

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorize the Director of Transportation to execute a Second Amendment to the Roof Equipment License Agreement (License Amendment or Agreement) with the San Francisco Municipal Transportation Agency (SFMTA) as tenant (or Permittee) and HWA 555 Owners LLC, a Delaware limited liability company as landlord (or Owner) for existing SFMTA equipment located at 555 California Street, San Francisco, for the SFMTA radio communications activities necessary to run the SFMTA Cable Car System, with an initial three-year term commencing retroactively on November 1, 2011, plus two three-year extension options at fixed rates.

SUMMARY:

- The Cable Car System’s operations and maintenance requires the use of hand-held radio in its daily communication needs.
- The City and County of San Francisco (City) is the Permittee under a Roof Equipment License Agreement for essential rooftop radio equipment at 555 California Street with HWA 555 Owners LLC, as landlord,.
- The term under the First Amendment expired on October 31, 2011 and the Agreement has continued on a Month-to-Month basis while the Owner and the City negotiated to extend the term.
- Staff requests approval of a Second Amendment to extend the license for an initial three-year term commencing retroactively on November 1, 2011 and at the discretion of the Director of Transportation, to exercise an option to extend the agreement for three years each at the fixed monthly rents.
- The initial total annual rent expenditure will be \$88,314.00 per year (or \$7,359.50 per month), adjusted annually on November 1st by 2.5% over the previous lease year. All rent payments have been included in the respective fiscal year’s Operating Budgets.

ENCLOSURES:

1. SFMTA Board Resolution
2. Second Amendment to Roof Equipment License

APPROVALS:

DATE

DIRECTOR _____ August 12, 2013

SECRETARY _____ August 12, 2013

ASSIGNED SFMTAB CALENDAR DATE: August 20, 2013

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PURPOSE

Authorize the Director of Transportation to execute a Second Amendment to Roof Equipment License Agreement (License Amendment or Agreement) with the SFMTA as tenant (or Permittee) and HWA 555 Owners LLC, a Delaware limited liability company as landlord (or Owner) for roof radio equipment located at 555 California Street, San Francisco, for certain SFMTA radio communications activities necessary to run the SFMTA Cable Car System, with an initial three-year term commencing retroactively on November 1, 2011, plus two three-year extension options at fixed rates.

GOAL

This item will meet the following goals and objectives of the SFMTA Strategic Plan:

Goal 1 – Create a safer transportation experience for everyone.

Objective 1.1 Improve security for transportation system users.

Objective 1.2 Improve workplace safety and security.

Objective 1.3 Improve the safety of the transportation system.

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

Objective 3.2 Increase the transportation system's positive impact to the economy.

Objective 3.4 Deliver services efficiently.

BACKGROUND

The SFMTA operates the world-famous Cable Car System as a part of its public transit system. The Cable Car System's operations and maintenance requires the use of hand-held radio in its daily communication needs.

Since 1994, the SFMTA has been a Permittee under a license agreement for the rooftop equipment at 555 California Street. The First Amendment to Roof Equipment License Agreement dated December 5, 2006 extended the license through October 31, 2011. The license then continued on a Month-to-Month basis. Staff has negotiated a Second Amendment to Roof Equipment License Agreement which extends the term through October 31, 2014 and provides for two three-year extension options at fixed rates.

License Terms

The proposed License has an initial term of three years commencing retroactively on November 1, 2011, with an initial rent of \$7,359.50 per month. The initial total annual rent expenditure for the Premises is \$88,314 per year. The rent will be adjusted annually by 2.5% on November 1st of each year and for the extended terms, if applicable. The Lease includes two extension options (three years each) at fixed rents.

ALTERNATIVES CONSIDERED

Two alternatives -- 1250 Clay Street and One Market Plaza -- were also considered. However, these two alternatives were eliminated due to the risk of moving the existing analog equipment and the potential of loss of control time and limited access to parts.

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FUNDING IMPACT

The proposed License payments have been budgeted in the respective fiscal years' Operating Budgets.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney's Office has reviewed this Calendar Item.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize and direct the Director of Transportation of the SFMTA to execute this Second Amendment to Roof License Agreement.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) leases certain roof-top premises at 555 California Street for its transit radio communication equipment's installation and operations and

WHEREAS, The SFMTA is the Permittee under a Roof Equipment License Agreement dated June 21, 1994 which was extended by the First Amendment to Roof Equipment License Agreement and

WHEREAS, The First Amendment to Roof Equipment License Agreement expired on October 31, 2011 and the Agreement has continued on a Month-to-Month basis while the Owner and the City have negotiated in good faith to extend the term; and

WHEREAS, The SFMTA is prepared to enter into a Second Amendment to the Roof Equipment License Agreement, with HWA 555 Owner's LLC, a Delaware limited liability company (Owner) which extends the existing license through October 31, 2014; and

WHEREAS, The proposed Second Amendment has an initial term of three years commencing retroactively on November 1, 2011, with at an initial annual rent expenditure of \$88,314.00 per year (or \$7,359.50 per month), adjusted annually by 2.5% each November 1; and

WHEREAS, The proposed Second Amendment includes two three-year options to extend the agreement at fixed rents; and

WHEREAS, Rental expenditures for the proposed Second Amendment have been included and budgeted in the SFMTA's fiscal year's Operating Budgets; now therefore, be it

RESOLVED, That the SFMTA Board of Directors authorize the Director of Transportation to execute this Second Amendment to Roof Equipment License Agreement (Agreement) with the SFMTA as Permittee and HWA 555 Owner's LLC, a Delaware limited liability company (Owner) for existing radio equipment located at 555 California St., San Francisco, with an initial three-year term, plus two three-year extension options at an initial total annual rent expenditure of \$88,314.00 per year (or \$7,359.50 per month), adjusted annually by 2.5%.

