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MAR 25 2011  
Lloyd Gosselink

March 23, 2011

Stefanie Albright  
Lloyd Gosselink Rochelle & Townsend, P.C.  
816 Congress Avenue  
Suite 1900  
Austin, TX 78701

RE: Water Facilities Lease and Services Agreement  
Belvedere MUD, Hamilton Bee Cave, LP, and LCRA

Dear Ms. Albright:

Enclosed is one fully-executed original of the above-referenced agreement. We have retained the other original.

Thank you for your assistance in this matter.

Best regards,

A handwritten signature in black ink that reads "Renee Poteet". The signature is written in a cursive, flowing style.

Renee Poteet  
Paralegal to  
Madison Jechow

## **WATER FACILITIES LEASE AND SERVICES AGREEMENT**

This Water Facilities Lease and Services Agreement (hereinafter referred to as the "Agreement") is entered into by and between Belvedere Municipal Utility District, a political subdivision of the State of Texas (hereinafter referred to as the "District"); Hamilton Bee Cave, LP, a Delaware limited partnership (hereinafter referred to as "Owner") and the Lower Colorado River Authority, a political subdivision of the State of Texas (hereinafter referred to as "LCRA").

### **RECITALS**

A. LCRA and Owner's predecessor in interest, William L. Formby, entered into that certain Utility Facilities Construction and Water Service Agreement dated December 7, 2004, which agreement was assigned by William L. Formby to Owner and amended by Owner and LCRA on March 30, 2005 and again on November 16, 2005 (the "Construction/Service Agreement").

B. Pursuant to the Construction/Service Agreement, LCRA has constructed the "Project" as such term is defined in the Construction/Service Agreement (the water transmission main extending from LCRA's West Travis County Regional Water System along Hamilton Pool Road and related hydropneumatic tank, pump station and improvements) in order to provide potable water service to Owner's property located within the boundaries of the District.

C. Also pursuant to the Construction/Service Agreement, Owner has constructed the first phase of the "Internal Facilities," as such term is defined in the Construction/Service Agreement (facilities necessary to provide potable water services within Owner's property, but does not include private customer service lines or other infrastructure located within an individually platted lot intended to provide service to and be owned and operated by a single retail utility customer) in order to provide potable water service to individual platted lots within the District. Owner intends to construction the remaining Internal Facilities in phases.

D. The Construction/Service Agreement provides that upon completion of the Project and the Internal Facilities, LCRA shall use such facilities to provide retail water service to individual service customers located in the District and that the Internal Facilities shall be conveyed and/or leased to LCRA, provided such conveyance does not impair the ability of the District to issue tax-exempt bonds for the purpose of financing the Internal Facilities.

E. Owner and the District have entered into that certain Agreement for the Construction of Utility Facilities and Reimbursement for Eligible Costs Between Hamilton Bee Cave, LP and Belvedere Municipal Utility District (the "District Reimbursement Agreement") dated July 18, 2006, whereby the District agrees to reimburse Owner its costs for the construction of the Internal Facilities through the issuance of District bonds pursuant to the provisions of Chapters 49 and 54 of the Texas Water Code.

F. Section 54.2351 (b) of the Texas Water Code authorizes the District to issue debt for the acquisition (by reimbursement to Owner) of the Internal Facilities to be conveyed by the District to LCRA operating pursuant to Article XVI, Section 59 of the Texas Constitution.

G. Owner, LCRA and the District desire to enter into this Agreement pursuant to Section 54.2351 of the Texas Water Code and other applicable law and to set forth their respective duties and responsibilities regarding LCRA's provision of retail water service within the boundaries of the District and Owner's lease of the Internal Facilities to LCRA prior to their ultimate conveyance to the District and thence to LCRA either prior to or after issuance of the District's bonds to reimburse the Owner's costs of the Internal Facilities.

