



# Staff Report

## City of Manhattan Beach

**TO:** Honorable Mayor Ward and Members of the City Council

**THROUGH:** Richard Thompson, Interim City Manager

**FROM:** Jim Arndt, Director of Public Works  
Steve Finton, City Engineer

**DATE:** July 20, 2010

**SUBJECT:** Consideration of an Amendment to a License Agreement with Northrop Grumman Systems Corp. Related to an Aerial Fiber Optic Communication Line Connecting Northrop Grumman Facilities in Manhattan Beach and Redondo Beach.

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### RECOMMENDATION:

Staff recommends that the City Council authorize the City Manager to execute an amendment to a license agreement with Northrop Grumman Systems Corp. related to an aerial fiber optic communication line connecting Northrop Grumman Facilities in Manhattan Beach and Redondo Beach.

### FISCAL IMPLICATION:

The original agreement with Northrop Grumman provided for payment to the City in the amount of \$1,000 annually with consumer price index (CPI) adjustments. A prorated fee of \$166.67 was received in May 2004 covering the two month term of the original agreement. No further payments have been received.

The proposed Amendment No 2 will provide payment in the amount of \$6,593.65 for past unpaid fees and will provide payment in the amounts indicated below through the proposed term of the agreement.

•	Payment of unpaid fees 2004 to present		\$6,593.65
•	Year 1	7/1/10 – 6/30/11	\$1,170.96
•	Year 2	7/1/11 – 6/30/12	\$1,194.38
•	Year 3	7/1/12 – 6/30/13	\$1,218.27
•	Year 4	7/1/13 – 6/30/14	\$1,242.64
•	Year 5	7/1/14 – 6/30/15	\$1,267.49
	Total		\$12,687.39

**BACKGROUND:**

Northrop Grumman facilities exist in Manhattan Beach and Redondo Beach northwest and southeast of the Aviation Boulevard/ Marine Avenue intersection respectively. The facilities are connected via underground fiber optic facilities that traverse Aviation Boulevard and Marine Avenue.

Starting in 2004, Aviation Boulevard was widened as part of the greater Aviation/Rosecrans improvement project. As a precautionary measure, Northrop Grumman installed an aerial fiber optic line crossing Marine Avenue and Aviation Boulevard to serve as a temporary back-up in case the underground line was damaged during street construction (see map, Attachment 1).

The original aerial attachment was performed under a license agreement (Attachment 2) approved by City Council on April 6, 2004. This agreement was for a term of two months ending on August 1, 2004. Northrop Grumman and the City subsequently amended the agreement to extend the term to September 1, 2005 (First Amendment, Attachment 3). No further amendments were executed and the aerial fiber optic line remains in place.

The fiber optic line is attached to utility poles in the public right-of-way owned by Southern California Edison. Northrop Grumman and Edison entered into joint pole agreements governing attachment heights and methods.

