, whether to the person or property of SkyStar, its Agents, or their respective invitees, guests or business visitors (collectively, "Invitees") or third persons arising from any use or activity by SkyStar or its Agents under this Permit, (b) any failure by SkyStar to faithfully observe or perform any of the terms, covenants or conditions of this Permit,

(c) the use of the Permit Area or any activities conducted thereon by SkyStar or its Agents or Invitees, or (d) any release or discharge, or threatened release or discharge, of any Hazardous Material caused or allowed by SkyStar or its Agents or Invitees, on, in, under or about the Permit Area, any improvements permitted thereon, or into the environment (other than releases or discharges in connection with the Wheel Generator not caused by SkyStar or its Agents); except solely to the extent of Losses resulting directly from the gross negligence or willful misconduct of City or City's authorized representative. 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 Area and claims for damages or decreases in the value of adjoining property. SkyStar 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 SkyStar by City and continues at all times thereafter.

The Parties' obligations under this Section shall survive the expiration or other termination of this Permit.

21. "AS IS" CONDITION OF PERMIT AREA; DISABILITY ACCESS; DISCLAIMER OF REPRESENTATIONS

SkyStar accepts the Permit Area in its "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 Area or any facilities on the Permit Area for SkyStar's use. Without limiting the foregoing, this Permit is made subject to all applicable laws, rules and ordinances governing the use of the Permit Area, and to any and all covenants, conditions, restrictions, easements, encumbrances, claims of title and other title matters affecting the Permit Area, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey. It is SkyStar's sole obligation to conduct an independent investigation of the Permit Area and all matters relating to its use of the Permit Area hereunder, including, without limitation, the suitability of the Permit Area for such uses. SkyStar shall obtain any further permission necessary because of any other existing rights affecting the Permit Area; provided however to the best knowledge of City there are no such other existing rights. Under California Civil Code Section 1938, to the extent applicable to this Permit, SkyStar is hereby advised that the Permit Area has not undergone inspection by a Certified Access Specialist ("CASp") to determine whether it meets all applicable construction-related accessibility requirements.

22. ASSIGNMENT

22.1 No Assignment or Sublicenses

This Permit and SkyStar's license to enter and use the Permit Area pursuant to this Permit is personal to SkyStar and shall not be assigned, conveyed or otherwise transferred by SkyStar, nor shall SkyStar's use of the Permit Area be sublicensed or transferred to any party, under any circumstances. Any attempt to assign, convey or otherwise transfer this Permit or the rights

herein shall be null and void and cause the immediate termination and revocation of this Permit.

23. DEFAULT; REMEDIES

23.1 Events of Default

Any of the following shall constitute an event of default ("**Event of Default**") by SkyStar hereunder:

(a) **Failure to Pay.** Any failure to make any payment due to City or to San Francisco Parks Alliance, provided SkyStar shall have a period of seven (7) days from the date of written notice from City of such failure within which to cure such reimbursement default in the payment or deposit of any sums due;

(b) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Permit, provided SkyStar shall have a period of fifteen (15) days from the date of written notice from City of such failure within which to cure such default under this Permit, or, if such default is not capable of cure within such fifteen (15) day period, SkyStar shall have a reasonable period to complete such cure if SkyStar promptly undertakes action to cure such default within such fifteen (15) day period and thereafter diligently prosecutes the same to completion and SkyStar uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from City; provided, however, that on the occurrence during the Term of two (2) defaults of the same obligation City shall not be required to provide any notice regarding SkyStar's failure to perform such obligation, and any subsequent failure by SkyStar after SkyStar has received two such notices shall constitute a default by SkyStar hereunder without any requirement on the part of City to give SkyStar notice of such failure or an opportunity to cure.

(c) **Bankruptcy.** The appointment of a receiver to take possession of all or substantially all of the assets of SkyStar, or an assignment by SkyStar for the benefit of creditors, or any action taken or suffered by SkyStar under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within sixty (60) days.

23.2 Remedies

On the occurrence of an Event of Default by SkyStar, City shall have all rights and remedies available to City at law or in equity, including, but not limited to, the right to terminate this Permit by delivering written notice of such termination to SkyStar and to cure such Event of Default at SkyStar's cost. If City elects to cure an Event of Default, SkyStar shall pay to City, promptly on demand, all sums expended by City, or other costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. SkyStar's obligations under this Section shall survive the termination of this Permit. Nothing herein shall imply any duty of City to do any act that SkyStar is obligated to perform under any provision of this Permit, and City's cure or attempted cure of an Event of Default shall not constitute a waiver of such Event of Default or any rights or remedies of City on account of such Event of Default.

Notwithstanding the foregoing, City hereby waives any and all rights to the Wheel, including but not limited to, any lien, priority, rights of foreclosure, levy, execution, sale, distraint, claims in bankruptcy or other insolvency proceedings or other rights arising by contract or under statute or rule of law now existing or hereafter enacted. City acknowledges that the Wheel shall remain at all times the personal property of SkyStar and shall be severable from the Permit Area and shall not be or become a fixture by being in any manner annexed, attached or connected with the Permit Area.

24. NO JOINT VENTURES OR PARTNERSHIP; NO AUTHORIZATION

This Permit does not create a partnership or joint venture between City and SkyStar as to any activity conducted by SkyStar on, in or relating to the Permit Area. SkyStar is not a State actor with respect to any activity conducted by SkyStar on, in, or under the Permit Area. The grant of license under this Permit by the Recreation and Parks Department does not constitute the authorization or approval that may be needed for any activity conducted by SkyStar on, in or relating to the Permit Area from any other City agency or department.