FURTHER RESOLVED, That the SFMTA Board of Directors authorize the Director of Transportation to execute either or both of the Extension Options at his discretion.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of August 20, 2013.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

Second Amendment to Roof Equipment License

SECOND AMENDMENT TO ROOF EQUIPMENT LICENSE AGREEMENT

This Second Amendment to Roof Equipment License Agreement is dated (for reference purposes only) as of April ____, 2013 (this "Amendment"), by and between **HWA 555 OWNERS, LLC**, a Delaware limited liability company ("Owner"), and **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, acting by and through the San Francisco Municipal Transportation Agency ("Permittee").

WITNESSETH:

WHEREAS, 555 California Street LLC, predecessor-in-interest to Owner, and Permittee are parties to a Roof Equipment License Agreement, dated September 15, 2003 (the "Original License Agreement"), pursuant to which Permittee has the right to install, maintain and operate certain "Equipment" at the "Site" (as such terms are defined in the Original License Agreement) at that certain building situated at 555 California Street, San Francisco, California (the "Building"), as more particularly described in the Original License Agreement;

WHEREAS, Owner succeeded to the interest of 555 California Street LLC under the Original License Agreement;

WHEREAS, the Original License Agreement was amended and modified by that certain First Amendment to Roof Equipment License Agreement, dated as of December 5, 2006 (as so amended, the "License Agreement"), pursuant to which Owner and Permittee agreed to extend the term of the License Agreement and to otherwise modify the License Agreement, as more particularly set forth therein;

WHEREAS, the term of the License Agreement expired on October 31, 2011 (the "Prior Expiration Date");

WHEREAS, following the Prior Expiration Date, Permittee continued to maintain and operate the Equipment on the Site on a month-to-month basis in accordance with the terms of the License Agreement; and

WHEREAS, Owner and Permittee desire to amend the License Agreement to further extend the term thereof upon the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants contained herein and in the License Agreement, the parties hereto do hereby covenant and agree as follows:

1. **Defined Terms.** Capitalized terms not otherwise defined herein shall have the meanings given them in the License Agreement.

2. **Term.** The term of the License Agreement (the "Term") is hereby extended for one additional period of three (3) years, which period shall commence on November 1, 2011 (the "Renewal Effective Date") notwithstanding that this Amendment is dated for reference purposes only as of April ____, 2013, and end on October 31, 2014 (the "Extended Expiration Date"), or such sooner or later date that the License Agreement shall expire or terminate pursuant to the terms thereof.

3. **Fixed Minimum Fee.** From and after the Renewal Effective Date, the License Agreement is amended and modified to provide that, from and after the Renewal Effective Date, the Monthly Fixed Minimum Fee payable by Permittee shall be an amount equal to:

<u>Period</u>	<u>Monthly Fixed Minimum Fee</u>
November 1, 2011 – October 31, 2012	\$7,359.50 per month
November 1, 2012 – October 31, 2013	\$7,543.49 per month
November 1, 2013 – October 31, 2014	\$7,732.07 per month

Promptly following the Effective Date (as such term is defined in Paragraph 5 hereof), Owner shall send a statement to Permittee showing the payments of Monthly Fixed Minimum Fee made by Permittee to Owner for the period commencing on the Renewal Effective Date and ending on the Effective Date. Permittee shall pay to Owner an amount equal to the excess (if any) of (i) the aggregate amount of Monthly Fixed Minimum Fee due for such period pursuant to the terms of this Amendment, over (ii) the aggregate amount of Monthly Fixed Minimum Fee theretofore paid by Permittee to Owner for such period as reflected in such statement, within thirty (30) days after the date that Owner gives such statement to Permittee. In the event the aggregate amount of Monthly Fixed Minimum Fee theretofore paid by Permittee for such period exceeds the aggregate amount of Monthly Fixed Minimum Fee due for such period pursuant to the terms of this Amendment, Permittee shall be entitled to credit against the Monthly Fixed Minimum Fee thereafter coming due hereunder.

4. **Option to Further Extend the Term.** From and after the Effective Date, Permittee shall have the option to extend the term of the License Agreement as set forth in this Paragraph 4.

Subject to the terms of this Paragraph 4, Permittee shall have the option (the "First Renewal Option") to extend the term of the License Agreement, as amended hereby, for one (1) additional period of three (3) years (the "First Renewal Term"), which First Renewal Term shall commence on the day immediately succeeding the Extended Expiration Date and end on October 31, 2017 (the "First Renewal Expiration Date"), provided that (i) the License Agreement, as amended hereby, has not been previously terminated, (ii) no default beyond applicable notice and cure period has occurred and is continuing on the date that Permittee gives Owner notice (the "First Renewal Notice") of Permittee's election to exercise the First Renewal Option, and (iii) the City and County of San Francisco is the Permittee hereunder (such requirement, the "Initial Permittee Requirement") on the date that Permittee gives Owner the First Renewal Notice.

