

## **DEVELOPMENT AGREEMENT FOR REGIONAL WATER AND WASTEWATER FACILITIES**

This Development Agreement for Regional Water and Wastewater (the “Agreement”) is entered into as of \_\_\_\_\_, 2018 (the “Effective Date”), by and between the CITY OF LEAGUE CITY, TEXAS, a municipal corporation and home-rule city of the State of Texas (the “City”), and WEST FM 517, LTD., a Texas limited partnership (the “Developer”).

### **RECITALS**

The Developer owns and plans to develop an approximately 491-acre tract located within the corporate limits of the City and as more fully described in **Exhibit A** attached hereto (the “Property”).

The Developer and the City wish to provide for the construction and development of certain regional water and wastewater facilities that serve a general benefit to area within the City’s corporate limits, as further described herein.

The Developer is willing to pre-finance the City’s cost to design and construct such regional water and wastewater facilities, subject to reimbursement from the City as provided herein.

The City and the Developer have determined that the terms, provision, and conditions hereof are mutually fair and advantageous to each.

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained herein, and other good and valuable consideration, the City and the Developer agree as follows:

### **ARTICLE I DEFINITIONS**

**Section 1.01 Terms.** Unless the context requires otherwise, and in addition to the terms defined above, the following terms and phrases used in this Agreement shall have the meanings set out below:

**Capital Recovery Fee** means the water and wastewater capital recovery fee described in Article IV, Division 3 of the City Ordinances.

**City Ordinances** means the City’s Code of Ordinances as it exists on the Effective Date of this Agreement.

**Contract Area** shall mean the area, as shown on **Exhibit B** attached hereto.

**Developer’s Engineer** means a duly qualified civil engineer engaged by the Developer to design the Project.

**General Benefit Facility** shall have the meaning ascribed to it in Section 114-161 of the City Ordinances and, to the extent not inconsistent with the City Ordinances, as generally used in the City's master plan or capital improvement plan.

**Party** means either the City or the Developer.

**Parties** means the City and the Developer.

**Preliminary Engineering Report** means the initial engineering report related to the proposed design of the Regional Water Facilities and the Regional Wastewater Facilities.

**Preliminary Project Cost Estimate** means the Developer's initial estimate and description of all anticipated Project Costs, including contingency, as further described in **Exhibit C** attached hereto.

**Project** means the Regional Water Facilities and Regional Wastewater Facilities.

**Project Cost Estimate** means the Developer's updated estimate and description of all anticipated Project Costs, including contingency, as submitted to the City prior to advertisement of bids for the Project, as described in Section 2.02 below.

**Project Costs** means all costs related to the design and construction of the Project, including but not limited to reasonable and necessary engineering, surveying, permitting, storm water pollution prevention, construction observation and management, testing, or other interests in land, and attorney or other consulting fees directly related to the Project. Any costs incurred prior to the Effective Date of this Agreement shall not be included in Project Costs.

**Regional Water Facilities** means the 24-inch water transmission line extending approximately 20,000 linear feet as generally described in **Exhibit D** attached hereto.

**Regional Wastewater Facilities** means the wastewater collection line extending approximately 15,100 linear feet as generally described in **Exhibit E** attached hereto.

## **ARTICLE II DESIGN AND CONSTRUCTION**

**Section 2.01 General Benefit.** The City acknowledges and agrees that the Project is a General Benefit Facility and is eligible to be financed by the City from Capital Recovery Fees or other revenue collected by the City. The City further acknowledges that the City's current Capital Recovery Fee is based on a capital improvement plan attached to Ordinance No. 2013-20 adopted by the City. The Developer acknowledges and agrees that the City, acting in accordance Chapter 395, Local Government Code, may approve and adopt amendments to the City's Capital Recovery Fee, including any capital improvement plans related thereto, to accommodate additional projected growth and additional funding for eligible projects. The Developer further acknowledges and agrees that nothing in this Agreement is intended or shall be construed to cap the Capital Recovery Fees at their current amounts or vest in the Developer or Developer's assignees or successors in interest the right to pay Capital Recovery Fees in the current amounts.

