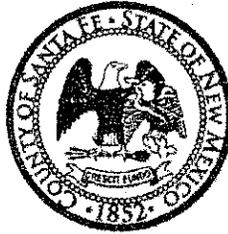


Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: *April 19, 2017*

TO: *Board of County Commissioners*

FROM: *Michael Kelley, Public Works Department Director* MK 4/21/17

VIA: *Katherine Miller, County Manager*

ITEM AND ISSUE: *BCC Meeting May 9, 2017*
Amended and Restated County Utility Line Extension and Service Agreement Between Homewise, Inc and Santa Fe County (Utilities Division/Sandra Ely)

SUMMARY:

This proposed Amended and Restated County Utility Line Extension and Service Agreement between, Homewise, Inc (Developer) and Santa Fe County (County) allows for the design and construction of a water line extension, a wastewater line extension, water service and wastewater discharge for the Tessera 2 Subdivision (Development). Upon Board of County Commissioners' acceptance (at a future date), the new water line and associated easements will be dedicated to the County. The wastewater line will not be dedicated to the County and will remain private.

BACKGROUND:

The County and Developer (collectively, "Parties") entered into that certain Water Line Extension Agreement and Water Delivery Agreement ("Original Agreement") on January 12, 2016. The Parties now propose to amend and restate the Original Agreement to add terms and conditions governing the provision of sewer service, to correct certain errors and omissions in the Original Agreement, and to make certain other changes.

The Developer proposes to construct 78 new residential homes on 69.56 acres of land located off the NM 599 Frontage Road at Via Tessera. The total proposed water budget for Tessera 2, including the 20% add-on required by Resolution 2006-57, is 18.72 acre-feet/year (AFY). Pursuant to Resolutions 2006-2 and 2010-89, Homewise will not be required to bring water rights for the portion of the development that is affordable housing.

DISCUSSION:

The Developer is proposing to design and construct tie-ins and extensions from the existing water and waste water lines service lines to the point-of-service for each structure in the Development. The proposed infrastructure improvements, including easements, will be at Developers sole expense and will be designed and constructed to County standards. Upon completion, the Developer will offer to dedicate the water improvements and easements to the County. The dedication will not be effective until it is accepted by the Board of County Commissioners. Developer shall not dedicate to the County any portion of the wastewater line extension. All common segments of the wastewater system shall be maintained by Developer or a homeowner's association.

ACTION REQUESTED:

Approve subject County Utility Line Extension and Service Agreement between, Santa Fe County and, Homewise, Inc.

Attachment:

Amended and Restated County Utility Line Extension and Service Agreement between Santa Fe County and, Homewise, Inc.

**AMENDED AND RESTATED
COUNTY UTILITY LINE EXTENSION AND SERVICE AGREEMENT**

This Amended and Restated Utility Line Extension and Service Agreement (“Agreement”) is between Santa Fe County (“County”), a political subdivision of the State of New Mexico, and Homewise, Inc. (“Developer”), a domestic nonprofit corporation whose address is 1301 Siler Road, Building D, Santa Fe, New Mexico 87507.

Recitals

A. The County and Developer (collectively, “Parties”) entered into that certain Water Line Extension Agreement and Water Delivery Agreement (“Original Agreement”) on January 12, 2016, which was filed on January 13, 2016, in the records of the County Clerk as Instrument No. 1783853.

B. The Parties desire to amend and restate the Original Agreement to add terms and conditions governing the provision of sewer service, to correct certain errors and omissions in the Original Agreement, and to make certain other changes.

C. On February 28, 2017, the Board of County Commissioners (“Board”) entered its development order conditionally approving the final plat for Phase 2 of the Tessera Residential Subdivision (“Development” or “Tessera 2”), consisting of 78 lots on 69.56 acres.

D. Tessera 2 is generally located within the area identified as “Phase Two” on that certain plat of Phase 1 of the Tessera Subdivision filed on April 11, 2014, in the records of the County Clerk as Instrument No. 1734330.

E. Developer owns the Development and is the Subdivider within the meaning of the County Sustainable Land Development Code (“SLDC”).

F. The Santa Fe County Utility (“Utility”) has agreed to provide water and wastewater service to the Development in accordance with the terms and conditions set out in this Agreement, which shall among other things govern the dedication and acceptance of any necessary utility easements, improvements, and water rights to the County and the design, construction, and approval of any water and wastewater line extensions.