25. 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, SkyStar confirms that SkyStar has read and understood that 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.

26. NON-DISCRIMINATION

26.1 Covenant Not to Discriminate

In the performance of this Permit, SkyStar agrees not to discriminate against any employee of, any City employee working with SkyStar, or applicant for employment with SkyStar, 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.

26.2 Subcontracts

SkyStar shall include in all subcontracts relating to the Permit Area a non-discrimination clause applicable to such subcontractor in substantially the form of Subsection 26.1. In addition, SkyStar 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. SkyStar's failure to comply with the obligations in this Subsection shall constitute a material breach of this Permit.

26.3 Non-Discrimination in Benefits

SkyStar 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 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.

26.4 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 Permit as though fully set forth herein. SkyStar 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, SkyStar 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 SkyStar and/or deducted from any payments due SkyStar.

27. TROPICAL HARDWOODS, VIRGIN REDWOOD, AND PRESERVATIVE-TREATED WOOD

(a) 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. SkyStar agrees that, except as permitted by the application of Sections 802(b) and 803(b), SkyStar 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.

(b) SkyStar may not purchase preservative-treated wood products containing arsenic in the performance of this Permit unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. SkyStar may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude SkyStar from purchasing preservative-treated wood containing arsenic for saltwater

immersion. The term “saltwater immersion” shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

28. NOTIFICATION OF LIMITATIONS ON CONTRIBUTIONS

By executing this Permit, SkyStar acknowledges its obligations under section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who leases, or seeks to lease, to or from any department of the City any land or building from making any campaign contribution to **(a)** a City elected official if the lease must be approved by that official, **(b)** a candidate for that City elective office, or **(c)** a committee controlled by that elected official or a candidate for that office, at any time from the submission of a proposal for the lease until the later of either the termination of negotiations for the lease or twelve (12) months after the date the City approves the lease. SkyStar acknowledges that the foregoing restriction applies only if the lease or a combination or series of leases or other contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. SkyStar further acknowledges that **(i)** the prohibition on contributions applies to each prospective party to the lease; any person with an ownership interest of more than 10 percent (10%) in SkyStar; any subtenant listed in the lease; and any committee that is sponsored or controlled by SkyStar; and **(ii)** within thirty (30) days of the submission of a proposal for the Lease, the City department with whom SkyStar is leasing is obligated to submit to the Ethics Commission the parties to the lease and any subtenant. Additionally, SkyStar certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the lease, and has provided the names of the persons required to be informed to the City department with whom it is leasing.

29. TAXES

29.1 Possessory Interest Tax

SkyStar recognizes and understands that this Permit may create a possessory interest subject to property taxation and that SkyStar may be subject to the payment of property taxes levied on such interest under applicable law. SkyStar agrees to pay any possessory interest taxes that may be lawfully assessed on SkyStar’s interest under this Permit or use of the Permit Area pursuant hereto when they become due and payable and before delinquency. San Francisco Administrative Code Sections 23.38 and 23.39 require that City report certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this Permit to the County Assessor within sixty (60) days after any such transaction, and that SkyStar report certain information relating to such matters to City within thirty (30) days after the applicable transaction. SkyStar agrees to provide such information as may be requested by City to enable it to comply with this requirement.

29.2 Other Taxes

SkyStar agrees to pay any other real or personal property taxes, excises, licenses, permit charges or assessments imposed or levied under applicable law against SkyStar’s use of the Permit Area pursuant to this Permit, the Wheel, any Alterations, SkyStar’s personal property at the Permit Area, or the Wheel operations, and shall, on City’s request, furnish City with official receipts of

the appropriate taxing authority or other evidence reasonable satisfactory to City and evidencing SkyStar's payment thereof. SkyStar shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency. SkyStar shall not allow or suffer a lien for any taxes payable by SkyStar under applicable law to be imposed on the Permit Area or any of the property of SkyStar or its contractors or subcontractors on the Permit Area.

30. RESTRICTION ON THE USE OF PESTICIDES

Chapter 3 of the San Francisco Environment Code (the "**IPM Ordinance**") describes an integrated pest management ("**IPM**") policy to be implemented by all City departments. SkyStar shall not use or apply or allow the use or application of any pesticides on the Permit Area or contract with any party to provide pest abatement or control services to the Permit Area without first receiving City's written approval of an IPM. SkyStar shall comply and shall require all of SkyStar's contractors and subcontractors to comply, with the IPM plan approved by 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 SkyStar were a City department.

If SkyStar or SkyStar's contractor will apply pesticides to outdoor areas at the Permit Area, SkyStar 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>.

31. PROHIBITION OF TOBACCO AND ALCOHOLIC BEVERAGE ADVERTISING AND SALES

SkyStar acknowledges and agrees that no sale or advertising of cigarettes or tobacco products is allowed on the Permit Area. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. SkyStar further acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Permit Area unless approved in advance and in writing by the RPD Manager. 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.

32. CONFLICTS OF INTEREST

Through its execution of this Permit, SkyStar acknowledges that it is familiar with the provisions of 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 SkyStar becomes aware of any such fact during the term of this Permit, SkyStar shall immediately notify City.

33. DRUG-FREE WORKPLACE

SkyStar acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City property. SkyStar agrees that any violation of this prohibition by SkyStar or its Agents shall, subject to applicable notice and cure periods under this Permit, be deemed a material breach of this Permit.

34. FOOD SERVICE AND PACKAGING WASTE REDUCTION

SkyStar agrees to comply fully with and be bound by the provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in Chapter 16 of the San Francisco Environment Code, including the remedies provided therein and implementing guidelines and rules, with respect to the operations at the Permit Area. 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, SkyStar 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, SkyStar 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 SkyStar's failure to comply with this provision.