**Section 2.02 Preliminary Engineering Report and Project Cost Estimate.** The Preliminary Project Cost Estimate is \$12,900,000. Upon the City's approval of plans and specifications for the Project, as described below, the Developer shall submit an updated Project Cost Estimate, including engineering, testing, and other preliminary expenses incurred to date, to the City. If the Project Cost Estimate does not exceed the Preliminary Project Cost Estimate, the Developer may proceed with bidding and award of the construction of the Project, as further described in Section 2.03 below. If the Project Cost Estimate is more than the Preliminary Project Cost Estimate, the City may approve the Project Cost Estimate, upon which approval the Developer may proceed with bidding and award of the construction of the project, as further described in Section 2.03 below. If the City does not approve the Project Cost Estimate within forty-five (45) calendar days of the City's receipt, this Agreement shall terminate as of the day following the expiration of said deadline.

**Section 2.03. Design, Competitive Bid, and Award of the Project.** The Developer shall oversee the design and construction of the Project. The Developer's Engineer shall design the Project in accordance with all applicable City requirements. The plans and specifications shall be subject to review and approval by the City, or its authorized agent, which review and approval shall not be unreasonably withheld or delayed.

After the execution of this Agreement, the Developer's Engineer shall submit a Preliminary Engineering Report to the City for review and approval and may commence design for the Project. Upon approval of plans and specifications for the Project by the City, the Developer shall advertise for competitive bids for the construction of the Project in accordance with the requirements of Chapter 252, Texas Local Government Code. Upon receipt of bids for the Project, the Developer shall submit a notice to the City containing the bid tabulation, the bidder whose bid will be most advantageous and result in the best and most economical completion of the Project, and the initial construction contract amount ("Notice of Bid").

If the initial construction contract amount, together with a construction contingency in the amount of five (5) percent and all other reasonably foreseeable Project Costs, does not exceed the Project Cost Estimate, the Developer may enter into a contract with the recommended bidder (the "Construction Contract"), which may be subject to change orders that increase, decrease, otherwise alter the Project Costs under such contract, as provided herein.

If the initial construction contract amount, together with a construction contingency in the amount of five (5) percent and all other reasonably foreseeable Project Costs, exceeds the Project Cost Estimate by any amount ("Cost Excess"), the City may object to the award of the contract by providing written notice to the Developer within thirty (30) business days of the City's receipt of the Notice of Bid. If no objection is submitted, the City will be deemed to have approved the award of the contract to the recommended bidder. If the City timely objects, the Developer shall have the option of either (1) re-bidding the Project or (2) proceeding with awarding the contract and bearing the Cost Excess. If after re-bidding the Project, a Cost Excess still exists, the Developer may elect to proceed with awarding the contract and bearing the Cost Excess or negotiate a revised construction contract amount with the City. If the Developer chooses to negotiate a revised construction contract amount and the City and the Developer cannot reach a mutually agreeable revised construction contract amount for the Project, the Developer may forego construction of the

Project, and this Agreement shall terminate ten (10) business days after either Party notifies the other in writing that an impasse has been reached.

**Section 2.04. Construction.** After award of the Construction Contract, the Developer shall administer the Construction Contract for the benefit of the Parties. The Developer shall execute both a performance bond and a payment bond naming the City as beneficiary for construction of the Project in accordance with Chapter 2253, Texas Government Code. The Developer, through its engineer or authorized representative, shall provide on-site inspection of the construction of the Project in accordance with the Construction Contract. The Developer shall approve or deny all pay applications and requests for extensions of time and shall timely pay all valid pay applications issued under the Construction Contract.

Change orders submitted under the Construction Contract and recommended for approval by the Developer shall be subject to review and approval by the City, or its authorized agent, which review and approval shall not be unreasonably withheld or delayed. If the City desires to object to a proposed change order, it must provide written notice to the Developer within ten (10) business days of the date the proposed change order is received by the City. Otherwise, the City will be deemed to have approved the change order, except for change orders that would result in Project Costs exceeding the total Project Cost Estimate. No change order may be approved that exceeds the total Project Cost Estimate, including the contingency amount contained therein, without the express written approval of the City.

The City, through its authorized representative or the City Engineer, may observe and inspect all construction for conformity with applicable City standards and shall promptly request changes or corrections to work performed under the Construction Contract if it finds such changes or corrections to be necessary. Any change orders for work requested by the City shall be subject to review and approval by the Developer, which shall not be unreasonably withheld if the work being performed is clearly shown to be out of compliance with applicable City standards. In addition, the City agrees that inspection fees related to the Project, including those under the City's Ordinance 2016-23, shall not be applied to the Project.

