

Attachment 3 – Baseline Services Agreement

**CITY OF PASADENA
AGREEMENT FOR SERVICES**

This agreement is made on July 14, 2008, at Pasadena, California, between the City of Pasadena, a municipal corporation, 100 N. Garfield Avenue, Pasadena, California 91109, hereinafter referred to as the "CITY," and the South Lake Business Association, a non-profit corporation, hereinafter referred to as the "DISTRICT."

RECITALS:

WHEREAS, pursuant to its Resolution No. 8765 (the "Resolution") the City Council of the CITY has established a property and business improvement district designated as the "South Lake Avenue Property-Based Business Improvement District" (the "SLAPBID"), under Section 36600, et seq. of the California Streets and Highway Code (the "Act"); and

WHEREAS, pursuant to the Resolution and the Act, assessments will be levied annually against the assessable parcels in the SLAPBID commencing with Fiscal Year 2007 and continuing through Fiscal Year 2012; and

WHEREAS, such assessments may be used only for the purposes set forth in the Resolution; and

WHEREAS, the CITY desires to use the assessments to contract for the administration of a program of improvements and activities in connection with the SLAPBID for Fiscal Years 2007 through 2012; and

WHEREAS, the DISTRICT proposes to administer such program of improvements and activities for Fiscal Years 2007 through 2012.

NOW, THEREFORE, the CITY and DISTRICT mutually agree as follows:

1. TERM OF AGREEMENT

- 1.1. The term of this Agreement shall be from July 14, 2008 to and including December 31, 2011.
- 1.2. In the case of a default by the DISTRICT, the CITY may terminate this Agreement by giving written notice to the DISTRICT.
- 1.3. Upon termination or expiration of this Agreement, all unexpended moneys for the SLAPBID and all assets purchased with SLAPBID funds shall be returned to the CITY.

2. USE OF FUNDS

- 2.1. Funds received by the DISTRICT pursuant to this Agreement shall only be expended for the purposes stated in the Resolution and authorized by the Act. Such funds shall be expended in accordance with the Management District Plan and in accordance with each annual report prepared by the SLAPBID advisory board pursuant to Section 36633 of the Act and approved by the City Council.
- 2.2. In no event shall the DISTRICT use any of the City's contribution received pursuant to this Agreement to pay for the cost and expenses of renewing the SLAPBID or establishing a new property and business improvement district after the expiration of the five-year term of the SLAPBID.

3. DISTRICT RESPONSIBILITIES

- 3.1. The DISTRICT shall administer the SLAPBID work program and perform all of the services specified in the Management District Plan and each annual report of the advisory board prepared by the SLAPBID advisory board pursuant to Section 36633 of the Act and approved by the City Council, and in this regard shall cooperate with the City Manager of the CITY or such personnel as the City Manager designates.
- 3.2. Throughout the term of this Agreement, the DISTRICT shall submit to the CITY's Finance Director the following:
 - 3.2.1. Annual Report - By each May 1st, beginning May 1, 2009, the DISTRICT shall submit a report for the current Fiscal Year complying with Section 36633 of the Act.
 - 3.2.2. Financial Statements - By each May 1st, beginning May 1, 2009, the DISTRICT shall submit a statement of income and expenses of the DISTRICT in relation to the SLAPBID, reviewed by a Certified Public Accountant covering the previous Fiscal Year. Notwithstanding the termination date of this Agreement, the DISTRICT shall submit a statement of income and expenses of the DISTRICT in relation to the SLAPBID.
 - 3.2.3. Within 10 days of a request of the CITY's Finance Director, the DISTRICT shall provide such other financial information of the DISTRICT in relation to the SLAPBID as the CITY's Finance Director shall reasonably request.
- 3.3. The DISTRICT hereby agrees to comply with all State and City laws and regulations as they relate to the administration of the SLAPBID.