### **AGREEMENT**

In consideration of the mutual covenants and conditions hereinafter set forth, Owner, LCRA and the District agree as follows:

#### **A. General**

The definitions contained in the Recitals are incorporated herein for all purposes.

This Agreement supercedes and replaces that Water Facilities Lease and Services Agreement previously executed by the Parties and effective October 4, 2006 (the "Facilities Agreement"). The Parties agree that the Facilities Agreement is hereby terminated by their execution of this Agreement and is of no further force and effect.

#### **B. Lease of Internal Facilities**

1. **Leased Facilities.** Owner hereby leases to LCRA and LCRA leases from Owner that phase of the Internal Facilities recently completed by Owner pursuant to that certain construction contract let to J.C. Evans Construction Co., L.P. for Belvedere, Phase I Paving, Drainage, and Water Improvements dated October 10, 2005 (the "Phase I Facilities"). The term of such lease will commence on July 31, 2006 (hereinafter referred to as the "Commencement Date") and will continue until the earlier of (i) July 31, 2016; or (ii) the date the Phase I Facilities are conveyed to LCRA, at which time, this lease will terminate and be of no further force or effect (the "Phase I Termination Date"). Owner also leases to LCRA and LCRA leases from Owner the remaining phases of the Internal Facilities completed by Owner pursuant to individual construction contracts (collectively with the Phase I Facilities, the "Leased Facilities"). The term of the lease for each individual phase of facilities will commence upon the latter date of: i) notification, in writing, from the Owner to LCRA that the phase of construction is complete, and ii) LCRA notification in writing that inspections are complete and the Leased Facilities have been accepted for operation (the "Commencement Date"). The lease for each individual phase of the Internal Facilities will continue until the earlier of (i) ten (10) years from the respective Commencement Date of the individual phase of the Internal Facilities; or (ii) the date each individual phase of Internal Facilities are conveyed to LCRA, at which time, the lease for that particular phase will terminate and be of no further effect ("Termination Date").

2. Leased Facilities Located in Public Utility Easements. By execution of this Agreement, Owner and District represent and warrant to LCRA that all Leased Facilities are located in public utility easements designated in that certain final plat of Belvedere Phase I filed with Travis County as public document no. 200600055; Belvedere Phase II filed with Travis County as public document no. 200700054; Belvedere Phase II-A filed with Travis County as public document no. 200700035; Belvedere Phase III filed with Travis County as public document no. 200800113; Belvedere Phase IV filed with Travis County as public document no. 200800252; and Belvedere Phase V filed with Travis County as public document no. 2001000023 (the "PUEs"). In the event LCRA determines that any phase of the Leased Facilities are not located in the PUEs, Owner and District agree to provide LCRA easements for said Leased Facilities at no cost to LCRA in accordance with the requirements of the Construction/Service Agreement.

3. Use of Leased Facilities. LCRA, upon the Commencement Date for each phase of Internal facilities, shall, at its own expense, use, operate, maintain, repair and replace the Leased Facilities in order to provide retail potable water service to property within the District as provided in Section B herein. LCRA shall not be obligated to upgrade the Leased Facilities at its expense, but only to maintain them in the same condition as of the Commencement Date for each phase of Internal Facilities. LCRA may, at its own expense, install or place in or on, or attach or affix to, the Leased Facilities such additional equipment or accessories as may be necessary or convenient to use the Leased Facilities for their intended purpose, provided that such equipment or accessories do not impair the value or utility of the Leased Facilities.

4. Standards for Operation. LCRA shall pay and discharge all operating expenses and shall cause the Leased Facilities to be operated by competent persons only. LCRA shall not use the Leased Facilities improperly, carelessly, or in violation of any applicable law, ordinance, rule or regulation of any governmental authority, or in a manner contrary to the nature of the Leased Facilities or the use contemplated by its manufacturer. LCRA shall take no action to subject the Leased Facilities to any levies, liens or encumbrances except those created under this Agreement or the Construction/Service Agreement.

