




COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

BCC MINUTES
PAGES: 159

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Valerie Espinoza

SANTA FE COUNTY

BOARD OF COUNTY COMMISSIONERS

REGULAR MEETING

July 27, 2010

Harry Montoya, Chair – District 1
Virginia Vigil – District 2
Michael Anaya – District 3
Liz Stefanics – District 5
Kathy Holian – District 4

Santa Fe Board of County Commissioners
County Commission Chambers
County Administration Building

REGULAR MEETING
July 27, 2010 at 11:00am

Please turn off Cellular Phones during the meeting.

Amended Agenda

- I. Call To Order
- II. Roll Call
- III. Pledge Of Allegiance
- IV. State Pledge
- V. Invocation
- VI. Approval Of Agenda
 - Amendments
 - Tabled Or Withdrawn Items
- VII. Approval Of Consent Calendar
 - A. Consent Calendar Withdrawals
- VIII. Approval Of Minutes
 - A. Approval Of June 29, 2010 BCC Minutes
- IX. Matters From The County Attorney
 - 1. Executive Session
 - A. Discussion Of Pending Of Threatened Litigation
 - B. Limited Personnel Issues
 - 1. Discussion Of Employment Agreement With Katherine Miller
 - C. Discussion of the Purchase, Acquisition or Disposal of Real Property or Water Rights
 - D. Collective Bargaining
 - 2. Consideration Of And Approval Of The Employment Agreement By And Between The Board And County Commissioners Of Santa Fe County And Katherine Miller.

X. Matters Of Public Concern –NON-ACTION ITEMS

XI. Matters From The Commission

- A. Update On Current Efforts Related To Regional Coalition Of LANL Communities And Direction On Potential Santa Fe County Resources. (Commissioner Holian)
- B. Santa Fe County Fair Announcements (Commissioner Anaya)
- C. A Proclamation In Support Of Graduate New Mexico 2010 (Commissioner Montoya)
- D. Acknowledgement Of The Santa Fe County Convenience Center Caretakers. (Commissioner Anaya)

XII. Appointments/Reappointments/Resignations

- A. Resignation Of Patricio Larragoite As A Member Representing Dental Health Provider On The Santa Fe County Health Policy And Planning Commission. (Community Services/Health & Human Services/HPPC)
- B. Recommendation To City To Appoint Jennifer Jaramillo For A Second Term To Serve On The City Of Santa Fe Library Board

XIII. Consent Calendar

A. Miscellaneous

- 1. Request Approval Of The Accounts Payable Disbursements Made For All Funds For The Month Of June 2010. (Finance Division)
- 2. Request Acknowledgement And Acceptance Of The Independent Auditor's Report For Santa Fe County's Agreed-Upon Procedures For Lodgers' Tax Facilities And The Reporting Of Lodgers Tax. (Finance Division)
- 3. Resolution No. 2010 – A Resolution Authorizing The Donation Of A Kennel To The Hidalgo County Sheriff's Department In Accordance With State Statutes. (County Sheriff's Office)
- 4. Request Approval Of A Caretaker Lease Agreement With Jason Hunter At The Fire Training Facility In Stanley, N.M. In Exchange For Caretaker/Security Services.
- 5. Request Authorization To Enter Into A Contract For Food And Commissary Services. The Purpose Of The Contract Is To Provide Meals And Commissary Services To The Youth Development Program And The Adult Detention Facility. (Corrections Department)
- 6. Request Approval Of A Resolution Accepting The Siler Extension For County Maintenance.
- 7. Request Approval Of Amendment No. 2 To The Professional Service Agreement With Montgomery & Andrews, P.A. For Legal Services To Increase Compensation In The Amount Of \$100,000.
- 8. Request Approval For Increase Of \$90K On Current 4 Year Contract – PSA# 29-1202-99-SD/MV- Santa Fe Animal Control / Professional Services. (TABLED)

- 9. Memorandum Of Understanding Between The County Of Santa Fe And The City Of Santa Fe For Joint GRT Funding For Airport Road Safety And Road Improvements Project Approved By The Regional Planning Authority.
- 10. Request Approval Of Amendment No. 1 To The Property Lease Between The County And Christus St. Vincent Regional Medical Center.

B. Budget Adjustments

- 1. Resolution No. 2010 – A Resolution Requesting An Increase To The Regional Transit Fund (202) To Budget Gross Receipts Tax Revenue Received For The Month Of June 2010 / \$302,978.98. (Finance Division)
- 2. Resolution No. 2010- A Resolution Requesting An Operating Transfer From The General Obligation Bond (GOB) 2001 Series Fund (353) To The GOB Debt Services Fund (401) To Budget Investment Income Revenue For Debt Service Expenditure In Fiscal Year 2010. (Finance Division)
- 3. Resolution No. 2010 – A Resolution Requesting An Operating Transfer From The 2008 GRT Revenue Bond Fund (333) To The GRT Revenue Bond Debt Service Fund (406) To Budget Investment Income Revenue For Debt Service Expenditure In Fiscal Year 2010. (Finance Division)
- 4. Resolution No. 2010 – A resolution Requesting An Operating Transfer From The General Fund (101) To The Economic Development Fund (224) For Expenditures Related To The Santa Fe Business Park / \$184,796. (Finance Division)
- 5. Resolution No. 2010 – A Resolution Requesting To Reverse The Operating Transfer From The General Fund (101) To The Jail Revenue Bond Debt Service Fund (405) And Replace With An Operating Transfer To The Corrections Operations Fund (247) Which Will Be Transferred To The Jail Revenue Bond Debt Service Fund (405) To Correct The Pooled And Non-Pooled Cash In The Jail Revenue Debt Service Fund / \$2,247,315. (Finance Division)
- 6. Resolution No. 2010 – A Resolution Requesting An Increase To The General Fund (101) To Budget Cash Carryover With An Operating Transfer To The Corrections Operations Fund (247) For Modernizing Security Equipment At The Adult Facility / \$203, 628. (Corrections Department)

XIV. Staff And Elected Officials' Items

A. Finance Division

- 1. Review And Discussion Of The Quarterly Financial Report
- 2. Presentation Of The Santa Fe County Advertising & Promotional Efforts Summary From The Santa Fe Communications Group, Inc., DBA Impressions Advertising Inc.

- 3. Resolution No. 2010 – A Resolution Requesting Approval Of The Fiscal Year 2011 Amended Final Budget Which Includes An Increase To The Property Valuation Fund Of \$75,800 And No Other Changes.

B. Community Services Department

- 1. Request Approval Of The Purchase Of An Easement On .03 Acres From The Lucy Moore Trust For The Nine Mile Trailhead Of The Santa Fe Rail Trail (Community Services Department)(TABLED)
- 2. Discussion And Request For Approval Of Change Order No. 3 To The Contract Between Santa Fe County And Bradbury Stamm Construction, Inc., For Construction Of The First Judicial Courthouse Project In The Amount Of \$876,831.17 (Community Services Department)
- 3. Discussion And Request For Approval Of Contract Amendment No. 4 To The Contract Between Santa Fe County And Gerald Martin, Ltd. For Construction Management Services For The New First Judicial Courthouse Project In The Amount Of \$631,490.06 (Community Services Department)
- 4. Discussion And Request For Approval Of An Increase Of Services With Souder, Miller And Associates For Environmental Remediation Services For The New First Judicial Courthouse Project In The Amount Of \$541,243.66 (Community Services Department)
- 5. Discussion And Request For Approval Of An Increase Of Services With INTERA, Inc. For Environmental Remediation Services For The New First Judicial Courthouse Project In The Amount Of \$335,454.97 (Community Services Department)
- 6. Resolution No. 2010 – A Resolution Approving A Declaration Of Trust For Units Built Utilizing A Development Project Grant From The Department Of Housing And Urban Development

C. Matters From The County Manager

D. Matters From The County Attorney

- 1. Ordinance No. 2010 - ____, An Ordinance Authorizing Additional Amendments To The Previously Authorized Economic Development Project With La Luz Holdings, LLC And Santa Fe Film And Media Studios, Inc.
- 2. Consideration And Approval Of The Amended And Restated Project Participation And Land Transfer Agreement By And Between The Board Of County Commissioners, La Luz Holdings, LLC, And Santa Fe Film And Media Studio, Inc.
- 3. Consideration And Approval Of The Amended LEDA Film Grant Agreement By And Between Santa Fe County, The Department Of Finance And Administration And The Economic Development Department

4. Consideration And Approval Of The Form Of The Supplemental Mortgage By And By And Between La Luz Holdings LLC, Santa Fe Film And Media Studios Inc. And Santa Fe County. (Action Item – Form Of Document)
5. Consideration And Approval Of The Form Of The Loan Guaranty Reimbursement Agreement By And Between Santa Fe County, La Luz Holdings LLC And Santa Fe Film And Media Studios. (Action Item – Form Of Document)
6. Consideration And Approval Of The Form Of The Assignment Of A Deposit Account By And Between Santa Fe County And Los Alamos National Bank. (Action Item – Form Of Document)
7. Resolution No. 2010 – ____, A Resolution Delegating To The Interim County Manager The Authority To Execute The Restated And Amended Project Participation And Land Transfer Agreement, The Amended And Restated LEDA Film Grant Agreement From The Department Of Finance And Administration And The Economic Development Department, The Supplemental Mortgage By And Between La Luz Holdings LLC, Santa Fe Film And Media Studios Inc. And Santa Fe County, The Loan Guaranty Reimbursement Agreement By And Between Santa Fe County, La Luz Holdings LLC And Santa Fe Film And Media Studios, The Assignment Of A Deposit Account By And Between Santa Fe County And Los Alamos National Bank, And Other Documents Necessary To Complete The Transaction. (Action Item)
8. Review Of The Loan Agreement By And Between Los Alamos National Bank, Santa Fe Film And Media Studios Inc. And La Luz Holdings LLC. (Review Only – Not An Action Item)
9. Approval Of Resolution No. 2010 – A Resolution Ratifying The Execution Of A Water Rights Lease Agreement Between Santa Fe County And Los Alamos National Bank And Authorizing Continued Performance By The County Under The Lease Agreement.

XV. Adjournment

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SANTA FE COUNTY
REGULAR MEETING
BOARD OF COUNTY COMMISSIONERS

July 27, 2010

This regular meeting of the Santa Fe Board of County Commissioners was called to order at approximately 11:06 a.m. by Chair Harry Montoya, in the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

Following the Pledge of Allegiance led by Gary Gonzales, and the State Pledge led by Daniel Fresquez, roll was called by Deputy County Clerk Vicki Trujillo and indicated the presence of a quorum as follows:

Members Present:

Commissioner, Harry Montoya, Chair
Commissioner Virginia Vigil, Vice Chair
Commissioner Kathy Holian*
Commissioner Liz Stefanics
Commissioner Mike Anaya

Members Excused:

[None]

V. INVOCATION

An invocation was given by Ken Vaughn from the County Clerk's Office.

VI. APPROVAL OF THE AGENDA

- A. Amendments**
- B. Tabled or Withdrawn Items**

PENNY ELLIS-GREEN (Acting County Manager): Mr. Chair, we do have some amendments to the agenda. On the first page, item number IX. We have added under executive session, b. i, Discussion of employment agreement with Katherine Miller. Item 2 under Matters from the County Attorney, we have added Consideration of and approval of employment agreement by and between the Board of County Commissioners of Santa Fe County and Katherine Miller.

* Commissioner Holian participated telephonically for various portions of the meeting.

On page 2 of the agenda we have added item number XI. D, Acknowledgement of the Santa Fe County Convenience Center caretakers. Item XII. B, I had added an item but I would request that that item actually be tabled to allow me time to identify the procedure in appointing this position and to work with the City on this appointment. And that was a recommendation of the City to appoint Jennifer Jaramillo for a second term to serve on the City of Santa Fe Library Board. So I'm asking if that can be tabled today.

Item number XIII. A. 8, Request approval for increase of \$90,000 on the current four-year contract for Santa Fe Animal Control professional services is being tabled.

Item number XIV. A. 3, Resolution No. 2010-__, a resolution requesting approval of the fiscal year 11 amended final budget, which includes an increase to the property evaluation fund of \$75,800 and no other changes – that item has been added to the agenda.

Under XIV. B.3, item number 1 is being tabled. That's request approval of the purchase of an easement of .03 acres from the Lucy Moore Trust for the Nine-Mile Trailhead.

Items number 2 through 5 have been reworded on the agenda, which is why they're shown in red, and they were reworded to add the dollar amounts to those items. And on page 5 of the agenda, item number XIV. D. 9 has been added, Approval of a resolution ratifying the execution of a water rights lease agreement between Santa Fe County and Los Alamos National Bank and authorizing continued performance by the County under the lease agreement.

Those are the changes. Thank you.

CHAIRMAN MONTOYA: Could we go back to B. 3 on page 4, Penny? That's for the First Judicial Courthouse and not for a trail.

MS. ELLIS-GREEN: Mr. Chair, item number 1 is being tabled. That is for a trail. Items number 2, 3, 4, and 5 on that page are shown in red because they were reworded to show the dollar amounts and they're all related to the courthouse.

CHAIRMAN MONTOYA: So it's B. 1, not B. 3 that's being tabled.

MS. ELLIS-GREEN: I'm sorry. Yes. B. 1 is being tabled.

CHAIRMAN MONTOYA: Okay, any other changes from the Board?

COMMISSIONER VIGIL: Move to approve as amended.

CHAIRMAN MONTOYA: Motion by Commissioner Vigil.

COMMISSIONER STEFANICS: Second.

CHAIRMAN MONTOYA: Second by Commissioner Stefanics.

The motion passed by unanimous [4-0] voice vote.

VII. APPROVAL OF CONSENT CALENDAR

A. Consent Calendar Withdrawals

CHAIRMAN MONTOYA: Any withdrawals?

COMMISSIONER STEFANICS: None.

COMMISSIONER ANAYA: Move for approval.

SFC CLERK RECORDED 09/03/2010

COMMISSIONER STEFANICS: Second.

CHAIRMAN MONTOYA: Motion by Commissioner Anaya, second by
Commissioner Stefanics.

The motion passed by unanimous [4-0] voice vote.