4. CITY RESPONSIBILITIES

- 4.1. The CITY shall submit to the County of Los Angeles each year an annual assessment roll for the SLAPBID for each year beginning in Fiscal Year 2008 and continuing through & Including Fiscal Year 2012 and shall disburse the SLAPBID assessment revenues received by the CITY from the County of Los Angeles to the DISTRICT in accordance with Section 5.1 hereof.
- 4.2. With respect to any public agencies for which the County of Los Angeles does not bill the annual SLAPBID assessments, the CITY shall hand bill such agencies for the SLAPBID assessments, provided that the CITY shall have no responsibility to enforce the collection of such assessments.
- 4.3. The CITY shall review all reports submitted by the DISTRICT.
- 4.4. The CITY shall make available to the DISTRICT such information in its possession, except for information which is determined to be confidential information by the City Attorney, which is necessary for implementation of the SLAPBID work program.
- 4.5. The CITY shall report to the DISTRICT on a regular basis as to the status of SLAPBID assessment revenues thus far collected so that the DISTRICT can adjust its budget and work program accordingly.

5. DISBURSEMENTS

- 5.1. Commencing with Fiscal Year 2007 and continuing through Fiscal Year 2011, the CITY shall annually remit to the DISTRICT the SLAPBID assessment revenues collected by the County of Los Angeles and paid to the CITY within 10 days of receipt of such revenues by the City from the County of Los Angeles.

6. AUDITS, ACCOUNTING AND AUDIT EXCEPTIONS

- 6.1. The DISTRICT's program, as it relates to the SLAPBID, will be audited in accordance with the CITY's policy and funding guidelines. For the purposes of audits or inspections, the CITY or its authorized representatives shall, upon 10 days' prior notice, have access to any and all books, documents, papers, records, property and premises of the DISTRICT.
- 6.2. The DISTRICT's staff will cooperate fully with authorized auditors when such auditors conduct audits and examinations of the DISTRICT's program, as it relates to the SLAPBID. If indications of misappropriation or misapplication of the funds governed by this Agreement cause the CITY to require a special audit, the cost of the audit shall be paid by the DISTRICT. Should it be subsequently determined that the special audit

was not reasonably warranted, the cost of such unwarranted audit shall be restored to the DISTRICT. The right to audit, as provided by this Section, shall be for a period of three (3) years from the date of submission of the financial report in question or any indication or notice to the CITY of any misappropriation or misapplication of funds by the DISTRICT, whichever is later.

- 6.3. The DISTRICT shall establish and maintain on a current basis an adequate accrual accounting system in accordance with generally accepted accounting principles and standards. The system shall detail all costs chargeable to the SLAPBID under this Agreement and shall substantiate all such costs, meeting acceptable standards for major public entities in Southern California and complying with any applicable Federal standards. The system shall meet the minimum fiscal and internal control requirements as reasonably determined by the CITY.

7. INSURANCE

District shall, at its own expense, procure and maintain policies of insurance of the types and in the amounts set forth below, for the duration of this agreement, including any extensions thereto. The policies shall state that they afford primary coverage.

- 7.1.1 General Liability with minimum limits of at least \$2,000,000 combined Premises/Operations and Personal Injury coverage is required. The City of Pasadena, its directors, commissioners, officers, employees, agents and volunteers must be endorsed on the policy as additional insured as respects liability arising out of the District's performance of this Agreement.

- A. If District employs other contractors as part of its performance under this agreement, Contractor's Protective Coverage is required. District may insure all subcontractors under its own policy or shall procure and furnish separate insurance for each subcontractor, meeting the requirements set forth herein.
- B. Blanket Contractual Coverage.
- C. Personal Injury and Advertising Coverage.

- 7.1.2 District shall comply with the applicable sections of the California Labor Code concerning workers' compensation for injuries on the job. Compliance is accomplished in one of the following manners:

- A. Provide copy of permissive self-insurance certificate approved by the State of California; or

- B. Provide a copy of permissive self-insurance certificate approved by the State of California; or
- C. To the extent that the District has employees, the District shall secure and maintain in force a policy of workers' compensation insurance with statutory limits and Employer's Liability Insurance with a minimal limit of \$1,000,000 per accident. The policy shall be endorsed to waive all rights of subrogation against City, its directors, commissioners, officers, employees, and volunteers for losses arising from performance of this Agreement; or
- D. Provide a signed statement certifying that no employees subject to the Labor Code's Workers' Compensation provision will be used in performance of this Contract.

7.1.3 DISTRICT shall procure and maintain at its own expense a policy covering its Directors & Officer Liability with minimal limits of \$1,000,000.