The City agrees the Developer does not warrant the quality of any engineering or construction work done by any third party in connection with, or materials provided for, the Project, nor for compliance of same with applicable City standards and other governmental codes and regulations applicable thereto, nor shall the Developer be deemed to be responsible for any such compliance.

**Section 2.05. Final Inspection, Acceptance, and Conveyance to City.** Upon completion of the Project, which the Developer agrees and covenants shall occur within three (3) years of the Effective Date of this Agreement, the City, through its authorized representative, shall inspect the Project for conformity to approved plans and specifications and applicable City standards. Upon the City's final determination of the Project's conformance to plans, specification, and applicable standards, in the City's sole and reasonable judgment, the City shall grant acceptance, and the Developer shall convey, free and clear of any liens and encumbrances, the Project to the City for ownership and operation. The conveyance of the Project shall be memorialized through a Utility Conveyance in substantial conformity with **Exhibit F** attached hereto. The Developer shall cause

the execution of a maintenance bond naming the City as beneficiary to cover maintenance and/or repairs to the Project performed during the first twelve (12) months after the Project is conveyed to the City. In addition to the foregoing, within sixty (60) days of acceptance by the City, the Developer shall cause to be submitted as-built drawings of the Project to the City.

**Section 2.06. Final Accounting of Project Costs.** The Developer shall issue a final accounting of all Project Costs to the City within 60 days after completion of the Project. The Developer agrees to provide any records in its possession relating to the Project or Project Costs to the City within thirty (30) business days of a request by the City.

**Section 2.07. Rights of Way and Easements.** The Parties acknowledge that the Project must be completed within public rights of way or easements owned by or in favor of the City. The City expressly authorizes the Developer's use of such rights of way or easements for the Project, and the City agrees to use its best efforts, including exercise of its eminent domain authority to acquire any additional rights of way or easements necessary, in the City's sole and reasonable judgment, for the Project. If it is necessary for the City to acquire additional easements or rights of way for the Project, the Developer shall reimburse to the City, within thirty (30) calendar days of a written request for reimbursement, all reasonable expenses incurred by the City related to the acquisition of such rights of way or easements.

### **ARTICLE III REIMBURSEMENT**

**Section 3.01. Reimbursement from Capital Recovery Fees.** The City acknowledges that the Contract Area, which includes the Property, is currently undeveloped, and the City Ordinances relating to Capital Recovery Fees apply to the development of property within the Contract Area. Subject to the limitations described in Section 3.02 below, the City agrees, irrespective of any future adjustments or modifications to the City's Capital Recovery Fees, except for a modification that reduces the City's Capital Recovery Fees to less than \$4,880 per single family equivalent (combined for water and sewer), that \$4,880 out of each single family equivalent Capital Recovery Fee (combined for water and sewer) collected by the City from property within the Contract Area (the "Eligible CRF") will be applied to reimburse the Developer for Project Costs, excluding any Cost Excess as defined in Section 2.03, which Cost Excess the Developer agrees shall not be eligible for reimbursement, notwithstanding any provision herein to the contrary. The Eligible CRF shall be the lower of \$4,880 or the City's adopted and valid Capital Recovery Fee per single family equivalent (combined for water and sewer). Capital Recovery Fees collected by the City from the Contract Area in excess of Eligible CRFs may be used for other purposes within the City's sole discretion.

**Section 3.02. Limitation on Reimbursement from Capital Recovery Fees.** Other than the initial payment described in Section 3.03(a) below, the Developer acknowledges and agrees that the sole source of reimbursement from the City shall be the Eligible CRFs collected by the City from the Contract Area. No other general funds or revenue from the City shall be pledged to the reimbursement of Project Costs. However, the City, in its sole discretion, may elect to reimburse the Developer for Project Costs from other available funds at any time.

**Section 3.03. Timing of Payments.** Within sixty (60) days of completion and final acceptance of the Project, the City shall pay to the Developer an amount equal to three million dollars (\$3,000,000) as partial reimbursement of Project Costs. In addition, the Developer shall also be reimbursed all Eligible CRFs, as described in Section 3.01 above, collected from the Property between the Effective Date of this Agreement and the date of final acceptance of the Project.

