

AGREEMENT TO CONSTRUCT REQUIRED DEVELOPMENT IMPROVEMENTS

This Agreement to Construct Required Development Improvements (“Agreement”) is made and entered into this ____ day of _____, 2026, by and between Homewise (“Owner”), a New Mexico nonprofit corporation, whose mailing address for purposes of this Agreement is 1301 Siler Road, Building D, Santa Fe, New Mexico 87507, whose telephone contact number is (505) 983-9473; the City of Santa Fe (“City”), a charter municipality, whose mailing address is City of Santa Fe, P.O. Box 909, Santa Fe, New Mexico 87504-0909; and the New Mexico Department of Workforce Solutions (“DWS”), whose mailing address for the purposes of this agreement is P.O. Box 1928, Albuquerque, New Mexico 87103 and whose telephone contact number is 505-847-4400.

1. **Ownership.** By this Agreement, Owner represents and warrants that it owns certain lands (the “Project Site”) within the platting jurisdiction of the City of Santa Fe, Santa Fe County, New Mexico and is developing, unless another entity is specified herein as Developer, said lands more particularly described as follows:

Tierra Contenta Phase 3A: Lots 7A, 8A, 8B, 9A, 10A, 10B, 10C, and 10D as shown on Tierra Contenta Phase 3A Right of Way & Easement Dedication Plat, lying within Section 13, 14, & the Pacheco Land Grant, Township 16 North, Range 8 East, New Mexico Principal Meridian, located in the vicinity of Santa Fe City and County, New Mexico.

2. **Project Information and Required Improvements.** Pursuant to Chapter XIV, Article 9 of the Santa Fe City Code (SFCC), Owner is required to complete (at no cost to the City) certain development improvements, including those described in SFCC §§ 14-9.1 to 14-9.5, and to meet the conditions of approval (collectively, the “Required Improvements”) for the following development project (the “Project”):

- A. Project Name: Tierra Contenta Phase 3A Final Subdivision Plat;
- B. LUD Case No.: 2025-11526;
- C. LUD BP (Grading) No.: 26-52641 LUD BP (Landscape/Utility) No.: 26-52643;

(to be completed by the City upon Building Permit Application submittal).

- D. Final Approval Granted by Planning Commission meeting dated December 4, 2025; and
- E. All of the Required Improvements are described by type and quantity in the City-approved cost estimate shown as Exhibit 1 to this Agreement and the Infrastructure Improvement plans as shown on the engineering plans approved by the City, which were prepared by Oralynn Guerrerortiz and bear Engineer’s Stamp No. 12688, and are dated June 9, 2025, as revised November 10, 2025 (the “Approved Plans”).

3. **Cost Estimate and Financial Guarantee. Pursuant** to SFCC § 14-9.5, Owner is required to submit the following documents in connection with the financial guarantee required by SFCC § 14-9.5(B)-(C):

- A. A cost estimate (“Cost Estimate”) for the Required Improvements prepared and certified by Oralynn Guerrerortiz in the amount of \$28,098,454.74; and
- B. A financial guarantee (such as an irrevocable letter of credit, bond, or other guarantee in a form acceptable to the City) (“Financial Guarantee”) issued by Merchants Bonding Company, a FDIC or FSLIC-insured financial institution (the “Financial Institution”) in favor of the City in the amount of \$28,098,454.74.
- C. The documents described in this paragraph shall not be deemed to have been submitted until the City Engineer has accepted and stamped the engineer’s estimate produced by Owner or the Owner’s agent.

4. **State of New Mexico Capital Outlay**. During the 2025 Regular Session of the New Mexico State Legislature, capital outlay funds were appropriated in HB450, Section 30, Item 506 (A25J3161), from the state’s General Fund to the Local Government Division of the New Mexico Department of Finance and Administration as follows: “eight million nine hundred seventy-five thousand dollars (\$8,975,000) to plan, design and construct infrastructure for Phase 3 of the Tierra Contenta subdivision in Santa Fe in Santa Fe County.” This appropriation made pursuant to HB 450 may be expended in fiscal years 2026 through 2029, provided that any unexpended balance of the appropriation shall revert to the state’s General Fund no later than the end of fiscal year 2029. DWS has agreed to serve as the fiscal agent for these capital outlay funds due to the significant scale of its impact on affordable housing in the region.