35. FIRST SOURCE HIRING AGREEMENT

SkyStar acknowledges that it must deliver an executed First Source Agreement in the form attached to this Permit as Exhibit B pursuant to Chapter 83 of the San Francisco Administrative Code (the "**First Source Agreement**") prior to execution of this Permit. Any default by SkyStar under the First Source Agreement shall be a default under this Permit.

36. SAN FRANCISCO PACKAGED WATER ORDINANCE

Unless the Department finds that relying on packaged water is necessary to protect the public health, safety and welfare, and no reasonable alternative to packaged water will serve the same purpose, SkyStar agrees to comply with San Francisco Environment Code Chapter 24 ("**Chapter 24**"). If SkyStar violates this requirement, City may exercise all remedies in this Permit and the Director of City's Department of the Environment may impose administrative fines as set forth in Chapter 24.

37. VENDING MACHINES; NUTRITIONAL STANDARDS

SkyStar shall not install or permit any vending machine on the Permit Area without the prior written consent of the RPD Manager. Any permitted vending machine must comply with the food nutritional and calorie labeling requirements set forth in San Francisco Administrative Code Section 4.9-1(c), as may be amended from time to time (the "**Nutritional Standards Requirements**"). SkyStar agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Permit Area or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section shall be deemed a material breach of this Permit. Without limiting City's other rights and remedies under this Permit, City shall have the right to require the immediate removal of any vending machine on the Permit Area that is not permitted or that violates the Nutritional Standards Requirements.

38. GRAFFITI REMOVAL

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on City and County and its residents, and to prevent the further spread of graffiti.

SkyStar shall remove all graffiti from the Wheel within forty-eight (48) hours of the earlier of SkyStar's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "**Graffiti**" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. Sections 101 et seq.). Any failure of SkyStar to comply with this Section shall constitute an event of default under this Permit.

39. PUBLIC TRANSIT INFORMATION

During the term of this Permit, SkyStar shall establish and carry on a program to encourage maximum use of public transportation by personnel employed on the Permit Area,

including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Permit Area and encouraging use of such facilities, all at SkyStar's sole expense.

40. SUPERVISION OF MINORS

SkyStar shall comply and shall require its contractors and subcontractors to comply with the obligations in California Public Resources Code Section 5164 if SkyStar, or any sublicensee, contractor, or subcontractor is providing services at a City park, playground, recreational center or beach, SkyStar shall not hire, and shall prevent any sublicensee, contractor or subcontractor from hiring, any person for employment or a volunteer position in a position having supervisory or disciplinary authority over a minor if that person has been convicted of any offense listed in Public Resources Code Section 5164. In addition, if SkyStar or any sublicensee, contractor or subcontractor, is providing services to City involving the supervision or discipline of minors, SkyStar and any sublicensee, contractor or subcontractor shall comply with any and all applicable requirements under federal or state law mandating criminal history screening for positions involving the supervision of minors. If there is a conflict between this Section and Section 43, this Section shall control.

41. INTELLECTUAL PROPERTY; MUSIC BROADCASTING RIGHTS

SkyStar shall be solely responsible for obtaining any necessary clearances or permissions for the use of intellectual property at the Permit Area, including, but not limited to musical or other performance rights. (Note to SkyStar: To obtain the appropriate music performance license, you may contact the BMI Licensing Executive toll free at 1-877-264-2137 Monday – Friday, 9-5 p.m. (Central Time) and the American Society of Composers, Authors and Publishers (“ASCAP”) at 1-800-505-4052 Monday – Friday, 9-5 p.m. (Eastern Time).

42. SUNSHINE ORDINANCE

In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public on request.

43. CRIMINAL HISTORY INQUIRIES FOR EMPLOYMENT

(a) Unless exempt, SkyStar agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; "**Chapter 12 T**"), which are hereby incorporated as may be amended from time to time, with respect to applicants and employees of SkyStar and any of their respective contractors or subcontractors performing work at the Permit Area.

(b) SkyStar shall incorporate by reference the provisions of Chapter 12T in all

contracts, and subcontracts for the operation or maintenance of any of the Permit Area and shall require the contractors and subcontractors of SkyStar at the Permit Area, to comply with such provisions. SkyStar's failure to comply with the obligations in this subsection shall constitute a material breach of this Permit.

(c) SkyStar and its contractors and subcontractors at the Permit Area, shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) SkyStar and their contractors and subcontractors at the Permit Area, shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. SkyStar and their contractors and subcontractors at the Permit Area, shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) SkyStar and their contractors and subcontractors at the Permit Area, shall state, in all their respective solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment at the Permit Area, that the SkyStar and their contractors and subcontractors at the Permit Area, as applicable, will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) SkyStar and their contractors and subcontractors at the Permit Area, shall post the notice prepared by the Office of Labor Standards Enforcement ("OLSE"), available on OLSE's website, in a conspicuous place at the Permit Area and at other workplaces within San Francisco where interviews for job opportunities at the Permit Area occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Permit Area or other workplace at which it is posted.

(g) SkyStar understands and agrees, and their contractors and subcontractors at the Permit Area, to understand and agree, that on any failure to comply with the requirements of Chapter 12T, City shall have the right to pursue any rights or remedies available under Chapter 12T or this Permit, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Permit.

(h) If SkyStar has any questions about the applicability of Chapter 12T, it may contact the Department for additional information. The Department may consult with the Director of City's Office of Contract Administration who may also grant a waiver, as set forth in

Section 12T.8.