After the initial payments described above, the City shall make quarterly payments to reimburse the Developer for remaining Project Costs within thirty (30) calendar days after the close of each calendar quarter (ending March 31, June 30, September 30, and December 31) as provided herein. Quarterly payments from Eligible CRFs collected from the Contract Area during the preceding calendar quarter shall continue, if funds are available, until all Project Costs have been reimbursed to the Developer.

**Section 3.04. Records of Capital Recovery Fees.** The City agrees to maintain accurate payments records of all Capital Recovery Fees collected for development within the Contract Area after the Effective Date of this Agreement and continuing until all Project Costs have been paid. The Developer may request inspection of such records upon providing ten (10) business days' written notice.

## **ARTICLE IV**

### **TERM, TERMINATION, DEFAULT, AND ASSIGNMENT**

**Section 4.01 Beneficiaries.** This Agreement shall bind and inure to the benefit of the City and the Developer, their successors and assigns.

**Section 4.02 Term.** This Agreement shall be in effect as of the Effective Date and shall terminate twenty (20) years after final completion and acceptance of the Project by the City. Notwithstanding any provision herein to the contrary, upon the expiration or termination of this Agreement, the obligation of the Parties to each other shall come to an end.

**Section 4.03. Default.** (a) A Party shall be deemed in default under this Agreement if such Party fails to materially perform, observe, or comply with any of its covenants, agreements, or obligations hereunder or breaches or violates any of its representations contained in this Agreement.

(b) Before any default or failure of any Party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the Party claiming such default or failure shall notify, in writing, the Party alleged to have defaulted or failed to perform of the alleged default or failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining Party within sixty (60) calendar days of the receipt of such notice, subject, however to the terms and provisions of Section 4.04 below. Upon a breach of this Agreement, the non-defaulting Party may be awarded actual damages for failure of performance. Except as otherwise set forth herein, no action taken by a Party pursuant to the provisions of this Section or any other Section of this Agreement shall be deemed to constitute an election of remedies and all remedies shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any Party at law or in equity. Each of the Parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other Party.

**Section 4.04 Force Majeure.** In the event either Party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, except the obligation to pay amounts owed or required to be paid pursuant to the terms of this Agreement, then the obligations of such Party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. As soon as reasonably possible after the occurrence of the force majeure relied upon, the Party whose contractual obligations are affected thereby shall give notice and full particulars of such force majeure to the other Party. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term “force majeure” as used herein shall include without limitation of the generality thereof, 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 the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, tornadoes, hurricanes, storms, floods, washouts, drought, arrests, restraint of government, civil disturbances, explosions, and/or any other incapacities of any Party, whether similar to those enumerated or otherwise, which are not within the control of the Party claiming such inability, which such Party could not have avoided by the exercise of due diligence and care.

**Section 4.05 Assignment.** All covenants and agreements contained by or on behalf of a Party in this Agreement shall bind its successors and assigns and shall inure to the benefit of the other Parties, their successors and assigns. The Parties may assign their rights and obligations under this Agreement or any interest herein, only with the prior written consent of the other Party, and any assignment without such prior written consent is void and of no effect.

## **ARTICLE V MISCELLANEOUS PROVISIONS**

**Section 5.01 Notice.** Any notice to be given under this Agreement shall be given in writing, addressed to the Party to be notified as set forth below, and may be given by (i) depositing the notice in the United States mail postage prepaid, registered or certified mail, with return receipt

requested, (ii) nationally recognized courier services, or (iii) facsimile. Notice shall be effective upon receipt by the Party to be notified. For purposes of notice, the addresses of the parties shall be as follows:

City: City of League City, Texas  
c/o City Manager  
300 West Walker St.  
League City, Texas 77573  
Facsimile: (281) 554-1035

Developer: West FM 517, Ltd.  
Attn: Mr. Tracy Goza  
211 E. Parkwood, Suite 100  
Friendswood, Texas 77546  
Facsimile: (281) 924-2827

The Parties shall have the right from time to time to change their respective addresses by giving at least ten (10) calendar days written notice of such change to the other Party.

