

THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY

ORDINANCE NO. 2022-01

AN ORDINANCE
AUTHORIZING THE ISSUANCE AND SALE OF SANTA FE
COUNTY, NEW MEXICO INDUSTRIAL REVENUE BONDS (SANTA
FE STUDIOS PROJECT) SERIES 2022 IN THE MAXIMUM
PRINCIPAL AMOUNT OF \$16,000,000 TO PROVIDE FUNDS TO
FINANCE THE RENOVATION, CONSTRUCTION,
RECONSTRUCTION, INSTALLATION AND EQUIPPING OF
UPGRADES TO EXISTING FACILITIES AND THE ACQUISITION,
CONSTRUCTION AND EQUIPPING OF AN EXPANSION OF A FILM
STUDIO IN THE UNINCORPORATED PORTION OF THE COUNTY;
AUTHORIZING THE EXECUTION AND DELIVERY OF AN
INDENTURE, LEASE AGREEMENT, BOND PURCHASE
AGREEMENT, THE BONDS AND OTHER DOCUMENTS IN
CONNECTION WITH THE ISSUANCE OF THE BONDS AND THE
PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS
RELATING TO THE BONDS AND THE PROJECT; RATIFYING
CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL
ACTIONS INCONSISTENT WITH THIS ORDINANCE.

WHEREAS, the County Industrial Revenue Bond Act, Sections 4-59-1 through 4-59-16 NMSA 1978, as amended (the "Act"), authorizes Santa Fe County, New Mexico (the "County") to issue industrial development bonds, and to acquire "projects" as defined in the Act; and

WHEREAS, the County desires to promote industry and trade by inducing manufacturing, industrial and commercial enterprises to locate or expand in the State of New Mexico (the "State"), promoting the use of the agricultural products and natural resources of the State and promoting a sound and proper balance in the State between agriculture, commerce and industry and to promote public health, welfare, safety, convenience and prosperity; and

WHEREAS, Santa Fe Film and Media Studios, Inc. (the "Company") proposes to acquire, construct and equip an expansion of a film studio, and possibly renovate, construct, reconstruction, install, and equip upgrades to existing facilities, located at 1 Santa Fe Studios Road, Santa Fe New Mexico, in the unincorporated portion of the County (the "Project") and the real and personal property associated therewith (the "Project Property"), which constitutes a "project" as defined in the Act; and

WHEREAS, the County's project review team has considered the information provided by the Company to the County regarding the Project (the "Project Plan") in

accordance with County Ordinance No. 1998-01, which project review team has recommended that the County move forward with the Project; and

WHEREAS, the Project has been considered by the Board of County Commissioners (the "Board") and the Board has concluded that the Project will promote the local health, general welfare, safety, convenience and prosperity of the inhabitants of the County, and the Board has concluded that it is in the best interest of the County to authorize the issuance of the Santa Fe County, New Mexico Taxable Industrial Revenue Bonds (Santa Fe Studios Project) Series 2022 (the "Bonds") for the financing of the Project and that the County's issuance of the Bonds shall constitute a valid public purpose under the Act; and

WHEREAS, the County adopted County Resolution No. 2021-118 (the "Inducement Resolution") on December 14, 2021 as an inducement for the Company to proceed with the Project; and

WHEREAS, concurrently with the issuance of the Bonds, the County would enter into an Indenture dated as of March 1, 2022, or such later date agreeable to the Company and the County (the "Indenture") among the County, SF Film Services, LLC, an affiliate of the Company which would purchase the Bonds (the "Purchaser"), and BOKF, NA, as depositary (the "Depositary"), pursuant to which, together with this ordinance (the "Bond Ordinance"), the County would issue the Bonds;

WHEREAS, concurrently with the issuance of the Bonds, the County and the Company would enter into a Lease Agreement dated as of March 1, 2022, or such later date agreeable to the Company and the County (the "Lease"), pursuant to which the Company will lease the Project Property from the County and will make payments to the Depositary sufficient to pay the principal of, redemption premium, if any, and interest on the Bonds, and to pay all other obligations incurred pursuant to the provisions of the Lease and the Bond Ordinance; and

WHEREAS, the Lease will provide that the Company shall maintain the Project Property and carry all proper insurance with respect thereto; and

WHEREAS, the proceeds of the Bonds shall be used for the purpose of financing the Project and to pay certain costs associated with the transaction; and

WHEREAS, the Bonds in a maximum, aggregate principal amount not to exceed \$16,000,000 will be issued, sold and delivered by the County in a private sale to the Purchaser pursuant to a bond purchase agreement (the "Bond Purchase Agreement") among the County, the Company, and the Purchaser; and

WHEREAS, the County is authorized to enter into the Lease, the Indenture, the Bond Purchase Agreement, the Infrastructure Agreement and other related documents and to issue the Bonds pursuant to the Act and the Bond Ordinance; and

