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**ESCROW AGREEMENT**

by and between the

**CITY OF BRISBANE, CALIFORNIA**

and

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,  
as Escrow Bank**

dated as of July 1, 2013

relating to:  
City of Brisbane,  
Limited Obligation Refunding Bonds,  
Northeast Ridge Assessment District  
(Reassessment and Refunding of 2001)

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EXHIBIT A: REDEMPTION SCHEDULE FOR THE 2001 BONDS

## ESCROW AGREEMENT

This ESCROW AGREEMENT, dated as of July 1, 2013 (this "Escrow Agreement"), is by and between the CITY OF BRISBANE, CALIFORNIA, a general law city and municipal corporation organized and existing under the laws of the State of California (the "City"), and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association organized and existing under the laws of the United States of America, in its capacity as fiscal agent with respect to the 2001 Bonds (as defined below), and in its capacity as escrow bank hereunder (the "Escrow Bank").

### RECITALS:

WHEREAS, the City has heretofore issued its \$6,975,000 initial principal amount of City of Brisbane, Limited Obligation Refunding Bonds, Northeast Ridge Assessment District (Reassessment and Refunding of 2001) (the "2001 Bonds") pursuant to a Fiscal Agent Agreement, dated as of July 1, 2001, between the City and the Escrow Bank as fiscal agent (the "2001 Fiscal Agent Agreement"); and

WHEREAS, the City has determined to provide for the refunding in full of the outstanding 2001 Bonds; and

WHEREAS, for the purpose of providing funds for the refunding of the 2001 Bonds, the City has determined to issue its \$3,395,000 Limited Obligation Refunding Bonds, City of Brisbane, Northeast Ridge Assessment District (Reassessment and Refunding of 2013) (the "2013 Bonds"), pursuant to a Fiscal Agent Agreement, dated as of July 1, 2013 (the "2013 Fiscal Agent Agreement"), by and between the City and The Bank of New York Mellon Trust Company, N.A., as fiscal agent (the "Fiscal Agent"); and

WHEREAS, the City wishes to make a deposit of proceeds of the 2013 Bonds with the Escrow Bank in an amount sufficient, together with certain other funds to be transferred to the Escrow Bank as provided herein, to pay the redemption price of the 2001 Bonds on September 2, 2013, and the City desires to enter into this Escrow Agreement for the purpose of providing the terms and conditions for the deposit and application of amounts so deposited with the Escrow Bank; and

WHEREAS, the Escrow Bank has full powers to act with respect to the irrevocable escrow created herein and to perform the duties and obligations to be undertaken by it pursuant to this Escrow Agreement.

### AGREEMENT:

NOW, THEREFORE, in consideration of the above premises and of the mutual promises and covenants herein contained and for other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

Section 1. Appointment of Escrow Bank. The City hereby appoints the Escrow Bank as escrow bank for all purposes of this Escrow Agreement and in accordance with the terms and provisions of this Escrow Agreement, and the Escrow Bank hereby accepts such appointment.

Section 2. Establishment of Escrow Fund. There is hereby created by the City with, and to be held by, the Escrow Bank, as security for the payment of the principal of and premium and interest on the 2001 Bonds as hereinafter set forth, an irrevocable escrow to be maintained

in trust by the Escrow Bank for the benefit of the owners of the 2001 Bonds, said escrow to be designated the "Escrow Fund." All moneys deposited in the Escrow Fund shall constitute a special fund for the payment of the principal of and premium and interest on the 2001 Bonds in accordance with this Escrow Agreement and the provisions of the 2001 Fiscal Agent Agreement.

If at any time the Escrow Bank shall receive actual knowledge that the moneys in the Escrow Fund will not be sufficient to make any payment required by Section 4 hereof, the Escrow Bank shall notify the City of such fact and the City shall immediately cure such deficiency from any lawful funds that may be available for such purpose.

Section 3. Deposit into Escrow Fund; Investment of Amounts. Concurrent with delivery of the 2013 Bonds, the City shall cause to be transferred to the Escrow Bank for deposit into the Escrow Fund the amount of \$3,997,191.88 in immediately available funds derived as follows: (a) \$3,041,314.71 from the proceeds of sale of the 2013 Bonds, (b) \$356,805.71 from funds held in the Reserve Fund for the 2001 Bonds, and (c) \$599,071.46 from funds held in the Redemption Fund for the 2001 Bonds.