The First Renewal Option shall be exercisable only by Permittee's delivering the First Renewal Notice to Owner not later than January 31, 2014 (as to which date time shall be of the essence). Owner shall have the right to declare Permittee's exercise of the First Renewal Option ineffective if (i) a default beyond applicable notice and cure period has occurred and is continuing as of the Extended Expiration Date, or (ii) as of the Extended Expiration Date, the Initial Permittee Requirement is not satisfied, in either case by giving notice thereof to Permittee during the period commencing on the Extended Expiration Date and ending on the date that is fifteen (15) days after the Extended Expiration Date (it being understood that (x) if Owner so declares Permittee's exercise of the First Renewal Option ineffective, then the Term shall terminate on the fifteenth (15th) day after the date that Owner gives Permittee notice of such declaration (in which case Permittee shall pay the Monthly Fixed Minimum Fee due hereunder in respect of the First Renewal Term to the extent accruing during the period commencing on the first day of the First Renewal Term and ending on the date that the Term so terminates), and (y) nothing contained in

this Subparagraph 4(b) limits Owner's other rights or remedies after the occurrence of a default hereunder).

Notwithstanding the foregoing to the contrary, in the event Permittee is unable to obtain approval from the Board of Directors of the San Francisco Municipal Transportation Agency, and, if applicable, the San Francisco Board of Supervisors and the Mayor, in their respective sole and absolute discretion, on or before April 25, 2014, Permittee may rescind the First Renewal Notice by giving notice ("Permittee's First Rescission Notice") to Owner not later than April 30, 2014. Time shall be of the essence as to the date by which Permittee must give Permittee's First Rescission Notice to Owner to rescind the First Renewal Notice. In the event Permittee so rescinds Permittee's exercise of the First Renewal Option, then the Term shall terminate on the Extended Expiration Date and Permittee shall have no further rights to exercise the First Renewal Option set forth in this Paragraph 4. If Permittee shall deliver the First Renewal Notice to Owner as aforesaid and does not give the Permittee's First Rescission Notice to Owner on or prior to April 30, 2014 (as to which date time shall be of the essence), then the Term shall be extended subject to and in accordance with the provisions set forth in this Paragraph 4. Except as expressly set forth in this Subparagraph 4(c), Permittee shall not have the right to revoke the First Renewal Notice or Permittee's First Rescission Notice.

Subject to the terms of this Paragraph 4, Permittee shall have the option (the "Second Renewal Option") to extend the Term for one (1) additional period of three (3) years (the "Second Renewal Term"), which Second Renewal Term shall commence on November 1, 2017 and end on October 31, 2020, provided that (i) the License Agreement, as amended hereby, has not been previously terminated, (ii) no default beyond applicable notice and cure period has occurred and is continuing on the date that Permittee gives Owner notice (the "Second Renewal Notice") of Permittee's election to exercise the Second Renewal Option, (iii) Permittee has theretofore exercised the First Renewal Option, (iv) Permittee has not rescinded Permittee's exercise of the First Renewal Option pursuant to the terms of Subparagraph 4(c) hereof, and (v) the Initial Permittee Requirement is satisfied on the date that Permittee gives Owner the Second Renewal Notice.

The Second Renewal Option shall be exercisable only by Permittee delivering the Second Renewal Notice to Owner not later than January 31, 2017 (as to which date time shall be of the essence). Owner shall have the right to declare Permittee's exercise of the Second Renewal Option ineffective if (i) a default beyond applicable notice and cure period has occurred and is continuing as of the last day of the First Renewal Term, or (ii) as of the last day of the First Renewal Term, the Initial Permittee Requirement is not satisfied, in either case by giving notice thereof to Permittee during the period commencing on the last day of the First Renewal Term and ending on the date that is fifteen (15) days after the last day of the First Renewal Term (it being understood that (x) if Owner so declares Permittee's exercise of the Second Renewal Option ineffective, then the Term shall terminate on the fifteenth (15th) day after the date that Owner gives Permittee notice of such declaration (in which case Permittee shall pay the Monthly Fixed Minimum Fee due hereunder in respect of the Second Renewal Term to the extent accruing during the period commencing on the first day of the Second Renewal Term and ending on the date that the Term so terminates), and (y) nothing contained in this subsection limits Owner's other rights or remedies after the occurrence of a default hereunder.

Notwithstanding the foregoing to the contrary, in the event Permittee is unable to obtain approval from the Board of Directors of the San Francisco Municipal Transportation Agency, and, if applicable, the San Francisco Board of Supervisors and the Mayor, in their respective sole and

absolute discretion, on or before April 25, 2017, Permittee may rescind the Second Renewal Notice by giving notice ("Permittee's Second Rescission Notice") to Owner not later than April 30, 2017. Time shall be of the essence as to the date by which Permittee must give Permittee's Second Rescission Notice to Owner to rescind the Second Renewal Notice. In the event Permittee so rescinds Permittee's exercise of the Second Renewal Option, then the Term shall terminate on the First Renewal Expiration Date and Permittee shall have no further rights to exercise the Second Renewal Option set forth in this Paragraph 4. If Permittee shall deliver the Second Renewal Notice to Owner as aforesaid and does not give the Permittee's Second Rescission Notice to Owner on or prior to April 30, 2017 (as to which date time shall be of the essence), then the Term shall be extended subject to and in accordance with the provisions of this Paragraph 4. Except as expressly set forth in this Subparagraph 4(f), Permittee shall not have the right to revoke the Second Renewal Notice or Permittee's Second Rescission Notice.