The City of Santa Fe acknowledges and agrees that pursuant to this Agreement to Construct Required Development Improvements, Owner will be paid up to \$8,975,000 for the Cost Estimate from HB450, Section 30, Item 506 (A25J3161) appropriated amount and up to \$275,000 for the Cost Estimate from SB240, Section 48, Item 431 (A26K3066) appropriated amount for the purpose of constructing certain development improvements for the Project, by DWS, as fiscal agent, on behalf of the City of Santa Fe.

The City of Santa Fe also acknowledges and agrees that additional capital outlay funds may be approved and appropriated with DWS as fiscal sponsor. Upon mutual execution, each additional appropriation will be incorporated into and form a part of this Agreement, in which, Owner will be paid the Cost Estimate from such appropriated amount.

5. **Recorded Plat and Plans**. Based upon the foregoing described documents, the City has recorded the Plat/Subdivision Plat/Development Plan for the project as Document No. _____, Plat Book _____, Page _____ in the records of the Santa Fe County Clerk (to be completed by the City upon recording).

6. **Completion of Improvements and Extension of Construction Deadline**. Owner agrees to install and complete the Required Improvements in accordance with the Approved Plans

on or before the expiration date of the Financial Guarantee, at no cost to the City, unless Owner requests a time extension in writing and obtains a time extension from the City, which shall not be unreasonably withheld. If Owner obtains an extension, Owner shall submit a new Financial Guarantee acceptable to the City.

7. **Compliance with Applicable Laws and Regulations.** As condition of the approval of the Required Improvements (and acceptance of Required Improvements to be publicly dedicated and accepted by the City, if applicable), Owner shall comply with all applicable laws, ordinances, and regulations, including but not limited to the City's permitting, inspection, and testing requirements.

8. **Inspections and Reductions in Financial Guarantee.**

A. Before construction begins, Owner shall request and attend a pre-construction conference with City Staff and the Owner or agent for the Project to discuss the process to arrange for required inspections.

B. During the construction of the Required Improvements, Owner or its agent shall request the required inspections of the work as required by all applicable codes, regulations, and ordinances.

C. Upon the inspection of the work partially constructed, Owner may submit a request for issuance by the City LUD of a Certificate of Partial Construction and Partial Release of Financial Guarantee (CPCR) in the form shown as Exhibit 4 to this Agreement. If the City has inspected the work and agrees that the work has been constructed, the City Engineer will approve an estimate for the cost of the work inspected (based on the unit prices contained in the approved cost estimate), place that estimated cost amount in the CPCR in the space provided thereon, and issue the CPCR to Owner. Any and all CPCR so issued shall have the effect of reducing the amount of the Financial Guarantee by the amounts shown in the Certificates.

9. **Completion, Acceptance, and Termination.** Upon completion of the Required Improvements in accordance with this Agreement and the Approved Plans, Owner shall submit a request for final approval of the Required Improvements (and acceptance of the Required Improvements to be dedicated and accepted by the City, if applicable) to the City LUD. The City shall conduct a final inspection of the Required Improvements. If the Required Improvements have been completed in accordance with this Agreement and the applicable documentation provided, the LUD shall issue a Certificate of Final Completion and Acceptance (CFCA), which shall begin a one-year warranty period under SFCC § 14-9.5(D) for the Required Improvements. After the City issues the CFCA, Owner shall submit to the City a request to draw down the Financial Guarantee to an amount of ten percent (10%) of the original Financial Guarantee amount. The remaining Financial Guarantee may be used by the City to address any defects in the Required Improvements during the warranty period that are not addressed by the Owner. If the Financial Guarantee expires before the end of the one-year warranty period, Owner shall provide either a new Financial Guarantee in the amount of ten percent (10%) of the original Financial Guarantee amount or a substitute Financial Guarantee acceptable to the City. Upon the expiration of the warranty period and completion of any necessary repairs, the City will receive and approve a

request from Owner to fully release the remaining Financial Guarantee amount, Owner's obligations under this Agreement shall be deemed completed, and this Agreement shall automatically terminate.