The Escrow Bank shall hold the funds deposited to the Escrow Fund in cash, uninvested. The cash in the Escrow Fund shall be held by the Escrow Bank in the Escrow Fund solely for the uses and purposes set forth herein. The Escrow Bank shall have no lien upon or right of set off against the funds at any time on deposit in the Escrow Fund.

Section 4. Instructions as to Application of Deposit. The total amount held in the Escrow Fund pursuant to Section 3 shall be applied by the Escrow Bank to redeem in full the 2001 Bonds on September 2, 2013, by paying on such date from the amount in the Escrow Fund the redemption price of the 2001 Bonds, being 103% of the then outstanding principal amount thereof, plus accrued interest to the Redemption Date, as more fully set forth in Exhibit A hereto.

The Escrow Bank, in its capacity as fiscal agent for the 2001 Bonds, is hereby irrevocably authorized and directed by the City to provide notice of the redemption of the 2001 Bonds pursuant to Section 2.03(c) of the 2001 Fiscal Agent Agreement by giving at least 30 days notice by registered or certified mail, or by personal service, to the registered owners of the 2001 Bonds at their addresses as they appear in the registration books for the 2001 Bonds maintained by the Escrow Bank, as fiscal agent for the 2001 Bonds, pursuant to Section 2.09 of the 2001 Fiscal Agent Agreement. The notice of redemption shall be in a form customarily used by the Escrow Bank for similar bond redemptions.

Following the final payment of the 2001 Bonds, the Escrow Bank shall transfer any remaining amounts held by it as Escrow Bank relating to the 2001 Bonds or the 2001 Fiscal Agent Agreement on September 3, 2013, to the City for deposit by the City's Administrative Services Director in the Redemption Fund established under the 2013 Fiscal Agent Agreement.

Section 5. Compensation to Escrow Bank. The City shall pay the Escrow Bank compensation for its duties under this Escrow Agreement, including out-of-pocket costs such as publication costs, legal fees and other costs and expenses relating hereto, pursuant to a separate agreement between the City and the Escrow Bank. Under no circumstances shall amounts deposited in the Escrow Fund be deemed to be available for said purposes. The obligation of the City under this Section 5 to pay compensation already earned by the Escrow Bank and to pay costs and expenses already incurred shall survive termination of this Escrow Agreement and shall survive the resignation or removal of the Escrow Bank.

Section 6. Liabilities and Obligations of Escrow Bank. The Escrow Bank shall have no obligation to make any payment or disbursement of any type or incur any financial liability in

the performance of its duties under this Escrow Agreement unless the City shall have deposited sufficient funds with the Escrow Bank. The Escrow Bank may rely and shall be protected in acting upon the written or oral instructions of the City or its agents relating to any matter or action as Escrow Bank under this Escrow Agreement. The protections, immunities and limitations from liability provided to the Fiscal Agent under the 2001 Fiscal Agent Agreement shall be afforded the Escrow Bank hereunder and are incorporated herein by this reference.

The Escrow Bank and its respective successors, assigns, agents and servants shall not be held to any personal liability whatsoever, in tort, contract, or otherwise, in connection with the execution and delivery of this Escrow Agreement, the establishment of the Escrow Fund, the acceptance of the moneys deposited therein, the sufficiency of the moneys held in the Escrow Fund hereunder to accomplish the discharge of the 2001 Bonds, or any payment, transfer or other application of moneys by the Escrow Bank in accordance with the provisions of this Escrow Agreement or by reason of any non-negligent act, non-negligent omission or non-negligent error of the Escrow Bank made in good faith in the conduct of its duties.

The recitals of fact contained in the recital clauses herein shall be taken as the statements of the City and the Escrow Bank assumes no responsibility for the correctness thereof.

The Escrow Bank makes no representations as to the sufficiency of the moneys in the Escrow Fund to accomplish the redemption of the 2001 Bonds pursuant to the 2001 Fiscal Agent Agreement, or to the validity of this Escrow Agreement as to the City and, except as otherwise provided herein, the Escrow Bank shall incur no liability in respect thereof.

The Escrow Bank shall not be liable in connection with the performance of its duties under this Escrow Agreement except for its own negligence, willful misconduct or default, and the duties and obligations of the Escrow Bank shall be determined by the express provisions of this Escrow Agreement and no implied duties shall be read into this Escrow Agreement against the Escrow Bank.