5. Insurance. At its own expense, LCRA shall, upon the Commencement Date for each phase of Internal Facilities, maintain (a) casualty insurance insuring the Leased Facilities against loss or damage by fire and any other risks reasonably required in an amount at least equal to the value of the Leased Facilities, and (b) liability insurance that protects Owner and the District from liability in all events in form and amount satisfactory to Owner and the District. LCRA may provide required insurance as part of "blanket" coverage maintained on its other assets and also may provide required insurance coverage through self-insurance. Owner and the District shall be named as an additional insureds on all policies of LCRA relating to the Leased Facilities unless LCRA provides required insurance coverage through self-insurance. Upon acceptance of the Leased Facilities and upon each insurance renewal date, LCRA will deliver to Owner and the District a certificate evidencing such insurance, unless LCRA provides required insurance coverage through self-insurance, in which event LCRA shall make available to Owner and District all non-attorney-client-privileged information regarding said self-insurance promptly upon request. In the event of any loss, damage, injury or accident involving the Leased

Facilities, LCRA will promptly provide Owner and the District with written notice thereof and make available to Owner and the District all information and documentation relating thereto. LCRA shall permit Owner and the District to participate and cooperate with LCRA in making any claim for insurance in respect thereof unless LCRA provides said insurance through self-insurance. All such casualty and liability insurance shall be with insurers that are acceptable to Owner and the District unless LCRA provides said insurance through self-insurance.

6. Indemnification. TO THE EXTENT PERMITTED BY LAW, LCRA SHALL INDEMNIFY, PROTECT AND HOLD HARMLESS OWNER AND THE DISTRICT FROM AND AGAINST ANY AND ALL LIABILITY, OBLIGATIONS, LOSSES, CLAIMS AND DAMAGES WHATSOEVER, RESULTING FROM THE GROSS NEGLIGENCE OF LCRA AND EXPENSES IN CONNECTION THEREWITH ARISING OUT OF OR AS THE RESULT OF (A) THE POSSESSION OF ANY PORTION OF THE LEASED FACILITIES, (B) THE ORDERING, ACQUISITION, USE, OPERATION, CONDITION, PURCHASE, DELIVERY, REJECTION, STORAGE OR RETURN OF ANY ITEM OF THE LEASED FACILITIES, (C) ANY ACCIDENT IN CONNECTION WITH THE OPERATION, USE, CONDITION, POSSESSION, STORAGE OR RETURN OF ANY ITEM OF THE LEASED FACILITIES RESULTING IN DAMAGE TO PROPERTY OR INJURY OR DEATH TO ANY PERSON OR (D) THE BREACH OF ANY COVENANT HEREIN OR ANY MATERIAL MISREPRESENTATION CONTAINED HEREIN. The indemnification arising under this paragraph shall continue in full force and effect notwithstanding the termination of the Lease Term, for any reason, for any liabilities that accrue prior to termination.

7. Assignments. LCRA will not assign, transfer, pledge, hypothecate, grant any security interest in or otherwise dispose of the Leased Facilities or any interest in the Leased Facilities. Owner may assign its rights, title and interest in and to the Leased Facilities and/or grant or assign a security interest in the Leased Facilities, in whole or in part, only following written approval by LCRA, which approval will not be unreasonably withheld or delayed. Any such assignees shall have all of the rights and obligations of Owner under this Agreement.

#### C. Provision of Service within the District

1. LCRA to Provide Service. In consideration of Owner's lease of the Leased Facilities in Section A and the other duties and obligations provided in this Agreement, LCRA shall operate the Leased Facilities in conjunction with the Project and the LCRA West Travis County Regional System, in accordance with LCRA's Schedule of Rates and terms therefor, and the Parties agree that LCRA shall provide retail water service to individual customers located within the boundaries of the District. Such service shall meet, at a minimum, the applicable requirements of regulatory authorities with jurisdiction, including the Texas Department of Health and the Texas Commission on Environmental Quality, for residential potable water systems. LCRA shall provide competent, trained personnel and licensed operators certified by the appropriate governmental authority. LCRA shall provide the same level of service to residents in the District as provided to other customers of its West Travis County Regional System.