G. Incorporated into and made a part of this Agreement by reference are the Utility Customer Service Policies (“Utility Policies”) adopted by the County, including but not limited to those established by Resolution Nos. 2012-88, 2006-57, 2011-79, and Ordinances 1998-16, 2010-16, and 2014-11, as the same may be amended, superseded, or replaced from time to time; *provided*, however, that in the event of a conflict between Sections 1 through 5 of this Agreement and any change in the Utility Policies after execution of this Agreement, this Agreement will prevail; and *provided* further that in the event of a direct and irreconcilable conflict between this Agreement and a requirement of the SLDC in effect on January 15, 2016, and amended on December 13, 2016, the SLDC shall prevail unless this Agreement imposes a more stringent requirement, in which case this Agreement shall prevail.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the County and Developer agree as follows:

1. Water and Wastewater Line Extensions.

1.1 General. The water and wastewater extensions required under this Agreement shall be designed, engineered, constructed, installed, and tested in compliance with this Agreement, the construction plans ("Construction Plans") submitted to the Administrator under the SLDC, and all Utility standards and other applicable standards to assure safe and reliable water and wastewater services. Developer shall obtain the Utility Director's ("Director") written approval of the Construction Plans prior to submitting its final Plans to the Administrator for approval. Calculations, certified by a licensed Professional Engineer licensed in the State of New Mexico, shall be required for the water and wastewater line extensions.

1.2 Developer Responsibility and Standards. Developer shall at Developer's sole expense complete all aspects of the water and wastewater line extensions, which shall conform to the standards and requirements, as applicable, of the American Water Works Association (AWWA), the New Mexico Standard Specifications for Public Works Construction (NMAPWA 2006 Edition or subsequent revisions), the New Mexico Environment Department, and the Utility.

1.3 Water Line Extension. The water line extension shall be constructed in accordance with the Construction Plans approved by the Administrator and the Director.

1.4 Wastewater Line Extension. The wastewater line extension shall be constructed in the accordance with the Construction Plans approved by the Administrator and the Director and the *Memorandum of Understanding Between the City of Santa Fe and Santa Fe County for Wastewater Service to Phase 2 of the Tessera Subdivision* ("MOU"), attached hereto as Exhibit A. The wastewater line extension shall include grinder pumps at each lot that will connect to the existing two-mile force main already serving Phase 1 of the Tessera Subdivision.

1.5 Professional and Personnel Qualifications. The Developer shall assure that the water and wastewater line extensions are designed, constructed, installed, and tested by qualified personnel and, where required by law or applicable professional codes, by New Mexico licensed professionals. A New Mexico licensed professional engineer (or engineers) shall serve as Project Engineer and perform, supervise, or oversee all work, as required by the New Mexico Engineering and Surveying Practice Act, including design, fabrication, construction, installation, and testing of the water and wastewater line extensions, and such Project Engineer (or engineers) shall certify and stamp all drawings, plans and specifications. A New Mexico licensed surveyor shall perform or supervise all construction surveying and shall certify all survey plats.

1.6 Oversight and Review. The Project Engineer shall formally submit to the Director for review and approval the designs and project specifications for the water and

wastewater line extensions. The Director's approval shall not be unreasonably withheld. The Director will provide written comments to the Project Engineer. After any comments have been addressed to the Director's satisfaction, the Director shall indicate his or her approval by signing the final Construction Plans prepared by the Project Engineer in accordance with this Agreement and the SLDC. To ensure that the Utility is fully informed at all stages of the water and wastewater line extensions, the Project Engineer shall meet and confer with the Utility on a regular basis.

1.7 Cost Estimate and Financial Guaranty. The Project Engineer shall certify the cost estimate submitted to the Administrator under Section 7.22.3 of the SLDC, which shall include an itemized estimate of the cost of constructing, installing, and testing all water and wastewater line extensions, the cost of reclamation, the cost of providing final certified documentation of the as-built conditions of the water and wastewater line extensions, and such other improvement costs as the Administrator reasonably determines should be included in the estimate under the SLDC. The portion of financial guaranty provided to the Administrator that pertains to the water and wastewater line extensions under this Agreement shall be 100% of the cost estimate approved by the Director plus a 20% contingency unless the Administrator requires a 25% contingency. The Director may authorize the Project Engineer to exclude from its cost estimate the cost of constructing any portion of the water and wastewater line extensions that have been constructed, inspected, and approved in accordance with this Agreement and the SLDC before Developer submits its cost estimate to the Administrator.