44. 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: Recreation and Park Department Property Management
McLaren Lodge Annex 501 Stanyan Street
San Francisco, CA 94117
Re: SkyStar Observation Wheel

SkyStar: SkyStar Wheel, LLC
Attn Todd Schneider, Managing Partner 1
610 Des Peres Road Ste 130
St Louis MO 63131

Notices herein shall be deemed given two (2) days after the date when it shall have been mailed if sent by certified or overnight courier, or on the date personal delivery is made and signed for.

45. 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.

46. 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.

47. 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.

48. GENERAL PROVISIONS

(a) This Permit may be amended or modified only by a writing signed by City and SkyStar.

(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 reasonable discretion of the RPD Manager or other authorized City official or the Commission. (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 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 SkyStar consists of more than one person then the obligations of each person shall be joint and several. (j) SkyStar may not record this Permit or any memorandum of this Permit. (k) Subject to the prohibition against assignments or other transfers by SkyStar hereunder, this Permit shall be binding on and inure to the benefit of the Parties and their respective heirs, representatives, successors and assigns.

49. THIRD PARTY BENEFICIARIES.

No provision of this Permit is intended to confer any rights, benefits, remedies, obligations or liabilities hereunder upon any Person other than the Parties and the San Francisco Parks Alliance. Except for the San Francisco Parks Alliance, there are no third party beneficiaries of this Permit.

[PAGE INTENTIONALLY BLANK]

SkyStar 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.

SkyStar:

SKYSTAR WHEEL, LLC, a Missouri Corporation

By:


Todd Schneider, Managing Partner

Date:

2/28/20

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By:


Philip A. Ginsburg, General Manager
Recreation and Park Department

Date:

2/28/20

APPROVED BY:

RECREATION AND PARK COMMISSION
PURSUANT TO RESOLUTION NO.

1912-011 DATED: 3/2/20


Ashley Summers, Commission Liaison

APPROVED AS TO FORM:

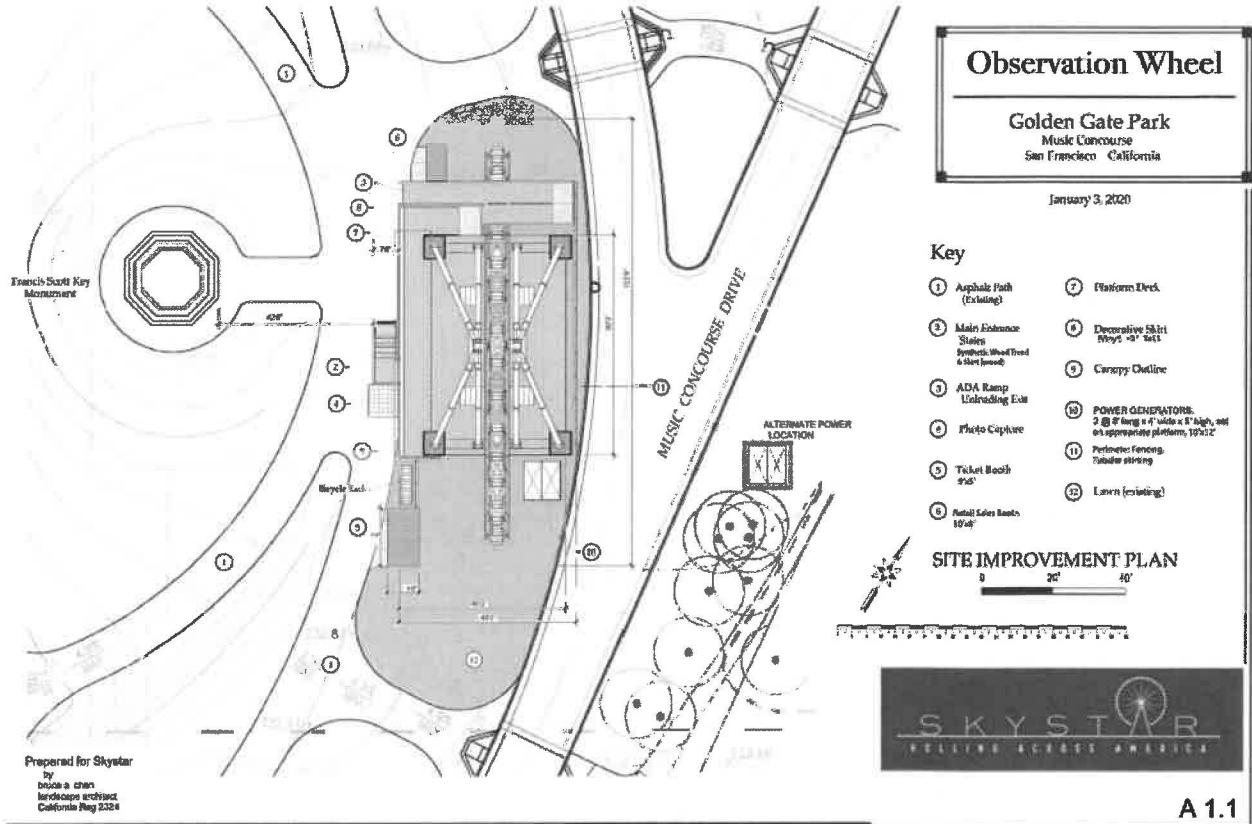
DENNIS J. HERRERA, City Attorney

By:

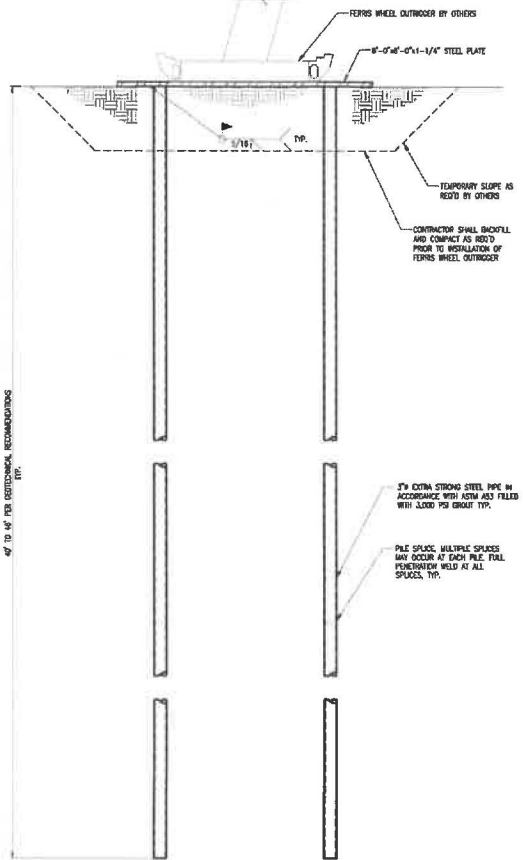

Deputy City Attorney

EXHIBIT A

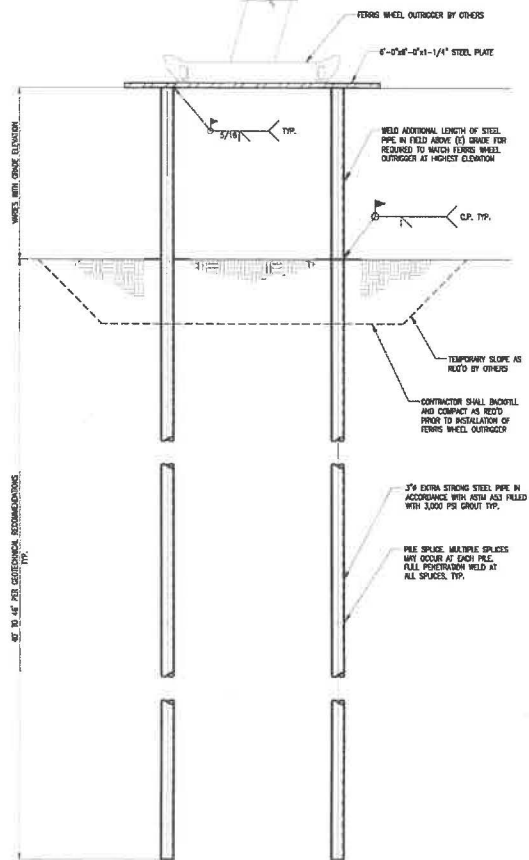
Permit Area and Installations



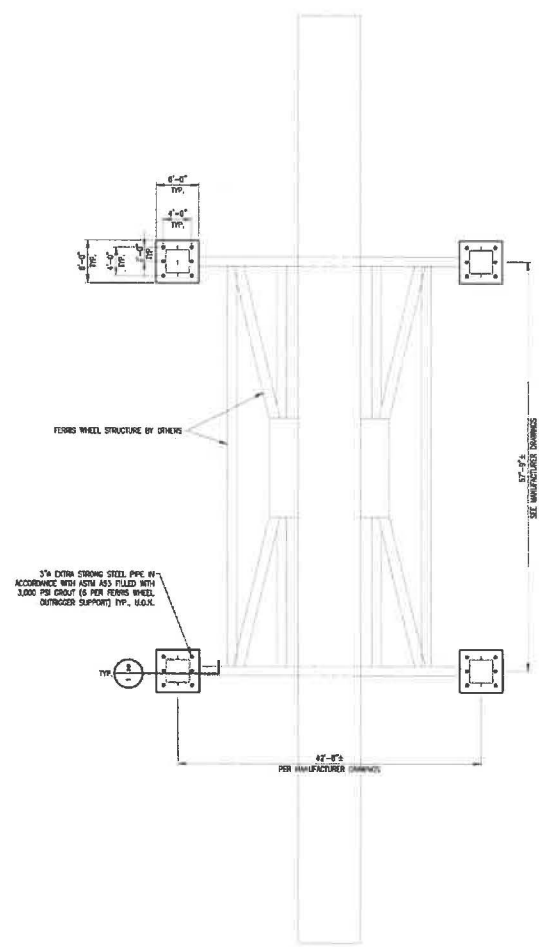
A 1.1



3 FERRIS WHEEL OUTRIGGER AT HIGH ELEVATION 3/4" = 1'-0"



2 FERRIS WHEEL OUTRIGGER AT LOW ELEVATION 3/4" = 1'-0"



1 FERRIS WHEEL FOUNDATION PLAN 1/8" = 1'-0"

ALL DIMENSIONS UNLESS OTHERWISE SPECIFIED SHALL BE IN FEET AND INCHES. DIMENSIONS IN PARENTHESES ARE FOR INFORMATION ONLY. DIMENSIONS IN FEET AND INCHES SHALL BE ROUNDED UP TO THE NEXT WHOLE INCH. IF DIMENSION IS SMALLER, THEN DIMENSION SHALL BE ROUNDED DOWN.