The term "Renewal Term" shall mean each of the First Renewal Term and the Second Renewal Term. The term "Renewal Option" shall mean each of the First Renewal Option and the Second Renewal Option. The term "Renewal Notice" shall mean each of the First Renewal Notice and the Second Renewal Notice.

If Permittee exercises a Renewal Option, then the licensing of the Site during the applicable Renewal Term shall be upon all of the same terms and conditions set forth in the License Agreement, as amended hereby, except that:

(i) the Monthly Fixed Minimum Fee payable during the First Renewal Term shall be as follows:

<u>Period</u>	<u>Monthly Fixed Minimum Fee</u>
November 1, 2014 – October 31, 2015	\$7,925.38 per month
November 1, 2015 – October 31, 2016	\$8,123.51 per month
November 1, 2016 – October 31, 2017	\$8,326.60 per month

(ii) the Monthly Fixed Minimum Fee payable during the Second Renewal Term shall be as follows:

<u>Period</u>	<u>Monthly Fixed Minimum Fee</u>
November 1, 2017 – October 31, 2018	\$8,534.76 per month
November 1, 2018 – October 31, 2019	\$8,748.13 per month
November 1, 2019 – October 31, 2020	\$8,966.83 per month

(iii) Owner shall have no obligation to perform any work or grant any work allowance to Permittee in connection with Permittee's exercise of the applicable Renewal Option; and

(iv) the provisions of this Paragraph 4 shall not be applicable to permit Permittee to further extend the Term (except for a Renewal Option that remains exercisable in accordance with the terms of this Paragraph 4).

5. **Effective Date.** As used herein the "Effective Date" is the date hereof.

6. **Interference.** From and after the Effective Date, Paragraph 8 of the License Agreement is hereby deleted in its entirety and the following shall be deemed inserted in lieu thereof:

“8. INTERFERENCE

It is hereby acknowledged by Permittee that Owner may conduct communications activities in, on and about the Building and may grant to certain telecommunications service providers, broadcasters and other parties the right, during the term of this License Agreement to engage in communications activities in, on and about the Building (including, without limitation, the roof thereof). Without limitation of the foregoing, during the term of this License Agreement, Owner may continue to (i) erect, use and maintain, or to grant other permittees the right to erect, use and maintain, pipes, ducts, wiring cables and conduits and appurtenances thereto, in, on and about the Building (including, without limitation, through the main communication shaft and the roof), and (ii) to attach cables, ducts antenna masts and broadcast or other communications antennas, to portions of the Building or roof. In the event of any interference to Permittee's Equipment attributable to the equipment and installations of any other persons or entities in the Building to the extent installed or modified after Permittee's Equipment is installed, Owner agrees to take commercially reasonable action to facilitate the elimination of such interference; provided, however, other than in the case of a willful and intentional breach of the foregoing covenant by Owner, Owner shall have no liability nor shall Permittee's obligations under this License Agreement be diminished or otherwise affected by reason of the existence of any such other communications equipment or any interference by such other communications equipment with transmissions to or receptions by Permittee's Equipment. In the event that such interference from third parties prevents Permittee from using some or all of its Equipment and such interference is not resolved within sixty (60) days following notice from Permittee to Owner, which notice shall include reasonable supporting documentation identifying and evidencing such interference, Permittee may, as its sole remedy, terminate this Agreement upon thirty (30) days' notice to Owner.

Permittee shall use the Site and the Equipment so as not to interfere in any way with the (i) the ability of tenants or other permittees or occupants of the Building or occupants of other properties to receive and/or transmit radio, television, telephone, computer, data processing, fiber-optic, microwave, short-wave, long-wave or any other signals of any sort, (ii) the use by Owner or such tenant or other permittees or occupants of electric, computer, electronic, fiber-optic or other facilities, equipment, appliances, personal property or fixtures, (iii) use of any antennas, satellite dishes or other equipment or facilities located on the roof or any other floor or area of the Building or other properties (collectively, “Other Equipment”) as of the date of that certain Second Amendment to Rooftop License Agreement, dated as of April __, 2013 (the “Second Amendment”), between Owner and Permittee, or (ii) the operation of the Building systems. In the event that the Equipment causes or is reasonably and in good faith believed to cause any such prohibited interference, or in the event that Equipment is subsequently modified after the date of the Second Amendment and the same then causes any interference with Other Equipment that was installed prior to the date the Equipment was so modified, then the upon receipt of notice from Owner of such interference, Permittee will take all steps necessary to correct and eliminate the interference. If the interference is not eliminated within 24 hours of Permittee's receipt or refusal of receipt of notice thereof then, upon request from Owner, Permittee shall shut down the Equipment pending resolution of the interference. If such interference has not been corrected within ten (10) days, Owner may require Permittee to