XIII. CONSENT CALENDAR

A. Miscellaneous

1. **Request Approval of the Accounts Payable Disbursements Made for All Funds for the Month of June 2010 (Finance Division)**
2. **Request Acknowledgement and Acceptance of the Independent Auditor's Report for Santa Fe County's Agreed-Upon Procedures for Lodgers' Tax Facilities and the Reporting of Lodgers' Tax (Finance Division)**
3. **Resolution No. 2010-116. A Resolution Authorizing the Donation of a Kennel to the Hidalgo County Sheriff's Department in Accordance with State Statutes. (County Sheriff's Office)**
4. **Request Approval of a Caretaker Lease Agreement with Jason Hunter at the Fire Training Facility in Stanley, N.M. in Exchange for Caretaker/Security Services**
5. **Request Authorization to Enter Into a Contract for Food and Commissary Services. The Purpose of the Contract is to Provide Meals and Commissary Services to the Youth Development Program and the Adult Detention Facility (Corrections Department)**
6. **Resolution No. 2010-117. A Resolution Accepting the Siler Extension for County Maintenance**
7. **Request Approval of Amendment No. 2 to the Professional Service Agreement with Montgomery & Andrews, P.a. for Legal Services to Increase Compensation in the Amount of \$100,000**
8. **Request Approval for Increase of \$90K on Current Four-Year Contract – PSA# 29-1202-99-SD/MV- Santa Fe Animal Control / Professional Services (TABLED)**
9. **Memorandum of Understanding between the County of Santa Fe and the City of Santa Fe for Joint GRT Funding for Airport Road Safety and Road Improvements Project Approved by the Regional Planning Authority.**
10. **Request Approval of Amendment No. 1 to the Property Lease between the County and CHRISTUS St. Vincent Regional Medical Center**

B. Budget Adjustments

1. **Resolution No. 2010-118. A Resolution Requesting an Increase to the Regional Transit Fund (202) to Budget Gross Receipts Tax Revenue Received for the Month of June 2010 / \$302,978.98 (Finance Division)**
2. **Resolution No. 2010-119. A Resolution Requesting an Operating Transfer From the General Obligation Bond (GOB) 2001 Series Fund (353) to the GOB Debt Services Fund (401) to Budget Investment Income Revenue for Debt Service Expenditure in Fiscal Year 2010. (Finance Division)**
3. **Resolution No. 2010-120. A Resolution Requesting an Operating Transfer From the 2008 GRT Revenue Bond Fund (333) to the GRT Revenue Bond Debt Service Fund (406) to Budget Investment Income Revenue for Debt Service Expenditure in Fiscal Year 2010 (Finance Division)**
4. **Resolution No. 2010-121. A Resolution Requesting an Operating Transfer From the General Fund (101) to the Economic Development Fund (224) for Expenditures Related to the Santa Fe Business Park / \$184,796. (Finance Division)**
5. **Resolution No. 2010-122. A Resolution Requesting to Reverse the Operating Transfer From the General Fund (101) to the Jail Revenue Bond Debt Service Fund (405) and Replace with an Operating Transfer to the Corrections Operations Fund (247) Which Will Be Transferred to the Jail Revenue Bond Debt Service Fund (405) to Correct the Pooled and Non-Pooled Cash in the Jail Revenue Debt Service Fund / \$2,247,315 (Finance Division)**
6. **Resolution No. 2010-123. A Resolution Requesting an Increase to the General Fund (101) to Budget Cash Carryover with an Operating Transfer to the Corrections Operations Fund (247) for Modernizing Security Equipment at the Adult Facility / \$203, 628 (Corrections Department)**

VIII. APPROVAL OF MINUTES

A. Approval of June 29, 2010 BCC Minutes

COMMISSIONER STEFANICS: Mr. Chair, I move approval of those minutes.

CHAIRMAN MONTOYA: Motion by Commissioner Stefanics.

COMMISSIONER VIGIL: I'll second.

CHAIRMAN MONTOYA: Second by Commissioner Vigil. Any discussion?

The motion passed by unanimous [4-0] voice vote.

IX. MATTERS FROM THE COUNTY ATTORNEY

1. Executive Session

a. Discussion of Pending or Threatened Litigation

b. Limited Personnel Issues

i. Discussion of Employment Agreement with Katherine Miller

c. Discussion of the Purchase, Acquisition or Disposal of Real Property or Water Rights

STEVE ROSS (County Attorney): Mr. Chair, we need a closed executive session to discuss a, b, and c.

CHAIRMAN MONTOYA: Okay. Could I have a motion?

COMMISSIONER ANAYA: Mr. Chair, I move that we go into executive session to discuss items listed by the County Attorney.

COMMISSIONER VIGIL: Second.

CHAIRMAN MONTOYA: I have a motion by Commissioner Anaya, second by Commissioner Vigil. Roll call please.

The motion passed by unanimous [4-0] roll call vote with Commissioners Stefanics, Vigil, Anaya and Montoya all voting in the affirmative.

CHAIRMAN MONTOYA: How long is this going to take, Steve? About 45 minutes?

MR. ROSS: That's a good guess.

CHAIRMAN MONTOYA: Okay. So we'll be back at 12:00.

[The Commission met in closed session from 11:15 to 12:15.]

CHAIRMAN MONTOYA: I'd like to have a motion to come out of executive session where we discussed items IX. 1. a through c.

COMMISSIONER STEFANICS: Mr. Chair, I move that we come out of executive session after having discussed pending or threatened litigation, limited personnel issues, and purchase, acquisition or disposal of real property or water rights.

COMMISSIONER VIGIL: I have a motion by Commissioner Stefanics, second by Commissioner Vigil.

The motion passed by unanimous [4-0] voice vote.

CHAIRMAN MONTOYA: Okay, do we have Commissioner Holian on the

line? Commissioner Stefanics.

COMMISSIONER STEFANICS: Mr. Chair, when we accepted our County Manager's resignation we approved six weeks of additional leave for the manager, and at this time I would like to move an additional six weeks of leave for our past County Manager.

COMMISSIONER VIGIL: I'll second that.

CHAIRMAN MONTOYA: Okay we have a motion by Commissioner Stefanics, second by Commissioner Vigil. Discussion?

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN MONTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: This has nothing to do with the work our Manager has done in the past. He did an awesome job, but I don't think that I can support that because the County is going through some tough times right now and I think that again, he did a good job for us and we're cutting all our services. We're taking cell phones away. We're cutting back percentages on the people that were dedicated to Santa Fe County and I just can't support this. Thank you, Mr. Chair.

CHAIRMAN MONTOYA: Okay. Thank you, Commissioner Anaya. Any other discussion?

The motion passed by majority [3-1] voice vote with Commissioner Anaya casting the nay vote.

IX. 2. Consideration of and Approval of the Employment Agreement by and between the Board and County Commissioners of Santa Fe County and Katherine Miller

COMMISSIONER VIGIL: Mr. Chair.

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER ANAYA: Thank you. It is my honor to make the motion that I'm about to make. As you know, we have been undergoing a search for a new County Manager and I'd like to preface my motion with stating some of the key qualifications of Katherine B. Miller and the motion I will make will be to appoint Katherine B. Miller as our new County Manager. She has extensive experience in public and business administration and financial management with over ten years significant, successful leadership experience in senior management positions with complex local, state and quasi-government agencies. I know we have some members in the audience who are not always affiliated with County government or state government process. Katherine Miller is currently the cabinet secretary of the Department of Finance and Administration.

She has excellent interpersonal skills and public presentation skills. This includes press and media skills. It also includes the handling of political situations and legislative processes, and reporting to and working for many boards, many of which she personally chairs, council

and elected officials, in a public environment. She has in-depth as well as broad-based expertise in management, including staff management, organizational restructuring, financial management and public policy development, contract and budget negotiations, capital planning and financing, revenue development, community relations, economic development and a multitude of other public policy areas. She has the highest level of professional and personal integrity and ethics with a collaborative management style.

And with that, Mr. Chair, I am proud to make the motion that we appoint Katherine B. Miller as our next County Manager.

CHAIRMAN MONTOYA: We have a motion by Commissioner Vigil.

COMMISSIONER STEFANICS: Second.

CHAIRMAN MONTOYA: Second by Commissioner Stefanics. Discussion.

The motion passed by unanimous [4-0] voice vote.

CHAIRMAN MONTOYA: Do we have Commissioner Holian on the line?

MS. ELLIS-GREEN: I don't believe we have her on the line at the moment. I'm sorry. We could call her on the line but the system doesn't seem to be working.

COMMISSIONER VIGIL: And just for the record, Mr. Chair, she wanted to be a part of this motion and vote in the affirmative.

CHAIRMAN MONTOYA: Correct. Thank you for clarifying that, Commissioner Vigil. With that, I'd like to ask our new County Manager if she'd like to say anything. Katherine.

KATHERINE MILLER: I say thank you very much. I think I had made a statement previously that I was fortunate for 5 ½ years, it was my introduction to New Mexico and New Mexico government. It was a wonderful experience, actually. The reason I stayed in New Mexico was working for Santa Fe County. It's a great pleasure and honor to be asked to come back as the Santa Fe County Manager. I know that the County's facing a lot of difficult issues as all local governments, state governments and even our national federal government and the national economy is facing and I hope that my experience in finances, in government and in quasi-government, private industry, all of that will bring good direction and the leadership to Santa Fe County and I look forward to working with the Commission and the employees and the communities to take this County through the difficult economic times ahead.

CHAIRMAN MONTOYA: Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you very much, Mr. Chair, and Katherine, for accepting the offer. I don't know that we indicated when you would start, so could you let everybody know when you'll be starting with the County and if there's anything in particular that you intend to focus on when you come here?

MS. MILLER: Yes, I'll be able to start September 2nd. As Commissioner Vigil stated I currently have a position with the New Mexico Department of Finance. I have to wrap things up there with the department and the administration and have actually discussed the departure with Governor Richardson, so I will be leaving towards the end of August and then

starting September 2nd. One of the first things I want to do and even hopefully I can do some time between now and then is meet with each of you as well as the department directors and other stakeholders for the County just to get a sense of what the current issues are.

The very first thing I want to do is to get up to speed on all of the issues facing the County and where the County is in the process of different issues and make sure that I'm well informed when I do start so that I can hit the ground running.

CHAIRMAN MONTOYA: Thank you. Any other comments?

COMMISSIONER VIGIL: We haven't emphasized what is Katherine's strength and that is finance, and her financial background and her budgeting and I just wanted the audience and the people who are listening to know that when Katherine interviewed she interviewed impeccably and when we spoke to her about policy the first statement she said to us is that your strongest policy are your financial records, how well they're kept and how well they're implemented. Everything associated with budgeting and finance is our strongest policy. What a great focus that was for the Commission and will be for the County. Thank you so much, Katherine.

CHAIRMAN MONTOYA: And Katherine, I'd just like to add that I think at this point in time you're exactly what Santa Fe County needs and I think with the contract that we have in place with you it's going to allow the county residents to see exactly the type of leadership skills you're going to bring to the County to help move us forward, as we continue to move forward as a Class A County. It's really only been eight years that we've been doing this and there's been struggles and certainly I feel that what we've done as a Commission collectively is certainly going to be the best for Santa Fe County residents.

I also want to just thank Nancy Long for her help in this process as well. Nancy, thank you. Appreciate your participation here as well. So thank you, Katherine, and we'll see you very soon.

MS. MILLER: Thank you. I look forward to working with all of you.

CHAIRMAN MONTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Mr. Chair. I'd like to also thank all the other people that applied for County Manager. We had a lot of good applicants and I want to thank them for applying. Katherine, thank you for accepting, and we have a lot of work to do. As you recognize some of the issues, I do agree with the Commissioners on what they're saying. I think we need to work together, not only with the Commission but the entire staff, the directors and the community to see if we can get Santa Fe County working on getting back on the track again. Thank you and welcome.

MS. MILLER: Thank you.

X. MATTERS OF PUBLIC CONCERN: NON-ACTION ITEMS

CHAIRMAN MONTOYA: These are non-action items and if anyone would like to address the Commission on items that are not on the agenda. Pablo Sedillo, I'd like to

recognize you. Pablo, thank you for being here, the representative from Senator Bingaman's office and deputy secretary Rick Martinez. Rick, we have a new leader for Santa Fe County and you're losing one at the State of New Mexico but thank you for being here. Do you have something, sir? Go ahead and come on up.

BRUCE WEATHERBY: Thank you, Mr. Chair, members of the Commission. My name is Bruce Weatherby. I am a member of IATSE Local 480, the film technicians union. I'm also president of the Northern New Mexico Central Labor Council. And I understand that you will be taking up later today items relative to the Santa Fe Studios. I mention my involvement with the Central Labor Council more as someone who's concerned about addressing economic development in the county and I want to applaud all of you for your hard work up to this point in trying to get something going south of Santa Fe, the city limits in Santa Fe County for the studios.

I realize that this has been a difficult year and it's been a difficult situation politically for a lot of people. I served in state government and in local government from the state I was in, in Massachusetts. I was a state rep, I was a local official at a municipal level. We don't have too much county government activities back in the northeast but much of the role that I played in government as a young man were what you have to deal with each day. So I appreciate the hard work, listening that you have to do for feedback from constituents and how many times there's conflict between constituents' needs and requests and points of view and that you have to weigh them all out there.

It's very easy for people to criticize the efforts that are made to try to move us forward. It's always easy to sit back and throw a stone or find a gottcha moment or whatever. I say this because I've done a lot of work recently in studying what film has done in New Mexico and the growth in the industry and the potential it has to create a lot of jobs for New Mexicans and for people in Santa Fe County. I hope that later today when that issue comes up that we make another step forward and I encourage you to continue your support.

I know everybody's been raking over the coals so to speak on some of these issues. Some people might not like the individuals involved. Personally, I don't particularly care for a couple of the people involved but that's a personal decision and a personal feeling. I think it's really important that we move forward and we go ahead with the fine work you've done so far and recognize that while government isn't the solution to everything, it's not what President Reagan said before. It's not the problem. The government is us. And yes, we all have problems and we need to address them and we need to move forward. And I think you've done the right thing in bring this forward, even if some of us don't like some individuals, don't like the politics, don't like whatever, if it's going to help some of our brothers and sisters out there who need work and is going to create a potentially significant improvement for our economy then we should move forward, personal issues aside. I thank you all and again I thank you. I know a couple of you are leaving at the end of this year. I want to personally thank you as a former public official for your hard work, even if I wouldn't agree with you on something and even if you don't make the decision I'd like later today, I want to thank you both for your fine work and your willingness to stick up for us. And by the way, just from a personal point of view and as

someone who's involved and hopes to be talking to the County about labor issues over the next few years, I think you made an excellent choice. It was obviously an excellent choice in the new County Manager and I wish you all and Ms. Miller the success that you all deserve. Thank you very much.

CHAIRMAN MONTOYA: Thank you, Mr. Weatherby. Okay. Anyone else who like to address the Commission?

XI. MATTERS FROM THE COMMISSION

A. Update on Current Efforts Related to Regional Coalition of LANL Communities and Direction on Potential Santa Fe County Resources. (Commissioner Holian)

DUNCAN SILL (Economic Development): Mr. Chair, Commissioners, good morning. Commissioner Holian is away for this meeting and she had asked me to share some information to provide an update to the Board of County Commissioners. She had previously given various updates during Commission meetings about the progress of the coalition. Today I also have members from the Los Alamos County Council here so I want to make a brief introduction for Councilor Sharon Stover and Councilor Gibson, along with their County Administrator, Tony Mortillaro, who will also be available to answer any questions concerning the coalition.

A little while back, back in the fall and winter of this year Los Alamos County invited various local governments to attend an informational session up in Los Alamos to review some issues that might be impact created from the laboratory, Los Alamos Laboratory. And specific invitees included members of the DOE, NMSA and other local community members. The congressional delegation also participated – Pablo Sedillo with Senator Bingaman's office and I believe Udall and Lujan's office also had representatives. In summary, the Regional Coalition of LANL Community was actually hosted by Santa Fe County down here and we sent an invitation to tribal governments to participate after that as well.

So there have been regular monthly meetings to discuss the purpose of the coalition. There has been some work towards drafting some components of the strategic plan, discussions about budget items and it was that topic that I wanted to bring to your attention today. In the process I put together some background information concerning the economic impact of the lab. As you can see, it's quite significant. Almost 2,800 within the city and county of Santa Fe has employment with the lab, leading to almost \$220 million on an annual basis. In addition to that, close to \$400 million in procurement is dedicated – well, not dedicated. It's actually procured within the northern New Mexico region. So we can see that anything that happens up in the lab really affects this region in a great manner and obviously the impact is even greater for Los Alamos County. So they're taking a significant interest in this.