10. **Indemnification.** Until the Required Improvements are approved and/or accepted by the City, if applicable, Owner shall be solely responsible for maintaining the Project Site upon which the Required Improvements are being constructed in a safe condition. Owner agrees to defend, indemnify, and hold harmless the City and its officers, agents, and employees from any claims, actions, suits, or other proceedings arising from or out of the negligent acts or omissions of Owner, its agents, representatives, contractors, or subcontractors; or arising from the failure of Owner, its agents, representatives, contractors, or subcontractors to perform any act or duty required of Owner herein.

11. **Assignment.** This Agreement shall not be assigned without the prior written consent of the City and the express written concurrence of any Financial Institution. The City's approval will not be withheld unreasonably. This Agreement shall extend to and be binding upon the successors and assigns of the parties hereto. Upon such assignment approved by the City, Owner shall be relieved of compliance with the terms of this Agreement, except that Owner shall not be relieved or release from any defaults arising before the date of the approved assignment unless the approval from the City shall so relieve Owner of pre-assignment defaults.

12. **Release.** If the Project or any part thereof is sold, conveyed, or assigned, the City will not release Owner or the Financial Institution from its obligations under this Agreement and will continue to hold Owner responsible for all Required Improvements until a successor-in-interest to Owner has posted a suitable Financial Guarantee and entered into an Agreement to Construct Required Development Improvements with the City. Thereafter, when Owner's successor-in-interest has provided a substitute Financial Guarantee acceptable to the City, the City will release this Agreement and the Financial Guarantee posted pursuant to this Agreement.

13. **Notice from Owner; Payment for Incomplete Improvements.** Owner shall notify City in writing not less than ninety (90) days prior to the expiration of the Financial Guarantee that the Financial Guarantee will expire on the date stated above. Such notice shall further state that Owner either (1) intends to complete the Required Improvements prior to the expiration date, or (2) will be requesting an extension of the Construction Deadline pursuant to Paragraph 5 of this Agreement. If Owner fails to provide such expiration notice or fails to satisfactorily complete construction of the Required Improvements by the Construction Deadline, including any extension granted by the City in writing, the City or its assignees may (but are not obligated to) call upon the Financial Guarantee and enter the Project Site to take such actions as are necessary construct or cause to be constructed the Required Improvements in accordance with the Approved Plans. If the direct or indirect costs and damages to the City exceed the amount of the Financial Guarantee, Owner shall be liable to, and shall pay, the City for all such reasonable costs and damages incurred. The funds received from the Financial Institution shall be applied to cover all such costs and damages, and if the funds are insufficient, Owner shall be liable for all such costs and damages in excess of the funds received.

14. **Notice.** For purposes of giving written notice, including notice of change of address, Owner's and the City's addresses are as stated in the first paragraph of this

Agreement. Notice shall be given by certified U.S. mail, postage paid. Notice will be considered to have been received within six (6) days after the notice is mailed if there is no actual evidence of receipt.

15. **Entire Agreement.** This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

16. **Changes to Agreement.** Changes to this Agreement are not binding unless made in writing, signed by both parties.

17. **Construction and Severability.** If any part of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement will remain valid and enforceable if the remainder is reasonably capable of completion.

18. **Captions.** The captions to the sections or paragraphs of this Agreement are not part of this Agreement and will not affect the meaning or construction of any of its provisions.

19. **Form not Changed.** Owner agrees that changes to the form of this Agreement are not binding unless initialed by Owner and signed by the City Attorney's Office.

20. **Authority to Execute.** Owner represents that the individual signing below has the legal power, right, and actual authority to execute and bind Owner to this Agreement.

21. **Right to Sell.** If Owner sells any portion or all of the Project Site or otherwise seeks to encumber the property that comprises the Project Site to the control of another entity, Owner agrees that all requirements of this Agreement shall continue to be the responsibility of Owner. Furthermore, Owner shall not agree to any encumbrance without the express written permission of the City, which permission shall not be unreasonably withheld.

22. **Notice of Default.** Owner agrees to prosecute the development work for the Required Improvements in a diligent and continuous manner in accordance with the Approved Plans to effect a timely and orderly completion of the project. If Owner fails to do so or if the City has no reasonable expectation that any remaining work will be completed in a diligent and continuous manner, the City may declare a default of this Agreement at anytime during the course of this Agreement or extension thereof and may call upon the Financial Guarantee to enable completion of the work. The City may use the funds received from the Financial Guarantee in any manner that the City deems reasonably necessary to complete the Required Improvements, regardless of the quantities in the Engineer's Cost Estimate, and regardless of unit quantities reflected in the latest CPCR. Prior to calling upon the Financial Guarantee, the City shall provide a written Notice of Default to both Owner and the Issuer of the Financial Guarantee. Such Notice of Default shall provide for a reasonable time period, as defined by the City, for Owner to cure the default.