The Escrow Bank may consult with counsel, who may or may not be counsel to the City, and in reliance upon the written opinion of such counsel selected by it with due care shall have full and complete authorization and protection in respect of any action taken, suffered or omitted by it in good faith in accordance therewith.

The City hereby assumes liability for, and hereby agrees (whether or not any of the transactions contemplated hereby are consummated), to the extent permitted by law, to indemnify, protect, save and hold harmless the Escrow Bank and its respective successors, assigns, agents and servants from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including reasonable legal fees and disbursements) of whatsoever kind and nature which may be imposed on, incurred by, or asserted against, at any time, the Escrow Bank (whether or not also indemnified against by any other person under any other agreement or instrument) and in any way relating to or arising out of the execution and delivery of this Escrow Agreement, the establishment of the Escrow Fund, the retention of the moneys therein and any payment, transfer or other application of moneys by the Escrow Bank in accordance with the provisions of this Escrow Agreement, or as may arise by reason of any act, omission or error of the Escrow Bank made in good faith in the conduct of its duties; *provided, however*, that the City shall not be required to indemnify the Escrow Bank against its own negligence or willful misconduct and any liability of the City under this paragraph shall be payable solely from funds legally available for such purpose. The indemnities contained in this Section 6 and the compensation and reimbursement of expenses set forth in Section 5 shall survive the termination of this Escrow Agreement and the resignation or removal of the Escrow Bank.

Whenever, in the administration of this Escrow Agreement, the Escrow Bank shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or willful misconduct on the part of the Escrow Bank, be deemed to be conclusively proved and established by a certificate of an authorized representative of the City, and such certificate shall, in the absence of negligence or willful misconduct on the part of the Escrow Bank, be full warrant to the Escrow Bank for any action taken or suffered in good faith by it under the provisions of this Escrow Agreement.

The Escrow Bank shall not be responsible for any of the recitals or representations contained herein.

The Escrow Bank shall not be liable for the accuracy of any calculations provided as to the sufficiency of moneys deposited with it to pay the redemption price of the 2001 Bonds.

The Escrow Bank shall incur no liability for losses arising from any disposition made pursuant to and in accordance with this Escrow Agreement.

No provision of this Escrow Agreement shall require the Escrow Bank to expend or risk its own funds or otherwise incur any financial liability in the performance or exercise of any of its duties hereunder or in the exercise of its rights or powers.

Any bank, federal savings association or trust company into which the Escrow Bank may be merged or with which it may be consolidated shall become the Escrow Bank without any action of the City.

The Escrow Bank shall have no liability or obligation to the holders of the 2001 Bonds with respect to the payment of debt service by the City on any of such bonds or with respect to the observance or performance by the City of the other conditions, covenants and terms contained in the 2001 Fiscal Agent Agreement, or with respect to the investment of any moneys in any fund or account established, held or maintained by the City pursuant to the 2001 Fiscal Agent Agreement.

The Escrow Bank shall not be liable for any error of judgment made in good faith by an authorized officer.

The Escrow Bank may execute any of the trusts or powers under this Escrow Agreement or perform any duties under this Escrow Agreement either directly or by or through agents, attorneys, custodians or nominees, and shall not be responsible for any willful misconduct or negligence on the part of any agent, attorney, custodian or nominee so appointed with due care.

The Escrow Bank agrees to accept and act upon instructions or directions pursuant to this Escrow Agreement sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods; provided, however, that, the Escrow Bank shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the City elects to give the Escrow Bank e-mail or facsimile instructions (or instructions by a similar electronic method) and the Escrow Bank in its discretion elects to act upon such instructions, the Escrow Bank's reasonable understanding of such instructions shall be deemed controlling. The Escrow Bank shall not be liable for any losses, costs or expenses arising directly or indirectly from the Escrow Bank's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The City agrees to assume all risks arising out of the use of such electronic methods

to submit instructions and directions to the Escrow Bank, including without limitation the risk of the Escrow Bank acting on unauthorized instructions, and the risk of interception and misuse by third parties.

