

**TERM SHEET FOR WATER TRANSFER AGREEMENT  
BY AND BETWEEN THE OAKDALE IRRIGATION DISTRICT AND  
THE CITY OF BRISBANE**

This Term Sheet, a non-binding framework for negotiation, is entered into this <sup>15<sup>th</sup></sup> day of October, 2012, between and among the Oakdale Irrigation District ("OID") and the City of Brisbane ("Brisbane"), both of which are collectively referred to hereafter as "Parties".

**RECITALS**

*WHEREAS*, OID is operating under and by virtue of Division 11 of the California Water Code; and

*WHEREAS*, Brisbane is a general law city subject to the California Government Code; and

*WHEREAS*, Brisbane desires to acquire water from OID for municipal and industrial (M&I) purposes, as those terms are generally defined by the California State Water Resources Control Board, including a water supply for the project referred to herein as the Baylands Project, a brownfield development located adjacent to the west side of Highway 101; and

*WHEREAS*, OID is interested in transferring water to Brisbane; and

*WHEREAS*, if OID transfers water to Brisbane, the Parties expect that the water will be delivered utilizing, among other facilities, OID's reservoirs, South Main Canal and laterals, certain designated facilities partially or fully owned and operated by the Modesto Irrigation District ("MID"), and the City and County of San Francisco's ("CCSF") Regional Water System; and

*WHEREAS*, this Term Sheet sets forth an understanding between the Parties to cooperate in the development, processing and completion of appropriate environmental review pursuant to the California Environmental Quality Act ("CEQA") by the designated Lead Agency; and

*WHEREAS*, this Term Sheet sets forth some of the potential terms and conditions related to a sale of water from OID to Brisbane so that the appropriate Lead Agency can commence development, processing and completion of the appropriate CEQA documentation, and

*WHEREAS*, this Term Sheet provides a general framework for the subsequent negotiation of definitive agreements regarding the transfer and delivery of water from OID, and will not create any binding contractual obligations on any party hereto or to commit any party to a particular course of action. A transaction of this type involves many essential terms and conditions that have not yet been agreed upon, and it is expressly contemplated by the Parties that, in order to effectuate the proposed transfer, binding agreements will have to be negotiated,

agreed to by the Parties and submitted for approval to the OID Board of Directors and the Brisbane City Council; and

*WHEREAS*, this Term Sheet is intended to memorialize the preliminary terms that have been negotiated among the Parties, and to inform the public regarding the goals and principles identified by OID that will guide the proposal to transfer water to Brisbane throughout the public review process; and

*WHEREAS*, the terms set forth in this Term Sheet are the Parties' preliminary concepts that may be included in a final water transfer agreement. They are not intended, nor should they be considered as, binding on the Parties; and

*WHEREAS*, the Parties reserve their complete and sole discretion to evaluate and determine project impacts, alternatives and mitigation measures including, but not limited to, the ability to choose the "No Project" alternative, under CEQA; and

*WHEREAS*, by entering into this Term Sheet, the Parties do not intend to make an irretrievable commitment of resources or to commit to any course of action prior to completion of all appropriate environmental review and all necessary prior agreements.

NOW, THEREFORE, the Parties, on the terms and conditions herein set forth, recognize the following as the framework for their negotiations:

## **TERMS**

### **1. DEFINITIONS:**

The following definitions shall govern this Term Sheet:

(a) "Delivery" means that the water is to be made available to Brisbane on an annual basis pursuant to an agreed upon schedule at a designated point(s) of delivery. The points of delivery can be Goodwin Dam or any lateral or canal at OID's boundary. It is the responsibility of Brisbane to develop an exchange of water between OID, MID and CCSF, and to develop a wheeling agreement with the CCSF, so that OID's transfer water can be delivered to the CCSF water system intake. If no exchange and/or wheeling agreements are entered into between OID, MID, CCSF, and Brisbane, as necessary, at Brisbane's option, the Delivery may be made pursuant to an alternative arrangement between OID and Brisbane that utilizes the CCSF system, the State Water Project and/or Central Valley Project facilities, or through another means of transfer. This definition is intended to include the grammatical variations of the term "delivery" including "deliver" and "delivered," where such term references water.