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Los Alamos County in the recent months drafted several scenarios of a budget that would move the coalition along with staffing, with relevant material and supporting efforts that would actually help the region to take the next step. At the same time we continue to get the involvement of tribal entities. As a matter of fact on August 2nd, Monday, Santa Fe County will host another one of these meetings here in the chambers and hopefully we could also get some tribal participation at that point.

The detailed budget scenarios are presented in your packet. The purpose of today's discussion is just to get some direction and feedback about how Santa Fe County would like to approach this situation and maybe consider one or two other scenarios and further the discussions amongst the coalition members and participants.

One of the other things I want to stress in here is that in the scenarios presented in your packet it ranges from an annual budget of \$125,000 up to \$350,000. So with that said, I want to turn it over to the Board of County Commissioners for discussion and vote.

CHAIRMAN MONTOYA: Okay. Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Mr. Chair. I'm wondering, Duncan, if you or some of our guests from Los Alamos could tell us specifically some of the goals of this group. We're in a very tight financial year so we'd like to know what our funds would be expended on if the group decides they can manage this at any level.

MR. SILL: Mr. Chair, Commissioner Stefanics, I would like to ask one of the Los Alamos County folks to address that specifically.

SHARON STOVER: Good afternoon, Commissioners. I'm Sharon Stover, vice chair of Las Alamos County Council and thank you for having us. Actually this group, as Duncan said, got together in January. There was a facilitator working with a whole bunch of community regional people and they worked on a mission statement and goals, and I'll read you the goals that we worked on and put together. Engage LANL, DOE, the State of New Mexico and others on site issues, increase the community voice, including state and federal legislative advocacy, discuss and proactively address issues and strategize on how to meet regional needs, identify and support economic opportunities to promote LANL activities offsite, ensure site activities and cleanup protect human health and the environment.

Before we started on this we talked to groups like the Kirkland group, the group of 50, where they are all speaking together as one voice with the region and we found that that kind of model works well with our federal delegation. Instead of coming from different entities it's one voice within the entire region.

CHAIRMAN MONTOYA: Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, so has the request also been made of the City of Santa Fe to participate in this?

COUNCILOR STOVER: Yes, and they have also participated in the mission statement, the goals as well.

COMMISSIONER STEFANICS: So Mr. Chair, and Councilor, has the City of Santa Fe identified an amount?

COUNCILOR STOVER: At this point I don't think an amount was discussed. The mayor attended the last meeting. Some numbers were thrown out but nothing that I would say that they have signed on the dotted line.

COMMISSIONER STEFANICS: So, Mr. Chair, you mentioned advocacy. Do you see this group, and specifically the staff, doing advocacy in DC?

COUNCILOR STOVER: Yes.

COMMISSIONER STEFANICS: Okay. I think that's all I have for right now. Thank you, Mr. Chair.

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: Thanks. Is this the group that sort of blossomed from the broadband initiative?

COUNCILOR STOVER: There's probably members in that group that actually did – I'll give you a story. A great story. Grace under fire. There was at that point the UC contract was up and as a region, the City of Santa Fe, Santa Fe County, Santa Fe Chamber, the pueblos, Los Alamos, Rio Arriba, Taos, there were 14 of us. But unbeknownst to anybody, LANL went and said this is not the time, the right time to deal with that contract with the University of California. We were all speaking with one voice and that contract then was extended. So it was that kind of idea and other entities have made their impact with the congressional folks when they speak with one voice. And also, with the recent changes with Senator Domenici who some in the region refer to as St. Pete, and we also got great support from Senator Bingaman as well, but that was some of the thought that was given to getting this group going.

COMMISSIONER VIGIL: Would the focus of the group be strictly advocacy in Washington?

COUNCILOR STOVER: Advocacy, in Washington but also within the state, advocacy for LANL.

COMMISSIONER VIGIL: Okay. I'm wondering how this group distinguishes itself, and that's probably one of the ways, from Northern New Mexico Economic Development organization and from the Española Basin Economic Development. So maybe if you are going to form strictly an advocacy that might the distinguishing feature. Please respond.

ROBERT GIBSON: Mr. Chair, Commissioner Vigil, I'm Robert Gibson, County Councilor from Los Alamos. There are a number of regional issues and there have been in some cases different organizations formed to address them. READY is one initiative. Broadband is really – it has grown out of that particular initiative. Those are more economic, ecological. This one as you pointed is distinctive in that it is really focused in a different dimension and although the same entities in many cases are involved and in some cases the same individuals, it really does have a very different focus.

COMMISSIONER VIGIL: Okay. Mr. Chair, this question I guess is the clarification. All we're really hearing today is an update on this. There's no specific action that's required? Is that correct? I'll defer to Legal on that. That's how it's actually drafted on

the agenda. It says update on current efforts. It's under Matters of Public Concern, non-action items and then Matters from the Commission. You're not looking for a motion here on anything are you?

MR. ROSS: Mr. Chair, Commissioner Vigil, no. I understand there's a draft JPA floating around. A draft JPA.

COMMISSIONER VIGIL: Okay. Do we have to take action on that JPA? Or is that a separate item in the future?

MR. ROSS: In the future, yes.

COMMISSIONER VIGIL: Okay. Thank you. That's all I need to clarify. Thank you, Mr. Chair.

CHAIRMAN MONTOYA: Does that JPA have dollars, resources included in that?

MR. ROSS: Mr. Chair, I got it but I haven't looked at it. I'm sorry.

COUNCILOR STOVER: We don't have a specific dollar amount. And one thing on the dollar amount I'd like to point out. Pablo Sedillo is here. The congressional folks have indicated there are possible federal dollars. So those money would also maybe leverage federal dollars today to see other entities like this working in different regions. So that is also the hope for us.

COUNCILOR GIBSON: Mr. Chair, it is correct that at this point we're not anticipating necessarily hard commitments but we are trying to develop a scope of activity consistent with the goals and that of course has to be consistent with resources available. So as you pointed out we did have discussions in previous meetings among the different entities what might the different entities be able to contribute or what level might they be able to participate financially. It would be helpful if we were starting to get some ideas of what individual entities could contribute, not looking for commitments at this point. But around the table the last time different entities were starting to throw out different numbers and at some point we'll need to summarize those. But any thoughts that you have or guidance that you might be able to provide to your staff as to what level you folks would be comfortable with would be helpful in the planning process.

CHAIRMAN MONTOYA: Okay. Were there any numbers at all that have been – Pablo, would you please maybe come and give us your perspective as well.

PABLO SEDILLO: Thank you, Mr. Chair and Commissioner. Actually, this is a concept that is not new. It is something that we've been working on as both Councilors have indicated. There is more of an energy to create regional projects. And the Regional Coalition of LANL Communities is precisely that, to ensure that if [inaudible] at LANL it's going to affect all of our communities. And that's the kind of advocacy. Sort of like Cannon Air force Base in Clovis. You will recall that they were about to close that air force base. There was a coalition between [inaudible] the state, both senators, and the members of congress that helped to save that.

So we're hoping that we can avert anything that would affect our communities. Any more than that is to look at projects that are going to benefit the region. This is something

that the Senator supports and I'm sure that other members of Congress support this whole concept of regionalization. As you know, the federal funds as well as County and State funds are just not there. So we just have to make the best to come together and look at local funds, state, county funds, as well as federal funds. This is really a partnership that we're looking for.

CHAIRMAN MONTOYA: Thank you, Pablo. Commissioner Vigil.

COMMISSIONER VIGIL: Thank you. I so appreciate Mr. Sedillo for being here. Thank you for joining us today. I'm totally a believer in regionalization. I'm particularly glad that Los Alamos has taken, at least identifiably by the title, a leadership role, since you have the accessibility to funding at a level that other components of this regional organization doesn't. So thank you very much for undertaking this and I think it could be a very successful model. I hope we're able to fulfill our commitments to that financially. At this point in time you have our energy.

CHAIRMAN MONTOYA: So let me just – in looking at this draft funding formula. If we were to consult with the City we would be looking at paying half of this \$31,250?

COUNCILOR STOVER: One moment, Mr. Chair. Yes. It depends on what kind of budget. There's different – as Councilor Gibson was pointing out, if you look at the goals and what you want to do within that budget. So with the \$350,000 – I think Tony could outline what the different components more specifically within the budget. That would be helpful. The \$350,000 is the Cadillac.

CHAIRMAN MONTOYA: Okay.

COUNCILOR GIBSON: And of course, between the City and the County that would be up to you folks to try to decide how to divide that up.

COUNCILOR STOVER: Would you like to hear the components within each budget a little bit?

CHAIRMAN MONTOYA: Sure.

COUNCILOR STOVER: Tony, do you want to cover that?

TONY MORTILLARO: Good afternoon, Mr. Chair, County Commissioners. As Councilor Stover indicated, there are three different funding scenarios here and the difference between the three funding scenarios is the level of staffing, which would actually relate to the level of effort that the organization would be expected to put forward. Basically, under the \$125,000 budget all the entity would be an executive director and we'd probably end up providing some kind of other support to the entity through our own contributions of either space or other staff.

When you get into the \$200,000 budget there's an executive director and there's a program manager that would work with the executive director and that program manager would have more of a technical background since some of the issues would relate to potential cleanup and remediation matters out at the laboratory and it's important that that person has some kind of a technical background.

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Then the \$350,000 budget has basically secretarial support through an administrative assistant and obviously, the fringes go up based on the amount of salary that you're paying; it's normally a percentage of salaries. But for the most part those are the differences in the three levels of budget.

CHAIRMAN MONTOYA: Okay.

COMMISSIONER STEFANICS: Mr. Chair.

CHAIRMAN MONTOYA: Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Mr. Chair. I understand that we might not be taking action on this today but I believe that Commissioner Holian as a part of the group and some of us are attending the meeting on Monday here in our chambers about this. We're looking for – she was hoping to provide some comment about whether we would commit or not. And right now, I've expressed several times, I oftentimes am the nay-sayer financially, but I'm expressing the fact that we have a limited budget. So if we were to consider something that would be moving forward I would certainly think it would be at the lowest level and probably split with the City of Santa Fe. So I just wanted to put that comment out there because it does look like, from the memo that was attached, that Commissioner Holian was hoping to make some kind of comment on Monday morning at the meeting that's being hosted here. So we are concerned about our budget. We are pulling back on several things. So I just wanted to put that out. Thank you.

CHAIRMAN MONTOYA: Okay. Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Mr. Chair. I know I've been involved in this regional coalition from the beginning and I strongly support it, and I too tend to agree with Commissioner Stefanics about the budget. But we'll look at what we can find so we can see what kind of answers we can give you. But I think – and I also want to thank the Councilors and the Manager and Pablo. I know you guys have worked really hard on trying to get this thing moving and you haven't let it drop and I'm proud of it. So keep going. Thank you, Mr. Chair.

CHAIRMAN MONTOYA: Okay. And I have heard, I don't know if it's true, that the Mayor had said Santa Fe that he would put in \$80,000.

COUNCILOR STOVER: Mr. Chair, I need to correct that. That is not correct.

CHAIRMAN MONTOYA: Oh, that's not correct.

COUNCILOR STOVER: That is not correct. A number was - \$30,000 to \$50,000 is correct.

CHAIRMAN MONTOYA: Oh, okay. And Commissioner Holian definitely said [inaudible] And I just want to thank Commissioner Anaya and Commissioner Montoya and also Commissioner Holian because you guys were the ones that stepped up to the plate and hosted the first one in Santa Fe and it was very nice. And now we're coming back again, after everybody else has hosted it. So we're back in Santa Fe County. So, thank you.

CHAIRMAN MONTOYA: Okay. Thank you, Councilor. I guess just for purposes of direction I would agree that why don't we look at the – at least the initial \$125,000 budget and see what we can negotiate with the City of Santa Fe and see what

hopefully we can come up with something in terms of the split. Are you okay with that, Commissioner Vigil?

COMMISSIONER VIGIL: Yes.

CHAIRMAN MONTROYA: Commissioner Anaya?

COMMISSIONER ANAYA: Yes.

CHAIRMAN MONTROYA: Commissioner Stefanics?

COMMISSIONER STEFANICS: Yes. And Mr. Chair, on this topic, staff – I know that all of the Commissioners were invited to Monday meeting so if more than two of us are attending I hope it's noticed.

MS. ELLIS-GREEN: Mr. Chair, Commissioner, we have noticed it.

COMMISSIONER STEFANICS: Thank you very much.

CHAIRMAN MONTROYA: Thank you, Councilor Stover, Pablo, Councilor Gibson, Tony. Thank you. Thank you, Duncan.

XI. B. Santa Fe County Fair Announcements (Commissioner Anaya)

COMMISSIONER ANAYA: Thank you, Mr. Chair. It's County Fair time again and I wanted to invite the County Fair Board and the Fair Queen and Princess to come forward and kind of give us a little update on what they're doing at the County Fair and I'd like to introduce our Fair Queen, Sara Zimmerman, and the County Fair Princess, Sydney Stewart. Thank you all for being here and I'll turn it over to you and let us know what's happening.

SYDNEY STEWART: Thank you, Mr. Chair. We're here to talk about the Santa Fe County Fair which as you know will be happening next week, August 4th through 8th. So we're here today to talk to you about the events that you can participate in at the County Fair. The first is a pet show that children are invited to where they can show off their tricks with their pets as well as compete. We also have fair visitors will get the opportunity to do the livestock shows and also the livestock fairs and maybe even be a part of the 4-H – doing a livestock auction on Saturday, August 7th. You also have the chance to see all of the 4-H and FHA youth indoor projects in our exhibit halls.

SARA ZIMMERMAN: The Santa Fe County Fair is an exciting event for you and your family, as well as friends. We invite you to come along and [inaudible] It takes place Thursday, August 4th through Sunday, August 8th, and we are located on Rodeo Road between the [inaudible] and the Rodeo de Santa Fe. Thank you, and we'll see you at the Santa Fe County Fair.

COMMISSIONER VIGIL: Thank you very much. Any response?
Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Mr. Chair. I think that the County Fair is a great experience. I've had the opportunity to be there several times and I really commend all the adults who are working with the children. I commend all of our youth,

children and teenagers and young adults and their work with animals and economics and home crafts. So thank you so much for everything that you're doing. It's very worthwhile.

MS. ZIMMERMAN: Thank you.

COMMISSIONER VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Madam Chair and thank you Queen and Princess for coming. And I'd also like to recognize some of the fair board that's in the audience. We have our chairman, John Thompson. John, thank you for being here. The vice chair, Tommy Spindle. Tommy, thanks for being here. And a member, Beth Gray. Beth. And another member and former chairman, Billy Runner. Billy, thank you for being here. We also have some of the kids that are in attendance. We have Jordan Spindle, Jordan. We have Abby Spindle. And Ashley Thompson. Thank you. Would you like to say something, Jordan? Okay. So with that, I'd like to again thank you for coming and I know – is there anything – maybe I'll look at you, Greg. Is there anything that the County needs, that you need from us to keep the County Fair running properly this year. I know you guys are on it, but I want to ask.

GREG SMITH (Indigent Fund Manager): Madam Chair, Commissioners, Commissioner Anaya, just your continued support, the Commission's continued support of this very crucial program, not just on behalf of the kids but for the community as a whole. It's very valuable to everybody around and we could use \$1.5 million but we're not here to ask for money. We're just here to tell the Commission and all of the County staffers, from Public Works to our maintenance, to all the CSD, Community Services Department, everybody is so crucial to being able to put this County Fair on and I greatly appreciate the help of the County staff as well. So again, it's just about telling you thank you and I'd love to see you out at the County Fair.