FERRIS WHEEL FOUNDATION GOLDEN GATE PARK SAN FRANCISCO, CA	
DATE: 12/1/2020	BY: TLR
SCALE: AS SHOWN	PROJECT NUMBER: 2019.184.00
DESIGNED BY: TLR	DATE: 12/1/2020
CHECKED BY: TLR	PROJECT NUMBER: 2019.184.00
DATE: 12/1/2020	BY: TLR
Tuan & Robinson, Inc. 224 S. Market Street, Suite 200 San Francisco, CA 94102 TEL: 415.398.3800 FAX: 415.398.3488 WWW: www.tuan-robinson.com	
S21 OF 4	



Figure 12: The base of the SkyStar Observation Wheel, including ticket booth and canopy. Accessibility ramp partially visible on the left of image.



Figure 13: The SkyStar Observation Wheel in Cincinnati, OH, ready for use



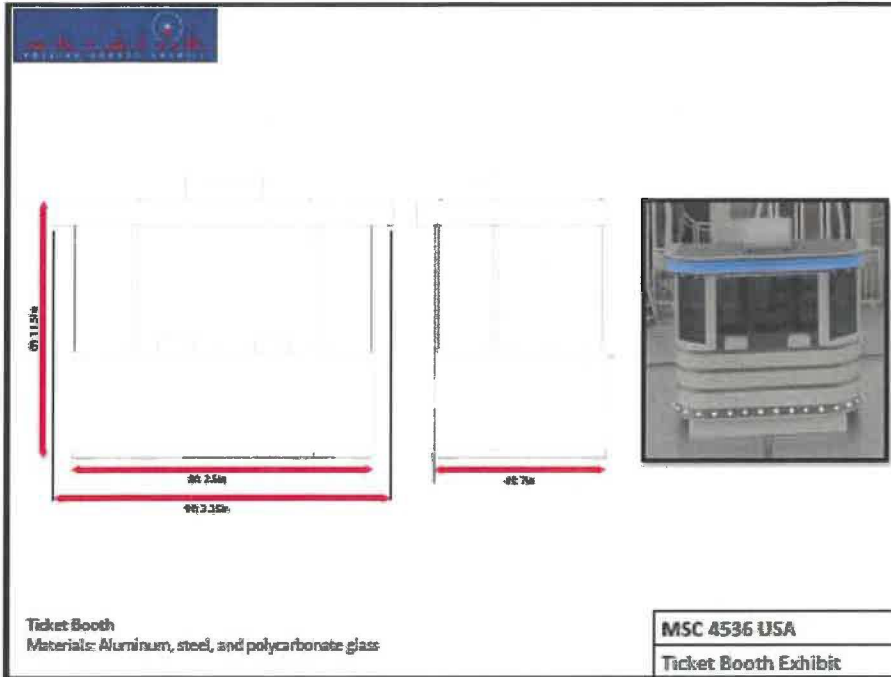


Figure 24: Observation Wheel ticket booth details



Figure 23: View of the SkyStar Observation Wheel and entrance canopy, as seen looking up from nearby the ticket booth.

Canopy
Materials: Aluminum, steel, and polycarbonate glass



Figure 16: View of the SkyStar Observation Wheel at night.



Figure 17: View of the SkyStar Observation Wheel at night.



Figure 21: Closer image of gondolas



Figure 22: Closer image of gondolas

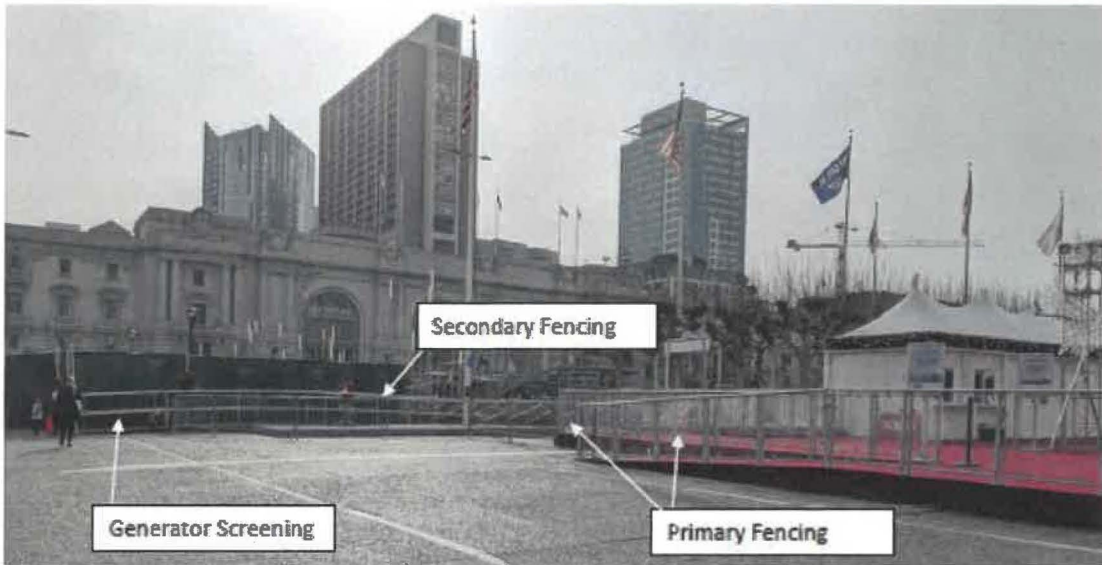


Figure 23: Examples of fencing and screening that will be used around the observation wheel

Fencing & Screening

Expected to be similar to those used by the Civic Center Ice Rink installation:

- Primary Fencing will be as transparent as possible with panels (v1) or metal bars (v2).
- Secondary Fencing would mostly be bicycle racks around the more back of house elements of the observation wheel.
- Generator Screening will be green paneled fencing to blend with the park background



Figure 24: Examples of fencing and screening that will be used around the observation wheel



