

THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY

ORDINANCE NO. 2008- 9

AN ORDINANCE APPROVING A SANTA FE COUNTY
ECONOMIC DEVELOPMENT PROJECT WITH THE
SANTA FE FARMERS' MARKET INSTITUTUE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
SANTA FE COUNTY:

Section One. Short Title.

This Ordinance may be cited as the "Santa Fe County Economic Development Project with Santa Fe Farmers' Market Institute."

Section Two. Authority.

This Ordinance is enacted pursuant to the authority of the Santa Fe County Economic Development Ordinance, Ordinance No. 1996-7, and the Local Economic Development Act, NMSA 1978, § 5-10-1 *et seq.* (1993, 2007).

Section Three. Required Project Review.

Santa Fe Farmers' Market Institute has submitted an application for public support pursuant to Santa Fe County Ordinance No. 1996-7 and the Local Economic Development Act, NMSA 1978, §§ 5-101 *et seq.* (1993, 2007). The Board of County Commissioners and the County staff specified in Ordinance No. 1996-7 have reviewed the Application.

Section Four. Approval of Application.

A. The local economic development project proposed by Santa Fe Farmers' Market Institute shall be and hereby is approved consistent with the terms of this Ordinance, County Ordinance No. 1996-7, the Local Economic Development Act, and the proposed Project Participation Agreement attached hereto as Exhibit 1.

B. The Application meets the criteria set forth in the County Ordinance No. 1996-7 and the Local Economic Development Act, NMSA 1978, §§ 5-101 *et seq.* (1993, 2007). Santa Fe Farmers' Market Institute is a qualifying entity as defined in NMSA 1978, §5-10-3(I)(6) of the Local Economic Development Act and Sections VI and VII of the County Ordinance No. 1996-7.

C. Approval herein of the Application is conditioned upon those matters set forth in the Project Participation Agreement to be entered into by the County and Santa Fe Farmers' Market Institute, and all applicable local, state, and federal laws.

Section Five. Incorporation By Reference.

The County of Santa Fe Project Participation Agreement with Santa Fe Farmers' Market Institute attached hereto as Exhibit 1 is hereby approved and incorporated by reference and made a part of this Ordinance.

Section Six. Project Revenue Fund.

The Santa Fe Farmers' Market Institute Revenue Fund is hereby established pursuant to Ordinance No. 1996-07. All revenue related in any way to the economic development project shall be deposited into the project revenue fund and any such revenue deposited into the fund shall only be expended for the project. Any unexpended and encumbered balances in the project revenue fund shall be transferred to the general fund upon termination of the economic development project as set forth in Section Eight, herein.

Section Seven. Effective Date.

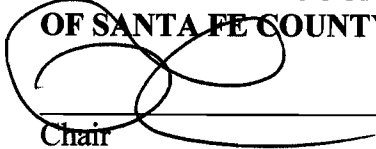
This Ordinance shall become effective thirty (30) days from its recordation by the Office of the County Clerk.

Section Eight. Termination.

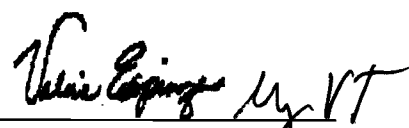
Termination of the economic development project that is the subject of this Ordinance shall be by ordinance. The ordinance shall provide for termination of the County of Santa Fe Project Participation Agreement. The ordinance shall provide for satisfying contracts and the rights of parties arising from those contracts.

PASSED, APPROVED AND ADOPTED this 10th day of June, 2008.

