

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF PASADENA AUTHORIZING THE ISSUANCE BY THE CITY OF NOT TO EXCEED \$30,000,000 AGGREGATE PRINCIPAL AMOUNT OF CITY OF PASADENA WATER REVENUE BONDS, 2010A SERIES AND NOT TO EXCEED \$35,000,000 AGGREGATE PRINCIPAL AMOUNT OF CITY OF PASADENA WATER REVENUE REFUNDING BONDS, 2010B SERIES, PAYABLE OUT OF THE WATER FUND, AND APPROVING THE EXECUTION AND DELIVERY OF A THIRD SUPPLEMENT TO WATER REVENUE BOND INDENTURE, A FOURTH SUPPLEMENT TO WATER REVENUE BOND INDENTURE, AN ESCROW AGREEMENT AND A CONTINUING DISCLOSURE AGREEMENT IN CONNECTION THEREWITH**

WHEREAS, pursuant to Article XIV of the Charter (the "Charter") of the City of Pasadena (the "City"), the City Council of the City (the "City Council") is authorized to provide for the issuance of revenue bonds for the purpose of providing moneys for the acquisition and construction of additions to, and extensions and improvements of, the water system of the City, and for refunding bonds for the purposes of refunding any revenue bonds issued pursuant to such Article, by ordinance authorizing the issuance of such revenue bonds and/or refunding bonds; and

WHEREAS, the City has previously issued its \$47,425,000 Water Revenue and Refunding Bonds, 2003 Series (the "2003 Bonds") pursuant to Article XIV of the Charter, and a Water Revenue Bond Indenture, dated as of August 1, 2003, by and between the City and The Bank of New York Mellon Trust Company, N.A. (formerly known as BNY Western Trust Company), as trustee (the "Trustee") (the "Master Indenture"), as supplemented by a First Supplement to Water Revenue Bond Indenture, dated as of August 1, 2003, by and between the City and the Trustee; and

WHEREAS, the City has previously issued its \$21,550,000 Water Revenue Bonds, 2007 Series (the "2007 Bonds") pursuant to Article XIV of the Charter, and the Master Indenture, as supplemented by a Second Supplement to Water Revenue Bond Indenture, dated as of April 1, 2007, by and between the City and the Trustee; and

WHEREAS, pursuant to Article XIV of the Charter, the City now proposes to issue on a parity basis with the 2003 Bonds and the 2007 Bonds and the 2010B Bonds hereinafter described (if and when issued) its Water Revenue Bonds, 2010A Series (with such further designation as may be determined to identify such bonds, the "2010A Bonds") pursuant to the Master Indenture, as supplemented by a Third Supplement to Water Revenue Bond Indenture, dated as of December 1, 2010, by and between the City and the Trustee (the "Third Supplement"), to provide moneys (i) for the acquisition and construction of additions to, and extensions and improvements of, the Water System, (ii) to make an additional deposit to the reserve fund for the 2003 Bonds, the 2007 Bonds, the 2010A Bonds and other parity bonds, and (iii) to pay costs of issuance of the 2010A Bonds, said 2010A Bonds not to constitute an indebtedness of the City but to constitute obligations which shall be payable as to both principal and interest, and any premiums upon the redemption of any thereof prior to maturity, only from

the Water Fund of the City and certain other funds as provided in the Indenture; and this Ordinance is for the purpose of authorizing the issuance of such 2010A Bonds; and

WHEREAS, pursuant to Article XIV of the Charter, the City also now proposes to issue on a parity basis with the 2003 Bonds, the 2007 Bonds and the 2010A Bonds (if and when issued) its Water Revenue Refunding Bonds, 2010B Series (with such further designation as may be determined to identify such bonds, the "2010B Bonds") pursuant to the Master Indenture, as supplemented by a Fourth Supplement to Water Revenue Bond Indenture, dated as of December 1, 2010, by and between the City and the Trustee (the "Fourth Supplement," and collectively with the Master Indenture as amended and supplemented, the "Indenture"), to provide moneys (i) to refund a portion of the 2003 Bonds, and (ii) to pay costs of issuance of the 2010B Bonds, said 2010B Bonds not to constitute an indebtedness of the City but to constitute obligations which shall be payable as to both principal and interest, and any premiums upon the redemption of any thereof prior to maturity, only from the Water Fund of the City and certain other funds as provided in the Indenture; and this Ordinance is for the purpose of additionally authorizing the issuance of such 2010B Bonds; and

WHEREAS, the American Recovery and Reinvestment Act of 2009 (the "Stimulus Act") provides authority to issue tax credit bonds and federally subsidized taxable bonds, known as "Build America Bonds," for the financing of certain governmental projects and the City desires to provide for the potential issuance of all or any portion of the 2010A Bonds as Build America Bonds.