remove the specific items of Equipment causing such interference. In the event that Permittee's use of the Site or the Equipment shall cause any of the foregoing interference, and Permittee reasonably and in good faith determines that elimination of such interference by Permittee would result in Permittee being unable to use the Site or some or all of the Equipment as required by Permittee for the uses permitted hereunder, then (i) Permittee shall provide Owner with evidence reasonably satisfactory to Owner that the elimination of such interference would result in Permittee being unable to use the Site or some or all of the Equipment for the uses permitted hereunder and (ii) provided that such evidence is reasonably satisfactory to Owner, Permittee shall have the right to terminate this License Agreement upon at least forty-five (45) days' prior written notice to Owner, unless by written notice to Permittee within fifteen (15) days after Owner's receipt of Permittee's termination notice Owner shall waive Permittee's obligation to eliminate such interference. In the event of such termination, prior to the termination date Permittee, at its sole cost and expense, shall remove the Equipment from the Building and otherwise comply with its obligations under this License Agreement applicable upon the termination hereof. No early termination fee shall be payable by either party to the other by reason of such early termination of this License Agreement. Such early termination of this License Agreement shall not relieve Permittee from any liability hereunder that shall accrue prior to the early termination date. In addition to the foregoing, Permittee agrees to use commercially reasonable efforts to prevent the Equipment from interfering in any way with any Other Equipment installed after the date of the Second Amendment, or any Other Equipment which is installed after the date the Equipment is modified as contemplated herein."

7. **Indemnity.** From and after the Effective Date, Paragraph 20 of the License Agreement is hereby amended and modified to (i) delete the first sentence thereof and insert the following in lieu thereof:

"To the fullest extent permitted by law, Permittee shall hold Owner, Owner's managing agent, and the holders of any superior interest in the building (including the holders of any mortgagees, and their respective constituent respective partners, members, managers, officers, directors, employees, trustees and agents (hereinafter collectively called the "Indemnitees") harmless from and indemnify and defend the Indemnitees against any and all claims, liabilities, demands, costs (including reasonable attorneys' fees and costs), expenses, damages, losses, actions, causes of actions, or judgments (collectively, "Claims"), to the extent arising or resulting from or in connection with (i) the acts or omissions of Permittee, Permittee's employees, agents, contractors, permittees, visitors or invitees in or about the Real Property, or (ii) the use of the Site by Permittee, and the installation, operation, existence, maintenance, repair, removal replacement or relocation of the Equipment whether occurring on or at the Site or any other place within or about the Building and whether arising prior to, during or subsequent to the term hereof, or (iii) any breach or default under this License Agreement by Permittee; except to the extent the Claims are caused directly by the gross negligence or willful misconduct of Owner", and

- (ii) capitalize the word "claims" in the second (2nd) sentence thereof so that the word shall refer to the defined term "Claims" and (iii) delete the words "claims, costs, or losses" from the third (3rd) sentence thereof and insert the defined term "Claims" in lieu thereof.

8. **Insurance and Waiver of Subrogation.** From and after the Effective Date, Paragraphs 22 and 23 of the License Agreement are hereby deemed deleted in their entirety and the following shall be deemed inserted in lieu thereof:

“22. INSURANCE

a. Permittee shall, at Permittee’s expense, maintain during the term of this License Agreement: (i) commercial general liability insurance including contractual liability coverage, with a minimum coverage of One Million Dollars (\$1,000,000) per occurrence/Two Million Dollars (\$2,000,000) general aggregate per location, plus a Five Million Dollars (\$5,000,000) umbrella/excess policy, for injuries to, or illness or death of, persons and damage to property occurring in or about the Site or otherwise resulting from Permittee’s operations on or about the Building and the land upon which it sits (collectively, the “Real Property”), (ii) property insurance protecting Permittee against loss or damage by fire and such other risks as are insurable under then-available standard forms of “all risk” insurance policies (excluding flood but including water damage and earthquake coverage), covering Permittee’s property in or about the Site or the Real Property and also covering any fixtures that may belong to Permittee and any improvements or alterations, for the full replacement value thereof without deduction for depreciation (Permittee may self-insure for earthquake coverage); and (iii) workers’ compensation insurance in statutory limits. All such policies shall provide coverage on an “occurrence” rather than a “claims made” basis; except that the telecommunications liability coverage may be provided on a claims made basis provided that the retroactive date for coverage is no later than the effective date of that certain Second Amendment to Roof Equipment Agreement, dated as of February ____, 2013 (the “Amendment”) between Owner and Permittee (unless Permittee elects to self-insure and provides Owner with reasonable evidence of such coverage) and the policy provides that in the event of cancellation or non-renewal, the discovery period for insurance claims (tail coverage) will be at least five (5) years. The above-described liability policies shall protect Permittee, as named insured, and Owner and all the Indemnitees (as such term is defined in the Amendment) and any other parties designated by Owner, as additional insureds; the liability policies cannot contain any exclusions or clauses limiting contractual liability assumed under an insured contract; and all coverages shall be primary to, and not contributing with, any insurance or self-insurance carried by such additional insureds. Regardless whether Permittee’s liability hereunder is or is not covered by insurance, Permittee’s liability shall in no way be limited by the amount of insurance recovery or the amount of insurance in force, or available, or required by any provisions of this License Agreement. The limits listed above are considered minimum. Owner reserves the right to increase the foregoing amount of liability coverage from time to time as Owner determines is required to adequately protect Owner and the other parties designated by Owner from the matters insured thereby. Nothing in this Paragraph 22 shall be construed as creating or implying the existence of (i) any ownership by Permittee of any additions, alterations, or improvements in or to any portion of the Real Property or (ii) any right on Permittee’s part to make any addition, alteration or improvement in or to any portion of the Real Property.