COMMISSIONER ANAYA: Thank you, Greg, and I know that Larry Narvaiz is always out there helping and maybe we can get him out there again with some other staff that has been out there that know what's going on during the fair and prior to the fair. So with that, Mr. Chair, I was wondering if maybe we could take a picture with the group that we have here.

CHAIRMAN MONTOYA: Sure, and have those New Mexico State Aggies right in front of you too.

COMMISSIONER VIGIL: What about us Lobos?

XI. C. A Proclamation in Support of Graduate New Mexico 2010 (Commissioner Montoya)

CHAIRMAN MONTOYA: I'll just briefly read this proclamation. This is the kickoff of a program that's going to be starting here and I believe the kickoff is going to be this Friday and the proclamation reads:]

Whereas, economic and community development are common goals for public and private institutions in Santa Fe; and

Whereas, local community capacity enhances success; and

Whereas, education is central to the economic vitality and quality of life for Santa Fe residents; and

Whereas, Graduate New Mexico will encourage partnerships between schools and other community resources focused on academic services, supports and opportunities for improved student learning, stronger families and healthier communities; and

Whereas, Graduate New Mexico partnerships will improve student learning by addressing the need of the whole student – physical, social and emotional as well as academic – by creating conditions that enable every student to succeed; and

Whereas, Graduate New Mexico promotes family engagement with students and families by providing access to existing community services; and

Whereas, Graduate New Mexico will help schools function more effectively because parents, schools and community partners will work together to support learning; and

Whereas, Graduate New Mexico partnerships will play a vital role in community building by improving community knowledge of school initiatives, increasing awareness and use of community agencies and access to school facilities, and strengthening community pride and engagement; and

Whereas, a collaborative partnership between the Santa Fe Public Schools, City of Santa Fe, the County of Santa Fe, Graduate New Mexico and local non-governmental organizations making high school graduation everybody's business will enable every student to succeed;

Now, therefore be it resolved that the Santa Fe County Board of County Commissioners we do hereby proclaim July 30, 2010 Graduate New Mexico Day throughout Santa Fe County.

I would move for approval of the proclamation.

COMMISSIONER VIGIL: Second.

CHAIRMAN MONTROYA: Second by Commissioner Vigil. Any discussion?

The motion passed by unanimous [4-0] voice vote.

CHAIRMAN MONTROYA: Thanks again. I would just like to recognize Miguel Acosta who has been behind this, spearheading this effort and I know he couldn't stick around with us.

XI. D. Acknowledgement of the Santa Fe County Convenience Center Caretakers (Commissioner Anaya)

COMMISSIONER ANAYA: Thank you, Mr. Chair. I think if we could get all the caretakers to come forward and sit on the front pew up here. I think it's important that we acknowledge the caretakers that take care of our convenience and transfer stations throughout

the county, and I know all of you have seen these individuals working very, very hard for us. I thank you, Mr. Chair, for allowing us to put this on the agenda.

The caretakers, they work at our transfer stations and they see the people coming in and out and they're not always having friendly conversations with them, because people aren't obeying the rules, but I wanted to bring you all forward so that we could acknowledge you and thank you for what you do for this great county of ours, and that you continue to do what you're doing and that's treat people with respect. And I know it's difficult sometimes but we thank you and we've got a little certificate that we'd like to give you and if I could, Commissioners, I'd ask us all to go down there and help us hand these certificates out. Unless you all have any other comments.

COMMISSIONER STEFANICS: Mr. Chair.

CHAIRMAN MONTOYA: Commissioner Stefanics, Commissioner Vigil.

COMMISSIONER STEFANICS: Thank you for bringing this forward, Commissioner Anaya. I think it's very important and the person that works in my transfer station I truly appreciate, but I know that all of you are the face to the public, and that the public really relies upon having a friendly, professional individual at that transfer station, or carrying materials back and forth. And I truly appreciate all of your work and please remember you are our public relations face to the County to all of these people who are coming to the transfer stations. Thank you for your hard work.

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: Thank you. I also want to thank Commissioner Anaya for bringing this forward and a special thank you to all of you who do serve Santa Fe County out there. I totally agree with Commissioner Stefanics. You are the face of Santa Fe County. You probably encounter the public on a day-to-day basis more than we do as Commissioners. So how you represent Santa Fe County is a representation and extension of who we all are. So my appreciation for the day-to-day activity that you're engaged in, the day-to-day problem solving that you personally have to go through. I'm sure that you have customers who come through the lines and who have a variety of fact patterns that you have to problem solve with and at the same time do it to the best of your ability in representing the County. Solid waste management is critical for our community. Currently and for its future, continue to do the great job that you're doing. You're the good, the bad and the ugly many times and the nice thing about what you do and your responsibilities is I hear a lot of good. So thank you so much for what you do.

CHAIRMAN MONTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, I have one more thing that I'd like to say and that is I got a job with Santa Fe County when I was in high school. I got that job from Commissioner Fernandez. You've heard this story, I guess. But I wanted to let you all know that my job was I was a caretaker for the dump. And I took care of all of them when you all went on vacation. So that was my job at the County when I first started way back when, 20, 30 years ago. And I just wanted to share that with you and I know how difficult it is and what you deal with on a day-to-day basis. So thank you.

CHAIRMAN MONTOYA: I'd just like to add my – they said it all. Thank you. Thank you. Thank you. I appreciate what you do. Thank you.

The following caretakers were presented with certificates: Michael Vigil from Nambe; Levi Martinez and Joseph Griego from Jacona; Rudy Anaya from Tesuque; Andrea Roberts, Andrew Vigil and Alex Grant from La Cienega; Jim Gumpolen and William Mares from Eldorado; Kim Gumpolen from San Marcos; Brett Garris from Stanley; and Les Francisco, the Solid Waste Superintendent.

XI. OTHER MATTERS FROM THE COMMISSION

CHAIRMAN MONTOYA: Commissioner Stefanics.

COMMISSIONER STEFANICS: Nothing at this time. Thank you very much, but I just would like to thank the staff for their continuing work and Penny for stepping in as County Manager until we're all settled. Thank you.

CHAIRMAN MONTOYA: Okay. Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Mr. Chair. I just want to get an update on – I know we've put out the water hauler thing where people can get water using a credit card, and I'm wanting to know how that is. Are we still working on that, Penny?

MS. ELLIS-GREEN: Mr. Chair, Commissioners, I understand there are permitting issues and we are working through that issue. I hope to get it resolved fairly soon.

COMMISSIONER ANAYA: Okay, great, because I'm glad to see that it's up but I want to see it running properly. And I'd like to thank Commissioner Stefanics. I just found out the other day that when we had a late meeting about the Boys and Girls Ranch. It was going on and on. I got up to use the restroom and the lady got upset because I left, and I was coming back, but I didn't know that you had stuck up for me. And I know you would stick up for all the Commissioners, but I wanted to thank you for doing that. I just found out recently that you had done that. So thank you, Commissioner.

I want to send my condolences to Shelley Cobau. She lost her sister. And then this stormwater management ordinance that we have approved. I think probably four or five years ago. I've been receiving some phone calls that it's really not that friendly towards people that are trying to develop property. So I'm wondering if we could maybe relook at that, some of the issues, and I can get you in touch with the person that had the problem with it. That way we can just talk briefly to see if we can address some changes, maybe.

And then I know that we have extended the business registration period for people to come in with businesses. Are we just accepting any business? Or how does that work?

MS. ELLIS-GREEN: Mr. Chair, Commissioner, what happened with that is that we have a list of people who are registered as business owners with the state who did not have business licenses with Santa Fe County. So several months ago we sent out a letter allowing them to come in and go through an abbreviated process as far as filing an

application and paying a fee. I understand we've had quite a few hundred businesses do that, but when the deadline happened we still had still had some businesses coming in. Some people had been out of state and hadn't received our initial letter. So we did keep that open until the end of this month.

COMMISSIONER ANAYA: Okay. So they have till the 30th.

MS. ELLIS-GREEN: That's correct.

COMMISSIONER ANAYA: And then there's one other thing that I want to talk about and that is the cell phones. I know that we're on a budget crunch and we're trying to cut back on everything that we can to make up the difference. But there's some people out there that just need a cell phone and by not having a cell phone or some way to communicate with them, how can we continue to do business properly? So I guess what I'm saying is before you take somebody's cell phone away maybe you really need to analyze it to see if it doesn't affect the job that they're doing. I can see taking a cell phone away from somebody that sits behind a desk that's by a telephone. But if you have construction workers that need the cell phone to communicate as their form of communication and we need to get a hold of them I think it's important that we maybe let them keep their phone.

Now, I don't know how many scenarios there are of that, but before we just wipe out cell phones and say no more cell phones we need to somehow have some sort of communication. Whether it be by two-way radio – something. That's all I have, Mr. Chair. Thank you.

CHAIRMAN MONTROYA: Commissioner Vigil.

COMMISSIONER VIGIL: Mr. Chair, I would just say we have a new County Manager coming in September 2nd who is going to be a very strong leader, has an excellent finance background and I think will be able to provide a lot of guidance with regard to the budget cuts and how those can be done. So whatever direction we may be giving now I don't know that you want to take final action on it without consulting with our new County Manager because I think that her input is going to be significant to that. And it's a short period of time that she'll be coming in. So Penny, I don't want to inundate you with too much in your interim responsibility. I know that some of the budget policy decisions that we made are in place and I applaud everyone who's been working towards that, but with regard to any policy changes and budget adjustments and finance issues, I really think as much as we can we need to bring our new County Manager in on that. Thank you, Mr. Chair.

COMMISSIONER STEFANICS: Mr. Chair.

CHAIRMAN MONTROYA: Commissioner Anaya and then Commissioner Stefanics.

COMMISSIONER ANAYA: Mr. Chair, I apologize. I had one more thing that I wanted to comment on. At the Galisteo Rodeo, this happened this last weekend or two weekends ago. One of the contestants, Kenny McOsker, he was a bronc rider from Edgewood and he passed away. He got kicked in the head by a horse and died and our condolences go out to the whole family, and they are setting up a memorial fund in Kenny McOsker's name, has been established at Wells Fargo Bank to benefit his family. He had a 14-year old

daughter, a 6-year old son, and a 17-month old son and another baby on the way. So Mr. Chair, our condolences go out to Kenny. Thank you.

CHAIRMAN MONTOYA: Okay. Commissioner Stefanics

COMMISSIONER STEFANICS: Mr. Chair, I wanted to go back to the point that Commissioner Anaya was bringing up. Penny, are we providing two-way radios or walkie-talkies to staff out on the road?

MS. ELLIS-GREEN: Mr. Chair, Commissioners, the field staff whose telephones were taken away, the ones that are regularly out in the field do have radios. I understand they don't have great coverage, so we're looking at getting our own repeater so we have a much better coverage. Once we've got that we may look at some additional cuts as well. So once people know the radios are up and running people out in the field would go by radio rather than by cell phone.

COMMISSIONER STEFANICS: So, Mr. Chair and Penny, could I ask you that you give us an update at the next meeting about that? The two-way communication and the safety issues? Thank you.

CHAIRMAN MONTOYA: Okay. And I just have a couple of reminders. Tomorrow is the Intergovernmental Summit and I'm hoping that Commissioners will be able to attend, 8:30 to 3:30 at Bishop's Lodge, and then on Thursday, the Santa Fe Mountain Center is having a luncheon out at their facility, recognizing and thanking the Commissioners and legislators who have helped in terms of providing some resources to the Santa Fe Mountain Center. And then the Graduate New Mexico is this Friday at the Santa Fe Boys and Girls Club. I invite everybody from 9:30 to 11:00. Governor Richardson is expected to be there as well in terms of helping to kick off the events on that day, so just a few reminders there.

And then again, I think it was mentioned on Monday we will be hosting the regional coalition for Los Alamos National Laboratories. That particular meeting, I believe it's from 10:00 to 1:00, something like that. So I just wanted to mention that as well. So with that, what are the wishes of the Commission? It is 1:25.

COMMISSIONER VIGIL: Mr. Chair, I do notice the Lodgers' Tax is here. Is that an item that we could handle before we break for lunch so that – I believe our Lodgers' Tax contractee is probably here from out of town. No? He lives here. What item is that, Teresa?

CHAIRMAN MONTOYA: It's the bottom of page 3, item XIV. A. 2.

COMMISSIONER STEFANICS: Mr. Chair, I really would appreciate taking the break.

CHAIRMAN MONTOYA: Okay. When we come back we will continue on item XII. That will be the appointments and reappointments and resignations.

COMMISSIONER VIGIL: We actually can do appointments now, can't we?

XII. APPOINTMENTS/REAPPOINTMENTS/RESIGNATIONS

A. Resignation of Patricio Larragoite as a Member Representing Dental Health Provider on the Santa Fe County Health Policy and Planning Commission (Community Services/Health & Human Services/HPPC)

COMMISSIONER STEFANICS: I would move, Mr. Chair, just to take care of that item that we accept the resignation of Patricio Larragoite.

COMMISSIONER VIGIL: I second that and I also second it in hopes that the Santa Fe County Health Policy and Planning Commission provides a certificate of appreciation or letter of appreciation to Dr. Patricio Larragoite as a member of the Health Policy and Planning Commission.

CHAIRMAN MONTOYA: Okay. We have a motion by Commissioner Stefanics, second by Commissioner Vigil.

The motion passed by unanimous [4-0] voice vote.

CHAIRMAN MONTOYA: And what time will we be back? 2:45? 2:45.

[The Commission recessed from 1:27 to 3:00.]

COMMISSIONER VIGIL: This is a continuation of this morning's meeting. We are actually on Staff and Elected Official items. Teresa.

XIV. STAFF AND ELECTED OFFICIALS' ITEMS

A. Finance Division

1. Review and Discussion of the Quarterly Financial Report

TERESA MARTINEZ (Finance Director): Madam Chair, Commissioners, you have before you the standard quarterly report that we present to you. We gave you a summary report of revenue and expenditures that summarizes what was budgeted with regard to anticipated revenues, but especially with regard to the use of cash and what was collected and what was expended. These numbers are still tentative in that we're still processing the final payroll. Eight days of the fiscal year were in the previous fiscal year, or eight days of the payroll were in the previous fiscal year, two days in the new year, and then we still have audit entries and obviously other things that we have to do. We anticipate that we'll have final numbers for you probably in September when we turn over the final balances to the auditors.

We show that our [inaudible] comparisons, we feel that our revenue materialized at 95 percent, almost 96 percent of what was budgeted, and our expenditures are currently just at 80 percent. Expenditures include encumbrances, so not all of that will materialize. For the most part the GRTs were the highest, or the most significant if you will under budget. The

GRTs were under budget I believe it wasn't even a full percentage and when we looked at the first recording period, which is July of this fiscal year, the GRTs were down \$97,000. Property tax is up slightly, and I think it's relative to the efforts of the Treasurer and the delinquent taxes that he's currently working. So for the period of July property taxes are going to offset that deficit in GRT. And I'll remind you that we budgeted GRT five percent down from the previous fiscal year and maintained it under budget. So we'll keep a close eye on that. The July report would have been for May activity.

So overall for the GRT for fiscal year 2010 we were just about \$50,000 under budget. And when we look at the expenditures it's still hard to determine because we paid bills against the prior year budget if you will through July 16, so we're still finalizing those numbers, still have departments submitting encumbrances for basically liquidation, saying they no longer need them and anything that drops to cash obviously would help the bottom line.

We also gave you a revenue and expenditure report for the major funds which include the general fund, the fire fund and the corrections fund. And with that, I'll stand for questions.