**Section 5.02 Time.** Time is of the essence in all things pertaining to the performance of this Agreement.

**Section 5.03 Severability.** If any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the Parties that the remainder of this Agreement shall not be affected.

**Section 5.04 Waiver.** Any failure by a Party to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver thereof or of any other provision hereof, and such Party shall have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

**Section 5.05 Applicable Law and Venue.** The construction and validity of this Agreement shall be governed by the laws of the State of Texas without regard to conflicts of law principles. Venue shall be in Galveston County, Texas.

**Section 5.06 Reservation of Rights.** To the extent not inconsistent with this Agreement, each Party reserves all rights, privileges, and immunities under applicable laws.

**Section 5.07 Agreement for Goods and Services.** The City acknowledges and agrees that this Agreement constitutes an agreement for goods and services under Chapter 271, Local Government Code, and that design, construction, and conveyance of the Project serves a governmental purpose.

**Section 5.08 Authority for Execution.** The City hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the laws of the State of Texas and City ordinances. The Developer hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the articles of incorporation and bylaws or partnership agreements of such entities.



**[EXECUTION PAGES FOLLOW]**

**Exhibits**

- Exhibit A – Property Description
- Exhibit B – Contract Area Map
- Exhibit C – Preliminary Project Cost Estimate
- Exhibit D – Regional Water Facilities
- Exhibit E – Regional Wastewater Facilities
- Exhibit F – Form of Utility Conveyance

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of equal dignity, on the date indicated below.

**CITY OF LEAGUE CITY, TEXAS**

\_\_\_\_\_  
John Baumgartner, City Manager

Date: \_\_\_\_\_

ATTEST/SEAL:

\_\_\_\_\_  
Diana M. Stapp, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Nghiem V. Doan, City Attorney

**Developer:**

**WEST FM 517, LTD.,**

a Texas limited partnership,

By: LinGo West FM 517 GP, LLC,  
a Texas limited liability company,  
its general partner,

By: \_\_\_\_\_  
Tracy Goza, Member

Date: \_\_\_\_\_

**Exhibits**

- Exhibit A – Property Description
- Exhibit B –Contract Area Map (including Sedona 5)
- Exhibit C – Preliminary Project Cost Estimate
- Exhibit D – Regional Water Facilities
- Exhibit E – Regional Wastewater Facilities
- Exhibit F – Form of Utility Conveyance

EXHIBIT F

## FORM

UTILITY CONVEYANCE  
(NAME OF PROJECT)

STATE OF TEXAS

§§

KNOW ALL PERSONS BY THESE PRESENTS:

COUNTY OF GALVESTON§

[DEVELOPER ENTITY NAME] (the “Developer”) has acquired certain improvements, structures, and facilities designed to provide water and wastewater to serve areas within the boundaries of the City of League City, Texas (the “City”). For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer hereby conveys, transfers, and delivers to the City, its successors and assigns, subject to a security interest therein, those certain facilities described as follows:

Those certain facilities constructed pursuant to the construction contract between the Developer and [CONTRACTOR], dated [DATE OF CONTRACT], for the water and wastewater facilities to serve [NAME OF PROJECT, and together with any improvements, structures, electrical equipment, plant equipment, distribution lines, collection lines, water mains, meters, valves, pipes, fittings, connections, meter boxes, laterals, easements, rights-of-way, licenses, operating rights and all other property therein whether real, personal or mixed, owned by the Developer in connection with the facilities being conveyed hereby (the “Facilities”).

The Developer is conveying the Facilities to the City pursuant to the Development Agreement for Regional Water and Wastewater Facilities, dated \_\_\_\_\_, 2018, between the City and the Developer (the “Agreement”). This conveyance is made subject to the terms of the Agreement. The Developer hereby reserves (and the City grants) a security interest in the Facilities to secure the performance of the City under the Agreement.

The Developer hereby assigns to the City all rights, maintenance bonds, warranties and manufacturer's warranties, if any, owned or acquired by the Developer for the Facilities.

The City hereby agrees by its acceptance of this conveyance to own, operate and maintain the Facilities in accordance with the terms of the Agreement.

[EXECUTION PAGES FOLLOW]

*[to be executed by City and Developer]*

\*\*\* End of Exhibit F \*\*