(b) "Transfer Water" shall mean and refer to the water transferred by OID to Brisbane under the terms and conditions of the final Water Transfer Agreement.

(c) "Water Transfer Agreement" or "the Agreement" means the final water transfer agreement executed by OID and Brisbane for the transfer of water by OID to Brisbane.

**2. TERM:**

The Parties expect a term for the Water Transfer Agreement of fifty (50) years from the effective date of the Agreement. The Parties also expect to permit renewals of the Water Transfer Agreement of twenty-five (25) years. Brisbane may terminate the Agreement on two (2) years prior notice at any time after five (5) years from the effective date.

**3. THE WATER TRANSFER:**

Brisbane will have an option under the Water Transfer Agreement to reserve or purchase for Transfer Water and may exercise the option at its discretion. If Brisbane does exercise its option, OID will annually sell and deliver Transfer Water for reasonable and beneficial uses, as those terms are generally defined by the California State Water Resources Control Board. The Parties intend that the Transfer Water will be used within the political boundaries of Brisbane, except that Brisbane may sell, lease, transfer, or assign the water for use outside its boundaries within the Hetch Hetchy water service area.

**4. QUANTITY:**

OID will make available for transfer up to a maximum of 2,400 acre-feet of water to Brisbane beginning on the effective date of the Water Transfer Agreement. For the first five (5) years following the execution of the Agreement, Brisbane shall provide OID with a delivery schedule that will identify the minimum quantity of water that OID shall deliver to Brisbane for the following year. During this five (5) year period, Brisbane can take delivery of as much or as little water as it determines necessary in the annual delivery schedule, subject to the 2,400 AF maximum.

On or before January 1 of the sixth year following the effective date of the Agreement, Brisbane must notify OID in writing how much water it will be acquiring by transfer during the remainder of the term of the Agreement. Brisbane does not need to take delivery of this quantity in each year of the term, but must pay for the identified quantity of water regardless of whether or not the full quantity is taken. The quantity identified by Brisbane shall not exceed 2,400 acre-feet.

**5. RESERVATION AND PURCHASE PRICE:**

Brisbane will pay the following amounts:

(a) **Reservation Price.** For the first five (5) years following the execution of the Water Transfer Agreement, Brisbane shall pay OID the sum of \$500 per acre foot for which delivery was taken and \$100 per acre foot derived by 2,400 minus the acre-feet taken.

(b) **Purchase Price.** Beginning in year six (6) following the execution of the Water Transfer Agreement, and for each year thereafter remaining in the term of the Agreement, Brisbane shall pay to OID \$500 per acre foot of water. Such price shall apply to the quantity identified by Brisbane in writing on or before January 1 of the sixth year, and will be paid to OID regardless of the quantity of water actually taken by Brisbane in any particular year.

**6. ANNUAL CHANGES TO PURCHASE PRICE:**

(a) The purchase price in year six (6) shall be adjusted based on changes to the Consumer Price Index as shown as the urban wage earners and clerical workers, U.S. City average (CPI-W)(“Index”) for the twelve-month period concluding with the August CPI index of each preceding year. Effective October 1 of each year, following the initial delivery of water, the base purchase price shall be modified based upon the same percentage that the Index as published in August of such year has changed, as compared to the Index published in August of the preceding year, provided, however, that the increase shall be no less than two percent (2%) and shall not exceed four percent (4%) in any year.

(b) If the Index is discontinued or revised during the term, such other index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised, and in the absence of such a comparable replacement index, the Parties shall mutually determine a comparable replacement index.

(c) The provisions of this Section 6 shall apply only to water actually purchased by Brisbane. The provisions of this Section 6 shall not apply to the \$100 reservation price as set forth in Section 5(a).