WHEREAS, the Board has been advised by the Company that the disclosure provisions of Rule 15c2-12 of the Securities and Exchange Commission are not applicable

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to this transaction inasmuch as the Bonds are being sold to the Purchaser, which is an affiliate of the Company, in a private sale without the participation of an underwriter; and

WHEREAS, there has been published in the Santa Fe New Mexican, a newspaper of general circulation in the County, public notice of the Board's intention to adopt this Bond Ordinance, which notice contained certain information concerning the ownership, purpose, location, and size of the Project and the Project Property, and the amount of the Bonds to be issued to finance the Project, which notice was published at least fourteen (14) days prior to hearing and final action on this Bond Ordinance; and

WHEREAS, the proposed forms of the following documents have been filed with the County Clerk and presented to the Board: (1) the Lease; (2) the Indenture; and (3) the Bond Purchase Agreement (collectively the "Bond Documents"); and

WHEREAS, the County has delivered notice to the County Assessor and each other entity located within the County authorized to levy taxes on property in the County of its intent to consider issuance of the Bonds, which notice was given at least thirty (30) days prior to the meeting at which final action is to be taken on this Bond Ordinance as required by Section 4-59-4.1, NMSA 1978, as amended.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS, THE GOVERNING BODY OF SANTA FE COUNTY, NEW MEXICO:

Section 1. RATIFICATION. All actions (not inconsistent with the provisions of this Bond Ordinance) heretofore taken by the Board and the officers and employees of the County, related to approval of the issuance and sale of the Bonds be approved and the same hereby are ratified, approved and confirmed.

Section 2. THE PROJECT PLAN. The Project to be financed with the Bonds consists of the acquisition, construction and equipping of an expansion of an existing film studio and possible renovation, construction, reconstruction, installation, and equipping upgrades to existing facilities, owned and operated by the Company (as so improved and upgraded, the "Facility"). The Company may use additional available money to accomplish the Project. The Project Plan is hereby approved in all respects.

Section 3. FINDINGS. The Board hereby declares that it has considered all relevant information presented to it relating to the Bonds and the Project and hereby finds and determines that the issuance of the Bonds pursuant to the Bond Ordinance and the Act to provide funds for the Project is necessary and advisable and in the interest of the public, and will promote the public health, safety, morals, convenience, economy, and welfare of the County and the residents of the County. The County finds that:

- (a) The Bonds will be issued for the Project;
- (b) The maximum aggregate face amount of obligations to be issued with respect to the Project is \$16,000,000;

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(c) The initial developer and operator of the Facility will be the Company or its assignee or assignees; and

(d) The Project is located in the unincorporated portion of the County.

Section 4. AUTHORIZATION AND APPROVAL OF THE BONDS. To finance the Project, the County hereby authorizes and approves the issuance and sale of its industrial revenue bonds to be designated "Santa Fe County, New Mexico Taxable Industrial Revenue Bonds (Santa Fe Studios Project), Series 2022" (or such other series designation as provided in the Indenture executed and delivered in connection with the Bonds) in the maximum, aggregate principal amount of \$16,000,000 and the use of the proceeds of the Bonds to finance the cost of the Project and to pay expenses relating thereto.

Section 5. SALE OF THE BONDS. The sale of the Bonds to the Purchaser at a purchase price equal to the par amount of the Bonds is hereby authorized and approved.

Section 6. FORM AND TERM OF THE BONDS. Subject to the limitations set forth in this Bond Ordinance, the Bonds shall be: (i) in the form and shall be numbered and dated all as set forth in the Indenture; (ii) payable as to principal and interest, and subject to optional and mandatory redemption and defeasance in the amounts, upon the conditions and at the times and prices set forth in the Indenture; and, (iii) issued in the principal amount of \$16,000,000, bearing interest at the rates and maturing on the dates set forth in the Indenture. The interest rate on the Bonds shall not exceed 12% per annum. The Board Chair or the County Manager shall sign the Bonds.

Section 7. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS. The form, terms, and provisions of the Bond Documents in the form on deposit in the office of the County Clerk are in all respects approved, authorized, and confirmed, and the County shall enter into such Bond Documents substantially in the form of each such document on deposit with the County Clerk, with only such changes as are not inconsistent with this Bond Ordinance or such other changes as may be approved by supplemental resolution of the Board.

(a) The Board authorizes the Chair or the County Manager to execute and deliver the Bond Documents in the name and on behalf of the County, and the Board authorizes the County Clerk or Deputy County Clerk to attest to, as necessary, the Bond Documents and the Bonds with such changes therein as are not inconsistent with this Bond Ordinance.

