

THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY

ORDINANCE NO. 2009-9

AN ORDINANCE APPROVING AN AMENDMENT TO THE PREVIOUSLY  
AUTHORIZED  
ECONOMIC DEVELOPMENT PROJECT WITH  
LA LUZ HOLDINGS, LLC AND  
SANTA FE FILM AND MEDIA STUDIOS, INC.

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

**Section One.** Section Three ("Required Project Review") of Ordinance No. 2008-07 shall be and hereby is amended, as follows:

"La Luz Holdings LLC and Santa Fe Film and Media Studios Inc. (hereinafter referred to as "Santa Fe Studios") have submitted an amended 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 amended Application."

**Section Two.** Section Four ("Approval of Amended Application") of Ordinance No. 2008-07, Subsections A through C, shall be and hereby is amended, as follows:

"A. The amended local economic development project proposed by Santa Fe Studios shall be and hereby is approved consistent with the terms of Ordinance No. 2008-07, this Ordinance, County Ordinance No. 1996-7, the Local Economic Development Act, and the proposed Fourth Amendment to the Project Participation and Land Transfer Agreement attached hereto as Exhibit 1.

"B. The amended 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 Studios is a qualifying entity as defined in NMSA 1978, §5-10-3(G)(3) of the Local Economic Development Act and Sections VI and VII of the County Ordinance No. 1996-7.

"C. Approval herein of the amended Application is conditioned upon those matters set forth in the Fourth Amendment to the Project Participation and Land Transfer Agreement to be entered into by the County and Santa Fe Studios, and all applicable local, state, and federal laws."

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**Section Three.** Section Five ("Incorporation by Reference") of Ordinance No. 2008-07, shall be and hereby is amended, as follows:

"The Fourth Amendment to the Project Participation and Land Transfer Agreement with Santa Fe Studios attached hereto as Exhibit 1 is hereby incorporated by reference and made a part of this Ordinance."

**Section Four.** Section Eight ("Termination") of Ordinance No. 2008-07 shall be and hereby is amended, as follows:

"Termination of the economic development project that is the subject of Ordinance No. 2008-07 and this Ordinance shall be by ordinance. Any such ordinance terminating the economic development project shall provide for termination of the Fourth Amendment to the Project Participation and Land Transfer Agreement. The ordinance shall provide for satisfying contracts and the rights of parties arising from those contracts."

**Section Five.** This Ordinance amending Ordinance No. 2008-07 shall become effective thirty (30) days from its recordation by the Office of the County Clerk.

PASSED, APPROVED AND ADOPTED this 16<sup>th</sup> day of October, 2009.

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

By: [Signature]  
Mikel Anaya, Chair

ATTEST: [Signature]

Valerie Espinoza, Santa Fe County Clerk

**APPROVED AS TO FORM:**

[Signature]  
Stephen C. Ross, Santa Fe County Attorney



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COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss

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Hereby Certify That This Instrument Was Filed for Record On The 30TH Day Of October, 2009 at 01:00:47 PM and Was Duly Recorded as Instrument # 1581720 of The Records Of Santa Fe County

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



**EXHIBIT 1**

**FOURTH AMENDMENT TO THE PROJECT PARTICIPATION AND LAND  
TRANSFER AGREEMENT**

**REC. CLERK RECORDED 10/30/2009**

**FOURTH AMENDMENT TO THE PROJECT PARTICIPATION  
AND LAND TRANSFER AGREEMENT**

**THIS FOURTH AMENDMENT TO THE PROJECT PARTICIPATION AND LAND TRANSFER AGREEMENT**, dated this \_\_\_\_ day of October, 2009, is made and entered into by and between the Board of County Commissioners of Santa Fe County, New Mexico, a political subdivision of the State of New Mexico ("the County"), La Luz Holdings, LLC, a New Mexico limited liability company ("the Buyer") and Santa Fe Film and Media Studios Inc., a New Mexico corporation ("the Qualifying Entity").