1.8 Construction.

1.8.1. General. All construction shall be carried out and supervised by a bonded professional contractor who possesses a valid New Mexico Utility Contractor's license.

1.8.2. Commencement. Construction of the water and wastewater line extensions shall not commence until after: (i) the Administrator and Director have signed off on the final Construction Plans and approved the amount of financial guaranty; (ii) the project review and inspection fees required under Sections 6.4.3 and 6.4.4 of this Agreement have been paid; (iii) Developer has acquired any necessary utility easements and temporary construction easements; and (iv) Developer has received a development permit from the Administrator and complied with all provisions of the SLDC applicable to commencement of construction.

1.8.3. Inspections. In accordance with Section 5.10.2 of the SLDC, no segment of the water and wastewater line extensions shall be buried permanently until they have been inspected and approved by a Utility staff inspector. The Project Engineer shall provide the construction schedule to the Utility and notify the Director of the commencement of construction at the same time Developer notifies the Administrator under Section 5.10.2 of the SLDC.

1.8.4. Change Orders. Changes to the Construction Plans necessitated during construction by unforeseen conditions or other factors may be proposed to the Administrator by either Developer or the Director for consideration in accordance with Section 5.9.4 of the SLDC. However, no change order shall be implemented until it is reviewed and approved, in writing, by the Project Engineer and the Director.

1.8.5. Supervision. The Project Engineer shall supervise all construction.

1.8.6. Testing.

1.8.6.1. General. After the water and wastewater line extension, or portions therefore, are constructed and operational, Developer shall conduct necessary or appropriate tests using a certified testing laboratory (as applicable) to assure that the extension systems meet the requirements of this Agreement and are functioning as designed. The test results shall be issued under the seal of the Project Engineer. Tests shall be performed and reported in accordance with applicable standards and using forms approved by the Utility, where applicable, and promptly reported to the Utility. All testing results and video must be reviewed and approved by the Utility. The Utility shall have the right, in its discretion, to require additional testing that it deems reasonably necessary or reasonably advisable based on observed conditions before, during, or after construction. Developer shall be responsible for the cost of all testing, including any required additional testing.

1.8.6.2. Specific Tests. Developer shall hydro-pressure test all new water mains installed as part of the water line extension and any existing water mains that Developer modified or disturbed as part of the extension. In addition, Developer shall video inspect any gravity sewer main installed as part of the wastewater line extension.

1.8.6.3. Correction of Defects. Developer shall promptly correct to the Director's satisfaction any defects discovered in testing the water and wastewater line extensions.

1.8.7. As-Builts. The Project Engineer shall provide the Director with complete, final, and certified record (as-built) drawings, along with a letter of certification stating that all line extension improvements to the County have been completed in accordance with the approved Construction Plans, specifications, and all pre-approved change orders. In addition, the following documentation shall be submitted for the water and wastewater line extensions (as applicable): disinfection results, hydrostatic pressure test results, bacteriological test result, backfill compaction densities, and concrete strength test results. All as-built data shall be provided in hard copy (24" x 36"), and on digital PDF formats, with index and cover map. The as-built copies provided to the Director are in addition to those provided to the Administrator under Sections 5.9.5 and 7.22.11 of the SLDC.

1.8.8. Release of Financial Guaranty. After completion of all construction, inspection, testing, correction of any discovered defects, and documentation of the water and wastewater line extensions, or portions thereof, required under this Agreement, Developer may seek complete or partial release of its financial guaranty (as appropriate) from the Administrator in accordance with the SLDC.

1.8.9. Developer shall provide contemporaneous copies to the Director of all of its written communications with the Administrator regarding the water and wastewater line extensions.

2. Offsite Utility Easements; Recordation.

2.1 General. The water and wastewater line extensions shall be constructed within the rights-of-way and utility easements indicated on the final subdivision plat. To the extent that the water and wastewater line extensions must be constructed beyond the platted area, Developer shall acquire at its sole expense such offsite easements, licenses, and permits (collectively, "Offsite Utility Easements") as may be required to complete the water and wastewater line extensions required under this Agreement. The Offsite Utility Easements shall comport with SLDC, the Construction Plans, and Utility Policies, as applicable, and authorize the operation, maintenance, repair, and replacement of the water and wastewater lines extensions (as applicable) in perpetuity; *provided*, however, that the Director may approve finite terms in cases where a governmental entity does not allow perpetual terms.

