

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 **MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF**
2 **LONG BEACH AND THE CITY OF LAKEWOOD REGARDING THE**
3 **DESIGN AND CONSTRUCTION OF IMPROVEMENTS TO VARIOUS**
4 **INTERSECTIONS PURSUANT TO THE AREA WIDE ADAPTIVE**
5 **TRAFFIC CONTROL SYSTEM (ATCS)**
6 **31221**

7 This MEMORANDUM OF UNDERSTANDING (“MOU”) is made and
8 entered, in duplicate, as of May 26, 2009, for reference purposes only, pursuant to a
9 minute order adopted by the City Council of the City of Long Beach at its meeting held on
10 August 19, 2008, by and between the CITY OF LONG BEACH, a municipal corporation,
11 and the CITY OF LAKEWOOD, a municipal corporation, pursuant to a minute order
12 adopted by the City Council of the City of Lakewood at its meeting held on May 12,
13 2009. CITY OF LONG BEACH and CITY OF LAKEWOOD may hereinafter be referred to
14 collectively as “PARTIES.”
15

16 RECITALS

17 WHEREAS, development of the Douglas Park Project is anticipated to
18 create traffic impacts in the City of Long Beach and adjacent communities, including the
19 cities of Lakewood, Signal Hill, Bellflower, and Cerritos (the “Cooperating Cities”); and

20 WHEREAS, the Cooperating Cities desire to coordinate design and
21 construction of roadway improvements and traffic signals in order to mitigate these traffic
22 impacts on an area-wide basis; and

23 WHEREAS, in order to address the specific roadway improvement projects
24 located on or near the adjacent borders of the City of Long Beach and the City of
25 Lakewood, and more Specifically set forth in Exhibit “A” (the “Project”), the Parties desire
26 to specify the terms and conditions under which the Project is to be engineered,
27 constructed and financed;

28 NOW, THEREFORE, the Parties agree as follows:

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SECTION I

CITY OF LONG BEACH AGREES:

1. To act as lead agency for the Project and to provide all necessary plans and specifications, utility identification and location, and all necessary construction engineering/management services at no cost to the City of Lakewood.
2. To insure that the Project as designed will comply with all environmental approvals as required from Federal or State agencies for Project.
3. To obtain all required authorizations and permits from governmental agencies necessary to construct Project.
4. To obtain City of Lakewood's approval of final plans and specifications prior to Project being advertised for construction bids.
5. Upon completion of Project, to furnish City of Lakewood a complete set of full-sized film positive reproducible as-built plans and the corresponding electronic files.

SECTION II

CITY OF LAKEWOOD AGREES:

1. To provide to City of Long Beach and/or its designee all available plans and survey data of existing City of Lakewood infrastructure necessary to design Project.
2. To enforce available rights under existing franchise agreements if existing public and/or private utilities conflict with the construction of Project.
3. To review and approve plans, and issue no fee encroachment permits, within 30 days of receipt of final plans from City of Long Beach or its designee.
4. City of Lakewood agrees that the City of Long Beach is the Lead agency for the environmental design and construction of the project.

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SECTION III

IT IS MUTUALLY AGREED AS FOLLOWS:

1. Design Plans signed by both City of Long Beach and City of Lakewood shall constitute acceptance of and official approval of said plans.

2. The duties of City of Long Beach under this agreement may be performed either by City of Long Beach employees, its designee or The Boeing Company or by persons or entities hired by City of Long Beach or the Boeing Company.

3. If existing public and/or private utilities conflict with the construction of Project, City of Long Beach will identify such utilities and City of Lakewood will make all necessary arrangements with the owners of such utilities for their protection, relocation or removal. City of Lakewood will coordinate and inspect the protection, relocation or removal. If there are costs of such protection, relocation or removal, City of Long Beach or The Boeing Company will pay One Hundred Percent (100%) of the cost of said protection, relocation or removal plus costs of engineering overhead and inspection.

4. In the construction of said work, City of Long Beach will furnish a resident engineer and City of Lakewood shall furnish a representative. Said representative and resident engineer will cooperate and consult with each other, but the decisions of City of Long Beach's resident engineer shall remain the sole and primary directive for all Project work. If material changes to the approved plans and specifications are required to complete the Project, and said changes will impact the proposed Project improvements within City of Lakewood's right-of-way, the City of Long Beach resident engineer will obtain the City of Lakewood's representative approval before authorizing said changes.

5. During the course of construction, City of Lakewood may request City of Long Beach to include additional work in Project. Said work shall be considered a "betterment" if it is not directly required by the proposed work shown in Exhibit "A". In addition, the term betterment shall include any City of Lakewood funded work that City of Lakewood desires to have constructed concurrently with Project and for which City of

1 Long Beach is able to reasonably accommodate in Project. Said betterment work shall
2 be accounted for separately. City of Long Beach or its designee may require a deposit
3 from City of Lakewood for the estimated cost of betterment prior to authorization.