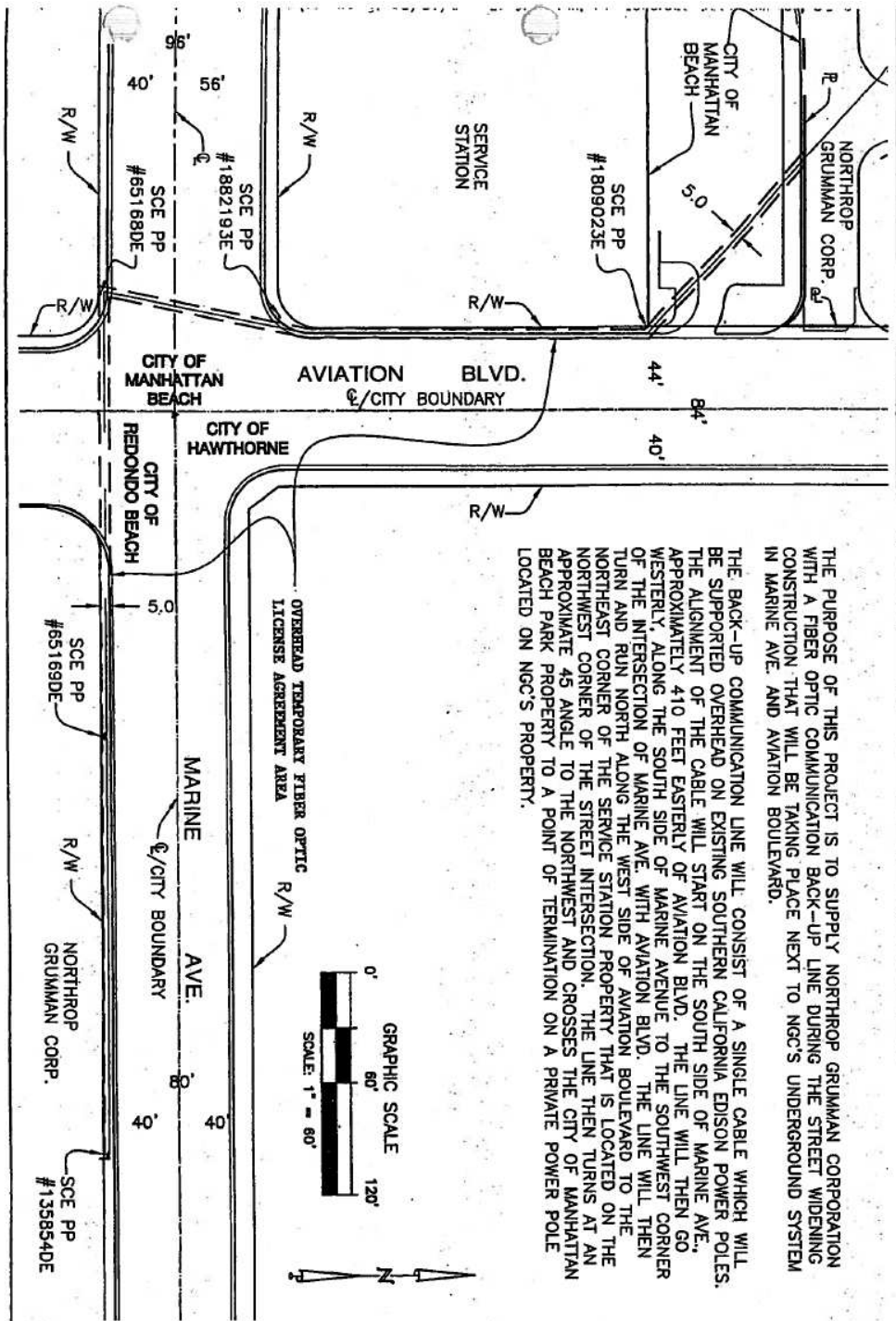
**DISCUSSION:**

Northrop Grumman wishes to make the temporary installation permanent and proposes a five-year license agreement ending June 30, 2015. The proposed Second Amendment (Attachment 4) would carry the same provisions as the original agreement and could be terminated by the City upon 30-days written notice.

- Attachments:
1. Map of Existing Fiber Line
  2. Original License Agreement
  3. Amendment No. 1
  4. Proposed Amendment No. 2

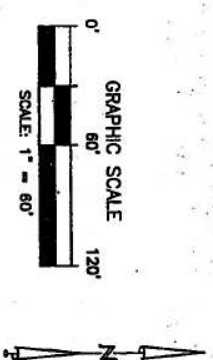
xc: Henry Mitzner, Controller  
Jeanne D. O'Brien, Accountant  
Juan Price, Maintenance Superintendent

Attachment: 1 – Map of Existing Fiber Line



THE PURPOSE OF THIS PROJECT IS TO SUPPLY NORTHROP GRUMMAN CORPORATION WITH A FIBER OPTIC COMMUNICATION BACK-UP LINE DURING THE STREET WIDENING CONSTRUCTION THAT WILL BE TAKING PLACE NEXT TO NGC'S UNDERGROUND SYSTEM IN MARINE AVE. AND AVIATION BOULEVARD.