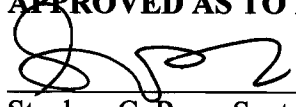
**THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY**


Chair

ATTEST:


Valerie Espinoza, Santa Fe County Clerk

APPROVED AS TO FORM:

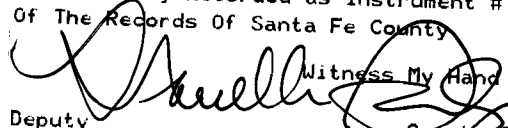

Stephen C. Ross, Santa Fe County Attorney



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

BCC ORDINANCE
PAGES: 7

I Hereby Certify That This Instrument Was Filed for
Record On The 13TH Day Of August, A.D., 2008 at 14:43
And Was Duly Recorded as Instrument # **1535019**
Of The Records Of Santa Fe County


Deputy _____ Witness My Hand And Seal Of Office
Valerie Espinoza
County Clerk, Santa Fe, NM

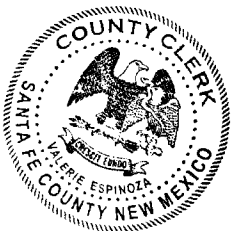


EXHIBIT 1

**FARMERS' MARKET INSTITUTE ECONOMIC DEVELOPMENT
PROJECT PARTICIPATION AGREEMENT**

THIS PROJECT PARTICIPATION AGREEMENT is made and entered into this _____ day of _____, 2008 by and between the County of Santa Fe, New Mexico, hereinafter referred to as "the County," and the Santa Fe Farmers' Market Institute, a New Mexico non-profit corporation, hereinafter referred to as "the Farmers' Market" or "the Qualifying Entity."

WHEREAS, the State of New Mexico has deemed it in the best interest of the citizens of New Mexico to enact the *Local Economic Development Act*, 5-10-1 et seq. NMSA (1978);

WHEREAS, the *Local Economic Development Act* explicitly permits counties to assist qualifying entities with economic development projects through the use of public resources;

WHEREAS, the County of Santa Fe has complied with the requirements of the *Local Economic Development Act* by adopting an economic development plan and ordinance (County Ordinance No. 1996-7);

WHEREAS, the Farmers' Market Institute requested funds from Santa Fe County in the amount of \$200,000.00 from accumulated revenue of the Capital Outlay Gross Receipts Tax for use in its construction of a Farmers' Market Building in the Santa Fe Rail yard (hereinafter referred to as "the Property");

WHEREAS, the Santa Fe Regional Planning Authority approved the use of the Joint Regional GRT funds as requested;

WHEREAS, the County encouraged the Farmers' Market Institute to apply use of the funds as a Local Economic Development Project (hereinafter referred to as "the Project");

WHEREAS, the Farmers' Market Institute submitted a project application pursuant to Ordinance No. 1996-7 and the Board of County Commissioners approved the project application on May 13, 2008 in Resolution 2008-72;

WHEREAS, the County has determined that it is in the interest of the welfare of the citizens of Santa Fe to enter into this Project Participation Agreement for the purposes of effectuating its economic development plan.

NOW THEREFORE, the undersigned parties hereby agree as follows:

I. CONTRIBUTIONS OF THE PARTIES

A. The Santa Fe Farmers' Market Institute shall provide \$4,566,024.00 toward the total estimated cost of construction of the Santa Fe Farmers' Market Building of \$4,766,024.00.

B. The County shall provide \$200,000.00 toward the total estimated cost of construction of the Santa Fe Farmers' Market Building.

C. The Farmers' Market shall directly or indirectly provide the following job opportunities in connection with the Project:

1. 19,047 hours of above-minimum wage jobs in connection with the construction of the Santa Fe Farmers' Market Building and the subsequent operation of a farmers' market at the Property within two (2) years after the inception of this Agreement; construction jobs that result from construction of infrastructure on the Property shall be credited toward the hourly requirements.

2. Such jobs created shall be created at the Property or elsewhere within the County so long as a nexus between the jobs created and the Farmers' Market can be established.

II. PROJECT DEVELOPMENT AND COMPLETION

Construction of the Project is underway and is expected to be completed and the building occupied in the summer of 2008.

III. PERFORMANCE REVIEW AND CRITERIA

A. The Farmers' Market will provide progress reports to the County and County Staff shall conduct a review of these reports.

B. The progress reports shall clearly indicate how the Farmers' Market has verified the revenue assumptions and other indices contained in the Economic Development Application and Economic Benefits Analysis.