2. Billing. LCRA shall establish customer accounts within the District, read meters, bill customers and collect all deposits, fees and rates for service. LCRA shall collect and maintain security deposits, and the District agrees that such deposits and interest earned thereon may be maintained in LCRA's accounts.

3. Rates. LCRA shall establish the deposits, fees and rates for service to be enforced in the District through an order duly enacted by its Board of Directors; provided, however, in the event of any irreconcilable conflict between the terms of the Schedule and the terms of the Construction/Service Agreement, as amended, the conflict shall be resolved in favor of the Construction/Service Agreement, as amended.

4. Regulatory Matters. LCRA shall be responsible for submitting all regulatory reports regarding the potable water system serving customers and its provision of retail water service within the District to the applicable regulatory authorities, including the Texas Commission on Environmental Quality. LCRA shall perform and maintain records of plumbing inspections (if applicable) and customer service inspections. LCRA shall reimburse the District for any civil or administrative penalties assessed against the District by any regulatory authority with jurisdiction related to the potable water system operated by LCRA used to provide service to the District pursuant to this Agreement, provided that such enforcement action was the result of the act or omissions of the LCRA. Nothing in the foregoing sentence shall be construed as preventing or limiting LCRA's right to defend itself against any such civil or administrative penalties. District agrees that it shall promptly forward to LCRA any correspondence that it receives from a regulatory authority regarding the potable water system if LCRA has not been copied on the same correspondence.

5. Emergencies. LCRA shall maintain personnel and equipment for emergency response 24 hours per day, seven days per week, 365 days per year. Emergencies shall include, without limitation, water leaks, water line breaks, loss of water pressure, degradation of water quality occurring within the water supply system, and blockage in the system. Additionally, LCRA shall undertake reasonable efforts to respond to requests by the District or its representatives or residents.

6. Costs. The cost of all materials and supplies used to provide retail water service under this Agreement shall be borne solely by LCRA.

7. Compensation to LCRA. LCRA's compensation for the retail water operation, maintenance and management services it provides pursuant to this Agreement shall be satisfied from, and shall equal, the revenues collected by the LCRA from the retail water customers located within the District.

8. LCRA Representative. An LCRA representative shall be made available to attend District Board meetings following reasonable advance notice to discuss retail water service issues and LCRA's provision of service under this Agreement.

D. Conveyance of Internal Facilities to District and Thence to LCRA

1. Conveyance After Bond Issue. The Parties agree that ownership of the Internal Facilities shall be conveyed by Owner to the District pursuant to the terms and conditions of the Reimbursement Agreement. Within 90 days of the conveyance of each phase of the Internal Facilities to the District as the result of a bond sale by the District, the District shall convey by bill of sale in a form mutually agreeable to the parties, title to that phase of Internal Facilities to LCRA and the lease provided in this Agreement, as applicable to that same phase of the Internal Facilities, shall automatically terminate. Such conveyance shall be in the form and manner and meet the requirements established in Article VI of the Construction/Service Agreement.

2. Conveyance if Bond Issue Delayed. If, within ten (10) years from the Commencement Date for each phase of the Internal Facilities the District has not yet issued bonds and acquired the phase of Internal Facilities pursuant to the District Reimbursement Agreement, Owner agrees that it will convey the phase of Internal Facilities directly to the District and the District shall contemporaneously convey the phase of Internal Facilities to LCRA by bill of sale in a form mutually agreeable to the parties and the lease provided in this Agreement, as applicable to that same phase of the Internal Facilities, shall automatically terminate. Such conveyances shall be in the form and manner and meet the requirements established in Article VI of the Construction/Service Agreement. LCRA agrees that it will continue to support Owner's reimbursement for the costs of the Internal Facilities through bonds issued by the District after the conveyance of such phase of Internal Facilities as provided in the District Reimbursement Agreement and shall execute, in a timely manner, any documents reasonably necessary to facilitate such reimbursement provided such documents do not impair or impede LCRA's rights or duties.