7.1.4 Each insurance policy included in this clause shall be endorsed to state that coverage shall not be cancelled except after thirty (30) days' prior written notice to City, and that coverage is primary to any other coverage available to City.

7.1.5 Insurance shall be placed with insurers with a Best's rating of no less than B:VIII. Insurers shall be admitted in the State of California unless pre-approved in writing by City.

7.1.6 Prior to commencement of performance, District shall furnish City with a certificate of insurance for each policy. Each certificate is to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificate(s) must be in a form approved by City. City may require complete, certified copies of any or all policies at any time.

7.2 Failure on the part of the DISTRICT to procure or maintain required insurance shall constitute a material breach of contract under which CITY may immediately terminate this agreement.

8. NOTICES

8.1. All notices, plans, or reports permitted or required under this Agreement shall be in writing, and shall be deemed made when personally delivered to the following persons as provided in this Agreement. Additionally, such notices shall be deemed made 48 hours after deposited in the U.S. Mail,

first class postage prepaid and addressed to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

CITY OF PASADENA
100 N. Garfield Avenue
Room No. 237
Pasadena, California 91109
Attention: City Manager

SOUTH LAKE AVENUE BUSINESS ASSOCIATION
Association President
251 S. Lake Avenue, Suite 180
Pasadena CA 91101

9. CONFLICT OF INTEREST.

9.1. For the duration of this Agreement, neither the DISTRICT nor any of its employees may act as consultant or perform services of any kind for any other person or entity in regard to the SLAPBID without the prior written consent of the CITY. In addition, neither members of the Board of Directors of the DISTRICT, nor its Chief Executive Officer, may enter into any additional contracts in regard to the SLAPBID, nor vote on any SLAPBID matters, when such contract or matter would be of financial benefit to the member or director over and above the general financial benefit to all businesses in the SLAPBID.

10. NONDISCRIMINATION.

10.1. The DISTRICT represents and agrees that it does not and will not discriminate against any employee or applicant for employment because of political affiliation or opinion, age, ancestry, marital status, physical condition, pregnancy or pregnancy-related condition, race, religion, color, sex, sexual orientation, national origin or medical condition.


11. GENERAL PROVISIONS.

- 11.1. Assignment. Neither this Agreement, nor any interest herein, shall be assigned by any party without the prior written consent of the other party.
- 11.2. Independent Contractor. It is agreed and understood that the DISTRICT is a wholly independent contractor. This Agreement is not intended and shall not be construed to create the relationship of agent, employee, servant, partnership, joint venture or association as between the CITY and the DISTRICT. Neither the CITY nor its agents shall have control over the conduct of the DISTRICT except as set forth herein. The CITY shall have no liability or responsibility for payment of any wage or benefits to the DISTRICT's employees, for whom the DISTRICT shall bear sole responsibility and liability.
- 11.3. Default of Contractor. In the case of default by the DISTRICT in providing any service, or in performing this Agreement, the CITY may, in addition to all other remedies it may have, including but not limited to termination of the Agreement and/or filing of a suit at law or equity, obtain such services from other sources and deduct the cost thereof from any costs due or thereafter owing to the DISTRICT relating to such items or to otherwise claim and collect such costs.
- 11.4. Attorney's Fees. If a legal action or proceeding is brought by any party because of default under this Agreement, or to enforce a provision thereof, the prevailing party therein shall be entitled, in addition to any other relief, to recover reasonable attorney's fees and court costs from the losing party as determined by the court in which said action or proceeding is pending.
- 11.5. Indemnity. The DISTRICT shall indemnify and hold the CITY harmless and defend, with counsel acceptable to the CITY, the CITY and every officer, employee and agent of the CITY, from any and all claims, causes of action, damages to persons or property, penalties, obligations, liabilities or financial losses, including, without limitation, attorney's fees and court costs arising directly or indirectly from any or all negligent or other wrongful acts, errors or omissions of the DISTRICT, its agents, employees and subcontractors in the performance of this Agreement.
- 11.6. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof. This Agreement may only be modified in writing signed by both parties.
- 11.7. Governing Law. This Agreement shall be governed by the laws of the State of California.