CHAIRMAN MONTOYA: Questions for staff?

COMMISSIONER STEFANICS: Just a comment.

CHAIRMAN MONTOYA: Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Mr. Chair. I appreciate the continuation of putting things not only in Excel but you've put the pie charts. Do we continue to post those on our website?

MS. MARTINEZ: Mr. Chair, Commissioner Stefanics, we will and we do. I'll give these to Kristine.

COMMISSIONER STEFANICS: Because I'd like to make sure the public can keep up with what we are talking about with our finances. Thank you so much.

CHAIRMAN MONTOYA: Okay. Any other questions? Thank you, Teresa.

XIV. A. 2. Presentation of the Santa Fe County Advertising & Promotional Efforts Summary From the Santa Fe Communications Group, Inc., dba Impressions Advertising, Inc.

RUSS ROUNTREE: Good afternoon, Mr. Chair and Commissioners. I'm Russ Rountree. I'm president and owner of Impressions Advertising, for 25 years a locally owned and operated here in Santa Fe County business. We are proud to be the contractor to be on board to promote the lovely Santa Fe County to potential visitors around the country.

I believe you have in your packet a summary of some of the items that we have undertaken this last fiscal year. Just let me recap a couple of items. The total budget that we operate with is \$287,850. Of that we received \$2,850 this past fiscal year as a State Tourism Department cooperative matching fund. Our marketing goals include the obvious trying to

bring visitors here to Santa Fe County, increasing the awareness of Santa Fe County as a travel destination, increasing the length of overnight stays, trying to make people spend a little bit more while they're here and really what applies directly to us increase the ad inquiries and the web users sessions that we operate off of.

Our marketing packets include national, regional print advertising. We've got a sample in your packets of two of the advertisements that we have promoted this last year. Our overall theme for the last couple of years has been Santa Fe County: It's no place like home. It plays on the adventure of the travel experience. It personalizes our creativity and makes the reader look at the visual and say I'd like to find out where that is and I'd like to go there. Perhaps uses a story that makes the reader want to find out more about these various locations that we advertise and with more than 2,000 square miles within the boundaries of Santa Fe County obviously you can see that we have an endless supply of attractions and landscapes and physical beauty to promote to our potential visitors.

We also do in-state broadcasts and cable advertisements. We showed these the last time that we were here last year. They consist of three different 15-second commercials that run. This last year we placed these ads in Las Cruces, Roswell and Farmington on cable outlets in those markets. At the beginning of the year we also got a small amount of ads on our local broadcast station out of Albuquerque.

We also do online marketing. We keep up with the website and in addition to that we do online advertising in external markets. We buy web banners. We peg our ads in email blasts that go out in particular markets that we have found to be potential feeder markets for us. Those include Dallas, Oklahoma City, Denver. Previously we've been in Phoenix, Huston, and Austin as well. We've got samples of the banner ad that we've run this last year. There's four – it's an animated ad so there's four segments that we've shown you and shown you kind of how they go from A to B, if you will. They start out with a gray-looking image, black and white, and they go to full color that promotes our various segments of Santa Fe County that we again try to push out there to potential visitors.

Our public relations campaign includes monthly event press releases that we drop to about 17 regional newspapers, again, primarily in the drive market. Also to our local network affiliate TV station. These monthly event releases include such things as our studio tours that happen about four or five times a year, as well as events as Golondrinas. When the flea market started out at the Downs we included that as well. We're always on the look for event information from various communities throughout the county and seeking people to send us along information so that we can include it in the info that we send out to these local writers and editors.

We also have in your packet not only the budget as well as the breakdown goes but also the media plan that we used this last year in fiscal year 10. You can see there was a sprinkling of national ads, mostly regional ads, and then our online promotions as well as the in-state cable and broadcast ads that we did. The results for fiscal year 10, not great, but given the economic climate that we've had recently we're somewhat pleased with it. Cautiously pleased I guess. We had a decrease in Lodgers' Tax collections of seven percent over fiscal

year 9. These were adjusted with the latest figures that we had for July through April. I'd also just like to note that one of our more – one of our larger contributing properties we lost this last year in January due to annexation into the city and that was the Inn at Santa Fe out by the factory outlet mall. So that's unfortunate.

We had a decrease in advertising inquiries of about seven percent and we've tagged that largely to the issue of fewer and fewer people fill out those little bingo cards, what we call bingo cards in the back of magazines and send them off. They go directly to our website to look at what we have as far as events throughout the year and potential properties that they can stay in. We had a slight increase in website inquiries of about 0.8 percent over fiscal year 09. Once again we kind of tagged that to the fact that we're giving them a lot of information on the website and there's no reason for them to ask for a visitors' guide. Currently the fulfillment piece for both online inquiries and advertising inquiries is the City of Santa Fe Visitors' Guide. We have a cooperative agreement with the Convention and Visitors Bureau that we turn our inquiries over to the Bureau and they send out a visitors' guide on behalf of the County and the inquiries that we generate. Obviously, that's saving us a substantial amount for postage because they take care of that and it cuts out our fulfillment costs. We don't have to print our brochure as often because we're not using them directly for our ad inquiries.

In fiscal year 11, a couple of things that we're looking to do would be the continuation of our online efforts. We found these to be very cost-effective and more and more people are looking to travel websites. These websites are primarily tied to the newspapers in our feeder markets, the Denver Post website, the Dallas Morning News website, Oklahoma City News website. We will be continuing with banner ads as well as buying ads in their outbound travel emails that they produce. We're also trying to see if we can get what's called a fam-trip, a familiarization trip for potential travel writers to come in the spring to Santa Fe. This is not quite as easy as it used to be, largely because there are fewer and fewer travel writers out there as newspapers have cut their staffs. That was one of the first segments of their staff to be cut is the features and travel sections. But we're still going to solicit and see if there are some people who would like to come to Santa Fe and be hosted for a couple days.

We also hope to add some blogs and podcasts to our website. We've identified some potential people that could author those and we'll post them up on a regular basis so that potential visitors to Santa Fe can hear from real county residents as to what they like about the county and what they feel others would enjoy by coming. That's about it as far as my presentation goes. I'll stand for any questions at this time.

CHAIRMAN MONTROYA: Any questions? Russ, how do you measure the success of the advertising that we're doing nationwide in terms of how do we know that someone's going to a bed and breakfast in different parts of the county outside of the city limits as a result of your advertising?

MR. ROUNTREE: Mr. Chair, Commissioners, it's really quite difficult, obviously, to say that someone has stayed at the Bob Cat Inn B & B as a direct result of

seeing one of our ads. We attempted to do a research project this past fiscal year whereby we had some research information of a short survey that we were asking the lodgers to put either in rooms or to give to the guests upon checkout. And it was asking them things like did you see our ads? What did you do while you were here? How many days were you here? And for whatever reason we had a tremendous amount of blowback. We actually did about three different versions of it to try to get something that would work with the lodgers so that they would give them to these guests that they had, and we quite frankly couldn't get people at the properties to give them out. We have also put the same survey on the back of our website but it's not a public portion of the website and that was the last iteration that we had as a research project was we said, look, just give these people a postcard when they leave and it directs them to this page on the website. And they wouldn't even give that out. With each of the times that we would go to them we would say it's critical for us to try to quantify this information so that when the governing body would ask a question like this we would hopefully have some type of response for them, but we made personal contacts with several of the lodgers and again, we met with resistance at pretty much every turn.

As far as the way that we quantify the numbers that are staying in these properties, we extrapolate the County Lodgers' Tax reporting, and we're able to determine how many rooms are available in any given month in the county. We look at the Lodgers' Tax reported in that particular month to give us a rough idea of the occupancy or the number of people that stayed in those rooms that month. But again, to tag that back to the actual advertising, Mr. Chair, we haven't been able to close that gap and get that direct information.

CHAIRMAN MONTOYA: Wouldn't these inns and B&Bs see it as a benefit? Because you advertise for them too, don't you?

MR. ROUNTREE: Well, we advertise in general the area and we list them on our website. We list all of the county properties. We don't directly in our ads have an ad for or a mention of Bishop's Lodge or Heart Seed B & B, but in total, we promote going out and staying in the county and then if you would go to our website, the county's website you would see all the listing of the various properties. Yes.

CHAIRMAN MONTOYA: I don't know, maybe just food for thought and incentive for them to participate would be including them or not including them on that list.

MR. ROUNTREE: Mr. Chair and members of the Commission, we hadn't thought of that. That's a little bit, quite a penal aspect there and I suppose we'd have to check with Legal and see if that would actually be appropriate for us to do. It certainly would be a very big stick against the carrot, that's for sure, and maybe if we could do that we could take a look at that. We haven't gone quite to that draconian of a measure yet.

CHAIRMAN MONTOYA: Draconian. I've never been called that before.

MR. ROUNTREE: I think if you don't list them there's all sorts of things that they'll call you.

CHAIRMAN MONTOYA: Okay. Any other questions? Thank you, Russ. Thank you for your time.

XIV. A. 3. Resolution No. 2010-124. A Resolution Requesting Approval of the Fiscal Year 2011 Amended Final Budget Which Includes an Increase to the Property Valuation Fund of \$75,800 and No Other Changes

MS. MARTINEZ: Mr. Chair, Commissioners, I'll remind you that you've already approved the budget for submission to DFA; you did at the June BCC meeting. This is an adjusted budget, if you will. It's based on recent meetings that we've conducted with the County Assessor relative to his statement and recent letter we received from Local Government identifying that there may be a question as to the adequate resources or adequate allocation of funds provided to the County Assessor so that he may fulfill his statutory responsibilities.

We conducted two meetings with the County Assessor and staff. Present at the meetings were Commissioners, County staff and Assessor staff and we went back and forth with regard to the issues that arose in the FY 2011 budget that had not been previously funded or recommended by Finance. When all was said and done we agreed to bring before this Board for approval increases to the Property Valuation Fund, not the general fund, but Property Valuation Fund. Those increases would fund out of state travel for one person to the IAAO conference, out of state travel to the Manitron Users Group, which is the new CAMA system that they recently implemented. That would be for two staff people, and 17 lap top computers that would go in the actual vehicles and would be used for field input and it would improve the efficiencies of that office and we also agreed to hire a consultant to help evaluate the Assessor's Office and to determine if there is a need for staff or if his office is over-staffed. And those are the items that we were able to come to an agreement on.

The things that we could not or the one item that we could not agree on was the addition of five new staff. We could not reach an agreement on that. So we bring before you an amended budget for our final budget with an increase of \$75,800 that will strictly affect the Property Valuation Fund and have no impact on the general fund. And I stand for questions.

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: What are the other purposes can that Property Valuation Fund be used for? Is it very specific or what are they?

MS. MARTINEZ: Mr. Chair, Commissioner Vigil, it's very specific. It has to be used for reappraisal and appraisal work only. It has to be tied to that.

COMMISSIONER VIGIL: Okay. So would a study qualify?

MS. MARTINEZ: I believe so. We asked that of the County Assessor and he agreed that it would qualify because it would help assess whether or not the appraisal staff he has on hand is sufficient to fulfill his statutory responsibilities.

COMMISSIONER VIGIL: Okay. All of these initiatives are moving forward based on a letter that was written to the Department of Finance and Administration regarding

how I guess that valuation fund is actually used. We currently have a meeting scheduled with them. Do we need to take action on this before that meeting occurs? Because it seems to me that once that meeting occurs we'll have a better sense of whether or not the valuation fund decisions are being made in the most appropriate manner.

MS. MARTINEZ: Mr. Chair, Commissioner Vigil, I believe you can make the decision or you can wait. The letter to DFA pointed out two things. One, insufficient or inadequate allocation of funds and misuse of the Property Valuation Fund. So this effort was with regards to providing him an adequate allocation of funds. He agreed that we'd use the Property Valuation Fund. With regard to the Property Valuation Fund, it is the charging of staff and their salaries and benefits at 100 percent. So we'll conduct additional meetings with the County Assessor to come up with an appropriate percentage, if you will, and obviously that will be an outcome of Thursday meeting with DFA as well.

COMMISSIONER VIGIL: Okay. And I guess my question to you is through the process we have allocated additional funds to the Assessor. As a matter of fact if there's any department that we've been allocating additional FTEs to it is the Assessor's department, based on his requests. And most recently we approved five FTEs based on his recommendation that with that approval there would be an increase in tax collection. Has that actually been done?

MS. MARTINEZ: Mr. Chair, Commissioner Vigil, this is where we struggle. It's a little bit of hindrance. He can't provide any documentation or any system reports until staff is fully trained to do their daily activities if you will within CAMA, but they're not sufficiently trained yet on the use of those management reports. We attempted to work with IT and will continue to work with IT but we found that in trying to do that you did need a member of the Assessor's Office present with the IT person to try to extrapolate the data. So property tax, have we've proven that the five people we've given in the past have materialized additional revenue? No. We can't specifically tie it to the five new people. So there are additional revenues but we don't know that it may have been relative to other work that was done. So no, we haven't been able to tie it to the five people that we have previously given to his office.

COMMISSIONER VIGIL: Will we ever be able to?

MS. MARTINEZ: Mr. Chair, Commissioner Vigil, I think it would be difficult at this point. That was a strong point of contention when we met with the Assessor's Office, making it clear that in the future if there were new people awarded he would clearly have to show the benefit that those new staff have provided, and quite honestly, I don't know the answer to that question.

COMMISSIONER VIGIL: Okay. It seems to me, if that valuation fund is available for the purposes that you all have negotiated I certainly would defer to the negotiations. My concern is whether or not a study is necessary and I think what portion of those dollars is going to this study?

MS. MARTINEZ: Mr. Chair, Commissioner Vigil, \$45,000.

COMMISSIONER VIGIL: Okay. Because currently we have the statutory guidelines and we have the Property Tax and Revenue Department at DFA and we have our own internal staff that would most readily be able to give us the kind of information that I think any study would provide. The benefit of a study is its objectivity, I'm sure. But by the same token, I think if you have \$20,000 in a short-budgeted year, that \$20,000 may be better leveraged to get not necessarily an FTE but perhaps contract employees or something of that nature. I'm not sure that \$20,000 is in the best interest at this point in time but I certainly can understand the computers, and what was the other item?

MS. MARTINEZ: Training.

COMMISSIONER VIGIL: Training. Certainly those are legitimate but I also think that we might be jumping the gun here, that maybe we need to have that meeting with DFA before we do, so I would motion to table this until we have that meeting with DFA. Do I have a second? No. I tried.

CHAIRMAN MONTOYA: Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Mr. Chair, and I appreciate Commissioner Vigil's discussion very much about this. I attended the second meeting with the County Assessor regarding several of his issues. It is my position that by identifying some steps forward with the County Assessor that we will identify to DFA that the Commissioners have in good faith negotiated something. Now, at the meeting that we had, Mr. Chair and Teresa, we weren't told that the study would cost \$45,000. We thought it would be a lot less.

MS. MARTINEZ: Mr. Chair, Commissioner Stefanics, we contacted several organizations that are in the business of doing that. We would have to follow the procurement process, obviously, for this but we were given a range of \$45,000 to \$500,000, depending on the jurisdiction, depending on the scope of work; it was really wide open. So we tried to put some money towards that to show an effort.

COMMISSIONER STEFANICS: Well, the other thing Mr. Chair, Commissioners, if the County does the contract for the evaluation of the office it will belong to us, not to the County Assessor, and the result of that evaluation, if it is done by an independent body might shed some light, not only on this administration and the County Assessor for the next four years but also for future ones. And that might be a tool that the County Commission can then use, and the County Manager's Office of course, can then use to budget.