b. Each insurance policy required pursuant to this Paragraph 22 shall be issued by an insurance company licensed to do business in the State of California and with a general policyholders’ rating of “A+” or better and a financial size ranking of “Class VIII” or higher in the most recent edition of Best’s Insurance Guide. Each insurance policy, other than Permittee’s workers’ compensation insurance, shall (i) provide that it may not be cancelled unless thirty (30) days’ (ten (10) days’ for non-payment of premium)

prior written notice to Owner and is given, and (ii) provide that no act or omission of Permittee shall affect or limit the obligations of the insurer with respect to any other insured. Certificates of insurance evidencing the coverages thereof and copies of additional insured and waiver of subrogation endorsements shall be delivered to Owner by Permittee upon signing the Amendment and thereafter Permittee shall deliver to Owner renewal certificates and endorsements at least five (5) days prior to the expiration dates of expiring policies; it being understood that the foregoing shall not be applicable to the extent that Permittee elects to self-insure subject to and in accordance with the provisions of subsection (c) hereof and delivers evidence thereof to Owner on or prior to the date of the Amendment.

c. Notwithstanding anything to the contrary set forth herein, as long as the City and County of San Francisco is the Permittee under this License Agreement, Permittee may elect to fulfill its insurance obligations hereunder by self-insuring, provided that (i) Permittee represents and warrants that it is adequately self-insured, which warranty and representation shall be a continuing one throughout the term hereof; for all purposes under this License Agreement for the particular risk, and (ii) no such self-insurance shall diminish the rights and privileges to which Owner is otherwise entitled under the terms of this License Agreement when there is a third-party insurer. If Permittee ceases to self-insure with respect to any risk for which this License Agreement requires insurance, Permittee shall give notice thereof to Owner and shall immediately comply with the provisions of this License Agreement relating to the policies of insurance required.

23. WAIVER OF SUBROGATION

Each party hereby releases the other party and its respective Indemnitees identified in Paragraph 20 hereof, and the respective partners, shareholders, agents, employees, officers, directors and authorized representatives of such released parties, from any claims (including deductibles, self-insured retentions, or self-insurance) such party may have for damage to the Building, the Site or any of the releasing party's fixtures, personal property, equipment, improvements and alterations in or about the Site, the Building or the Real Property that is caused by or results from risks insured against under any property insurance policies actually carried by the releasing party or deemed to be carried by the releasing party. For purposes of this Paragraph 23, Permittee shall be deemed to be carrying any of the insurance policies required pursuant to Paragraph 22 but not actually carried by Permittee, and Owner shall be deemed to be carrying standard form "all risk" insurance covering the Building and the improvements therein. Each party shall cause each such property insurance policy obtained by it to provide that the insurance company waives all rights of recovery by way of subrogation against the other party and the other aforesaid released parties in connection with any matter covered by such policy."

9. OFAC.

(a) Permittee represents and warrants to Owner that (a) Permittee and each person or entity directly or indirectly owning an interest in Permittee is (i) not currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control of the Department of the Treasury ("OFAC") and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation (collectively, the "List"), and (ii) not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, (b) none

of the funds or other assets of Permittee constitute property of, or are beneficially owned, directly or indirectly, by, any Embargoed Person, (c) no Embargoed Person has any interest of any nature whatsoever in Permittee (whether directly or indirectly), (d) none of the funds of Permittee have been derived from any unlawful activity with the result that the investment in Permittee is prohibited by requirements of law or that the License Agreement, as amended hereby is in violation of requirements of law, and (e) Permittee has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times. The term "Embargoed Person" means any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder with the result that the investment in Permittee is prohibited by requirements of law or Permittee is in violation of requirements of law.

(b) Permittee covenants and agrees (a) to comply with all requirements of law relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect, (b) to immediately notify Owner in writing if any of the representations, warranties or covenants set forth in this paragraph or the preceding paragraph are no longer true or have been breached or if Permittee has a reasonable basis to believe that they may no longer be true or have been breached, (c) not to use funds from any "Prohibited Person" (as such term is defined in the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) to make any payment due to Owner under this Agreement and (d) at the request of Owner, to provide such information as may be requested by Owner to determine Permittee's compliance with the terms hereof.

(c) Permittee hereby acknowledges and agrees that Permittee's inclusion on the List at any time during the term of this License Agreement shall be a default beyond notice and cure periods under this License Agreement. Notwithstanding anything herein to the contrary, Permittee shall not permit the Site, or any portion thereof to be used or occupied by any person or entity on the List or by any Embargoed Person (on a permanent, temporary or transient basis), and any such use or occupancy of the License Areas, or any portion thereof by any such person or entity shall be a default under this License Agreement.

10. Default/Notice to Cure. From and after the Effective Date, Paragraph 26 of the License Agreement is hereby amended and modified to insert immediately after the words "by Permittee" in the first (1st) line thereof, the words "which continues for more than five (5) business days following notice thereof."