11.8. Time of Essence. Time is of the essence of each and every provision of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement this 14th day of July, 2008

ATTEST:


10/02/08
MARK JOMSKY
City Clerk


CITY OF PASADENA

By: 
BERNARD K. MELEKIAN
City Manager

SOUTH LAKE AVENUE BUSINESS ASSOCIATION

By:  - President

APPROVED AS TO FORM:


BRAD L. FULLER
Assistant City Attorney

**CITY OF PASADENA
BASELINE SERVICES CONTRACT**

This agreement is affective as of July 14, 2008, at Pasadena, California, between the City of Pasadena (the "CITY"), a municipal corporation, and the South Lake Business Association (the "DISTRICT"), a non-profit corporation.

RECITALS:

WHEREAS, pursuant to its Resolution No. 8765 (the "Resolution") the City Council of the CITY has established a property and business improvement district designated as the "South Lake Avenue Property-Based Business Improvement District" (the "SLAPBID"), under Section 36600, et seq. of the California Streets and Highway Code (the "Act"); and

WHEREAS, pursuant to the Resolution and the Act, assessments will be levied annually against the assessable parcels in the SLAPBID commencing with Fiscal Year 2007 and continuing through Fiscal Year 2012; and

WHEREAS, on July 14, 2008, the CITY entered into an agreement (the "Enhanced Services Agreement") with the DISTRICT under which the DISTRICT will administer a program of improvements and activities in connection with the SLAPBID for Fiscal Years 2007 through 2012 (the "Agreement for Services"); and

WHEREAS, the Agreement for Services will be partially funded from the SLAPBID assessments; and

WHEREAS, the CITY currently provides municipal services, including police and sanitation services, within the territorial limits of the SLAPBID; and

WHEREAS, the CITY and the DISTRICT intend for the Agreement for Services to supplement, rather than supplant, existing municipal services; and

WHEREAS, Section 36636 of the Act provides that the City Council may execute a baseline services contract establishing levels of City services that will continue after the SLAPBID has been formed; and

WHEREAS, the CITY and the DISTRICT wish to execute such an agreement.

NOW, THEREFORE, the CITY and DISTRICT mutually agree as follows:

1. TERM OF AGREEMENT

- 1.1. This Agreement shall be effective so long as the Enhanced Services Agreement is effective.

2. MAINTENANCE OF SERVICE LEVEL

- 2.1 The CITY and the DISTRICT agree that Attachment A to this agreement contains a complete representation of the services provided within the territorial limits of the SLAPBID prior to the formation of the SLAPBID.
- 2.2 During the term of this Agreement, and except as elsewhere provided in this Agreement, the CITY will continue to provide, within the territorial limits of the SLAPBID, each service listed in Attachment A at a level of service that is no less than that indicated in Attachment A.
- 2.3 Where Attachment A indicates that (1) the CITY will maintain or service infrastructure, fixtures, landscaping, or facilities or (2) a service will be provided "as required" or "on an as-needed basis," such service will be provided by the CITY according to CITY policies and procedures in effect at the time the service is needed. These policies and procedures may be changed from time to time at the sole discretion of the CITY. The CITY will not, based solely on the existence of services provided by the DISTRICT, adopt policies and procedures that provide a reduced level of service to the SLAPBID as compared with service levels provided to other areas of the CITY.

3. CITYWIDE REDUCTION IN SERVICE

- 3.1 The CITY and the DISTRICT agree that at any time during the term of this Agreement the CITY may, on a citywide basis, reduce the level of any service listed in Attachment A. If such a citywide reduction occurs, the CITY may reduce the levels of service provided within the territorial limits of the SLAPBID to an extent not disproportional to the citywide reductions.

4. WAIVER BY DISTRICT

- 4.1 Should the DISTRICT determine that any service indicated in Attachment A is no longer needed, the DISTRICT may, in writing, release the CITY from its obligation to provide such service.

5. INSURANCE.

District shall, at its own expense, procure and maintain policies of insurance of the types and in the amounts set forth below, for the duration of this agreement, including any extensions thereto. The policies shall state that they afford primary coverage.

- 5.1.1 General Liability with minimum limits of at least \$2,000,000 combined single limits written on a Comprehensive General Liability "occurrence" form. Premises/Operations and Personal Injury coverage is required. The City of Pasadena, its directors, commissioners, officers, employees, agents and volunteers must

be endorsed on the policy as additional insured as respects liability arising out of the District's performance of this Agreement.