(b) The Chair, County Manager, County Treasurer, and County Clerk are further authorized to execute, authenticate, and deliver such certifications, instruments, documents, letters, and other agreements, including security agreements, and to do such other acts and things, either prior to or after the date of delivery of the Bonds, as are necessary or appropriate to consummate the transactions contemplated by the Bond Documents.

(c) The officers of the County shall take such action as is necessary to effectuate the provisions of the Indenture and shall take such action as is necessary in

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conformity with the Act and this Bond Ordinance to finance the costs of the Project and for carrying out other transactions as contemplated by this Bond Ordinance and the Bond Documents, including, without limitation, the execution and delivery of any closing documents to be delivered in connection with the sale and delivery of the Bonds.

Section 8. DELIVERY OF THE BONDS. Upon the execution of the Bond Documents and the satisfaction of the conditions set forth in the Bond Documents, the Bonds shall be executed, authenticated, and delivered to the Purchaser. None of the Bonds shall be valid for any purpose until such Bond has been properly authenticated as set forth in the Indenture.

Section 9. FINDINGS REGARDING PAYMENT OF PRINCIPAL AND INTEREST AND OTHER MATTERS. The Board makes the following determinations and findings in accordance with the Act:

(a) The maximum amount necessary in each year to pay the principal of and interest on the Bonds, assuming issuance of the Bonds as of March 22, 2022 in the amount of \$16,000,000 and bearing interest at the rate of 2.00% is as follows:

<u>Year Ended</u>	<u>Maturing Principal</u>	<u>Interest Amount</u>	<u>Total Debt Service</u>
12/31/23	\$0	\$320,000	\$320,000
12/31/24	\$0	\$320,000	\$320,000
12/31/25	\$0	\$320,000	\$320,000
12/31/26	\$0	\$320,000	\$320,000
12/31/27	\$0	\$320,000	\$320,000
12/31/28	\$0	\$320,000	\$320,000
12/31/29	\$0	\$320,000	\$320,000
12/31/30	\$0	\$320,000	\$320,000
12/31/31	\$0	\$320,000	\$320,000
12/31/32	\$0	\$320,000	\$320,000
12/31/33	\$0	\$320,000	\$320,000
12/31/34	\$0	\$320,000	\$320,000
12/31/35	\$0	\$320,000	\$320,000
12/31/36	\$0	\$320,000	\$320,000
12/31/37	\$0	\$320,000	\$320,000
12/31/38	\$0	\$320,000	\$320,000
12/31/39	\$0	\$320,000	\$320,000
12/31/40	\$0	\$320,000	\$320,000

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12/31/41	\$0	\$320,000	\$320,000
12/31/42	\$0	\$320,000	\$320,000
12/31/43	\$0	\$320,000	\$320,000
12/31/44	\$0	\$320,000	\$320,000
12/31/45	\$0	\$320,000	\$320,000
12/31/46	\$0	\$320,000	\$320,000
12/31/47	\$0	\$320,000	\$320,000
12/31/48	\$0	\$320,000	\$320,000
12/31/49	\$0	\$320,000	\$320,000
12/31/50	\$0	\$320,000	\$320,000
12/31/51	\$0	\$320,000	\$320,000
12/31/52	\$16,000,000	\$320,000	\$320,000

(b) The lease rentals payable under the Lease shall be at least sufficient to pay the principal and interest payments on the Bonds set forth in Paragraph (A) of this Section 9 when due and otherwise render the financing of the Project entirely self-liquidating. There shall be no payments to any reserve fund or sinking fund installment payments.

Section 10. NON TAXABLE TRANSACTION CERTIFICATES. The Company, as agent for the County, will acquire the Project. The County will cooperate with the Company to obtain and allow use of Type 9 Nontaxable Transaction Certificates ("Certificates") that have been properly executed for acquisition of tangible personal property relating to the Project as applicable under the New Mexico Gross Receipts and Compensating Tax Act. The Company shall not use the Certificates other than for such things as may be permitted by law, if any, nor shall the Company use such Certificates after the completion of the Project. No costs, expenses or other monetary relief will be recoverable from the County by vendors of equipment.

Section 11. LIMITED OBLIGATIONS. The Bonds shall be special limited obligations of the County payable solely from the revenues derived from the Lease and payable by the Company as described in the Indenture, and shall never constitute a debt or indebtedness of the County or the State or any political subdivision thereof within the meaning of any provision or limitation of the State Constitution, statutes, or laws of the County, and shall not constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power. Nothing contained in the Bond Ordinance or the Bond Documents, or any other instrument, shall be construed as obligating the County (except with respect to the Project Property and the application of the revenues therefrom and the proceeds of the Bonds, all as provided in the Bond Documents), nor as incurring a pecuniary liability or charge upon the general credit of the County or against its taxing power, nor shall the breach of any agreement contained in the Bond Ordinance,

the Bond Documents, the Bonds, or any other instrument be construed as obligating the County (except with respect to the Project Property and the application of revenues therefrom and the proceeds of the Bonds all as provided in the Bond Documents) nor as incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing power, the County having no power to pay out of its general funds, or otherwise contribute any part of the costs of the Project, nor power to operate the Project as a business or in any manner except as lessor and seller of the Project Property.