**WHEREAS**, the parties entered into that certain Project Participation and Land Transfer Agreement ("the Agreement") on June 10, 2008;

**WHEREAS**, the Agreement has been amended twice to extend the time for closing on the real estate that is the subject of Part I of the Agreement;

**WHEREAS**, the Board of County Commissioners enacted Ordinance No. 2008-07, approving the covenants in Part II of the Agreement as an economic development project pursuant to the Local Economic Development Act;

**WHEREAS**, the State Board of Finance approved the sale of the Real Estate as provided in NMSA 1978, Section 13-6-2.1;

**WHEREAS**, the Qualifying Entity now desires to obtain a loan of \$6 million from the County to achieve the economic development goals set forth in Part II of the Agreement and to satisfy conditions of banks providing the bulk of capital for the project, and the County desires to further support the Qualifying Entity by providing such a loan, and the parties hereto therefore desire to amend the Agreement accordingly as set forth in this Fourth Amendment;

**WHEREAS**, the Board of County Commissioners enacted Ordinance No. 1998-14, creating the County Infrastructure Gross Receipts Tax, revenue which is anticipated to be dedicated to repayment of bonds to fund the loan provided for herein; and

**WHEREAS**, the provisions of the Agreement for the sale and purchase of the Real Estate, as amended by this Fourth Amendment, shall be subject to the approval of the State Board of Finance to the extent that such approval is required or recommended based upon the amendment to the provisions of the Agreement providing for the County's disposition of the Real Estate in connection with the Project.

**IT IS THEREFORE AGREED** by and between the parties to this Agreement that the Project Participation and Land Transfer Agreement, shall be and hereby is amended, as follows:

1. Part 1 ("Land Transfer to the Buyer"), Sec. 2 of the Agreement shall be amended with the addition of the following additional subparagraph 2.4:

2.4 Payment of Purchase Price. The Purchase Price shall be paid in five equal installments of \$524,000 plus interest accrued upon the unpaid balance of the Purchase Price to the date of the installment payment. The interest rate applied to the balance of the Purchase Price shall the same interest rate as the interest rate on the loan provided for in Part 2, Sec. 7.2.5 of this Agreement. Installment payments shall be due when 100,000 hours of above-minimum wage jobs have been provided pursuant to Part 2, Sec. 7.2.1(b) of this Agreement, so that payments are made when 100,000, 200,000, 300,000, 400,000 and 500,000 hours have been provided pursuant to Part II, Sec. 7.2.1(b); provided, however, if all payments have not been made within five (5) years of the date of execution of this Amendment, the remaining payments must be made no later than September 11, 2015.

2. Part 2 ("Project Participation") Sec. 7.2 of the Agreement shall be amended with the addition of the following additional subparagraph 7.2.5:

7.2.5 Loan.

A. The County will assist the Buyer and the Qualifying Entity by entering into an agreement or agreements (collectively, the "Loan Agreement") to provide a loan in an amount not to exceed \$6 million (the "Loan") to the Buyer and the Qualifying Entity, jointly and severally as borrower. The Loan shall used by the Buyer and the Qualifying Entity for construction and/or long-term financing of capital improvements such as the construction of buildings, appurtenances and infrastructure in, on, or under the Phase 1A Land, and for equipment necessary for the studio and workforce purposes of the Project. The Loan shall not under any circumstances be used to operate the facility or for any day to day operational expenses. The source of funds for the Loan is anticipated to be a taxable bond issued by the County, the source of repayment of which will be payments made by the Buyer and the Qualifying Entity under the loan agreement. Security for repayment of the Loan to the Buyer and the Qualifying Entity shall include the following, all of which shall be satisfactory to the County in substance and form: (AA) a mortgage on the Phase 1A land and improvements (the "Loan Mortgage"); (BB) a \$2 million letter of credit or escrow to be maintained by the Qualifying Entity during the period when the economic development goals set forth in Part II, Sec. 7.2.1 of this Agreement are unmet, which may be reduced on a pro rata basis as the economic development goals are satisfied in 100,000 hour increments on the same dates as the installments payments by Buyer under Part 1, Sec. 2.4; and (CC) a guarantee of La Luz Holdings LLC (Buyer) in the amount of \$4 million.