A. If District employs other contractors as part of its performance under this agreement, Contractor's Protective Coverage is required. District may insure all subcontractors under its own policy or shall procure and furnish separate insurance for each subcontractor, meeting the requirements set forth herein.

B. Blanket Contractual Coverage.

C. Personal Injury and Advertising Coverage

5.1.2 District shall comply with the applicable sections of the California Labor Code concerning workers' compensation for injuries on the job. Compliance is accomplished in one of the following manners:

1. Provide copy of permissive self-insurance certificate approved by the State of California; or

2. To the extent that the District has employees, the District shall secure and maintain in force a policy of workers' compensation insurance with statutory limits and Employer's Liability Insurance with a minimal limit of \$1,000,000 per accident. The policy shall be endorsed to waive all rights of subrogation against City, its directors, commissioners, officers, employees, and volunteers for losses arising from performance of this Agreement; or

3. Provide a signed statement certifying that no employees subject to the Labor Code's Workers' Compensation provision will be used in performance of this Contract.

5.1.3 DISTRICT shall procure and maintain at its own expense a policy covering its Directors & Officer Liability with minimal limits of \$1,000,000.

5.1.4 Each insurance policy included in this clause shall be endorsed to state that coverage shall not be cancelled except after thirty (30) days' prior written notice to City, and that coverage is primary to any other coverage available to City.

5.1.5 Insurance shall be placed with insurers with a Best's rating of no less than B:VIII. Insurers shall be admitted in the State of California unless pre-approved in writing by City.

5.1.6 Prior to commencement of performance, District shall furnish City with a certificate of insurance for each policy. Each certificate is to

be signed by a person authorized by that insurer to bind coverage on its behalf. The certificate(s) must be in a form approved by City. City may require complete, certified copies of any or all policies at any time.

- 5.2 Failure on the part of the DISTRICT to procure or maintain required insurance shall constitute a material breach of contract under which CITY may immediately terminate this agreement.

6. NOTICES

- 6.1. All notices, plans, or reports permitted or required under this Agreement shall be in writing, and shall be deemed made when personally delivered to the following persons as provided in this Agreement. Additionally, such notices shall be deemed made 48 hours after deposited in the U.S. Mail, first class postage prepaid and addressed to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

CITY OF PASADENA
100 N. Garfield Avenue
Room No. 237
Pasadena, California 91109
Attention: City Manager

SOUTH LAKE AVENUE BUSINESS ASSOCIATION
Association President
201 South Lake Avenue, Suite 511
Pasadena CA 91101

7. CONFLICT OF INTEREST.

- 7.1. For the duration of this Agreement, neither the DISTRICT nor any of its employees may act as consultant or perform services of any kind for any other person or entity in regard to the SLAPBID without the prior written consent of the CITY. In addition, neither members of the Board of Directors of the DISTRICT, nor its Chief Executive Officer, may enter into any additional contracts in regard to the SLAPBID, nor vote on any SLAPBID matters, when such contract or matter would be of financial benefit to the member or director over and above the general financial benefit to all businesses in the SLAPBID.

8. NONDISCRIMINATION.

- 8.1. The DISTRICT represents and agrees that it does not and will not discriminate against any employee or applicant for employment because of political affiliation or opinion, age, ancestry, marital status, physical condition, pregnancy or pregnancy-related condition, race, religion, color,

sex, sexual orientation, national origin or medical condition.