2.2 Recordation. Developer shall at its expense record all Offsite Utility Easements and such other documents, grants, assignments, plats, and approvals as may be necessary or required under this Agreement or the SLDC.

3. Offers and Acceptance of Dedications; Warranties.

3.1 Dedication and Acceptance.

3.1.1 Water Line Extension. Pursuant to the SLDC, the final subdivision plat shall include Developer's offer to dedicate the rights-of-way and utility easements containing the water line extension improvements. If Developer must construct any portion of the water line extension improvements within an Offsite Utility Easement, Developer shall offer to dedicate/transfer these Easements along with the public water line improvements on instruments approved by the County Attorney. No offer of dedication shall be accepted by the Board unless and until the Administrator and the Director certify to the Board that all improvements comprising the water line extension have been constructed in accordance with the SLDC and this Agreement and that Developer has complied with Sections 3.2.1 and 3.4 below.

3.1.2 Wastewater Line Extension. Developer shall not dedicate to the County any portion of the wastewater line extension. All common segments of the wastewater system shall be maintained by Developer or a homeowner's association, in perpetuity, pursuant to the SLDC, the MOU, and all applicable laws, standards, and codes, including any requirements imposed by the City of Santa Fe ("City") as a condition of discharging into the City's wastewater system. The wastewater system shall not be operated so as to create a public or private nuisance, and Developer shall promptly investigate and correct any malfunction discovered by or reported to Developer. Developer's obligations under this Section as to the common elements of the wastewater system may be assigned to a homeowner's association as permitted under the SLDC; Developer's obligations as to the components of the system located within the individual lots, including grinder pumps, may be assigned to the individual homeowners.

3.2 Warranty and Warranty Bond.

3.2.1 Public Water Line Improvements. Commencing at the time the County accepts the offers of dedication required under this Agreement, Developer shall warrant to the County that all public water line improvements are and shall remain free from defects in materials and workmanship for a period of one (1) year after the date of the County accepts the improvements. To financially guaranty the warranty, Developer shall provide a warranty bond or other financial assurance in a form approved by the County Attorney and in an amount equal to 10% of the cost estimate for construction of the Public Water Line improvements.

3.2.2 Private Wastewater Line Improvements. Developer or its contractor shall warrant to the homeowners' association or individual lot owners, as applicable, that the private wastewater line improvements are and shall remain free from defects in materials and workmanship for a minimum period of one (1) year after the date Director approves the construction or the date of transfer to the HOA or lot owner, whichever occurs last.

3.3 End-of-Warranty Inspections; Release of Warranty Bond. Within 90 days prior to expiration of the one-year warranty under Section 3.2 above, Developer shall perform an end-of-warranty inspection of the public water line improvements and report the results to the Director.. Utility staff must be present during all inspections. The Director may exercise its rights under the warranty bond if Developer fails to correct or repair any discovered defects to the Director's satisfaction within thirty (30) days after discovering the same or within such other time as the parties may mutually agree. The warranty bond shall be released at the end of the warranty period or after the Director provides written notice to Developer stating that all warranty work to cure any discovered defects has been satisfactorily completed, whichever is last.

3.4 Title Warranty. At the time of dedication, Developer shall warrant to the County that the Offsite Utility Easements and improvements are free and clear of any mortgage, lien, or other encumbrance and that Developer is conveying good and marketable title along with sufficient rights, title, and interest to operate, maintain, and replace the dedicated improvements located in perpetuity or for such other term as the approved instrument of dedication provides.

4. Water Budget and Water Rights.

4.1 Water Budget. The total water budget for the Development, including the affordable housing required under the SLDC, is 18.72 acre-feet per year ("AFY"), which is calculated on the basis of 0.24 afy per lot.¹ However, the Development's actual water use shall not exceed 0.2 AFY per lot.

4.2 Transfer of Water Rights.

4.2.2 Developer shall transfer water rights to the County in the amount necessary to meet the Development's total water budget less that portion of the water budget

¹ 0.24 AFY includes the additional 20% required under Resolution 2006-57; the actual water use shall not exceed 0.2 AFY per lot.

attributable to the 15% affordable housing requirement under the SLDC², which is 2.88 AFY (*i.e.*, 12 affordable homes multiplied by 0.24 AFY). The water rights shall have the following elements:

- Source:** Surface waters of the Rio Grande.
- Amount:** A consumptive use of 15.84 AFY (*i.e.*, 18.72 – 2.88 AFY).
- Priority:** Pre-1907.
- Point of Diversion:** Buckman Direct Diversion (“BDD”) or such other point as may be designated by the Utility.
- Purpose of Use:** Municipal or County Utility purposes.
- Place of Use:** The service area of the Utility, as the same may be amended from time to time.