NOW, THEREFORE, the People of the City of Pasadena ordain as follows:

**Section 1. Authorization to Issue 2010 Bonds; Purpose; Principal Amount.**

(a) Pursuant to Article XIV of the Charter, the City Council does hereby authorize to be issued, upon the terms and conditions as hereinafter set forth, the 2010A Bonds in the aggregate principal amount of not to exceed \$30,000,000 for the acquisition and construction of additions to, and extensions and improvements of, the Water System, any required deposit to the reserve fund and the payment of costs and expenses incidental thereto. The City Council does hereby authorize all or any portion of the 2010A Bonds to be issued as Build America Bonds.

(b) Pursuant to Article XIV of the Charter, the City Council does hereby authorize to be issued, upon the terms and conditions as hereinafter set forth, the 2010B Bonds in the aggregate principal amount of not to exceed \$35,000,000 for the refunding of a portion of the 2003 Bonds, including the payment of costs and expenses incidental thereto. If so determined by the City, in the event the 2010A Bonds are to be issued in an aggregate principal amount less than the maximum amount authorized by this Ordinance or are not to be issued, the 2010B Bonds may be additionally or alternatively issued for the acquisition and construction of additions to, and extensions and improvements of, the Water System, any required deposit to the reserve fund and the payment of costs and expenses incidental thereto, and the not to exceed aggregate principal amount of the 2010B Bonds authorized hereby shall be increased proportionately; provided that the sum of the aggregate principal amount of 2010A Bonds and any 2010B Bonds to be issued does not exceed \$65,000,000. Furthermore, the sum of principal amount of 2010A Bonds and any 2010B Bonds used to finance the acquisition and construction

of additions to, and extensions and improvements of, the Water System, any required deposit to the reserve fund and the payment of costs and expenses incidental thereto shall not exceed \$30,000,000.

(c) This Ordinance shall constitute complete authority to issue the 2010 Bonds pursuant to the Indenture as provided herein.

**Section 2. Issuance of 2010 Bonds.** The 2010A Bonds shall be issued pursuant to and in accordance with the terms and conditions set forth in this Ordinance, and more specifically in the Master Indenture (as amended to the date hereof) and the Third Supplement. The 2010B Bonds shall be issued pursuant to and in accordance with the terms and conditions set forth in this Ordinance, and more specifically in the Master Indenture (as amended to the date hereof or as amended by the Third Supplement) and the Fourth Supplement.

**Section 3. Date of Issuance; Maximum Interest Rates.** The 2010A Bonds shall be dated their date of delivery. The maximum interest rate to be payable on the 2010A Bonds shall not exceed an amount that will result in a true interest cost to the City (not taking into account any subsidy payment the City may be entitled to receive in connection with 2010A Bonds issued as Build America Bonds) of greater than eight percent (8.0%) per annum. The 2010B Bonds shall be dated their date of delivery. The maximum interest rate to be payable on the 2010B Bonds shall not exceed an amount that will result in a true interest cost to the City of greater than four and three-quarters percent (4.75%) per annum.

**Section 4. Maturity Dates.** The maximum term for the 2010 Bonds shall be 35 years. Subject to the preceding sentence, the 2010 Bonds shall mature and be payable on such dates as specifically set forth in the Third Supplement or the Fourth Supplement, as applicable, described in Sections 6 and 7 hereof.

**Section 5. Source of Payment.** The 2010 Bonds shall not constitute an indebtedness of the City but shall constitute obligations which shall be payable as to both principal and interest, and any premiums upon the redemption of any thereof prior to maturity, only from the Water Fund of the City, as provided in Article XIV of the Charter, and certain other funds as authorized by Article XIV and provided in the Indenture.

**Section 6. Approval of Third Supplement.** In order to prescribe the terms and conditions upon which the 2010A Bonds are to be issued, secured, executed, authenticated and held, the Third Supplement proposed to be executed and entered into by the City and the Trustee, in substantially the form attached hereto as Exhibit A is hereby approved, and the Director of Finance (or, in the absence of the Director of Finance, his designee) is hereby authorized and directed, for and in the name and on behalf of the City, to execute, and the City Clerk is authorized to affix the official seal of the City to, and deliver the Third Supplement to the Trustee in substantially such form, with such changes (including, without limitation, such changes as may be requested by rating agencies providing a rating on the 2010A Bonds) as may be approved by the Director of Finance (or, in the absence of the Director of Finance, his designee), acting on behalf of the City, subject to advice of counsel, such execution thereof to constitute conclusive evidence of the approval of the City of all changes from the form of the Third Supplement presented to this meeting.