The Escrow Bank may at any time resign by giving written notice to the City, which notice shall indicate the date (not earlier than 60 days after receipt by the City of such notice) on which the resignation is to be effective (the "resignation date"). The City shall promptly appoint a successor Escrow Bank by the resignation date. Resignation of the Escrow Bank will be effective upon acceptance of appointment by a successor Escrow Bank. If the City does not appoint a successor Escrow Bank by the resignation date, the Escrow Bank may petition any court of competent jurisdiction for the appointment of a successor Escrow Bank, which court may thereupon, after such notice, if any, as it may deem proper and prescribe and as may be required by law, appoint a successor Escrow Bank. The City may at any time terminate the services of the Escrow Bank and appoint a new Escrow Bank hereunder, such termination to take effect only upon acceptance of the appointment by the replacement Escrow Bank.

Section 7. Amendment. This Escrow Agreement may be modified or amended at any time by a supplemental agreement which shall become effective when the written consents thereto of the owners of one hundred percent (100%) in aggregate principal amount of the 2001 Bonds then outstanding shall have been filed with the Escrow Bank. This Escrow Agreement may be modified or amended at any time by a supplemental agreement, without the consent of any such 2001 Bondowners, but only (a) to add to the covenants and agreements of any party, other covenants to be observed, or to surrender any right or power herein or therein reserved to the City, (b) to cure, correct or supplement any ambiguous or defective provision contained herein, or (c) in regard to questions arising hereunder as the parties hereto may deem necessary or desirable and which, in the opinion of counsel, shall not materially adversely affect the interests of the owners of the 2001 Bonds, and that such amendment will not cause interest on the 2001 Bonds to become subject to federal income taxation.

Section 8. Severability. If any section, paragraph, sentence, clause or provision of this Escrow Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, sentence, clause or provision shall not affect any of the remaining provisions of this Escrow Agreement.

Section 9. Notices to Escrow Bank and City. Any notice to or demand upon the Escrow Bank may be served and presented, and such demand may be made, at the principal corporate trust office of the Escrow Bank at The Bank of New York Mellon Trust Company, N.A., 400 South Hope Street, Suite 400, Los Angeles, California 90071, Attention: Corporate Trust (or such other address as may have been filed in writing by the Escrow Bank with the City). Any notice to or demand upon the City shall be deemed to have been sufficiently given or served for all purposes by being mailed by registered or certified mail, and deposited, postage prepaid, in a post office letter box, addressed to the City of Brisbane, 50 Park Lane, Brisbane, California 94005, Attention: Administrative Services Director (or such other address as may have been filed in writing by the City with the Escrow Bank).

Section 10. Merger or Consolidation of Escrow Bank. Any company into which the Escrow Bank may be merged or converted or with which may it be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Escrow Bank may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible to act as fiscal agent under the 2001 Fiscal Agent Agreement, shall be the successor hereunder to the Escrow Bank without the execution or filing of any paper or any further act.

Section 11. Unclaimed Moneys. Anything contained herein to the contrary notwithstanding, any moneys held by the Escrow Bank in trust for the payment and discharge of the principal of, and the interest and any premium on, the 2001 Bonds which remains unclaimed for two (2) years after the date when the payment of such principal, interest and premium have become payable, if such moneys were held by the Escrow Bank at such date, shall be repaid by the Escrow Bank to the City as its absolute property free from any trust, and the Escrow Bank shall thereupon be released and discharged with respect thereto and the owners of such 2001 Bonds shall look only to the City for the payment of the principal of, and interest and any premium on, such 2001 Bonds. Any right of any 2001 Bondowner to look to the City for such payment shall survive only so long as required under applicable law.

Section 12. Execution of Counterparts. This Escrow Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original and all of which shall together constitute but one and the same instrument.

Section 13. Governing Law. This Escrow Agreement shall be construed and governed in accordance with the laws of the State of California applicable to contracts made and performed in such State.



IN WITNESS WHEREOF, the CITY OF BRISBANE, CALIFORNIA has caused this Escrow Agreement to be signed in its name by its City Manager, and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., has caused this Escrow Agreement to be signed in its corporate name by its officer identified below, all as of the day and year first above written.

CITY OF BRISBANE, CALIFORNIA

By: \_\_\_\_\_  
Clayton L. Holstine,  
*City Manager*

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Escrow Bank

By: \_\_\_\_\_  
*Authorized Officer*

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EXHIBIT A

REDEMPTION SCHEDULE FOR THE 2001 BONDS

Redemption Date	Maturing Principal	Principal Redeemed	Redemption Premium	Accrued Interest	Total Payment
September 2, 2013	\$385,000.00	\$3,400,000.00	\$102,000.00	\$110,191.88	\$3,997,191.88