B. To the extent that the Loan from the County is utilized as construction financing, the Loan Agreement shall require that disbursement of loan proceeds follow demonstrated progress in constructing capital improvements on the Phase 1A Land. The term of the Loan shall in no event exceed the term of the County Infrastructure Gross Receipts Tax ("CIGRT") bonds or the useful life of the project. The interest rate of the Loan should be no less than the rate on the

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CIGRT bonds. The County's obligation to fund the Loan shall be contingent on: (1) successful negotiation of the Loan Agreement in form acceptable to the County Attorney and the County's bond counsel, and approved by the Board of County Commissioners; (2) the availability of net proceeds of bonds issued by the County to fund the Loan in an amount sufficient to fund the Loan and pay all costs of issuance of the bonds; (3) if the Loan is to be funded from other sources, adequate funding to provide the Loan; (4) execution of the Loan Agreement, Mortgage and related documentation in form and substance satisfactory to the County; (5) issuance of a lender's policy of title insurance in favor of and satisfactory to the County; (6) receipt by the County, at or before closing of the loan, of the certifications and legal opinions required in the Loan Agreement, Mortgage and related documentation or agreements; and (7) approval by the State Board of Finance of the Agreement, as amended, to the extent that such approval is required or recommended based upon the amendment to the provisions of the Agreement providing for the County's disposition of the Real Estate in connection with the Project.

3. Part 2 ("Project Participation"), Sec. 7.3, of the Agreement shall be amended with the additional sentences shown underlined below:

7.3. Failure to Perform; Remedies. In the event the Qualifying Entity fails to provide the job opportunities required by Section 7.2.1, above, it shall be in default hereunder. In the event of such default, the Qualifying Entity and the Buyer shall pay the County the amount of \$30,000 for each acre foot of water rights actually delivered to the Property by the County, and shall reimburse all additional amounts contributed by the County or the State in support of the Project pursuant to the Act, adjusted to reflect the extent to which the Economic Development Goals have been performed at the time the partial release of the LEDA Parcel Mortgage is requested (e.g. if 50% of the hourly requirements required as Economic Development Goals have been satisfied, the Qualifying Entity and La Luz shall be obligated to reimburse 50% of the aggregate amount of public funding contributed by the County and the State). The Qualifying Entity and the Buyer shall reimburse the County and State according to the respective contributions by each within ninety (90) days after notice of such default is given. In the event the Qualifying Entity or the Buyer 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 and the LEDA Performance and Repurchase Agreement. The duties of the Qualifying Entity and the Buyer are further described in the LEDA Performance and Repurchase Agreement. In the event that the Buyer and the Qualifying Entity fail to satisfy the terms of the loan described in Sec. 7.2.5 of this Agreement, in whole or in part, they shall suffer the remedies set forth in Sec. 7.2.5, in this paragraph, and any additional remedies set out in the loan agreement. Satisfaction of the economic development goals and release of the LEDA mortgage shall not relieve any obligations under the terms of the loan and loan agreement described in Sec.

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7.2.5 and the mortgage lien shall be considered to be independent obligations of the Buyer and the Qualifying Entity.

4. Part I, Sec. 5.1.8 of the Agreement, concerning an industrial revenue bond, shall be and hereby is deleted, and Resolution No. 2008-91 expressing the intent of the Board of County Commissioners to consider adoption of a bond ordinance authorizing the issuance of an industrial revenue bond in connection with the Project shall be of no further effect.

5. Part II, Sec. 7.2.1 of the Agreement shall be amended with the additional sentence shown underlined below:

7.2.1. The Qualifying Entity shall directly or indirectly provide the following job opportunities in connection with the LEDA Project:

(a) 500,000 hours of above-minimum wage jobs in connection with the Project within six (6) years after the Closing Date in connection with Phase 1A, or 800,000 hours of above-minimum wage jobs in connection with development of Phases 1A and Phase 1B of the Project, toward which hourly requirements shall be credited all construction jobs that result from construction of the LEDA Project on the Property or for offsite infrastructure for the Studio Project;

(b) work force development, including apprenticeships or other job training and career advancement programs for Santa Fe County area residents and residents of the State of New Mexico.