THE BACK-UP COMMUNICATION LINE WILL CONSIST OF A SINGLE CABLE WHICH WILL BE SUPPORTED OVERHEAD ON EXISTING SOUTHERN CALIFORNIA EDISON POWER POLES. THE ALIGNMENT OF THE CABLE WILL START ON THE SOUTH SIDE OF MARINE AVE., APPROXIMATELY 410 FEET EASTERLY OF AVIATION BLVD. THE LINE WILL THEN GO WESTERLY ALONG THE SOUTH SIDE OF MARINE AVENUE TO THE SOUTHWEST CORNER OF THE INTERSECTION OF MARINE AVE. WITH AVIATION BLVD. THE LINE WILL THEN TURN AND RUN NORTH ALONG THE WEST SIDE OF AVIATION BOULEVARD TO THE NORTHEAST CORNER OF THE SERVICE STATION PROPERTY THAT IS LOCATED ON THE NORTHWEST CORNER OF THE STREET INTERSECTION. THE LINE THEN TURNS AT AN APPROXIMATE 45 ANGLE TO THE NORTHWEST AND CROSSES THE CITY OF MANHATTAN BEACH PARK PROPERTY TO A POINT OF TERMINATION ON A PRIVATE POWER POLE LOCATED ON NGC'S PROPERTY.



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	17625 Crenshaw Blvd., Ste. 300 Torrance, California 90504 Tel: (310) 327-0018 Fax: (310) 327-0175 www.dcacivileng.com	
<b>NGC EASEMENT FOR FIBER OPTIC COMMUNICATION LINE</b>		
SCALE:	1" = 60'	DATE: 02/24/04
BY:	ACH	JOB NO.: 03-113-0099.000-382.03

## LICENSE AGREEMENT

THIS AGREEMENT is made this 6<sup>th</sup> day of April, 2004, by the CITY OF MANHATTAN BEACH, a municipal corporation, ("Licensor"), and ~~NORTHROP GRUMMAN CORPORATION~~, an Ohio corporation, ("Licensee").  
*Space 2 Mission Systems Corp.*

### RECITALS

- A. Licensor is the owner of certain public right of way as well as of a public parking lot;
- B. Licensee is desirous of obtaining the right to locate a private backup communication line within the aforementioned property;
- C. The parties mutually desire to enter into an agreement by which, for adequate consideration payable to Licensor, Licensee acquires a license to locate its communication line over property owned by Licensor;"

NOW, THEREFORE, Licensor and Licensee agree as follows:

#### 1. License Granted

For the consideration provided for herein Licensor hereby grants to Licensee a non-exclusive, revocable license to locate one backup fiber optic communication line on existing poles in the public right of way and on public property as indicated on Exhibit A ("Subject Property"), which is attached hereto and incorporated herein by this reference. Nothing herein gives Licensee the right to locate new poles other than those located on the Subject Property at the time this Agreement is entered into or to expand the license beyond the Subject Property, .

#### 2. Ownership

Nothing in this Agreement shall convey to Licensee any ownership interest in the Subject Property or any aspect of the Subject Property.

#### 3. Termination of License

Licensor may without cause at any time terminate this License Agreement upon ten days prior notice to Licensee. Licensee shall have thirty days from the date of the notice to remove its improvements from the Subject Property. Should Licensee fail to do so upon the expiration of the thirty days all said improvements shall become the property of Licensor.

#### 4. Consideration

In consideration of the rights granted hereunder, Licensee shall pay to Licensor the sum of one thousand dollars (\$1,000) per year or prorated portion thereof payable immediately upon signature of this agreement by both parties and thereafter on July 1 of each year. Effective each year after the initial payment hereunder the annual fee shall be

Attachment: 2 – Original License Agreement, Pg 2 of 5

adjusted by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the Los Angeles/Long Beach SMSA, as published by the United States Department of Labor. The increase shall be calculated by multiplying the fee then in effect immediately prior to the July first payment date by a fraction, the numerator of which is the index published prior to the July first payment date and the denominator of which is the index published just prior to the beginning of the immediately preceding 12 month period beginning with July first of the prior year.

**5. Term**

This agreement shall, if not terminated sooner by Licensor as provided for above, be for a term of sixty (60) days beginning on June 1, 2004 and ending at 12:00 midnight on August 1, 2004. Licensee shall remove any equipment or improvements from the licensed property upon termination of this Agreement for any reason. Should Licensee fail to so remove any of its equipment or improvements within three (3) days of the termination date it shall become the property of licensor. If Licensee holds over beyond the termination date set forth in this section this Agreement, and Licensee's obligation to make payments hereunder, shall continue on a month to month basis subject to the terms of this Agreement.