EXHIBIT B

**Exhibit B: First Source Hiring Agreement
For Business, Commercial, Operation and Lease Occupancy of the Building**

This First Source Hiring Agreement (this "Agreement"), is made as of February 14, 2020, by and between SkyStar Wheel, LLC (the "Lessee"), and the First Source Hiring Administration, (the "FSHA"), collectively the "Parties":

RECITALS

WHEREAS, Lessee has plans to occupy a portion of the eastern edge of the Music Concourse in Golden Gate Park "Premises" which required a First Source Hiring Agreement between the project sponsor and FSHA due to the issuance of building permit for 25,000 square feet or more of floor space or constructed ten or more residential units; and,

WHEREAS, the project sponsor was required to provide notice in leases, subleases and other occupancy contracts for use of the Premises ("Contract"); and

WHEREAS, as a material part of the consideration given by Lessee under contract, Lessee has agreed to execute this Agreement and participate in the Workforce System managed by the Office of Economic and Workforce Development (OEWD) as established by the City and County of San Francisco pursuant to Chapter 83 of the San Francisco Administrative Code;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Parties covenant and agree as follows:

1. DEFINITIONS

For purposes of this Agreement, initially capitalized terms shall be defined as follows:

- a. **Entry Level Position:** Any position that requires less than two (2) years training or specific preparation, and shall include temporary, permanent, trainee and intern positions.
- b. **Workforce System:** The First Source Hiring Administrator established by the City and County of San Francisco and managed by the Office of Economic and Workforce Development (OEWD).

One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103



☎ (415)701-4848 ☎ (415)701-4897 🌐 oewd.org
✉ workforce.development@sfgov.org

- c. Referral: A member of the Workforce System who has been identified by OEWD as having the appropriate training, background and skill sets for a Lessee specified Entry Level Position.

Lessee: Tenant, business operator and any other occupant of the building requiring a First Source Hiring Agreement as defined in SF Administrative Code Chapter 83. Lessee shall include every person tenant, subtenant, or any other entity occupying the building for the intent of doing business in the City and County of San Francisco and possessing a Business Registration Certificate with the Office of Treasurer.

2. OEWD WORKFORCE SYSTEM PARTICIPATION

- a. Lessee shall notify OEWD's Business Team of every available Entry Level Position and provide OEWD 10 business days to recruit and refer qualified candidates prior to advertising such position to the general public. Lessee shall provide feedback including but not limited to job seekers interviewed, including name, position title, starting salary and employment start date of those individuals hired by the Lessee no later than 10 business days after date of interview or hire. Lessee will also provide feedback on reasons as to why referrals were not hired. Lessee shall have the sole discretion to interview any Referral by OEWD and will inform OEWD's Business Team why specific persons referred were not interviewed. Hiring decisions shall be entirely at the discretion of Lessee.
- b. This Agreement shall be in full force and effect throughout the Lessee's occupancy of the building.

3. GOOD FAITH EFFORT TO COMPLY WITH ITS OBLIGATIONS HEREUNDER

Lessee will make good faith efforts to comply with its obligations under this Agreement. Determination of good faith efforts shall be based on all of the following:

- a. Lessee will execute this Agreement and attachment *Exhibit B-1* upon entering into leases for the commercial space of the building. Lessee will also accurately complete and submit *Exhibit B-1* annually to reflect employment conditions.
- b. Lessee agrees to register with OEWD's Referral Tracking System, upon execution of this Agreement.
- c. Lessee shall notify OEWD's Business Services Team of all available Entry Level Positions 10 business days prior to posting with the general public. The Lessee must identify a single point of contact responsible for communicating Entry-Level Positions and take active steps to ensure continuous communication with OEWD's Business Services Team



1 Dr. Carlton B. Goodlett Place, Room 448

San Francisco, CA 94102 | www.oewd.org

p: 415-554-6969 f. 415-554-6018

- d. Lessee accurately completes and submits Exhibit B-1, the "First Source Employer's Projection of Entry-Level Positions" form to OEWD's Business Services Team upon execution of this Agreement.
- e. Lessee fills at least 50% of open Entry Level Positions with First Source referrals. Specific hiring decisions shall be the sole discretion of the Lessee.
- f. Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, or existing employment contracts. In the event of a conflict between this Agreement and an existing agreement, the terms of the existing agreement shall supersede this Agreement.

Lessee's failure to meet the criteria set forth in Section 3 (a.b.c.d.e.) does not impute "bad faith" and shall trigger a review of the referral process and compliance with this Agreement. Failure and noncompliance with this Agreement will result in penalties as defined in SF Administrative Code Chapter 83, Lessee agrees to review SF Administrative Code Chapter 83, and execution of the Agreement denotes that Lessee agrees to its terms and conditions.

4. NOTICE

All notices to be given under this Agreement shall be in writing and sent via mail or email as follows:

ATTN: Business Services, Office of Economic and Workforce Development
1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103
Email: Business.Services@sfgov.org

5. This Agreement contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors. If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected. If Agreement is executed in one or more counterparts, each shall be deemed an original and all, taken together, shall constitute one and the same instrument. Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, successors and assigns. If there is more than one person comprising Seller, their obligations shall be joint and several. Section titles and captions contained in this Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions. This Agreement shall be governed and construed by laws of the State of California.




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San Francisco, CA 94102 | www.oewd.org

p: 415-554-6969 f: 415-554-6018

IN WITNESS WHEREOF, the following have executed this Agreement as of the date set forth above.