Such jobs under subparagraph (a) may be located onsite at the Property or elsewhere within the County, provided that the film and multi-media production is contracted for or originated through the Qualifying Entity, its subtenants or users of the Studio Project. For example, if a film or multi-media production is contracted for or originated as provided in the preceding sentence and is filmed or created at both the Property and in downtown Santa Fe, credit will be given for hours of jobs created in downtown Santa Fe; if a production is contracted for or originated by the Qualifying Entity or its subtenants before the Studio Project is ready for use, and the production is filmed or created offsite, jobs created shall be credited toward the economic goals in Section 7.2.(a) above. The Qualifying Entity shall begin creating jobs as soon as is practicably possible after Closing. Jobs created and credited against the economic development goals described in this Agreement shall, consistent with the capabilities of the local work force in Central New Mexico, prefer local workers over workers over workers from outside Central New Mexico.

Notwithstanding the time periods set forth in this Section 7.2.1, if construction of the Studio Project is delayed and the time for completion is extended as provided in Section 2(d) of the Performance Agreement, the

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period during which jobs are to be created shall be extended by the amount of additional time provided for completion of construction.

For purposes of this PPA and the LEDA Performance Agreement, the "minimum wage" means the minimum "living wage" then in effect in the City of Santa Fe, New Mexico pursuant to the City's Living Wage Ordinance, No. 28-1, Section 28-1.12, Santa Fe City Code 1987, as amended.

6. Part II, Sec. 13 of the Agreement, concerning assignment, shall be and here is deleted.

7. Part Sec. 22 of the Agreement, concerning assignment, shall be and hereby is amended to read as follows:

**22. ASSIGNMENT.** This Agreement shall be binding upon the parties hereto and their respective heirs, successors or representatives; provided, that this Agreement may not be assigned by any party without the prior express written consent of the other party.

8. Part 1, Section 4.4 of the Agreement is amended to read as follows:

4.4. Inspection Period Extension. The Inspection Period, unless extended by mutual agreement of the parties reduced to writing and fully executed, shall expire at 5:00 p.m. on November 30, 2009.

Notwithstanding the foregoing, Buyer and Qualifying Entity may give notice prior to the end of the Inspection Period that the inspection is complete, in which event the date of such notice shall serve as the end of the Inspection Period for the purpose of establishing the Closing Date.

This amended Section 4.4 supersedes the modifications to this Section contained in the First and Second Amendments to the Agreement.

9. Part 2, Sec. 9.3 of the Agreement shall be amended to read as follows:

(b) Phase 1A, consisting of Stages 1 and 2 and approximately 39,000 square feet of space to house the mill, shop, grip and lighting facilities, and the approximately 35,000 square feet of space to house production support facilities, shall commence within 36 months following the Closing Date, and shall be completed within 72 months after the Closing Date; provided however that if market conditions and prospective tenant requirements require a different configuration, the parties may agree to changes in the mix of improvements comprising Phase 1A without amending this Agreement so long as at least 40,000 square feet of improvements, including at least two soundstages, are constructed;

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10. The foregoing recitals are incorporated herein by this reference.

11. The following shall be added as new Part 3 ("General Provisions"), Section 19.1.6:

19.1.6 Force Majeure.

(a) The duties and obligations of the Qualifying Party and/or Buyer hereunder will be suspended, but not released, upon the occurrence and continuation of any "Event of Force Majeure" which inhibits or prevents performance hereunder or under any document referred to or implied herein, and for a reasonable start-up period thereafter. For purposes of this Agreement and related documents described below, the period of suspension shall run for the amount of time the Event of Force Majeure impairs production at the LEDA Project plus one hundred twenty calendar (120) days for the start-up of activities at the Studio Project.