**6. Assignment**

This agreement and Licensee's rights hereunder shall not be assigned without the express written consent of Licensor.

**7. Notice**

All notices shall be personally delivered or mailed to the below listed addresses. These addresses shall be used for delivery of service of process.

- a. Address of Licensee is as follows:

Northrop Grumman Space Technology  
attn: Carleen Beste  
One Space Park Dr. E2/10062  
Redondo Beach, CA 90278

- b. Address of Licensor is as follows:

City of Manhattan Beach  
1400 Highland Ave  
Manhattan Beach, CA 90266  
Attn.: Director of Community Development

Attachment: 2 – Original License Agreement, Pg 3 of 5

(with a copy to):

City Attorney  
City of Manhattan Beach  
1400 Highland Ave  
Manhattan Beach, CA 90266

**8. Authority to Execute.**

The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

**9. Indemnification**

Licensee agrees to indemnify, defend, and hold harmless Licensor and its elective or appointive boards, officers, agents, attorneys and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees arising out of, or in any way connected with performance of, the Agreement by Licensee, Licensee's agents, officers, employees, subcontractors, or independent contractor(s) hired by Licensee. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Licensee.

**10. Modification.**

This Agreement constitutes the entire agreement between the parties and supersedes any other agreements, oral or written. No promises, other than those included in this Agreement, shall be valid. This Agreement may be modified only by a written agreement executed by Licensor and Licensee.

**11. California Law.**

This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the appropriate branch of the Los Angeles County Municipal or Superior Court.

**12. Interpretation.**

This Agreement shall be interpreted as though prepared by both parties.

**13. Preservation of Agreement.**

Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

**14. Entire Agreement.**

This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that representations by any party not embodied herein, and any other agreements, statements, or promises concerning the subject matter of this Agreement, not contained in this Agreement, shall not be valid and binding. Any modification of this Agreement will be effective only if it is in writing signed by the

Attachment: 2 – Original License Agreement, Pg 4 of 5

parties. Any issue with respect to the interpretation or construction of this Agreement is to be resolved without resorting to the presumption that ambiguities should be construed against the drafter.

**IN WITNESS THEREOF**, the parties hereto have executed this Agreement on the day and year first shown above.

“LICENSEE”

~~Space & Mission Systems Corp.~~  
~~Northrop Grumman,~~  
A Ohio Corporation


By  \_\_\_\_\_

“LICENSOR”