Permit Conditions: There shall be no permit conditions that are unacceptable to the Utility, including but not limited to any condition imposing a sunset clause, requiring the future acquisition offset water rights, or otherwise limiting the Utility’s right to divert and use water in perpetuity in accordance with the elements identified in this Section.

4.2.3 On July 18, 2016, by warranty deed filed as Instrument No. 1799122 in the records of the County Clerk, Developer granted the County water rights having the elements required under Section 4.2.2 above, except that the amount granted was 17.68 AFY. In accordance with Developer’s request, the County shall re-convey back to Developer 1.84 AFY.

4.2.4 In consideration of Developer’s transfer of water rights to the County in accordance with this Agreement, the Utility shall not require any person to pay the Water Service Connection Fee required under Resolution Nos. 2012-88 and 2011-79, as the same may be amended or replaced, as a condition of water service to a lot within the Development; *provided*, however, that the Development’s water budget shall not be exceeded.

4.3 Defense and Replacement of Water Rights. In the event a suit, water rights adjudication, or administrative action in which the title, validity or any element of the water rights dedicated to the County under this Agreement are challenged, Developer shall at its expense indemnify the County and defend the title, validity, and elements of the water rights. If the challenge is successful, in whole or in part, Developer shall at Developer’s expense provide replacement water rights to the County to the extent necessary to comply with Section 4.2.2 as soon as practicable after entry of a final district court judgment or administrative decree. The Utility may discontinue water service to the extent Developer fails to provide replacement water rights to the Utility within one year from the date of the final judgment or administrative decree;

² Pursuant to Section 13.5 of the SLDC, a subdivision in which affordable housing is provided shall not be required to transfer water rights to the County for any required affordable housing within the subdivision.

provided, however, that service shall not be discontinued so long as Developer and the County are co-applicants before the New Mexico Office of the State Engineer to transfer replacement water rights to the County that will meet the requirements of Section 4.2.2.

4.4 Failure to Record Final Plat; Vacation of Final Plat.

4.4.1 If Developer does not record the final plat for the Development within the time required under the SLDC, this Agreement shall terminate in accordance with Section 6.5 below.

4.4.2 If the Board approves the vacation of the final plat for the Development pursuant to NMSA 1978, Section 47-6-7, this Agreement shall terminate in accordance with Section 6.5 below.

5. Developer Improvements.

5.1 Definition and Developer Responsibility. "Developer Improvements" mean those improvements and components comprising the water and wastewater line extensions that are not dedicated to the County under this Agreement. In general, water supply lines installed from the meter box to a residence are Developer Improvements. All components of the wastewater line extension required under this Agreement shall be Developer Improvements. Developer shall be responsible for all costs associated with constructing all Developer Improvements to the Utility's satisfaction in accordance with applicable laws, codes, and Utility Policies, including the service lines, valves, and any other plumbing needed to connect the meter boxes to each building constructed as part of the Development.

5.2 Cross Contamination. The Developer shall assure that there is no cross-connection between any other source of water, such as a water well, and the service lines within the Development, and shall include backflow devices where appropriate.

5.3 Inspection. Developer shall notify the Utility when the Developer Improvements are being constructed and installed. The Utility shall have the right but not the obligation to inspect the Developer Improvement for compliance with this Agreement.

6. Customer Accounts.

6.1 Application. After the County has accepted all offers of dedication required under this Agreement and all required infrastructure has been constructed and approved by the County, separate water and wastewater customer accounts shall be established for each lot. Developer or subsequent lot owners may file applications to establish such accounts. The applications shall be on forms acceptable to the Utility and shall conform to Utility Policies. All fees required under Section 6.4 below shall be paid before or at the time the application is filed. Applications shall be submitted at least sixty (60) days prior to the date of the requested service.

6.2 Water Delivery. Within 60 days after receiving a complete application for service for a given lot pursuant to Section 6.1, including all fees due, delivery of water shall commence

and no further scheduling of new water deliveries shall be required; *provided*, however, that water service shall not commence until the meter has been installed.