Section 12. APPROVAL OF INDEMNIFICATION. The Board specifically approves the provisions of the Lease relating to indemnification which provide that the Company shall indemnify and hold harmless the County and its Commissioners, officials, members, officers, employees, and agents against liability to the Company or to any third parties that may be asserted against the County, its Commissioners, officials, members, officers, employees, and agents with respect to the County's ownership of the Project Property or the issuance of the Bonds and arising from the condition of the Project Property or the acquisition or operation of the Project Property by the Company, except to the extent that Section 56-7-1, New Mexico Statutes Annotated, 1978 Compilation, as amended, applies.

Section 13. BOND ORDINANCE IRREPEALABLE. After the Bonds are issued, this Bond Ordinance shall be and remain irrevocable until the Bonds, including all interest thereon, are fully paid, cancelled, and discharged, or until there has been defeasance of the Bonds in accordance with the Indenture.

Section 14. SEVERABILITY. If any section, paragraph, clause or provision of this Bond Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of that section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Bond Ordinance.

Section 15. REPEALER. All by-laws, ordinances, resolutions, and orders, or parts thereof, inconsistent with this Bond Ordinance are repealed by this Bond Ordinance but only to the extent of that inconsistency. This repealer shall not be construed to revive any ordinance, resolution, or order, or part thereof, previously repealed.

Section 16. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE DATE. This Bond Ordinance, immediately upon its final passage and approval, shall be recorded in the ordinance book of the County, kept for that purpose, and shall be there authenticated by the signature of the Board, and by the signature of the County Clerk or any Deputy County Clerk, and notice of adoption thereof shall be published once in a newspaper that maintains an office in, and is of general circulation in, the County, and shall be in full force and effect following such publication.

Section 17. GENERAL SUMMARY FOR PUBLICATION. The title and general summary of the subject contained in the Bond Ordinance shall be published in substantially the following form:

(Form of Notice to be Published)

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NOTICE OF ADOPTION OF ORDINANCE

SANTA FE COUNTY, NEW MEXICO

NOTICE IS HEREBY GIVEN of the title and of a general summary of the subject matter contained in County Ordinance No. 2022-01 (the "Ordinance"), duly adopted and approved by the Board of County Commissioners of Santa Fe County, New Mexico on February 8, 2022. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the County Clerk in the office of the County Clerk, 100 Catron Street, Santa Fe, New Mexico 87501. The title of the Ordinance is:

AN ORDINANCE

AUTHORIZING THE ISSUANCE AND SALE OF SANTA FE COUNTY, NEW MEXICO INDUSTRIAL REVENUE BONDS (SANTA FE STUDIOS PROJECT) SERIES 2022 IN THE MAXIMUM PRINCIPAL AMOUNT OF \$16,000,000 TO PROVIDE FUNDS TO FINANCE THE RENOVATION, CONSTRUCTION, RECONSTRUCTION, INSTALLATION AND EQUIPPING OF UPGRADES TO EXISTING FACILITIES AND THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF AN EXPANSION OF A FILM STUDIO IN THE UNINCORPORATED PORTION OF THE COUNTY; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, LEASE AGREEMENT, BOND PURCHASE AGREEMENT, THE BONDS AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS AND THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE BONDS AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

THE PRINCIPAL OF, INTEREST ON AND REDEMPTION PRICE, IF ANY, OF THE BONDS WILL NEVER CONSTITUTE AN INDEBTEDNESS OF THE COUNTY WITHIN THE MEANING OF ANY PROVISION OR LIMITATION OF THE CONSTITUTION OR LAWS OF THE STATE OF NEW MEXICO. THE BONDS WILL NEVER CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS.

The title sets forth a general summary of the subject matter contained in the Ordinance.

Dated: February 8, 2022.

/s/ Katharine E. Clark

County Clerk

Santa Fe County, New Mexico

(End of Form of Notice to be Published)

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PASSED, ADOPTED, AND ENACTED this 8TH day of February, 2022.

Anna T. Hamilton

Anna T. Hamilton
Chairman, Board of County
Commissioners

Attest:

Katharine E. Clark

Katharine E. Clark
County Clerk



APPROVED AS TO FORM:

Gregory S. Shaffer

Gregory S. Shaffer
County Attorney

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

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I Hereby Certify That This Instrument Was Filed for
Record On The 9TH Day Of February, 2022 at 08:23:55 AM
And Was Duly Recorded as Instrument # **1979945**
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Katharine E. Clark
County Clerk, Santa Fe, NM

Deputy *Destiny Romero*



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