City of Manhattan Beach

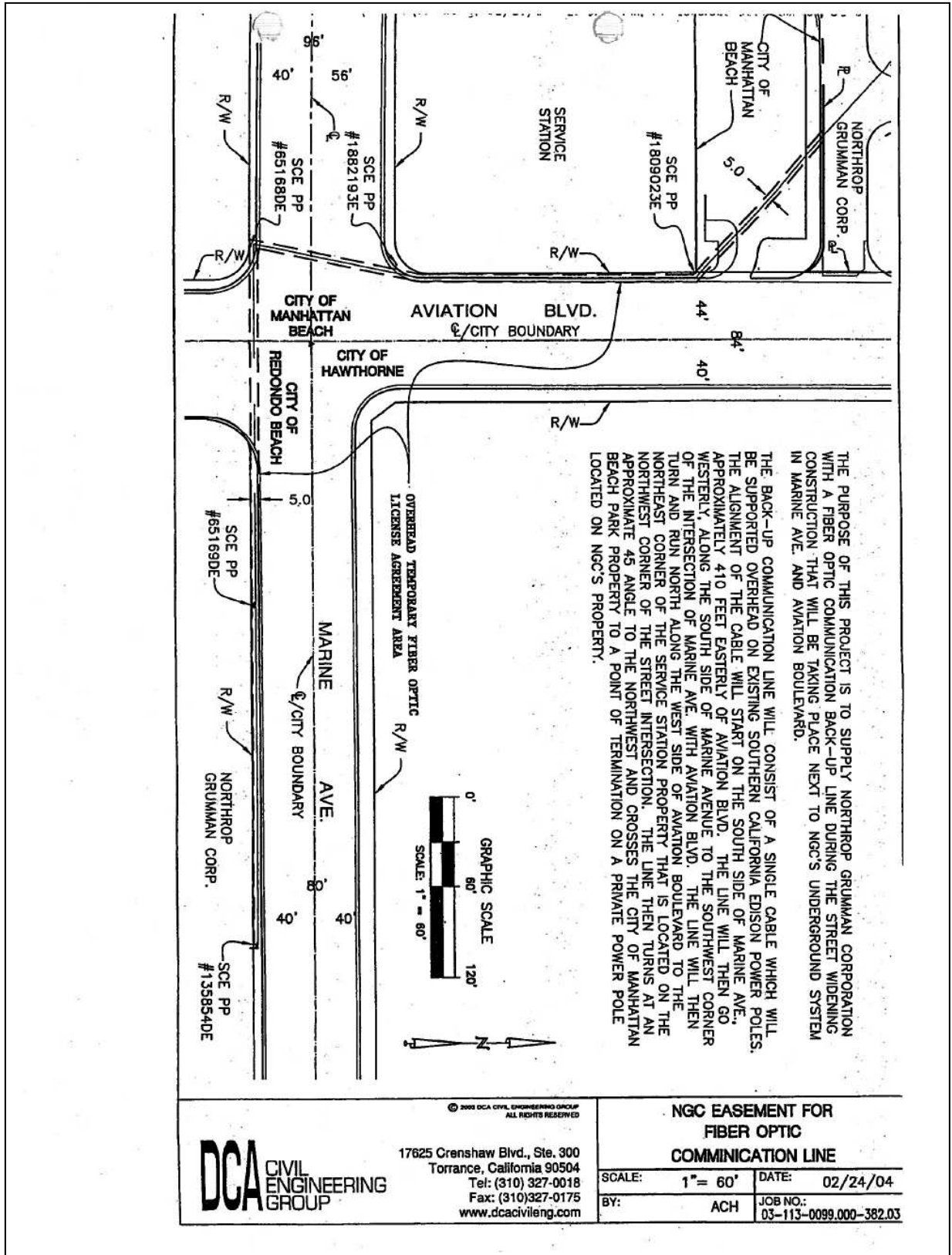
By  \_\_\_\_\_

ATTEST:

By  \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By  \_\_\_\_\_  
City Attorney



THE PURPOSE OF THIS PROJECT IS TO SUPPLY NORTHROP GRUMMAN CORPORATION WITH A FIBER OPTIC COMMUNICATION BACK-UP LINE DURING THE STREET WIDENING CONSTRUCTION THAT WILL BE TAKING PLACE NEXT TO NGC'S UNDERGROUND SYSTEM IN MARINE AVE. AND AVIATION BOULEVARD.

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**DCA** CIVIL ENGINEERING GROUP

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Fax: (310) 327-0175  
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**NGC EASEMENT FOR FIBER OPTIC COMMUNICATION LINE**

SCALE:	1" = 60'	DATE:	02/24/04
BY:	ACH	JOB NO.:	03-113-0099.000-382.03



**FILE**

**FIRST AMENDMENT TO  
LICENSE AGREEMENT**

THIS AGREEMENT AMENDMENT is made this 1<sup>st</sup> day of AUGUST, 2004, by the CITY OF MANHATTAN BEACH, a municipal corporation, ("Licensor"), and SPACE AND MISSION SYSTEMS CORPORATION, an Ohio corporation, ("Licensee").

**RECITALS**

- A. On April 6, 2004 Licensor and Licensee entered into a License Agreement for a private backup communication line on public property;
- B. The parties mutually desire to enter into an amendment to the term of the Agreement,

NOW, THEREFORE, Licensor and Licensee agree as to an amendment to Section 5 Term of the License Agreement as follows:

**5. Term**

This agreement shall, if not terminated sooner by Licensor as provided for above, be for a term of three-hundred and sixty (360) days beginning on **September 1, 2004** and ending at 12:00 midnight on **September 1, 2005**. Licensee shall remove any equipment or improvements from the licensed property upon termination of this Agreement for any reason. Should Licensee fail to so remove any of its equipment or improvements within three (3) days of the termination date it shall become the property of licensor. If Licensee holds over beyond the termination date set forth in this section this Agreement, and Licensee's obligation to make payments hereunder, shall continue on a month to month basis subject to the terms of this Agreement.