Date: 02-17-
2020

Signature: 
Name of Authorized Signer: Todd Schneider
Company: SkyStar Wheel, LLC
Address: 1610 Des Peres Rd. Ste. 130 St.
Louis, MO 63131
Phone: 314-308-2783 (cell)
314-858-1177 (office)
Email: todd@skyviewatlanta.com

1 Dr. Carlton B. Goodlett Place, Room 448



San Francisco, CA 94102 | www.oewd.org

p: 415-554-6969 f. 415-554-6018

EXHIBIT C



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
02/19/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Allied Specialty Insurance, Inc. 10451 Gulf Blvd Treasure Island, FL 33706-4814	CONTACT NAME: Michelle Kugler PHONE (A/C No. Ext): 727-547-3070 FAX (A/C No.): 727-367-5695 E-MAIL ADDRESS: mkugler@alliedspecialty.com INSURER(S) AFFORDING COVERAGE NAIC # INSURER A: T.H.E. Insurance Company 12866 INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:
INSURED SKY STAR WHEEL, LLC 1610 DES PERES ROAD SUITE 130 ST LOUIS MO 63131	

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		CPP0106638-02	02/23/2020	02/23/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ N/A PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMPIOP AGG \$ 1,000,000 \$
	AUTOMOBILE LIABILITY ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY					COMEINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$		ELP0012704-02	02/23/2020	02/23/2021	EACH OCCURRENCE \$ 19,000,000 AGGREGATE \$ 19,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A	WCP0005475-001	02/23/2020	02/23/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Equipment: 2018 Mondial Self Erecting Model Portable Observation Wheel Serial # MCS4536USA
 Location: Golden Gate Park, Bowl Drive @ Music Concourse Drive, San Francisco, CA 94117
 RE: General Liability, the following are named as additional insured in respects to the negligence of the named insured: the City and County of San Francisco, its Recreation and Park Commission and Recreation and Park Department, and their officers, agents and employees
 Further this insurance will be deemed to be primary and non-contributory with respect to the insurance of such additional insured if you agreed to such a condition in the written contract with such additional insured

CERTIFICATE HOLDER San Francisco Recreation and Park Department Permits and Reservations McLaren Lodge in Golden Gate Park 501 Stanyan Street San Francisco, CA 94117	CANCELLATION Thirty (30) days notice of cancellation applies SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
---	---

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ACORD 25 (2016/03)

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EXHIBIT C

POLICY NUMBER: CPP0106638-01

COMMERCIAL GENERAL LIABILITY
CG 20 26 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):

San Francisco Recreation and Park Department
Permits and Reservations
McLaren Lodge in Golden Gate Park
501 Stanyan Street
San Francisco, CA 94117

**NO COVERAGE APPLIES TO LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE
ADDITIONAL INSURED**

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

- A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
1. In the performance of your ongoing operations; or
 2. In connection with your premises owned by or rented to you.
- However:
1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
 2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.
- B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:**
- If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:
1. Required by the contract or agreement; or
 2. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.
- This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

EXHIBIT C

POLICYHOLDER COPY

NA



P.O. BOX 8192, PLEASANTON, CA 94588

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

ISSUE DATE: 03-02-2020

GROUP:
POLICY NUMBER: 9271480-2020
CERTIFICATE ID: 1
CERTIFICATE EXPIRES: 02-28-2021
02-28-2020/02-28-2021

SAN FRANCISCO RECREATION AND PARK DEPT. NA
801 STANYAN ST
SAN FRANCISCO CA 94117-1888

This is to certify that we have issued a valid Workers' Compensation Insurance policy in a form approved by the California Insurance Commissioner to the employer named below for the policy period indicated.

This policy is not subject to cancellation by the Fund except upon 10 days advance written notice to the employer.

We will also give you 10 days advance notice should this policy be cancelled prior to its normal expiration.

This certificate of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policy listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate of insurance may be issued or to which it may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions, and conditions, of such policy.

Authorized Representative

President and CEO

EMPLOYER'S LIABILITY LIMIT INCLUDING DEFENSE COSTS: \$1,000,000 PER OCCURRENCE.

ENDORSEMENT #0015 ENTITLED ADDITIONAL INSURED EMPLOYER EFFECTIVE 2020-03-02 IS ATTACHED TO AND FORMS A PART OF THIS POLICY. NAME OF ADDITIONAL INSURED: SAN FRANCISCO RECREATION AND PARK DEPT.

ENDORSEMENT #2570 ENTITLED WAIVER OF SUBROGATION EFFECTIVE 2020-03-02 IS ATTACHED TO AND FORMS A PART OF THIS POLICY. THIRD PARTY NAME: SAN FRANCISCO RECREATION AND PARK DEPT.

EMPLOYER

SKYSTAR WHEEL, LLC
1810 DES PERES RD
SAINT LOUIS MO 63131

NA

[P1B,HO]

(REV.7-2014)

PRINTED : 03-02-2020

Exhibit C-2

114196726V-9

EXHIBIT C

WAIVER OF SUBROGATION NOTICE

Enclosed is your copy of a certificate of insurance on which the certificate holder required a waiver of subrogation:

1. Please be advised that a waiver of subrogation requires that a 3% surcharge will be applied by State Fund ONLY to the premium assessed on the payroll of your employees earned while engaged in work for that certificate holder who requested the waiver. (Note: if you have no employee payroll on that job, then there is no charge.)
2. To apply the 3% surcharge, you must also agree to maintain accurately segregated payroll records for employees engaged in work on job/s for the certificate holder who has the waiver. The payroll records are subject to verification by an auditor.

Example:

Payroll for job:	\$5,000.00
Sample Rate:	13.30%

Regular Premium equals:	\$ 665.00
Surcharge:	3.00%

Additional Waiver charge:	\$ 19.95
Total premium equals	\$ 684.95 (665.00 + 19.95)