C. The review shall determine whether the project is in compliance with the agreement and is substantially achieving the goals and objectives herein.

D. Payment applications will have a cover letter from the Farmers' Market requesting funds to pay invoices paid toward construction expenses.

IV. RECOUPMENT OF INVESTMENT

The obligations of the Farmers' Market shall be secured by delivery of a mortgage in substantially the form attached hereto as Exhibit 1 (the "LEDA Parcel Mortgage") to be recorded against the Property.

V. TERM

This agreement shall remain in force until conditions of the Agreement are performed in full or to the satisfaction of the County. In the event that the Farmers' Market performs or exceeds the required performance levels contained in this agreement, this agreement may be terminated at that time.

VI. TERMINATION, REMEDIES

A. This Agreement may be terminated by the County upon written notice delivered to the Farmers' Market at least 45 days prior to the intended date of termination in the event that the Farmers' Market ceases to operate the project in accordance with the terms of this Agreement. If the Farmers' Market is found to not be in substantial compliance with the Agreement, the County reserves the right to terminate the Agreement, recall public funding and foreclose on the mortgage.

B. In the event the Farmers' Market fails to provide the job opportunities required by this Agreement, it shall be in default hereunder. In the event of such default, the Farmers' Market shall repay the County the amount of \$200,000 within ninety (90) days after notice of such default is given. In the event the Farmers' Market fails to make such payment on a timely basis, the County may pursue its rights under the LEDA Parcel Mortgage securing, among other things, performance of this Agreement.

VII. STATUS OF THE FARMERS' MARKET

The Farmers' Market, and its agents and employees are not employees of the County. The Farmers' Market, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of County vehicles or any other benefits afforded to employees of the County as a result of this Agreement.

VIII. ASSIGNMENT

The Farmers' Market shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the County.

IX. LIABILITY AND INSURANCE

It is expressly understood and agreed by and between Farmers' Market and the County that Farmers' Market shall defend, indemnify and hold harmless the County for all losses, damages, claims or judgments on account of any suit, judgment, execution, claims, actions or demands whatsoever resulting from Farmers' Market's actions or inactions as a result of this Agreement. Farmers' Market shall maintain adequate insurance in at least the aggregate maximum amounts which the County could be liable consistent with the provisions of the New Mexico Tort Claims Act. The Farmers' Market shall provide proof of such insurance coverage to the County. It is the sole responsibility of the Farmer's Market to be in compliance with the law.

X. THIRD PARTY BENEFICIARIES

By entering into this Agreement the parties do not intend to create any right, title or interest in or for the benefit of any person other than the County and the Farmers' Market. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

XI. RECORDS AND AUDITS

The Farmers' Market shall maintain detailed time records which indicate the date and nature of services rendered. These records shall be subject to inspection by the County, the Department of Finance and Administration and the State Auditor. The County shall have the right to audit billings both before and after payment; payments under this Agreement shall not foreclose the right of the County to recover excessive illegal payments.

XII. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Department of Finance and Administration on behalf of the Farmers' Market to the County for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Department of Finance and Administration on behalf of the Farmers' Market to the County, this Agreement shall terminate upon written notice being given by the County to the Farmers' Market.

XIII. RELEASE

The Farmers' Market, upon final fulfillment of this Agreement, releases the County, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Farmers' Market agrees not to purport to bind the County to any obligation not assumed herein by the County unless the Farmers' Market has express written authority to do so, and then only within the strict limits of that authority.

XIV. AMENDMENT

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

XV. APPLICABLE LAW

This Agreement shall be governed by the ordinances of the County of Santa Fe and the laws of the State of New Mexico.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY**

By: _____
Chair

ATTEST:

Valerie Espinoza, County Clerk

APPROVED AS TO FORM:

Stephen C. Ross, County Attorney

QUALIFYING ENTITY:

Santa Fe Farmers' Market Institute

By: _____
Sarah Noss, Executive Director

Employer ID Number: 30-0124953
County of Santa Fe Business ID Number: 45875