6.3 Account Transfer. Individual customer accounts shall be transferred to subsequent lot owners and lessees in accordance with Utility Policies.

6.4 Additional Fees and Charges. For each separate account, and subject to Section 4.2.4 above, the customer under the account shall pay when due all fees and charges as required under this Agreement and Utility Policies, including the following:

6.4.1 Water Meter Installation Fee. Unless Developer has already installed the meter in accordance with this Agreement, meter installation fees for water service shall be paid in accordance with Utility Policies at the time of application is made under Section 6.1.

6.4.2 Standby Fees and Service Charges. After water service is available to the Development (*i.e.*; once the infrastructure is operational and the County has accepted the required dedications), each lot owner shall pay standby fees and service charges (*e.g.*, fire service line charges), as billed and as applicable, in accordance with Utility Policies.

6.4.3 Project Review Fee. Developer shall pay a project review fee to the County equal to 0.5% of the Project Engineer's cost at the 100% design stage for the water and wastewater line extensions pursuant to Section 1.7 above. The fee shall be paid to the County within 30 days after the Utility's approval of the 100% stage completion drawings.

6.4.4 Project Inspection Fee. The Developer shall pay an inspection fee to the County equal to 1.5% of Project Engineer's cost estimate of the water and wastewater line extensions submitted at the 100% design stage pursuant to Section 1.7 above. The fee shall be paid to the County prior to the Administrator's approval of the Construction Plans. A "true up" fee may be required if the actual final construction cost, including change orders, exceed the Project Engineer's original 100% cost estimate. Prior to acceptance any improvements offered for dedication under this Agreement, the Engineer shall submit documentation, in a form acceptable to the County, setting forth the final construction cost of such improvements.

6.4.5 Wastewater Service Charges. Developer or each Individual Customer, as applicable, shall be responsible for all wastewater service fees imposed on the County by the City that are attributable to their lot(s), including utility expansion, connection, collection, and treatment charges. All such charges shall be timely paid in accordance with Utility Policies upon being invoiced by the County, and the County shall be responsible for paying the City in accordance with the MOU; *provided*, however, that the County may require utility expansion, connection, or other one-time charges to be paid at the time the site development plan is recorded for a given lot. Unless the Board adopts an ordinance imposing additional fees, the County shall not impose any fees for wastewater service except as necessary to cover the fees imposed on the County by the City.

6.5 Termination.

6.5.1 Automatic Termination. This Agreement shall terminate automatically if the final plat is not recorded within the time required under the SLDC or the recorded plat is vacated.

6.5.2 Material Breach. This Agreement may be terminated for an uncured material breach. In the event of an alleged material breach, the non-breaching party shall give the other party written notice of breach, and such other party shall have ninety (90) days thereafter to cure the breach. If the breach is not cured within 90 days, the non-breaching party may terminate this Agreement by providing the other party written notice of termination.

6.5.3 Mutual Agreement. This Agreement may be terminated by a written agreement between the parties.

6.5.4 No Obligation to Provide Service Upon Termination; Re-Conveyance of Water Rights. In the event this Agreement terminates for any reason, the Utility shall have no obligation to provide water or sewer service to the Development. Unless otherwise agreed in writing by the County and Developer, the County shall re-convey the water rights it received under this Agreement to Developer following termination of this Agreement.

7. Miscellaneous Provisions.

7.1 Water Wells. Developer represents that there are no water wells within the Development and Developer shall not drill any new water well to serve the Development so long as water service from the Utility is available.

7.2 Assignment. This Agreement shall not be assignable except to a subsequent owner of the Development. The Developer shall notify the County in writing within 30 days of any assignment made under this Agreement.

7.3 Amendment. This Agreement may be amended only by a written amendment executed by and between the County and the Developer.

7.4 Indemnity. Developer shall indemnify, defend, and hold the County harmless, including its commissioners, officers, employees, contractors, and agents, from and against any and all loss, attorneys' fees, costs, claims, causes of action, and any and all other liability relating to or arising out of Developer's alleged tortious acts or omissions, including the alleged tortious acts or omissions of Developer's officers, employees, contractors, or agents.

7.5 Insurance. From the commencement of the water and wastewater line extensions until the term of the warranty under Section 3.2 of the Agreement expires, Developer shall maintain a general liability insurance policy that, at a minimum, covers bodily injury and property damage arising out of or relating to the extensions. The policy shall have a liability limit in the amount of not less than \$1,000,000 per occurrence and name the County as an additional insured. The Developer shall provide proof of such general liability insurance acceptable to the

County.