**Section 7. Approval of Fourth Supplement.** In order to prescribe the terms and conditions upon which the 2010B Bonds are to be issued, secured, executed, authenticated and held, the Fourth Supplement proposed to be executed and entered into by the City and the Trustee, in substantially the form attached hereto as Exhibit B is hereby approved, and the Director of Finance (or, in the absence of the Director of Finance, his designee) is hereby authorized and directed, for and in the name and on behalf of the City, to execute, and the City Clerk is authorized to affix the official seal of the City to, and deliver the Fourth Supplement to the Trustee in substantially such form, with such changes (including, without limitation, such changes as may be requested by rating agencies providing a rating on the 2010B Bonds) as may be approved by the Director of Finance (or, in the absence of the Director of Finance, his designee), acting on behalf of the City, subject to advice of counsel, such execution thereof to constitute conclusive evidence of the approval of the City of all changes from the form of the Fourth Supplement presented to this meeting.

**Section 8. Approval of Continuing Disclosure Agreement.** The Continuing Disclosure Agreement, proposed to be executed and entered into by and between the City and the Trustee, in substantially the form attached hereto as Exhibit C is hereby approved, and the Director of Finance (or, in the absence of the Director of Finance, his designee) is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the trustee the Continuing Disclosure Agreement in substantially said form, with such changes as may be approved by the Director of Finance (or, in the absence of the Director of Finance, his designee), acting on behalf of the City, subject to advice of counsel, such execution thereof to constitute conclusive evidence of the approval of the City of all changes from the form of the Continuing Disclosure Agreement presented to this meeting.

**Section 9. Approval of Escrow Agreement.** The Escrow Agreement, proposed to be executed and entered into by and between the City and the Escrow Agent, in substantially the form attached hereto as Exhibit D is hereby approved, and the Director of Finance (or, in the absence of the Director of Finance, his designee) is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the trustee the Escrow Agreement in substantially said form, with such changes as may be approved by the Director of Finance (or, in the absence of the Director of Finance, his designee), acting on behalf of the City, subject to advice of counsel, such execution thereof to constitute conclusive evidence of the approval of the City of all changes from the form of the Escrow Agreement presented to this meeting.

**Section 10. Authorization to Make Certain Determinations in Connection with 2010A Bonds.** Notwithstanding anything in this Ordinance to the contrary but subject to the parameters set forth herein, the Director of Finance (or, in the absence of the Director of Finance, his designee) is hereby authorized to determine (i) whether all or any portion of the 2010A Bonds shall be issued as Build America Bonds or as bonds the interest on which is to be excluded from gross income of the owners thereof for federal income tax purposes pursuant to section 103(a) of the Code, which determination shall be made taking into account the advice of the City's financial advisor for such 2010A Bonds, and on the basis of what bond structure in light of the existing market conditions is in the best interest of the City, which determinations shall be conclusively evidenced by the issuance and delivery of the 2010A Bonds. In connection with the issuance of any 2010A Bonds as Build America Bonds, the Director of Finance (or, in the absence of the Director of Finance, his designee) is hereby authorized to make an irrevocable

election in a tax certificate or other certification signed by the City in connection with the 2010A Bonds to have section 54AA of the Code apply to the 2010A Bonds and to approve any written procedures and guidelines for continued compliance with tax law requirements, or other similar document, relating to the 2010A Bonds if deemed advisable, and is hereby further authorized and directed, on behalf of the City, to make any necessary filings and execute documents and certificates (including tax certificates) necessary or desirable in connection with any such election and the issuance of the 2010A Bonds as Build America Bonds.

**Section 11. Official Action.** All actions heretofore taken by the officers and agents of the City with respect to the issuance of the 2010 Bonds and the negotiation and execution of said agreements are hereby approved, confirmed and ratified. The City Manager, the Director of Finance, the City Treasurer, the City Clerk and any and all other officers of the City are hereby authorized and directed, for and in the name and on behalf of the City to do any and all things and take any and all actions, including execution and delivery of any and all certificates, requisitions, agreements (including tax certificates) and other documents, which they, or any of them, may deem necessary or advisable in order to consummate the issuance, sale and delivery of the 2010 Bonds pursuant to the agreements described herein.

**Section 12. Provisions Necessary and Desirable.** The provisions of this Ordinance are deemed necessary and desirable to facilitate the issuance and sale of the 2010 Bonds authorized by this Ordinance.

**Section 13. Publication.** The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance, excepting the exhibits attached hereto, to be published once in the PASADENA STAR-NEWS, a daily newspaper of general circulation published in said City.

**Section 14. Effective Date.** This Ordinance shall take effect on the date of publication pursuant to Section 13, subject only to the right of referendum provided in Section 1413 of the City Charter.

Signed and approved this 1st day of November, 2010.

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Mayor of the City of Pasadena, California

**I HEREBY CERTIFY** that the foregoing Ordinance was adopted by the City Council of the City of Pasadena at its regular meeting held November 1, 2010, by the following vote:

Ayes:

Noes:

Absent:

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APPROVED AS TO FORM:

  
Michele Beal Bagneris  
City Attorney

\_\_\_\_\_  
Mark Jomsky  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Danny Kim  
Fulbright & Jaworski L.L.P.  
Bond Counsel