All other provisions of the License Agreement shall remain unchanged.

**IN WITNESS THEREOF**, the parties hereto have executed this Agreement on the day and year first shown above.

"LICENSEE"

"LICENSOR"

Space and Mission Systems Corporation  
An Ohio Corporation

City of Manhattan Beach

By K.W. Roberts  
K.W. Roberts

By [Signature]

ATTEST:

APPROVED AS TO FORM:

By [Signature]  
City Clerk

By [Signature]  
City Attorney

Attachment: 3 – Proposed Amendment No. 2, Pg. 1 of 2

**SECOND AMENDMENT TO LICENSE AGREEMENT**

This First Amendment to License Agreement is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2010 by and between the City of Manhattan Beach (the "City") and Northrop Grumman Systems Corp., a Delaware corporation successor in interest to Northrop Grumman Space & Mission Systems Corp. ("Northrop").

**RECITALS:**

**WHEREAS**, the City is the owner of certain public right of way as well as of a public parking lot within the City for the purpose of providing public services to its citizens; and

**WHEREAS**, the City and Northrop entered into that certain License Agreement ("Agreement") dated the 6th day of April, 2004 whereby the City granted a non-exclusive, revocable license to locate one backup fiber optic communication line on existing poles in the public right of way and on public property for the term June 1, 2004 to August 1, 2004.

**WHEREAS**, the City and Northrop entered into a First Amendment to License Agreement ("Amendment No. 1") dated the 1<sup>st</sup> day of August 2004 extending the License Agreement to September 1, 2005.

**WHEREAS**, the City and Northrop wish to amend the Agreement as set forth herein;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Northrop agree as follows:

1. **Extended Term of the Agreement.** Northrop wishes to extend the term of the Agreement for an additional five (5) year period from July 1, 2010 (the "Extension Commencement Date") through June 30, 2015, (the "Extended Term").
2. **Fee During Extended Term.** Upon execution of this Amendment, Northrop shall make a payment for the previous term in the amount of Six Thousand Five Hundred Ninety Three and 65/100 Dollars (\$6,593.65) based on the Index referenced in paragraph 4 of the Agreement. The Yearly Fee for the Extended Term shall be as follows:

Year 1	7/1/10 – 6/30/11	\$1,170.96
Year 2	7/1/11 – 6/30/12	\$1,194.38
Year 3	7/1/12 – 6/30/13	\$1,218.27
Year 4	7/1/13 – 6/30/14	\$1,242.64
Year 5	7/1/14 – 6/30/15	\$1,267.49

3. **Continuing Obligations.** Except as modified by this Second Amendment, the rights and obligations of the City and Northrop under the License Agreement, and all terms and conditions of the Agreement shall remain in full force and effect, and the City and Northrop hereby ratify and confirm the Agreement as herein amended. No covenant or condition of the Agreement shall be deemed waived by any action or inaction in the past.

Attachment: 3 – Proposed Amendment No. 2, Pg. 2 of 2

4. **Successors.** This amendment shall be binding upon the heirs, executors, administrators, successors and assigns of Northrop.

5. **Notices.** All future notices to Northrop shall be sent to the following address:

Sector Real Estate  
Northrop Grumman Aerospace Systems  
One Hornet Way  
Dept K02601/D12  
El Segundo, CA 90245

With a copy to:

Corporate Real Estate  
Northrop Grumman Corporation  
1840 Century Park East  
Los Angeles, CA 90067-2199  
Attn: Real Estate – Legal Notices

**IN WITNESS WHEREOF**, the City and Northrop have executed this Amendment as of the date and year first above written.

“CITY”  
**CITY OF MANHATTAN BEACH**  
a municipal  
corporation

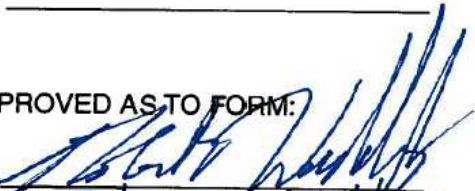
“NORTHROP”  
**NORTHROP GRUMMAN SYSTEMS CORP.**  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED:

By:   
Name: Robert J. Waddell Jr  
Its: City Attorney

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Name/Title