7.6 Survival. The obligations of the Parties under this Agreement that the Parties have expressly agreed shall survive termination of this Agreement, or that, by their nature, would continue beyond termination of this Agreement, shall survive the termination of this Agreement. Without limiting the generality of the foregoing, the Parties intend that the Sections 7.4 and 7.5 shall survive termination of this Agreement.

7.7 Appropriations. The County's obligation to expend money under this Agreement, if any, are contingent upon sufficient appropriations being made by the Board, and the County is not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure.

7.8 Integration. This Agreement sets out the complete Agreement between the County and Developer regarding the Utility's provision of water and wastewater service to the Development, and all prior agreements and understandings between the County and Developer, whether written or oral, are incorporated into or superseded by this Agreement; *provided*, however, that the Parties do not intend to merge into this Agreement or modify any prior written agreements that may exist between the Parties' predecessors in interest concerning the Development or the Property. Nothing in this Agreement shall be deemed an admission regarding the applicability of any such prior agreements, nor do the Parties waive any defense or interpretation they may have regarding such prior agreements. All such prior agreements speak for themselves.

7.9 Limitation on County Liability. As a political subdivision of the State of New Mexico, any potential liability of the County under this Agreement is limited by state law, including the Bateman Act, NMSA 1978, Section 6-6-11, the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-30, the Anti-Donation Clause of the New Mexico Constitution, N.M. Const. article 9, section 14, and NMSA 1978, Section 37-1-23. The County's obligation under this Agreement to make future expenditures of money, if any, shall be absolutely contingent on the Board in its sole discretion appropriating sufficient funds to cover such future expenditures.

7.10 Binding Effect. This Agreement shall be binding on and inure to the benefit of any subsequent owner of the Development and any successor or assignee of the Utility.

7.11 Venue and Applicable Law. In the event of any dispute between the parties regarding this Agreement, the exclusive venue shall be New Mexico State District Court, First Judicial District, Santa Fe County, New Mexico. The law of New Mexico shall apply to this Agreement.

7.12 No Third-Party Beneficiaries. This Agreement may only be relied upon and enforced by the County and the Developer. There are no third-party beneficiaries to this Agreement.

7.13 Incorporation of Recitals. The Recitals set out above are hereby incorporated into

and made a part of this Agreement by reference.

7.14 No Waiver. The Utility's or Developer's failure or delay in exercising any right, power or privilege under this Agreement shall not operate as a waiver; nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof.

7.15 Duplicate Originals. This Agreement shall be executed in duplicate originals.

7.16 Compliance with Law. Developer shall assure that it, including its employees, contractors and agents, complies with all applicable federal, state, and local laws, regulations, and ordinances in performing this Agreement. Nothing in this Agreement relieves Developer of its duty to comply with all such applicable law, including the SLDC.

7.17 Notice. - Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier or by U.S. mail, either first class or certified, return receipt requested, postage prepaid as follow:

To the Utility- Santa Fe County Utility
Office of the Utility Director
424 NM SR 599 Frontage Rd,
Santa Fe, New Mexico 87507

To the Developer- Homewise, Inc.
Attn: Mike Loftin
1301 Siler Rd. Bldg. D
Santa Fe, NM 87507

With a copy to: Design Enginuity
Attn: Oralynn Guerrerortiz
PO Box 2758
Santa Fe NM 87504
oralynn@designenginuity.biz

7.18 Counterparts. The Parties may execute this Agreement in counterparts.

SANTA FE COUNTY

By: _____
Henry P. Roybal, Chair
Board of County Commissioners

Date: _____

ATTEST:

Geraldine Salazar

Date: _____

Santa Fe County Clerk

APPROVED AS TO FORM:

Gregory S. Shaffer
Santa Fe County Attorney

Date: _____

APPROVED:

Don D. Moya
Santa Fe County Finance Director

Date: _____

HOMEWISE, INC.

By: _____
Name: Michael D. Loftin
Title: CEO

Date: _____

ACKNOWLEDGEMENT

STATE OF NEW MEXICO

COUNTY OF SANTA FE

The foregoing Amended and Restated County Utility Line Extension and Service Agreement was acknowledged before me on this ___ day of _____ 2017, by Michael D. Loftin, as CEO of Homewise, Inc., for and on behalf of said corporation.

Notary Public

My commission expires: _____