9. GENERAL PROVISIONS.

- 9.1. Assignment. Neither this Agreement, nor any interest herein, shall be assigned by any party without the prior written consent of the other party.
- 9.2. Independent Contractor. It is agreed and understood that the DISTRICT is a wholly independent contractor. This Agreement is not intended and shall not be construed to create the relationship of agent, employee, servant, partnership, joint venture or association as between the CITY and the DISTRICT. Neither the CITY nor its agents shall have control over the conduct of the DISTRICT except as set forth herein. The CITY shall have no liability or responsibility for payment of any wage or benefits to the DISTRICT's employees, for whom the DISTRICT shall bear sole responsibility and liability.
- 9.3. Default of Contractor. In the case of default by the DISTRICT in providing any service, or in performing this Agreement, the CITY may, in addition to all other remedies it may have, including but not limited to termination of the Agreement and/or filing of a suit at law or equity, obtain such services from other sources and deduct the cost thereof from any costs due or thereafter owing to the DISTRICT relating to such items or to otherwise claim and collect such costs.
- 9.4. Attorney's Fees. If a legal action or proceeding is brought by any party because of default under this Agreement, or to enforce a provision thereof, the prevailing party therein shall be entitled, in addition to any other relief, to recover reasonable attorney's fees and court costs from the losing party as determined by the court in which said action or proceeding is pending.
- 9.5. Indemnity. The DISTRICT shall indemnify and hold the CITY harmless and defend, with counsel acceptable to the CITY, the CITY and every officer, employee and agent of the CITY, from any and all claims, causes of action, damages to persons or property, penalties, obligations, liabilities or financial losses, including, without limitation, attorney's fees and court costs arising directly or indirectly from any or all negligent or other wrongful acts, errors or omissions of the DISTRICT, its agents, employees and subcontractors in the performance of this Agreement.
- 9.6. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof. This Agreement may only be modified in writing signed by both parties.
- 9.7. Governing Law. This Agreement shall be governed by the laws of the State of California.
- 9.8. Time of Essence. Time is of the essence of each and every provision of

this Agreement.


IN WITNESS WHEREOF, the parties have executed this Agreement this 28th day of April, 2009.

CITY OF PASADENA

ATTEST:



MARK JOMSKY
CITY CLERK

By: 

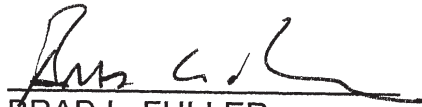
MICHAEL J. BECK, City Manager

**SOUTH LAKE AVENUE BUSINESS
ASSOCIATION**

By: 

Rhonda G. Bennett

APPROVED AS TO FORM:



BRAD L. FULLER
Assistant City Attorney

ATTACHMENT A

BASELINE LEVEL OF SERVICES PROVIDED BY CITY OF PASADENA

<u>ACTIVITY</u>	<u>LEVEL OF SERVICE</u>
Police Services	
1. Patrol	11 officers, seven days a week, twenty-four hours per day, in the Midtown area, which includes South Lake.
2. Special Problems Unit	Service of citywide unit as required.
Maintenance Services	
1. Lighting	Lights changed on as needed basis. Necessary upkeep and maintenance of lighting. Preventative maintenance every nine months.
2. Graffiti Removal	Two trucks, operated seven days a week on a citywide basis. Response to calls from Hotline number and police officers. Service provided at no charge to building owner.
3. Vacant Lots Maintenance	Response to reports of owners not maintaining their property
4. Parking Off-Street Lots	Maintenance of two City-owned parking lots through private contractor. Trash, Landscape and Sweeping is completed weekly. Signage, Lighting and Equipment Maintenance is completed as needed.
5. Parking On Street	Maintenance of parking spaces and meters, including repairing and painting meters.
6. Street Sweeping /Maintenance	Machine sweeps once every two weeks on Friday, twenty-six times per year. Street maintenance, including repairing pot holes, laying asphalt patches and maintaining storm drains.
7. Trash dumping	Street Litter Containers along Colorado Blvd at Lake Avenue and along Lake Avenue from Colorado Blvd to California Blvd – Six days per week, Monday through Saturday.
8. Landscaping	Maintenance of street trees and tree wells and grates as well as landscaping and maintenance of the Del Mar Islands
9. Landscaping - Tree Trimming	Pruning of trees on four-year pruning schedule. Pruning of other species are at varying schedules from four to fifteen years. Trees to be maintained and groomed.
10. Landscaping - Tree Planting	Planting and removal of trees as necessary.

Other Services	
1. Business recruitment and retention	Coordinated efforts with the DISTRICT, retailers and property owners to develop, attract and retain retail tenants, investors, office tenants and customers for Playhouse. The goal of this shall be to (1) work to gain new tenants and customers throughout the SLD on and off Lake Avenue; (2) develop programs to educate and retain independent business, per annual budget allocation.