#### E. General Provisions

1. Remedies, Notice of Default, Costs. The Parties shall be limited to the remedies of a suit for injunctive relief, mandamus or specific performance to enforce the terms of this Agreement in the case of default by one or more of the Parties. Prior to instituting such an action, the non-defaulting party must provide the defaulting party written notice of the action giving rise to the default and thirty days after receipt of the notice to cure the default. In the event any party is required to initiate legal proceedings to enforce its rights or the performance of the Agreement, the prevailing party will be entitled to recover from the non-prevailing party all of its costs incurred in connection with the legal proceedings, including reasonable attorneys fees and costs of court.

2. Force Majeure. In the event that any party is rendered unable, wholly or in part, by force majeure to carry out its obligations under this Agreement, it is agreed that each party shall give written notice of such force majeure to the other parties as soon as possible after the occurrence of the cause relied on and shall, therefore, be relieved of its obligations, so far as they are affected by such force majeure, during the continuance of any inabilities so caused, but for no longer. The term "force majeure," as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or of the state or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, disturbances, explosions, partial

or entire failure of utilities, shortages of labor, material, supplies or transportation, or any other similar or different cause not reasonably within the control of the party claiming such inability.

3. Notice. Any notice to be given under this Agreement must be in writing and may be effected by personal delivery, by facsimile transmission, or by sending said notices by registered or certified mail, return receipt requested, to the address set forth below. Notice by facsimile transmission must also be provided by first class mail. Notice will be deemed given when delivered by personal delivery or confirmed facsimile, or when deposited with the United States Postal Service with sufficient postage affixed.

LCRA: Lower Colorado River Authority  
Attn: Executive Manager, Water & Wastewater Utility Services  
PO Box 220  
Austin, Texas 78767-0220  
(512) 473-3200  
Fax (512) 473-3551

with a copy to its counsel:

Lower Colorado River Authority  
Attn: Madison Jechow, Associate General Counsel  
PO Box 220  
Austin, Texas 78767-0220  
Fax (512) 473-4010

the District: Belvedere Municipal Utility District  
c/o Lauren Kalisek  
Lloyd Gosselink Blevins Rochelle & Townsend, PC  
816 Congress Ave Suite 1900  
Austin, Texas 78701  
(512) 322-5800  
Fax (512) 472-0532

Owner: Joel Robuck  
c/o Hamilton Bee Cave, LP  
7015 Snider Plaza, Suite 205  
Dallas, Texas 75205  
(214) 361-7830  
Fax (214) 363-3090

4. Section Headings; Defined Terms. All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement. Terms for which the first letter is capitalized are defined by this Agreement or, if not defined in this Agreement, shall have the same meaning as defined in the Construction/Service Agreement.



5. Governing Law, Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Travis County, Texas.

6. Severability, Waiver. Any provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement. The waiver by any party of any breach of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach thereof.

7. Agreement Binding; Assignment. Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns. LCRA may not assign its rights or obligations under this Agreement without the written consent of Owner and the District.

**EXECUTED** to be effective the last date appearing below:

HAMILTON BEE CAVE, L.P.,  
a Delaware Limited Partnership

By: Joel H. Robuck  
Name: Joel H. Robuck  
Title: Authorized Agent

Date: November 16, 2010

BELVEDERE MUNICIPAL UTILITY DISTRICT

ATTEST:

By: Colleen Rinaldi  
Colleen Rinaldi, Secretary

Date: November 16, 2010

By: Harold Jobes  
Harold Jobes, President

LOWER COLORADO RIVER AUTHORITY

By: Dennis Daniel  
Dennis Daniel

Date: 3-7-2011