**7. WHEELING AGREEMENT:**

The Agreement is contingent upon an agreement with CCSF that provides for the wheeling of water on an annual basis pursuant to an agreed-upon schedule that permits Brisbane to acquire and use the water transferred by OID.

**8. EXCHANGE AGREEMENT:**

The Agreement is contingent upon an agreement between OID and Modesto ID, and between Modesto ID and CCSF for the exchange of water. Any costs, approvals or permits associated with the exchange agreement will be borne or obtained by OID. OID staff will cooperate with Brisbane in the development, negotiation and preparation of an exchange agreement to be presented to Modesto ID and to CCSF for consideration and possible approval. Notwithstanding such cooperation, OID retains the sole right to reject any such exchange agreement between OID and Modesto ID.

**9. DEVELOPER FUNDING AGREEMENT:**

The future Water Transfer Agreement is contingent upon an agreement between Baylands Project developer and Brisbane for developer to fully fund the development of all agreements and associated costs and for the delivery of Transfer Water to the Baylands (“the Developer Funding Agreement”). Within the Developer Funding Agreement, the developer will commit to sustainability by agreeing to build a recycled water system sized for irrigation and building plumbing demands for the final approved Baylands Project. Brisbane retains the sole right to negotiate and approve the Developer Funding Agreement. The Developer Funding Agreement will include, but not be limited to, an assumption by the developer of responsibility for payment of all costs imposed upon Brisbane for reservation and delivery of water for the Baylands

Project, referred to in Sections 4 and 5, all costs arising from the Wheeling Agreement and Exchange Agreement for water delivered to the Baylands, referred to in Sections 7 and 8, and all costs for the environmental reviews referred to in Section 13.

**10. WATER QUALITY:**

OID will not warranty the quality or fitness for use of Transfer Water.

**11. WATER SUPPLY REDUCTIONS:**

Water transferred to Brisbane will not be reduced on an annual basis by OID for any reason, unless by mutual agreement of the Parties.

**12. WATER RIGHTS:**

OID will transfer water that is not subject to the permitting jurisdiction of the State Water Resources Control Board (SWRCB).

**13. ENVIRONMENTAL REVIEW:**

Brisbane will be the lead agency for purposes of the California Environmental Quality Act (CEQA) with respect to the transfer of water from OID to Brisbane. Brisbane is also undertaking CEQA review of its local development and water supply analysis, including growth inducing impacts and its receipt of water from OID. The expenses of environmental review and approval for both OID and Brisbane will be paid entirely by Brisbane with funds to be provided by the developer of the Baylands Project pursuant to the Developer Funding Agreement referred to in Section 9.

**14. NO IRRETRIEVABLE COMMITMENT OF RESOURCES:**

By agreeing to this Term Sheet, neither Party is agreeing to commit any resources that could result in an environmental impact. It is a condition to the obligations of the Parties that environmental review be completed prior to entering into any binding agreement regarding the transfer of water from OID to Brisbane and the obligation of Brisbane to pay for Transfer Water.

Following completion of the above-referenced CEQA document and any supplements thereto, unless OID selects the "No Project" alternative (in which case no Water Transfer Agreement will be negotiated), and execution of the Developer Funding Agreement referred to in Section 9, OID will negotiate in good faith with Brisbane to develop a Water Transfer Agreement acceptable to both Parties, which Agreement will be consistent with the above-referenced CEQA documents. OID and Brisbane each expressly retain its discretion with respect to whether it will enter into a Water Transfer Agreement, and on what terms, as well as its discretion to consider any and all alternatives, including the "No Project" alternative, and any and all mitigation measures indentified in the above-referenced CEQA process.

**15. COOPERATION:**

To the extent reasonably required, each Party shall, in good faith, assist the other in developing the information and agreements necessary to develop and enter into a Water Transfer Agreement, as well as obtaining all necessary approvals and preparation of required environmental documents.