So for example, if an independent evaluation indicated that no new staff were needed until everybody in the office is trained in the CAMA system, I think that's going to be a very worthwhile comment. And we won't be considering any more new staff for many years. If it comes in and says the independent evaluation indicates that we are overstaffed, that's going to give us a really clear indication. If it indicates that the training is needed and then there should be a step-up in staff, then it would offer us an opportunity to do a plan. I have no problem waiting on the plan but the funds are not coming out of the general fund; they are coming out of the valuation fund and if it's a legal, appropriate use, I think it would be a good

assessment tool for the County Commission and the County Manager's Office to regard all requests.

The other thing, when the County Assessor appeared before us and said we need more staff, or I need more staff, my – I wanted some factual foundation on why he needed more staff. So if there was an independent assessment done it would offer him the opportunity to do any kind of reorganization or any kind of plan and then present a very concrete request to us or not present anything at all. But I think that the assessment would be our ammunition for accepting or not accepting requests in the future. So that's the reason I didn't move to table. The valuation fund could pay for the assessment, it can pay for training, and it can pay for the computers. And then my recommendation after our meeting, and of course Commissioner Montoya was there at both of them. I was only there at one meeting. That my recommendation would be that we not fund any further staff until there is a reason to fund further staff. I think the Commission could go either way on this today based upon do we want to wait and see what happens with DFA on Thursday morning or do we want to take the steps to say we can go through this?

CHAIRMAN MONTOYA: I guess I would just concur with Commissioner Stefanics. I believe having attended both those meetings along with Teresa and Carol and other staff, that the justification really was not clear as to why we needed to add five more employees into the County Assessor's Office other than to say he needed to request them but he wasn't sure if it was five or 500 more that he needed. So I think until we have some sort of analysis done in terms of what's really required or what's needed, we're kind of putting the cart before the horse. I think what we're doing here, the reason I didn't second either, Commissioner Vigil, is because what we've done is what we've been asked to do by DFA-Local Government Division, and that's to negotiate and come to some sort of mutual agreement in terms of being able to reach some sort of consensus from where we were to where we're at.

And I believe that what we've done is the most reasonable thing in terms of allowing for the purchase of the computers, allowing for the training with Manitron, because that to me is blatantly clear that staff down there needs that additional training in order to be up to capacity. And in order to answer your question, yes, I believe the capacity is there to get that information that we need, but not until it's developed. That capacity has not been developed yet in order to obtain the information that's going to tell us if these staff are generating x-amount of revenue per year in terms of what they're collecting and what they're assessing. The capacity is there but it hasn't been built.

So I think by doing this we've taken action. We're showing DFA-Local Government we're taking action. We're complying with what they're requesting and we're going forward with a budget that I think probably accurately reflects what it is that we have to move forward with now in terms of the protest that was made by the Assessor and the information that we were given during those discussions. Commissioner Vigil.

COMMISSIONER VIGIL: So that begs the question for me, did DFA direct us to negotiate the valuation – that particular fund?

MS. MARTINEZ: Mr. Chair, Commissioner Vigil, I think they directed us – the hope would be that we could meet internally and work it out and not have to even go to the level of the meeting with DFA. So basically, that we try to meet internally and resolve the issues.

CHAIRMAN MONTOYA: And that was resolved. That issue with the valuation fund and charging it was, so Teresa and the Assessor are going to work on that.

COMMISSIONER VIGIL: Thank you.

CHAIRMAN MONTOYA: Any other discussion? Commissioner Anaya.

COMMISSIONER ANAYA: I agree with your comments, Mr. Chair.

CHAIRMAN MONTOYA: Okay.

COMMISSIONER STEFANICS: So, Mr. Chair, I would move approval of the Resolution 2010-124.

CHAIRMAN MONTOYA: Okay. We have a motion by Commissioner Stefanics.

COMMISSIONER ANAYA: Second.

CHAIRMAN MONTOYA: Second by Commissioner Anaya. Any further discussion?

The motion passed by majority 3-1 voice vote with Commissioner Vigil casting the nay vote.

COMMISSIONER STEFANICS: Mr. Chair.

CHAIRMAN MONTOYA: Commissioner Stefanics.

COMMISSIONER STEFANICS: I just want to emphasize though that I am seeing this as a County contract for the evaluation and the County will own the evaluation assessment. It is not a secret assessment that will only go to the Assessor's Office.

CHAIRMAN MONTOYA: Absolutely.

XIV. B. Community Services Department

- 2. Discussion and Request for Approval of Change Order No. 3 to the Contract between Santa Fe County and Bradbury Stamm Construction, Inc., for Construction of the First Judicial Courthouse Project in the Amount of \$867,831.17 (Community Services Department)**
- 3. Discussion and Request for Approval of Contract Amendment No. 4 to the Contract between Santa Fe County and Gerald Martin, Ltd. for Construction Management Services for the New First Judicial Courthouse Project in the Amount of \$631,490.06 (Community Services Department)**

4. **Discussion and Request for Approval of an Increase of Services with Souder, Miller and Associates for Environmental Remediation Services for the New First Judicial Courthouse Project in the Amount of \$541,243.66 (Community Services Department)**
5. **Discussion and Request for Approval of an Increase of Services with INTERA, Inc. for Environmental Remediation Services for the New First Judicial Courthouse Project in the Amount of \$335,454.97 (Community Services Department)**

JOSEPH GUTIERREZ (Community Services Director): Mr. Chair, members of the Commission, I have a brief presentation for you for discussion and approval of actually items XIV. B. 2, 3, 4 and 5 are all covered in the presentation. And before I get started on the presentation I would just like to introduce members of the courthouse team and the individuals that have the knowledge to answer any technical questions that you may have. First I have Mr. Dan Lyons who is with Bradbury Stamm. I have Robert Martinez who is with Gerald Martin, our construction manager. I have Joe Tracy, who is with Intera, our environmental consultants. Matt Ashlenburger who is with Souder Miller and who is handling the water treatment for us. And also in the audience there's a Mr. David Charlesworth who handles all the health and safety issues at the site and at the surrounding area of the courthouse. And also Mr. Paul Olafson who is greatly involved in this project.

This is just a quick update for you. What I want to do first is give you an overview of the financial picture of the courthouse, what we have allocated, what we've spent. As you see on presentation there on page 2, I've outlined the revenues to date for the courthouse. And the first number I have there are state funds. We actually early on did receive some state grants for the courthouse project. They total \$1,026,500. In 2007 the voters approved a general obligation bond. That was \$25 million. That bond has earned some interest. The balance of that bond – not the balance, but what has accumulated on the bond is \$27,289,191.

In 2008 the Commission approved a revenue bond on the 1/16 GRT gross receipts tax. That bond was a \$30 million revenue bond and that has accrued some interest. So the total for that is \$31,355,945. In addition to that we have a 1/16 GRT that's allocated for the purposes of the courthouse and what we try and do is pull some of that cash balance over to the courthouse and to date we've pulled about \$800,000. So you can see we have a total revenue for the courthouse of \$60,471,636.

A number of times the question has come up, what is the project for the courthouse, and it's roughly about \$60 million. As you can see in the project budget it's a number of things. It's not only the construction of the courthouse.

On page 3, on the financial courthouse overview, when you look at the total revenue to date, it's \$60,471,636. Accumulated expenditures, the total expenditures to date is \$17,542,965. What we have encumbered to date for the courthouse – and this is mostly encumbrances for the construction of the courthouse. That's \$39,065,090. So the revenues

are not allocated but are in the area of the project budget. To date the balance of that is \$3,863,581.

The other revenue source that we use is the 1/16 GRT and just to give you a quick picture of that, the cash balance of the GRT as of July 1st was \$2,921,489. What we pulled out to use for the courthouse is \$500,000. That \$500,000 is part of the \$800,000 I showed you on slide 2. The projected revenue for the fiscal year that we're in for this 1/16 GRT is \$2,143,436. That's revenue projected based on what we received in FY 10 and was reduced by five percent. In addition we also pay the debt service for the \$30 million bond and that debt service in FY 11 will be \$1,442,656. So at the end of fiscal year 11 we're projecting about \$3.1 million will be left as a cash balance in the 1/16 GRT.

So in terms of money that would or could be available for the courthouse we have the balance of the bond, which is about \$3.8 million and it's projected that we may have as much as \$3.1 million in the 1/16 GRT.

Today on the agenda I come to you requesting additional – not so much additional dollars but approval to allocate the dollars that are not committed to the specific areas. The first area is Intera, our environmental consultant. I'm requesting to increase that amount by \$335,454.97. The second item is Bradbury Stamm. That's the contractor. To increase that contract by \$867,831.17. Most of that is for the moving of the contaminated soil from the courthouse site.

COMMISSIONER VIGIL: Joseph, it's \$876,000. Correct? I think you said \$867,000. We have \$876,000 in our packet.

MR. GUTIERREZ: I have \$867,000.

COMMISSIONER VIGIL: I have \$876,000 in the amended agenda, so which is the accurate figure.

MR. GUTIERREZ: I'm sorry. It's \$867,831.17.

CHAIRMAN MONTTOYA: So that's what it should be on the agenda then.

MR. GUTIERREZ: Hold on a second. I'll find out for you. Mr. Chair, Commissioner Vigil, it is \$867,831.17. So if we have a motion, if we can change that amount on the agenda from the \$876,831.

COMMISSIONER VIGIL: I will so move that, Mr. Chair.

CHAIRMAN MONTTOYA: Okay. We have a motion by Commissioner Vigil.

COMMISSIONER ANAYA: Second.

CHAIRMAN MONTTOYA: Second by Commissioner Anaya. Questions?

The motion to correct the amount listed on the agenda passed by 4-0 voice vote.

MR. GUTIERREZ: The next item – sorry about that - is Souder Miller. Souder Miller is having all the water treatment at the courthouse site the dewatering and the treatment of that water. I just want to cover a few more notes on the courthouse activities. The excavation of the petroleum contaminated soils, to date we've moved about 20,000 tons from this site. The 20,000 tons held between 10,000 and 15,000 gallons of gas, so that was

removed from the site. The Department of the Environment informed me that off the site but in that area they have removed about 1300 gallons of gasoline from the site. We continue to coordinate with New Mexico NMED. We're going to be installing the dewatering system later on this week. We have additional shoring to put into place. The site depth now is at 6946. We're going to excavate a little bit lower. They're going to put some clean fill material at the site and at that would when all is said and done we will begin the garage structure at the courthouse site. That's all I have. We have some more individuals if you have specific questions.

CHAIRMAN MONTROYA: Any questions on number 3? Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, I have some questions on the construction part but we could wait until after. On the building. Or I could ask now, whatever you'd like.

CHAIRMAN MONTROYA: Yes, go ahead.

COMMISSIONER ANAYA: Joseph, have you – is there still leaking going on in the construction of the walls?

MR. GUTIERREZ: Mr. Chair, we were actually at the site today with the Department of the Environment and staff, the contractor that put the wall in, their subcontractor and our environmental team, and they're identifying areas of the wall that need to be repaired. We knew there would be a repair process and we're marking the areas that are to be repaired and my understanding, talking to the director at Environment is that they will be out on August 16th to start the repair process.

COMMISSIONER ANAYA: And tell me how that repair process is going to happen. If you've got a leak in one of the walls there what are they going to do?

MR. GUTIERREZ: Mr. Chair, could I call one of my experts?

COMMISSIONER ANAYA: Call one of your experts. I want to hear it.

JOSEPH TRACY: Joseph Tracy with Intera. Mr. Chair, Commissioner Anaya, our understanding is that they are going to repair the barrier wall by – most of the repairs will be done from the excavation but the injection will go and the repair will happen behind the barrier wall. And we don't have the final repair plan from the state yet but that's what we've been told verbally out at the site. That's how that will work.

COMMISSIONER ANAYA: And Joseph, tell me, the barrier wall, tell me what that's constructed now. Because what I've heard is that the barrier wall failed. Then they put in another barrier wall and that failed. Are we going to put in a third barrier wall?

MR. TRACY: Well, this would be a repair of the second. I don't know if it's completely accurate to say it failed. There were certainly leaks after the first time. There was a process in identifying those leaks and there was a repair process made at that time. The thing we have to remember is that was just the barrier wall and as part of the construction we have to mill the wall. And so after the milling there were some more leaks that were evident. This would be more of a repair process to take care of what happened to the milling. So I think we're looking at an injection process where they take the probe, they start down deep

and they extract it up and then high pressure grout is injected into cracks or weeps, leaks, whatever you want to call them.

COMMISSIONER ANAYA: Excuse me, Joe, is this going to cure the problem? What my concern is later on down the line I don't want to build the building and then somehow we start to develop leaks. And who's going to – well, that's my main concern. Can you guarantee that?

MR. TRACY: Understood, Mr. Chair, Commissioner Anaya. The opportunity that we have is that the repairs will be milled and we'll be able to see if they're working and it will be obvious if they're not. And we've been told by the state's contractor than they can repair what's identified as leaking.

COMMISSIONER ANAYA: So how are you going to repair that leak? From the side that you milled or from the backside?

MR. TRACY: Well, they'll actually inject from the side that they mill, but then they probe and they pull that probe out from the back side to the front side. And then there's another milling process that goes on after that. So we would mill it again and we would be able to tell whether that repair had held or not.

COMMISSIONER ANAYA: Okay. I guess I'm concerned about the milling process. You've already milled the wall, you're going to inject it and then mill it again?

MR. TRACY: Mr. Chair, Commissioner Anaya, the way the process works is it's high pressure injection grout so there's a certain amount of soil material that has to be up against the wall before the injection process can start for safety. So as they extract that probe out then there is going to be some grout – maybe I misspoke a little earlier – there is going to be some grout on our side of the wall that will required it to be milled. Now, we've been told that that will be minimal and again, the opportunity to see it is how we can tell if the repair is good.

COMMISSIONER ANAYA: And how many injections are you proposing that we need?

MR. TRACY: Well, the last figure was somewhere around 100. There's a back and forth with the state as to exactly which ones they're repair and what that process is going to be. We know now that they're going to start on the 16th and some of those may or may not be eliminated from the list based on some more discussions that we have with the County's grout wall consultant, Geo Solutions and then with the state's contractors.

COMMISSIONER ANAYA: And why do you think that the wall failed or is developing leaks? Is it normal?

MR. TRACY: Mr. Chair, Commissioner Anaya, I can speak from my own personal experience but we do not have a lot of injection grout wall experience and that's why the County brought in Geo Solutions. From what we've found out during this process is that it's a complicated installation and certainly the geology out there makes it harder. So I think a repair process is going to be necessary no matter who built the wall and how it was built.

COMMISSIONER ANAYA: So then tell, after you fix the leaks, what's the next steps?

MR. TRACY: Mr. Chair, Commissioner Anaya, the next step would be the remobilization of the construction team to, as Joseph said in his presentation to put in the additional shoring support so we can complete the rest of the contaminated soil removal. We're almost there but there's some places that contamination exists a little deeper than the elevation we're at right now. So we need to do some additional shoring work in order to safely go down. At that point we backfill and we begin the liner installation and building the building.

COMMISSIONER ANAYA: Tell me about the liner.