11. Notices. The addresses for delivery of all notices as previously set forth in Paragraph 1 of the License Agreement are amended and modified as follows:

Notices to Owner to:

HWA 555 Owners, LLC
co/o Vornado Office Management LLC
888 Seventh Avenue
New York, New York 10019
Attn.: President - New York Division

And with a copy to each of the following:

Vornado Realty Trust
210 Route 4 East
Paramus, New Jersey 07652
Attn.: Executive Vice President - Finance and Administration and Chief
Financial Officer

HWA 555 Owners, LLC
c/o Vornado Office Management LLC
888 Seventh Avenue
New York, New York 10019
Attn.: Vice President - Leasing (555 California Street)

HWA 555 Owners, LLC
555 California Street
San Francisco, California 94104
Attn.: Property Manager

Highpointe Management, LLC
750 Park of Commerce Blvd, Ste. 300
Boca Raton, FL 33487
Attn.: Lease Administration, CA-0904 555 California Building/Lease: 14514

Notices to Permittee, to:

Attn.: Kerstin Magary
City and County of San Francisco
MTA Real Estate/Facilities Planning
One South Van Ness Avenue, 8th Floor
San Francisco, CA 94103

With a copy to:

Attn.: Director of Property
City and County of San Francisco
Real Estate Division
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102

12. Day-to-Day Communications; Emergency Access Protocols. Without limiting the provisions of the License Agreement regarding notice, the current protocol for day-to-day and emergency access to the Site by Permittee is as follows:

- Permittee shall be provided routine access to the Site every other Thursday morning at 9:00 am for routine maintenance without charge, provided, however, if Permittee (i) has not cancelled such scheduled access by email to Global Tower Partners ("GTP") at Access@gtpsites.com with a courtesy copy to Owner's Agent at _NYO_555_California_St_Construction@vno.com forty-eight (48) hours in advance and (ii) is a "no – show," Permittee shall pay Owner \$500 for each such "no show" instance.

Permittee anticipates that the duration of routine access will typically be approximately four (4) hours and if Permittee anticipates that the duration of any particular routine access will exceed five (5) hours, Permittee shall advise Global Tower Partners and Owner's agent via electronic mail of the anticipated duration of any such access in accordance with the provisions set forth in this Paragraph 12.

- Permittee shall also be provided access to the Site at other times without charge by emailing to GTP 72 hours in advance along with the completed form attached to this Amendment as Exhibit A (subject to reasonable revisions made by Owner's Agent and communicated to Permittee, from time to time). The following employees of Permittee with City and County of San Francisco shall have the ability to get prompt access to the Site in an emergency by calling the Owner directly at 415-392-1697. Prompt access shall be defined as access as soon as the Building has been cleared as safe to enter. An emergency shall be defined as an effective shutdown of Permittee's communication equipment or an inspection following a natural disaster such as an earthquake or wind storm.

Permittee's emergency access employees are:

- 1) Lam Sao
- 2) Larry Chau
- 3) Roy Mash
- 4) Khoa Trinh

- Throughout the term of the License Agreement, Permittee shall have the right to substitute, in writing, other employees for the employees listed above.
- Permittee's employees desiring access to the Site shall be required to provide reasonable identification to personnel at the Building's Security Desk located in the lobby, and shall comply with all Building rules and regulations.
- All amounts payable pursuant to this Paragraph 12 shall be invoiced by GTP and shall be paid by Permittee as an additional fee under the License Agreement within ten (10) days following GTP's rendition of a bill therefor.

13. Payment Address. The payment address for Fixed Minimum Fee previously set forth in Paragraph 4 of the License Agreement is changed as follows:

Attn: Global Tower Holdings LLC
c/o Suntrust Bank
P.O. Box 116465
Atlanta, GA 30368-6465
Re: CA-0904 555 California/Lease: 14514

14. Condition of Site. Permittee shall accept the Site in its as is condition on the Effective Date and Permittee acknowledges and agrees that Owner shall have no obligation to make or pay for any improvements or perform any renovations or other work in or to the Site to prepare the same for Permittee's continued use thereof.

15. Limitation of Owner's Liability. The provisions of Paragraph 35 shall apply to the License Agreement, as amended hereby.

16. Agents or Brokers. (a) Permittee represents and warrants to Owner that it has not dealt with any broker, finder or like agent in connection with this Amendment other than GTP. Permittee does hereby indemnify and hold Owner harmless of and from any and all loss, costs, damage or expense (including, without limitation, attorneys' fees and disbursements) incurred by Owner by reason of any claim of or liability to any broker, finder or like agent, other than GTP, who shall claim to have dealt with Permittee in connection herewith as a result of Permittee's representation and warranty set forth in this Paragraph 16 being untrue.

(b) Owner represents and warrants to Permittee that it has not dealt with any broker, finder or like agent in connection with this Amendment other than GTP. Owner does hereby indemnify and hold Permittee harmless of and from any and all loss, costs, damage or expense (including, without limitation, attorneys' fees and disbursements) incurred by Permittee by reason of any claim of or liability to any broker, finder or like agent, including, without limitation, GTP, who shall claim to have dealt with Owner in connection herewith. Owner shall pay GTP any fees that may be due in connection with this Amendment pursuant to the terms of a separate agreement between Permittee and GTP.

(c) The provisions of this Paragraph 16 shall survive the expiration or termination of the License Agreement, as amended by this Amendment.

17. No Offer. Submission of this instrument for examination and signature by Permittee does not constitute an offer to amend the License Agreement or a reservation of or option to amend the License Agreement and this instrument is not effective as an amendment or otherwise until executed and delivered by both Owner and Permittee.