4 6. Prior to acceptance of the Project, as completed, under the terms of
5 the Project's construction contract, City of Long Beach will confer with City of Lakewood,
6 in good faith, to obtain City of Lakewood's concurrence that those components of the
7 Project that are located within City of Lakewood's right-of-way have been completed in
8 substantial conformance with the approved plans and specifications. It is understood that
9 City of Lakewood will not unreasonably withhold said concurrence. Should City of Long
10 Beach and City of Lakewood be unable to agree on Project completion as discussed
11 herein, then City of Long Beach and City of Lakewood shall meet and confer, in good
12 faith, to resolve the disagreement.

13 7. Should any portion of Project be financed with funds with specific
14 expenditure requirements or limitations, all applicable laws, regulations and policies
15 relating to the use of such funds shall apply notwithstanding other provisions of this
16 Agreement.

17 8. Neither City of Long Beach nor any officer or employee, or person, or
18 a designee of City of Long Beach shall be responsible for any damage or liability
19 occurring by reason of any acts or omissions on the part of City of Lakewood delegated
20 to or determined to be the responsibility of City of Lakewood under this Agreement.
21 Pursuant to Government Code Section 895.4, City of Lakewood shall indemnify, defend
22 and hold City of Long Beach harmless from any liability imposed for injury (as defined by
23 Government Code Section 810.8) occurring by reason of any acts or omissions on the
24 part of City of Lakewood delegated to or determined to be the responsibility of City of
25 Lakewood under this Agreement.

26 9. Neither City of Lakewood nor any officer or employee of City of
27 Lakewood shall be responsible for any damage or liability occurring by reason of any acts
28 or omissions on the part of City of Long Beach delegated to or determined to be the

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1 responsibility of City of Long Beach under this Agreement. Pursuant to Government
2 Code Section 895.4, City of Long Beach shall indemnify, defend and hold City of
3 Lakewood harmless from any liability imposed for injury (as defined by Government Code
4 Section 810.8) occurring by reason of any acts or omissions on the part of City of Long
5 Beach delegated to or determined to be the responsibility of City of Long Beach under
6 this Agreement.

7 10. Every notice, demand, request, or other document or instrument
8 delivered pursuant to this Agreement shall be in writing, and shall be either personally
9 delivered by Federal Express or other reputable overnight courier, sent by facsimile
10 transmission with telephonic confirmation of actual receipt and the original subsequently
11 delivered by other means, or sent by certified United States mail, postage prepaid, return
12 receipt requested, to the addresses set forth below, or to such other address as a party
13 may designate from time to time:

14
15 City Of Long Beach
16 David Roseman
17 City Traffic Engineer
333 West Ocean Blvd, 10th floor
Long Beach, CA 90802

18
19 City of Lakewood
20 Max Withrow
21 City Engineer
5050 Clark Ave
Lakewood, CA 90712

22 11. This Agreement constitutes the entire understanding and agreement
23 of the Parties and integrates all of the terms and conditions mentioned herein or
24 incidental hereto with respect to the subject matter hereof, and supersedes all
25 negotiations or previous agreements between the Parties with respect to all or part of the
26 subject matter hereof.

27 12. This Agreement may be amended in writing at any time by the
28 mutual consent of the Parties. No amendment shall have any force or effect unless

1 executed in writing by both Parties.

2 13. If any term, provision, covenant, or condition of this Agreement is
3 held by a court of competent jurisdiction to be invalid, void, or unenforceable, the
4 remaining provisions of the Agreement shall continue in full force and effect, unless both
5 Parties would be materially altered or abridged by such interpretation.

6 14. This Agreement shall be construed and enforced in accordance with
7 the laws of the State of California.

8 15. Except as set forth herein, no Party shall assign or otherwise transfer
9 this Agreement or its right of interest or any part thereof to any third party without the
10 prior written consent of the other Party. Such consent shall not be unreasonably
11 withheld. No assignment of this Agreement shall relieve the assigning Party of its
12 obligations until such obligations have been assumed in writing by the assignee. When
13 duly assigned in accordance with the forgoing, this Agreement shall be binding upon and
14 inure to the benefit of the assignee.

15 This Agreement shall commence on full execution of this document
16 _____, 2009 the date first approved and shall terminate upon City of Long
17 Beach's acceptance of the constructed improvements.

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective officers as of the date first written above.

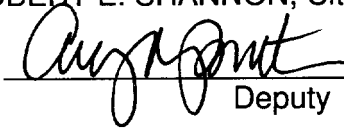
CITY OF LONG BEACH

By  Assistant City Manager July 13, 2009
City Manager

**EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.**

This Memorandum of Understanding is approved as to form on 7-8, 2009.


ROBERT E. SHANNON, City Attorney

By  Deputy

CITY OF LAKEWOOD

By  Mayor July 2, 2009

This Memorandum of Understanding is approved as to form on July 2, 2009.

By  City Attorney

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Figure 1.1: Project Area