MR. TRACY: Mr. Chair, Commissioner Anaya, the liner is a high density polyethylene. It's an HDP material. The way it's installed it's just that, it's hung on the building, it's hung on the shoring, it's laid out underneath the building. It wraps over the grade beams. It seals where all the grade beams meet on the shoring piers and it will be smoke tested and this kind of thing so we can be sure that it doesn't leak. There are several different aspects to it. There's a geo-textile that goes in there. There's an asphalt spray that goes on the liner and again, I think we've got a good approach as far as our quality control on the liner. We'll know if it's good before we build the building.

COMMISSIONER ANAYA: And how much dirt is on top of the liner?

MR. TRACY: There is no dirt on top of the liner.

COMMISSIONER ANAYA: So the concrete goes on top of the liner?

MR. TRACY: Yes, sir.

COMMISSIONER ANAYA: And that's the same way with the walls?
Concrete?

MR. TRACY: Mr. Chair, Commissioner Anaya, yes, sir. The liner is – basically from the ground surface it goes straight down to the bottom of the building and it goes underneath the slab and back up the other side. The whole excavation that you see out there will be enveloped in that liner.

COMMISSIONER ANAYA: Okay. Thank you. Thank you, Mr. Chair.

CHAIRMAN MONTOYA: Other questions?

COMMISSIONER STEFANICS: Mr. Chair.

CHAIRMAN MONTOYA: Commissioner Stefanics.

COMMISSIONER STEFANICS: I'm sorry. I had to step out for a minute but I did meet earlier, or late last week with Joseph to go over several of these items and I do have some of the concerns that Commissioner Anaya is bringing up today but I also believe that we have an opportunity to complete this project. We are still within budget and I think that that is of great concern to the taxpayers. I do think that – I know that we're behind schedule but I think that if it's time that we're losing but if we're not going to go sky-high over budget then that would be a prudent thing to do. Thank you very much.

CHAIRMAN MONTOYA: Okay. Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, I know that we didn't anticipate running into the gasoline that we ran into, so we're cleaning that up, right, Joseph? We're going to be continually pumping that gasoline out for two, three years?

MR. GUTIERREZ: Mr. Chair, Commissioner Anaya, actually the Department of the Environment has set up a system outside the parameters of the courthouse and they're estimating their system will run for three years to clean up the whole area, to extract the vapors from the ground, basically. It's a permanent system that theoretically should be operational in the next 30 to 60 days.

COMMISSIONER ANAYA: Because that was one of the things that we were asked was are we going to be able to clean this up and we gave the public our word that that's one of the things that we would do, so I'm glad to see that we're still doing that. Thank you, Mr. Chair.

CHAIRMAN MONTOYA: Okay. Commissioner Vigil.

COMMISSIONER VIGIL: And this is probably just maybe for Intera. How well are you working with our expert? This has been a revealing experience for us and probably for you all.

MR. TRACY: Yes, Commissioner Vigil. I assume you mean our grout wall expert.

COMMISSIONER VIGIL: Yes.

MR. TRACY: We spent all morning in the excavation together and we've been working with them quite a bit on their evaluation process of the wall. There's a whole scoring system of the different types of leaks and these sort of things, so yes, we've learned a lot. I think they're a very good company. They're not just a consultant. They also build these so I think they give us that insight that a contract would have. They've been really good.

COMMISSIONER VIGIL: And the Department of the Environment is engaged in all of this?

MR. TRACY: Mr. Chair, Commissioner Vigil, yes, the Environment Department has attended all the meetings and they are routinely onsite. I think they're there every day and they're on board with the repair process.

COMMISSIONER VIGIL: Thank you, Joseph. Thank you, Mr. Chair.

CHAIRMAN MONTOYA: Okay. Any other questions? Could I have a motion?

COMMISSIONER VIGIL: Mr. Chair, if you can accept a motion for items 2 through 5, which I think what is being requested. So if it's acceptable to take action on items 2 through 5 that were just presented I move that we so do that.

COMMISSIONER STEFANICS: I'll second.

CHAIRMAN MONTOYA: Okay. Motion by Commissioner Vigil, second by Commissioner Stefanics. Any other discussion? I'll just add my concerns also in terms of some of what Commissioner Anaya has brought up and that's the fact that we've kind of gone over and over this and we're still under budget. But if we continue to put money into this hole and we don't get to some point the question is still when do we say when? I'm ready

to say it right now, just for this huge change order right now. The unfortunate thing is where is Larry Barker when you need him? Those walls are leaking out there right now and NMED oversaw that whole process, you don't hear anything about that reality that should be exposed in terms of the public knowing exactly what's going on.

I have been disappointed with NMED and the fact that we haven't gotten any further than we have and we've gotten as far as we have in spite of them. So I will support this and hope that we can get this cleaned up and more forward on this.

The motion passed by unanimous [4-0] voice vote.

XIV. B. 6. Resolution No. 2010-125. A Resolution Approving a Declaration of Trust for Units Built Utilizing a Development Project Grant From the Department of Housing and Urban Development

COMMISSIONER STEFANICS: Mr. Chair, we heard about this in our Housing Authority Board meeting this morning, so I would move approval of this item.

COMMISSIONER VIGIL: Second.

CHAIRMAN MONTOYA: Motion by Commissioner Stefanics, second by Commissioner Vigil. Any other discussion?

XIV. C. Matters From the County Manager

MS. ELLIS-GREEN: Thank you, Mr. Chair. I just have a couple of updates for you. First of all, last month the Board gave direction to our Planning Division to meet with the Estancia Valley working group on the SLDP, and I just wanted to let you know that they are starting meeting starting this Thursday and they will be having weekly meetings with that group.

One other issue is that the Legal Department and I have now interviewed four PR firms so now we are moving forward with a small contract with the Cooney Watson Firm. I hope to have that contract done within the next week and we can get the PR firm on board. And that's all I have. Thank you.

CHAIRMAN MONTOYA: Okay. Any questions or comments?

COMMISSIONER VIGIL: Mr. Chair, I think we do need to take a little break. I know that Kathy Holian wanted to be in on this. Do we have her on line?

MS. ELLIS-GREEN: Mr. Chair, Commissioners, we don't have her on line yet. Apparently our internal system is not working. If we can take a five-minute break here IT could set up the phone here so Kathy can be part of the discussion.

[The Commission recessed from 4:00 to 4:05.]

XIV D. Matters From the County Attorney

- 1. Ordinance No. 2010-10. An Ordinance Authorizing Additional Amendments to the Previously Authorized Economic Development Project with La Luz Holdings, LLC and Santa Fe Film and Media Studios, Inc.**
- 2. Consideration and Approval of the Amended and Restated Project Participation and Land Transfer Agreement by and between the Board of County Commissioners, La Luz Holdings, LLC, and Santa Fe Film and Media Studio, Inc.**
- 3. Consideration and Approval of the Amended LEDA Film Grant Agreement by and between Santa Fe County, the Department of Finance and Administration and the Economic Development Department [Exhibit 2: Amended and Restated LEDA Film Grant Agreement]**
- 4. Consideration and Approval of the Form of the Supplemental Mortgage by and between La Luz Holdings LLC, Santa Fe Film and Media Studios Inc. and Santa Fe County (Action Item – Form of Document) [Exhibit 3: Supplemental Mortgage]**
- 5. Consideration and Approval of the Form of the Loan Guaranty Reimbursement Agreement by and between Santa Fe County, La Luz Holdings LLC and Santa Fe Film and Media Studios. (Action Item – Form of Document) [Exhibit 4: Loan Guaranty Reimbursement Agreement]**
- 6. Consideration and Approval of the Form of the Assignment of a Deposit Account by and between Santa Fe County and Los Alamos National Bank (Action Item – Form of Document) [Exhibit 5: Assignment of Deposit Account]**
- 7. Resolution No. 2010-126. A Resolution Delegating to the Interim County Manager the Authority to Execute the Restated and Amended Project Participation and Land Transfer Agreement, the Amended and Restated LEDA Film Grant Agreement From the Department of Finance and Administration and the Economic Development Department, the Supplemental Mortgage by and between La Luz Holdings LLC, Santa Fe Film and Media Studios Inc. and Santa Fe County, the Loan Guaranty Reimbursement Agreement by and between Santa Fe County, La Luz Holdings LLC and Santa Fe Film and Media Studios, the Assignment of a Deposit Account by and between Santa Fe County and Los Alamos National Bank, and Other Documents Necessary to Complete the Transaction (Action Item)**

8. Review of the Loan Agreement by and between Los Alamos National Bank, Santa Fe Film and Media Studios Inc. and La Luz Holdings LLC (Review Only – Not an Action Item) [Exhibit 6: Letter of Intent]

CHAIRMAN MONTROYA: If we could go ahead and reconvene here. Steve.

MR. ROSS: Mr. Chair, we're here looking at item XIV. D, and items 1 through 8 are all related, and they all pertain to the Santa Fe Studios project. And we can consider them all collectively but I think in terms of when we try to figure out what kind of action we take and how to take it we should take the ordinance separately, and then you might entertain a motion to consider 2 through 7 like we did the last item when we get to that point. Number 8 is a review or information item only. There's no action needed on number 8.

Now, in your packet, unfortunately the explanation for all of this in your packet was placed in the packet last, and it's this memo that I wrote. I think it would probably be a good idea to work from this document because it lays the whole thing out for you, especially what's happened. As you'll recall from the discussion last meeting the Studios' proponents have obtained private financing from Los Alamos National Bank. So the County loan that was authorized in the previous version of the ordinance and the project participation agreement for this project is no longer going to happen. Instead, the project proponents are going to get a loan in the amount of \$10 million from Los Alamos National Bank, pair with the \$10 million state grant that the County has been awarded and construct the project.

As you recall from the discussion last time in order to make the loan work in today's real estate and financial times there needs to be a limited County guarantee of \$6.5 million or the loan won't work. We've laid that out in the memo how that will work. The guarantee is a guarantee of payments only, not of the principal of the loan, so of the \$6.5 million face value of the guarantee only about \$500,000 will be at stake in any given year.

So just to go through the documents that make these changes, first of all of course is the ordinance. Any time you do an economic development project you have to do an ordinance that adopts the project participation agreement. Both these things are required by the Local Economic Development Act. So this ordinance approves a revised PPA, which is second on your list of items. The revised PPA has some significant changes in that it eliminated the paragraphs that authorized a loan and instead authorizes the limited guarantee that I just described.

So moving on to number 3 on the list there you have the amended and restated LEDA film grant agreement. That's the state grant for \$10 million. It also needs to be revised to reflect the fact that there's no longer going to be a County loan but instead there's going to be a private loan and a limited County guarantee of that loan. So this film grant agreement has been accepted by DFA and the Economic Development Department. And it's ready to go.

Number 4 – numbers 4 and 5 are documents that are needed to protect the County on the proposed loan guarantee with Los Alamos National Bank. Document number 4 is the supplemental mortgage. The County already has a mortgage on this property that covers both

the LEDA obligations of the film studio proponents as well as the County's loan, if you will, that secures the payments of the property that we sold to them last February. This mortgage will layer on top of that prior mortgage and protect obligations that are stated in number 5, which is the loan guarantee reimbursement agreement. The loan guarantee reimbursement agreement provides what happens if Los Alamos National Bank should ever levy on the guarantee and among the remedies stated in there is foreclosure on the entire property. So that's why number 4 is important.

Number 6 is the actual guarantee document. We're still working on this. In the packet of documents that are on your desks there that are separated by kind of hot pink separator pages you'll find an amended version of the loan guarantee reimbursement agreement and an updated version of the guarantee document.

Number 7 of course is a resolution delegating to the interim County Manager to sign all of these documents. How this will work is that we will set up another real estate closing in two or three weeks where all these documents that we're talking about today will be signed as well as the loan agreement with LANB. All that stuff works together so it all has to be signed together at a real estate closing. Just so the entire Commission doesn't have to go to that real estate closing this resolution is necessary to delegate to the interim County Manager to sign all that stuff and to go to that real estate closing.

And finally the terms of the loan agreement, and once again in these documents I just handed out today is a letter of intent from Los Alamos National Bank that sets out the essential parameters of the loan to Santa Fe Studios. If you look through that document it's the last document in this set, the very last one. It's a \$10 million loan used to construct the film studio. The collateral of course is the guarantee that the County will provide plus a second lien on certain parts of the property. The term of the initial loan will be a 24-month construction loan followed by permanent financing that will be in place for up to 25 years, interest rate, things like that. Those things aren't pertinent to us because they pertain to the studios.

I think there's nothing else in there that's all that relevant for our purposes. So that's the transaction. I'll stop now because I'm sure there'll be questions. One thing I'd like to ask from the Commission when we get set to vote on number 7, the resolution delegating to the interim County Manager, I'd like some latitude to continue to work on typos and bad language in the agreement. As you can see from looking at this stuff, it's a very compact agreement. There are probably five lawyers working on it and have been working on it for many weeks and we'd like your indulgence to be able to correct things we find without having to bring them back to the Commission so long as it isn't a substantive issue related to the transaction. With that I'll stand for questions.

CHAIRMAN MONTROYA: Questions? Commissioner Vigil.

COMMISSIONER VIGIL: Steve, I just need you to repeat probably a couple of things. Did you say that the film grant has already been reviewed by the state?

MR. ROSS: Yes.

COMMISSIONER VIGIL: So they're ready to sign off on it?

MR. ROSS: They're ready to sign off on it. They will sign off on it at the closing because they're concerned about all these details being worked out just like I am.

COMMISSIONER VIGIL: Has the closing date been scheduled?

MR. ROSS: No, not yet.

COMMISSIONER VIGIL: Okay. It might be good for you, just from the perspective that you worked toward this to make a few statements with regard to how we're protecting the taxpayer and the public dollar here.

MR. ROSS: Okay. The only taxpayer money that's at risk from the County perspective is the money that's going to be used to guarantee the loan. Now, how that will work is we already have – Los Alamos National Bank is already the County's depository institution. All we're guaranteeing is the payments on this loan, not the principal. So the principal of the loan for our purposes is \$6.5 million, even though the Studios may get more money and that's between them and the bank. The face value of this loan is \$10 million, but we're only agreeing to guarantee \$6.5 million, which is where we were last winter with the loan.

So how it will work is \$6.5 million will be segregated from our normal deposits and placed in a separate sub-account at the bank. Only when there's a default on the underlying loan agreement between the bank and the Santa Fe Studios will the bank come to us and say we want to levy on that amount that's deposited there. And all they would be able to levy on those months are monthly or I think in this case quarterly loan payments. So in any give year less than \$500,000 of the \$6.5 million on deposit will be exposed pursuant to the agreement.

The reimbursement agreement I mentioned a minute ago provides that in the event of an event like that occurring that all bets are off and that the County could and probably would foreclose pursuant to the supplemental mortgage and pursue remedies. Probably the bank would do the same thing. So I think it is a relatively safe transaction. Very little amount of money is at risk in any given year. If the loan does become troubled and the guarantee is levied upon we'd have the ability to take the property back or work with whomever to make the taxpayers whole.

COMMISSIONER VIGIL: And the total amount if I'm to calculate this correctly that we're exposed to is that about \$18,000? How much is that?

MR. ROSS: Tell me more. I didn't quite get your question.

COMMISSIONER VIGIL: The total amount that we're exposed to in terms of dollars on an annual basis – I think you mentioned quarterly.

MR. ROSS: Oh, it's less than \$500,000 annually, because that represents the amount of the payments that are due in a given year. These documents have provisions in there that preclude acceleration of the underlying loan between the Studios and Los Alamos National Bank. Normally acceleration is the first thing that happens when a loan is troubled. The bank declares that the entire amount is due and owing right now. But under these documents that can't occur. There can only be payments. So that would give the County plenty of time to restructure or take other actions that are appropriate to protect the taxpayers.