18. Authority. If Permittee is a corporation, partnership, trust, association or other entity, Permittee and each person executing this Amendment on behalf of Permittee, hereby covenants and warrants that (a) Permittee is duly incorporated or otherwise established or formed and validly existing under the laws of its state in which the Building is located, (c) Permittee has full corporate, partnership, trust, association or other appropriate power and authority to enter into this Amendment and perform all Permittee's obligations under the License Agreement, as amended by this Amendment, and (d) each person (and all of the persons if more than one signs) signing this Amendment on behalf of Permittee is duly and validly authorized to do so.

19. Entire Agreement. The License Agreement, as amended by this Amendment, constitutes the entire understanding between the parties hereto with respect to the Site and may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

20. Enforceability. This Amendment shall not be binding upon or enforceable against either Owner or Permittee unless, and until, Owner and Permittee, each in its sole discretion, shall have executed and unconditionally delivered to the other an executed counterpart of this Amendment.

21. **Full Force and Effect of License Agreement.** Except as modified by this Amendment, the License Agreement and all covenants, agreements, terms and conditions thereof shall remain in full force and effect, and are hereby in all respects ratified and confirmed.

22. **Counterparts.** This Amendment may be executed in one or more counterparts, it being understood that all such counterparts, taken together, shall constitute one and the same agreement.

THIS AMENDMENT IS EXECUTED by Owner and Permittee as of the respective dates set forth below their signatures.

<p>Owner:</p> <p>HWA 555 OWNERS, LLC, a Delaware limited liability company</p> <p>By: Hudson Waterfront Associates I, L.P., a Delaware limited partnership, its sole member</p> <p>By: Hudson Waterfront I Corporation, a Delaware corporation, its sole general partner</p> <p>By: _____ David R. Greenbaum President</p>	<p>Permittee:</p> <p>CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the San Francisco Municipal Transportation Agency</p> <p>By: _____ Edward D. Reiskin Director of Transportation</p> <p>Date: _____</p> <p>APPROVED BY: San Francisco Municipal Transportation Agency Board of Directors Resolution No: _____ Adopted: _____ Attest: _____ Roberta Boomer Secretary, SFMTA Board of Directors</p> <p>APPROVED AS TO FORM: DENNIS J. HERRERA, City Attorney</p> <p>By: _____ Anita L. Wood Deputy City Attorney</p>
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EXHIBIT A
ACCESS REQUEST FORM



Submit this form to: _NYO_555_California_St_Construction@vno.com
for 555 California / 345 Montg. OR
_NYO_315_Montgomery_St_Construction@vno.com
for 315 Montgomery

Contractor Access Form - GENERAL CONSTRUCTION

From: _____ **General Contractor**
_____ **Project Manager**
_____ **Cell#**
_____ **Office #**
_____ **Home #**
_____ **Project Superintendent**
_____ **Cell#**
_____ **Office #**
_____ **Home #**

Fatima Vegas **General Manager**
Andy Csonka (555 / 345) & Tolando Travillian (315) **Chief Engineer**

Date: _____
Tenant: _____
Job #: _____

Please select property:

- 555 California**
- 315 Montgomery**
- 345 Montgomery**

Floor #: _____

The following is a list of subcontractors who will require building access to the above referenced space on the below date(s). Please note that access forms can only be set up for a **one week period at a time**.

General Contractor / Subcontractor Name	Main Contact / Emergency #	Date (From-To)	Time (From-To)	Crew Size
<i>Note: All contractors involved with hazardous material work must be listed on the Building's "Contractor Access Form - Hazardous Material Work"</i>				

Brief Description of Work:

Please check boxes below if needing access to the below closets:

ELECTRICAL CLOSET TELEPHONE RISER CLOSET UTILITY CLOSET

REASON FOR CLOSET ACCESS:

IMPORTANT NOTES

- 1) It is the General Contractor's responsibility to have their Superintendent and/or their Subcontractor's responsible party sign in and out with Engineering prior to the commencement of ANY work.
- 2) A minimum of **48 HOURS NOTICE** must be given for such items as Life Safety Testing, Smoke Detector(s) needing to be turned off, HVAC/Air Off Requests (ACM work), Sprinkler Work, Loud noise, Coring, and Roto-Hammering.
- 3) Any work in and around elevators must be coordinated and scheduled in advance with the Building Office. Please note that Bus Taps will require a longer notification period. Prior arrangements must be made with the Building Office for freight elevator reservations and Debris Boxes must be scheduled with Security directly.
- 4) **Please note that the notification boxes must be completed before submitting the access form. If voicemail is left and access has not been approved, it is the responsibility of the General Contractor to call back for that individual's approval:**

Andy Csonka (555/345) or Tolando Travillian (315), Chief Engineer Notified:
(415) 392-1697 x251 for Andy; x265 for Tolando
Building Office Notified:
(415) 392-1697
Cushman & Wakefield Office Notified (Bank of America projects only):
(415) 913-4854 for Jennifer Kremen
Lawrence Francis, Security Manager Notified
(555/345/315 only):
(415) 392-1697 x254

Date	Contact	Left VM	Approved	
			By	Reason
	Andy			
	Jericho			
	Diana			
	Lawrence			

Building Office to coordinate access with Engineering and Security for the items mentioned in the above Note section.

(Internal Use Only)

Copies to: Security (1), Security Director (1), Engineering (1), Janitorial (1)

REVISED 08/02/11