**16. RESALE, LEASE OR ASSIGN:**

Brisbane will be entitled to resell, lease, transfer, or assign the Transfer Water. However, any such resale, lease, transfer or assignment shall only be to water entities within the Hetch Hetchy water service area.

**17. ADDITIONAL ITEMS TO BE DISCUSSED, NEGOTIATED AND RESOLVED**

The Parties anticipate that terms addressing several additional topics will be needed including, but not limited to:

- (a) Additional acts
- (b) Force Majeure
- (c) Assignment
- (d) Third Party Beneficiaries
- (e) Default, Cure and Remedies
- (f) Attorneys Fees
- (g) Notices
- (h) Miscellaneous Provisions
- (i) Applicable Law and Forum

**18. NOTICES:**

All notices that are required, either expressly or by implication, to be given by any Party to the other will be signed for by OID and Brisbane by such officers as they may, from time to time, authorize in writing to so act.

Any notices to Parties required by this Agreement shall be emailed, delivered or mailed, United States first-class postage prepaid or by private mail courier, e.g. FedEx, addressed as follows:

OAKDALE IRRIGATION DISTRICT  
Attn: Steve Knell  
General Manager  
Oakdale Irrigation District  
1205 E F Street,  
Oakdale, CA 95361-4198

CITY OF BRISBANE  
Attn: Clay Holstine

City Manager  
50 Park Place  
Brisbane, CA 94005

With copy to:  
Randy Breault  
Director of Public Works/City Engineer  
50 Park Place  
Brisbane, CA 94005

And:  
Brisbane City Attorney  
50 Park Place  
Brisbane, CA 94005

Notice shall be deemed given (a) two business days following mailing via regular or certified mail, return receipt requested, (b) one business day after deposit with any one-day delivery service assuring "next day" delivery, or (c) upon actual receipt of notice, whichever is earlier. The Parties shall promptly give written notice to each other of any change of address, and mailing or shipment to the addresses stated herein shall be deemed sufficient unless written notification of a change of address has been received.

**19. MEDIATION:**

In the event of a dispute between the Parties as to any right, alleged right, obligation or alleged obligation under this Term Sheet, the Parties shall make a good faith effort to resolve the dispute by nonbinding mediation prior to the commencement of any lawsuit by one party against the other.

**20. EFFECTIVE DATE:**

The effective day and date of this Term Sheet shall be the day and date on which this Term Sheet is executed by both parties.

The Parties hereby re-confirm that neither the Water Transfer Agreement, nor the proposed water transfer, can proceed unless and until the Parties have negotiated, executed and delivered mutually acceptable agreements based upon information produced from the CEQA environmental review process and on other public review and hearing processes, and subject to all applicable governmental approvals and execution of the Developer Funding Agreement by Brisbane and the developer of the Baylands Project. The Parties intend by this Term Sheet to inform and focus the work necessary to develop and review a proposed water transfer, not to pre-determine whether or not that proposed water transfer shall be done or, if so, under what conditions.

By signing below, the Parties evidence their general agreement with the provisions of this Term Sheet and agree to use this Term Sheet as the framework for the good faith negotiations of


binding definitive agreements. Any agreements resulting from negotiations will become effective only if and after such agreement has been considered and approved by the OID Board of Directors and the Brisbane City Council following conduct of all legally required procedures.

Nothing contained in this Term Sheet or in the Water Transfer Agreement shall control or regulate Brisbane's determination and approval of land uses to be included as part of the Baylands Project.

With the above understandings and agreements the Parties hereto do execute this Term Sheet.

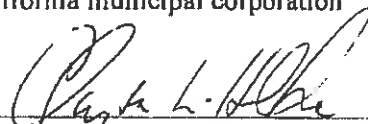
OAKDALE IRRIGATION DISTRICT,  
a political subdivision of the State of California

Dated: 10/2/12

By:   
Steve Knell, General Manager

CITY OF BRISBANE,  
a California municipal corporation

Dated: 10/15/12

By:   
Clayton L. Holstine, City Manager

Approved as to form:

  
Harold S. Toppel, City Attorney