23. **New Mexico Tort Claims Act.** Any liability incurred by the City of Santa Fe or DWS in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et. seq., as amended. The City, DWS and

its respective “public employees” as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

[SIGNATURE PAGES TO FOLLOW]

Approved and Accepted:

Developer

By: Johanna Gilligan
Johanna Gilligan, President

09/16/2026

Date

State of New Mexico, Department of Workforce Solutions

Sarita Nair
Sarita Nair (Sep 17, 2026 16:27:45 MDT)
Sarita Nair, Cabinet Secretary

09/17/2026

Date

Gregory Lauer
Gregory Lauer (Sep 17, 2026 12:46:38 MDT)
Gregory Lauer, Legal Counsel –
Certifying Legal Sufficiency

09/17/2026

Date

Maria Garcia Cunningham
Maria Garcia Cunningham (Sep 17, 2026 10:55:30 MDT)
Maria Garcia Cunningham, ASD Deputy
Director

09/17/2026

Date

Acknowledged and Accepted for Compliance with [INSERT ORDER OR AGREEMENT HERE]:

City of Santa Fe

By: [Signature]
City Engineer
City of Santa Fe Land Use Department

09/21/2026

Date

COUNTY OF SANTA FE)
)SS
STATE OF NEW MEXICO)

I hereby certify that this Instrument was filed for record on this _____ day of _____, 20__, at _____ o'clock _____ AM/PM, and was duly recorded in Book _____, Page _____ of the records of Santa Fe County.

Witness my hand and seal of Office:

County Clerk, Santa Fe County, New Mexico

CITY OF SANTA FE:

MICHAEL GARCIA, MAYOR

DATE: _____

ATTEST:

GERALYN CARDENAS, CITY CLERK

CITY ATTORNEY'S OFFICE

Marcos D. Martínez

[Marcos D. Martinez \(Sep 17, 2026 16:57:26 MDT\)](#)

MARCOS D. MARTÍNEZ, CITY ATTORNEY

APPROVED FOR FINANCES:

MONICA MAESTAS, FINANCE DIRECTOR

EXHIBIT 2

Bond No.: _____ ("the Bond")

Applicant: [Lender's Customer] _____ (Hereinafter "Applicant")

Issuer: _____ [Lender] (Hereinafter "Issuer"), whose mailing address is _____ and whose physical delivery address is _____.

Beneficiary: City of Santa Fe, (Hereinafter "Beneficiary"), whose mailing address is P.O. Box 909, Santa Fe, New Mexico 87504-0909 and whose physical address is 200 Lincoln Avenue, Santa Fe, New Mexico 87501.

Project: [Describe project or matter] _____ (Hereinafter "the Project")

LUD Case No.: _____

City Clerk Item No.: _____ (For Beneficiary administrative use only
– Absence of number shall not affect validity of this Draft)

Date: _____

At The Sight of This Draft

Pay to the order of the City of Santa Fe, the amount of _____ Dollars (\$_____) and charge the same amount in reduction of the amount of funds available to Beneficiary under the Bond

To: [Issuer, Address]

CITY OF SANTA FE

By: _____
(Signature)

(Print Name)

(Title)

EXHIBIT 3
CERTIFICATE

Bond No.: _____ (“the Bond”)

Applicant: [Lender’s Customer] _____ (Hereinafter “Applicant”)

Issuer: [Lender] (Hereinafter “Issuer”) whose mailing address is _____ and whose physical delivery address is _____.

Beneficiary: City of Santa Fe, (Hereinafter “Beneficiary”), whose mailing address is P.O. Box 909, Santa Fe, New Mexico 87504-0909 and whose physical address is 200 Lincoln Avenue, Santa Fe, New Mexico 87501.