(b) An "Event of Force Majeure" shall mean any act, cause, contingency or circumstance beyond the reasonable control of such party (whether or not reasonably foreseeable), including, without limitation, to the extent beyond the reasonable control of such party:

(i) any governmental action, nationalization, expropriation, confiscation, seizure, allocation, embargo, prohibition of import or export of goods or products, regulation, order or restriction (whether foreign, federal or state) that has a material adverse effect on the studio Project;

(ii) war (whether or not declared), civil commotion, disobedience or unrest, insurrection, public strike, riot or revolution;

(iii) lack or shortage of, or inability to obtain, any labor, machinery, materials, fuel, supplies or equipment from normal sources of supply;

(iv) any labor relations dispute affecting or involving the Project or which may affect or involve production activities occurring at the Project including, but not limited to, union or "wildcat" picketing, the filing of an Unfair Labor Practice charge by a union, the expiration of a negotiated labor contract, work stoppage or slowdown by a union or members of a union, an existing or impending union or wildcat strike or lockout, or any other matter which could reasonably be construed as a labor relations dispute (collectively, "Labor Disputes");

(v) fire, flood, earthquake, drought or other natural calamity, weather or damage or destruction to structures and/or equipment; or

(vi) acts of God.

(c) As soon as reasonably possible following the occurrence of an Event of Force Majeure, the affected party(ies) shall give written notice to the other party(ies) as to the date and nature of such Event of Force Majeure, and the potential effects thereof. An Event of Force Majeure is not anticipated but is foreseeable by the parties.

(d) The County acknowledges and understands that labor and the local workforce are essential to the success of the Studio Project, the ability of the Qualifying Party to create jobs under Section 7.2.1 above, and that any labor dispute within the filmmaking and media production industry may adversely affect the Project.

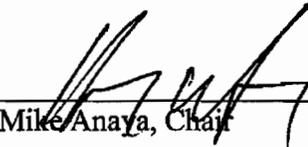
(e) This Section shall also be included in substantially similar form (tailored to the particular document) in the LEDA Performance Agreement and related documents, the loan documents for the installment purchase of the Property, and the loan documents for the \$6,000,000 loan from the County specified above.

12. Following execution of this Fourth Amendment, the Agreement, as previously amended and as amended by this Fourth Amendment, shall compiled in amended and restated form, which shall be executed and delivered promptly by the parties hereto.

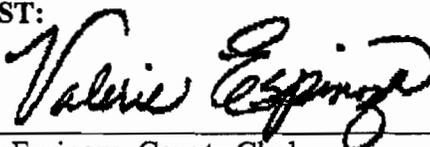
13. This Fourth Amendment to the Project Participation and Land Transfer Agreement shall be approved by the New Mexico State Board of Finance prior to becoming effective, unless the State Board of Finance, or its counsel, determines that approval of this amendment by the Board of Finance is not necessary.

**COUNTY:**

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

By:   
Mike Anaya, Chair

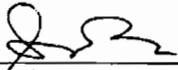
10-28-09  
Date

ATTEST:  
  
Valerie Espinoza, County Clerk

10-27-09  
Date

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**APPROVED AS TO FORM:**



\_\_\_\_\_  
Stephen C. Ross  
Santa Fe County Attorney

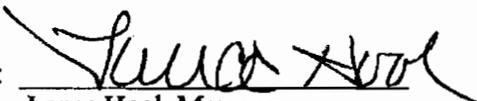
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Date

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**BUYER:**

**La Luz Holdings, LLC**  
**A New Mexico limited Liability Company**

By:   
Lance Hool, Manager

10.16.09  
Date

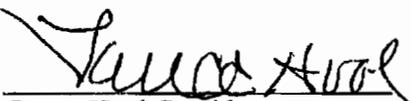
**ATTEST:**

  
Secretary

10/16/09  
Date

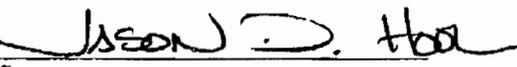
**QUALIFYING ENTITY**

**Santa Fe Film and Media Studios Inc.,**  
**A New Mexico corporation**

By:   
Lance Hool, President

10.16.09  
Date

**ATTEST:**

  
Secretary

16 OCTOBER 2009  
Date

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