Project: [Describe project or matter] _____ (Hereinafter “the Project”)

P&DR Case No.: _____

City Clerk No.: _____ (For Beneficiary administrative use only – Absence of number shall not affect validity of this Certificate)

Engineer’s Estimate: [Describe Estimate] _____ or other professional’s estimate as determined by the City attached hereto and incorporated herein as Exhibit “1” as modified or amended with Issuer’s and Beneficiary’s express, written, consent (Hereinafter “the Engineer’s Estimate”)

Date: _____

The undersigned, _____ as an authorized agent of Beneficiary, acting on behalf of Beneficiary, hereby certifies as follows:

1. I am authorized to execute this Certificate on behalf of Beneficiary.
2. This Certificate is being delivered, together with a sight draft, in satisfaction of the requirements specified in the Bond.
3. Through no fault of Beneficiary, Applicant has failed or refused to perform the following work or condition(s) to construction or development approval imposed by Beneficiary as outlined in the Engineer’s Estimate, attached as Exhibit “1” and incorporated herein by reference:

4. To satisfy the condition(s) imposed by Beneficiary identified in paragraph 3 above, Beneficiary submits its Sight Draft in the amount of \$_____.
5. Upon honor of the Sight Draft, Beneficiary shall use the funds paid to it by Issuer only to pay all costs, including but not limited to administrative associated with satisfying the condition(s) identified in paragraph 3 above and shall diligently cause such condition(s) to be satisfied.
6. Beneficiary shall refund to Issuer any funds paid to it by Issuer and not required to complete and satisfy the condition(s) identified in paragraph 3 above within sixty (60) days after the completion of the condition(s).

Executed this _____ day of _____, 20____.

_____, being first duly sworn, upon oath, states that he/she has read the foregoing Certificate, and that the statements therein are true and correct to the best of the knowledge, information and belief of the undersigned.

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

CITY OF SANTA FE

By: _____
(Signature)

(Print Name)

(Title)

ACKNOWLEDGMENT

STATE OF NEW MEXICO)

) ss.

COUNTY OF _____)

On this _____ day of _____, 20____, before me personally appeared _____, as _____ of the City of Santa Fe, a municipal corporation, for and on behalf of said municipal corporation, personally known to me OR proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the foregoing Certificate and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted executed the instrument.

Witness my hand and official seal.

Signature of Notary Public

Printed Name of Notary Public

My Commission Expires: _____

REV 06-17-2019

EXHIBIT 4

**CERTIFICATE OF PARTIAL CONSTRUCTION AND PARTIAL RELEASE OF
FINANCIAL GUARANTY**

Bond No.: _____ (“the Bond”), expiring _____.

Applicant: [Lender’s Customer] _____ (Hereinafter “Applicant”)

Issuer: [Lender] (Hereinafter “Issuer”) whose mailing address is _____,
whose physical delivery address is _____, and whose
facsimile number is _____.

Beneficiary: City of Santa Fe, (Hereinafter “Beneficiary”), whose mailing address is P.O.
Box 909, Santa Fe, New Mexico 87504-0909 and whose physical address
is 200 Lincoln Avenue, Santa Fe, New Mexico 87501.

Project: [Describe project or matter] _____ (Hereinafter “the Project”)

LUD Case No.: _____; BP No. (Grading): _____; BP No.
(Landscape/Utility): _____

City Clerk Item No.: _____ *(For Beneficiary administrative use
only – Absence of number shall not affect validity of this Acknowledgement
and Partial Release)*

Engineer’s Estimate: [Describe Estimate] _____ or other professional’s estimate as
determined by the City attached hereto and incorporated herein as Exhibit
“1” as modified or amended with Issuer’s and Beneficiary’s express,
written, consent (Hereinafter “the Engineer’s Estimate”)

Date: _____

The undersigned, _____ as an authorized agent of Beneficiary, acting
on behalf of Beneficiary, hereby certifies as follows:

1. I am authorized to execute this Certificate of Partial Construction and Partial Release of Financial Guaranty (“CPC”) on behalf of Beneficiary.
2. This CPC is being issued to Applicant to acknowledge that the Beneficiary has inspected certain work items constructed by Applicant or has accepted certification from a City approved construction engineer and that Beneficiary’s finds that the following work described in the Engineer’s Estimate has been constructed or has reasonable cause to believe said work has been constructed as presented in the pay estimate presented by the Applicant or the Applicant’s authorized representative.

- Executed this _____ day of _____, 200__.

By: _____
(Signature)

(Title)

[illegible]

Witness my hand and official seal.

My Commission Expires: _____

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