COMMISSIONER VIGIL: Okay. Thank you, Mr. Chair.

CHAIRMAN MONTOYA: Okay. Other questions?

COMMISSIONER HOLIAN: Mr. Chair.

CHAIRMAN MONTOYA: Commissioner Holian.

COMMISSIONER HOLIAN: I have a question. In the event of default by Santa Fe Studios, who would assume ownership of the property? The bank or the County?

MR. ROSS: Mr. Chair, Commissioner Holian, the County would have a first lien pursuant to the supplemental mortgage that we're considering today. So we could – we would have the right at least to assume ownership.

COMMISSIONER HOLIAN: Okay. Thank you.

CHAIRMAN MONTOYA: Just a couple of questions, Steve. In light of the fact that Albuquerque Studios just went through bankruptcy foreclosure and all that, what guarantees do we have that we're going to be successful in this endeavor?

MR. ROSS: Well, Mr. Chair, it's not really a legal question. I know that you can answer the question a lot of different ways. One way is that if Albuquerque Studios goes down there's more work for us. Up here we know from what we've heard from the folks who are proposing this studio project that Santa Fe is a very popular destination for films. We know that the state's tax incentive structure for film-making is very desirable, very attractive to filmmakers. Our proximity, an hour from LA is valued by the talent that participates in movies and productions, as opposed to sitting on a plane for 15 hours to go to New Zealand they can be here in an hour and home in LA for the evening.

I just got an email the other day that apparently there was a study done in California of the film industry there and they were discussing the concerns that California has about losing the film business to New Mexico. New Mexico was singled out as a destination for California film business. It was identified as a concern for California. In that study they pointed out that for every one job created in the film industry 2 ½ jobs are created that support the film industry. So it seems like some of the economic studies are lining up in favor of local economic development of this type being extremely beneficial to local communities.

The proponents of this project, as you know from going through the process of selecting them and awarding them this economic development project are very, very well known. Very ethical and professional film producers. They have a good reputation in LA. They're Hollywood insiders. One might argue that the people running the Albuquerque Studios are not necessarily Hollywood insiders. These folks know the business. They have developed a pricing structure they think will be very attractive to the film industry in California and help contribute to the flight of films from California.

So I think all those things being considered, like I say, not strictly legal matters but they are reasons that we are already in two different contracts with this particular group that it seems like it could work and if it does work it's going to be very beneficial for the community.

CHAIRMAN MONTOYA: Jason Hool, you're here. Is there anything you'd like to add to that?

COMMISSIONER VIGIL: While Jason's coming up, Mr. Chair, I recently received some information regarding that and I think one of our local newspapers, actually, solicited some information from Commissioners and one of the pieces of information that was critical to me was the fact that Albuquerque Studio principals have been in litigation for quite some time. I think that's probably a history that's open and documented. I also understand that management there has turned over quite a bit, and what I would say with regard to one of the clearest distinctions and one of the reasons why I really have bought into this particular project is that the principals involved in this project have vested themselves in our community. They have moved here; they live here. They're an integral part of it. They have a vested personal, private and future interest in the success of this and that is a clear distinction between Santa Fe Studios and Albuquerque Studios. I'll defer to Jason.

JASON HOOL: I'm Jason Hool with Santa Fe Studios. Mr. Chair and Commissioners, I'll be brief in my comments. One of the main differences between Albuquerque Studios and Santa Fe is obviously Santa Fe vs. Albuquerque. Santa Fe as we all know is highly desirable, especially compared to Albuquerque for a variety of reasons, most of which are that Hollywood creative talent prefers Santa Fe to Albuquerque.

Secondly, we're starting very modestly in what we build. We're starting with two sound stages. Albuquerque Studios as you know has eight sound stages, which, one may argue, might be over capacity, especially when you add in the fact that Albuquerque is less desirable than Santa Fe. So we're going to start modestly and grow organically as the demand warrants. And then I'll just further Commissioner Vigil's comments about different styles of management. The management issues at Albuquerque Studios are widely known and widely reported in the press. It's a very different situation with Santa Fe Studios.

If you're curious, the head of the film union is here and I'm sure he has some light he can shed on it. John Hendry is here to comment further.

CHAIRMAN MONTROYA: No, I'm fine. I just wanted to get your perspective in terms of that particular question. Thank you, Jason. And my next question is what are we going to do if, for whatever reason, Steve, that this doesn't work out with the film studio?

MR. ROSS: Well, Mr. Chair, we would have to take that situation as it arose. I'm sure there are any number of things that could happen. One thing that could happen is the County could take the studio back and run it itself. The County could take the studio back and hire someone to run it. Short of that, I'm sure that any situation that would arise would first involve a period where you would try and work things out with the studios and the banks and all the people involved, and probably the state also, so it's hard to look at this as a worst-case scenario because it usually doesn't happen that way. You try to work with people and get things back on an even keel. But the worst-case scenario is we take it back. It's our responsibility and we have to figure out how to make it work.

CHAIRMAN MONTROYA: Okay. And then the \$6.5 million that's going to be set aside, is that going to be coming from our cash reserve?

MR. ROSS: That is a part of our cash reserve. That would be part of the County's cash reserve and would be counted as a part of the cash reserve, so except for the

amount at issue in any given year. So the nice thing about the way this is working out is we have \$6.5 million in the first year on deposit at LANB. Of that \$6.5 million, we would be able to count \$6 million of that as a part of our required reserves. So the funds sitting there would serve essentially two purposes.

Then over time, as the balance of the loan were reduced by payments that amount on deposit there would be gradually reduced.

CHAIRMAN MONTOYA: Okay. And the reason that I ask those questions is because those questions have been asked and they're out there in terms of some misperceptions of what's sometimes not accurate and what's reported. So I think it's important that we have it on the record in terms of why this is something that we need to move forward with. So thank you for answering those questions. Peter, is there anything you'd like to add or anything we should be aware of? I know you've been very involved with this also.

PETER FRANKLIN (Bond Counsel): Mr. Chair, Commissioners, no, I think Mr. Ross summed up my views on it, essentially.

CHAIRMAN MONTOYA: Okay. Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Mr. Chair. Maybe I could start by, Mr. Hool, once things got started, when do you see construction starting, when do you see any kind of film actually starting? And I'm sorry if this has already been discussed today. I know we've discussed it in the past but we had different timelines.

MR. HOOL: Mr. Chair, Commissioner Stefanics, once the real estate closing occurs as Mr. Ross alluded to earlier. He estimated a few weeks for that to happen. Once the i's are dotted and the t's are crossed legally we anticipate breaking ground pretty much immediately thereafter. So hopefully August and/or September when we break ground. The contractors have been on standby for a number of months already and already have a grading permit and literally are on hair-trigger waiting to break ground once we get the final green light. We're estimating a construction schedule of approximately eight to twelve months, depending on the severity of this winter. And we anticipate having productions in there as soon as we open for business approximately a year from now.

As you're probably aware there are currently six films and TV productions in the state of New Mexico with a further six on the way, within the next several months, so the state of the industry in the state is very positive, compared to say, California, which is struggling as evidenced by that report that was talked about earlier today.

Once the final green light is given for us to break ground we will start our own sales and marketing for the studio and our board members who I'm sure you're all aware of are heads of their respective major Hollywood studios in Hollywood. They're going to start scheduling their films to come to our studios. And we've been holding off on our own sales and marketing until we got the final green light which we hope to receive soon.

COMMISSIONER STEFANICS: Thank you. So, Mr. Chair, Commissioners, I have received many emails supporting and some emails casing doubt on this project. And in looking back over the two reports that were done specifically for Santa Fe County, the second

report supported the first report and said business would be even better than what was suggested in the first report. And I want to remind everybody that were talking about construction jobs and if we can even get in here two films, that's 500 jobs, most of those jobs will be local. We're talking about payroll, we're talking about property tax, we're talking about a major influx. Plus, we're looking at a lot of people – I would say young people but not everybody is young – who are going through the training program at Santa Fe Community College, who are already set up to be not only trained but going into internships but going into good paying jobs.

The report that came out of the California experience, a group called Malkin – I don't know if they were a foundation or what group they were, but they indicated that for every one film job it would create 2 ½ other jobs in the community. And because Santa Fe County indicated that we were interested in economic development I see this as a project that is going to help us start a very concrete project in economic development. And who knows? Maybe we'll next have an energy park at Canyon Ranch. That will be the next step in our development. But the issue is – and it was decided before I got here – Santa Fe County decided to take the chance and become an economic development district and it's great that we are trying to break the ceiling and help people get jobs and improve the economy here in Santa Fe County. Thank you.

CHAIRMAN MONTOYA: Okay. Commissioner Vigil.

COMMISSIONER VIGIL: I just wanted to – I couldn't have said it better. Thank you, Commissioner Stefanics. There's also something that I think needs to be part of the record because it's a question that I get posed a lot and that's with regard to the studies that have been done by the state and by other entities. Those studies indicate opposite ends of the spectrum that for every dollar we invest we only get 41 cents. Another study says for every dollar we invest we get \$1.50 or \$2.50, whatever it is. Those studies are very narrowly based. In fact, what those studies do is they look at the narrowness of what a tax credit does or doesn't do, but they never look at the blossoming potential of what happens with the film industry. They never look at what it does to our community colleges. They never look at what it does to our public school systems. They never look at what it does for the potential for the students and the participants in the film industry and where they go and how they grow and how they actually develop jobs and the potential for a future and connect with community as a result of that, or move on to other areas.

So for those people who are really concerned about the data they've heard about with regard to tax credits and tax dollars I think we need to get away from the narrow, linear analysis of what a tax credit does to a tax dollar and what it does to the person, to the community, to the industry. Thank you, Mr. Chair.

CHAIRMAN MONTOYA: Thank you, Commissioner Vigil. Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Mr. Chair. I agree with all the comments that the Commission has made. I'm just beginning to wonder, is this thing going to happen before we get out of office, Commissioner Montoya. But I think this is going to be

great. We've been filming in New Mexico for many, many years and this is going to give us another opportunity to capitalize on [inaudible] and bring good, clean economic development to Santa Fe County. And I'm still waiting for that call to be in one of those movies. I don't know which it's going to be. Thank you, Mr. Chair.

CHAIRMAN MONTOYA: Okay. Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Mr. Chair. I just want to say that I'm very supportive of this project. I think it's a wonderful fit for our community. It really plays to our community's strength, and I think it speaks very well that LANB is willing to underwrite this project, in addition to what is coming from the state. So again, I'm very supportive.

CHAIRMAN MONTOYA: Okay, with that, I'll take a motion then for D. 1.

XIV. D. 1. Ordinance No. 2010-10. An Ordinance Authorizing Additional Amendments to the Previously Authorized Economic Development Project with La Luz Holdings, LLC and Santa Fe Film and Media Studios, Inc.

CHAIRMAN MONTOYA: So this is a public hearing and this is regarding the ordinance to authorize the economic development project with La Luz Holdings and Santa Fe Film and Media Studios. If there's anyone who would like to speak on this would you please come forward. Okay, the public hearing is closed.

COMMISSIONER VIGIL: Mr. Chair.

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: I move we approve Ordinance No. 2010-10.

COMMISSIONER HOLIAN: Second.

CHAIRMAN MONTOYA: I have a motion by Commissioner Vigil, second by Commissioner Holian.

The motion passed by unanimous [5-0] roll call vote with Commissioners Anaya, Holian (telephonically), Stefanics, Vigil and Montoya all voting in the affirmative.

- XIV. 2. Consideration and Approval of the Amended and Restated Project Participation and Land Transfer Agreement by and between the Board of County Commissioners, La Luz Holdings, LLC, and Santa Fe Film and Media Studio, Inc.**
- 3. Consideration and Approval of the Amended LEDA Film Grant Agreement by and between Santa Fe County, the Department of Finance and Administration and the Economic Development Department [Exhibit 2: Amended and Restated LEDA Film Grant Agreement]**
- 4. Consideration and Approval of the Form of the Supplemental Mortgage by and between La Luz Holdings LLC, Santa Fe Film and Media Studios**

- Inc. and Santa Fe County (Action Item – Form of Document) [Exhibit 3: Supplemental Mortgage]**
5. **Consideration and Approval of the Form of the Loan Guaranty Reimbursement Agreement by and between Santa Fe County, La Luz Holdings LLC and Santa Fe Film and Media Studios. (Action Item – Form of Document) [Exhibit 4: Loan Guaranty Reimbursement Agreement]**
 6. **Consideration and Approval of the Form of the Assignment of a Deposit Account by and between Santa Fe County and Los Alamos National Bank (Action Item – Form of Document) [Exhibit 5: Assignment of Deposit Account]**
 7. **Resolution No. 2010-126. A Resolution Delegating to the Interim County Manager the Authority to Execute the Restated and Amended Project Participation and Land Transfer Agreement, the Amended and Restated LEDA Film Grant Agreement From the Department of Finance and Administration and the Economic Development Department, the Supplemental Mortgage by and between La Luz Holdings LLC, Santa Fe Film and Media Studios Inc. and Santa Fe County, the Loan Guaranty Reimbursement Agreement by and between Santa Fe County, La Luz Holdings LLC and Santa Fe Film and Media Studios, the Assignment of a Deposit Account by and between Santa Fe County and Los Alamos National Bank, and Other Documents Necessary to Complete the Transaction (Action Item)**

CHAIRMAN MONTOYA: I'll entertain a motion for items 2 through 7.

COMMISSIONER STEFANICS: Mr. Chair.

CHAIRMAN MONTOYA: Commissioner Stefanics.

COMMISSIONER STEFANICS: I move approval of the items 2 through 7.

COMMISSIONER VIGIL: On that, would you consider giving Legal the latitude to make any kind of cleanup language as long as it's not substantive available.

COMMISSIONER STEFANICS: Yes.

COMMISSIONER VIGIL: Okay. I second that then.

CHAIRMAN MONTOYA: Okay. Motion by Commissioner Stefanics, second by Commissioner Vigil. Any further discussion?

The motion passed by unanimous [5-0] voice vote.

XIV. D. 8. Review of the Loan Agreement by and between Los Alamos National Bank, Santa Fe Film and Media Studios Inc. and La Luz Holdings LLC (Review Only – Not an Action Item) [Exhibit 6: Letter of Intent]

CHAIRMAN MONTOYA: Was there anything else you needed to add?

MR. ROSS: Mr. Chair, no. I handed out the letter of intent and we're going to be getting the loan agreement from LANB any day now and we'll go over it and make sure it's okay. Once it's okay then we'll schedule the closing in probably two to three weeks.

CHAIRMAN MONTOYA: Okay.

MR. ROSS: So there's no action needed on number 8. I just wanted you to know what the general terms are. We've described them and I think it's pretty simple.

XIV. D. 9. Approval of Resolution No. 2010-127. A Resolution Ratifying the Execution of a Water Rights Lease Agreement between Santa Fe County and Los Alamos National Bank and Authorizing Continued Performance by the County Under the Lease Agreement

MR. ROSS: Mr. Chair, as you recall we have a lease agreement with Los Alamos National Bank for a small amount of water from the Hagerman well. The agreement is a month-to-month lease. Questions have been raised whether the County Manager who did sign the lease had the authority to do so and this resolution merely ratifies the auction of the County Manager in signing that lease.

COMMISSIONER STEFANICS: Mr. Chair.

CHAIRMAN MONTOYA: Commissioner Stefanics.

COMMISSIONER STEFANICS: I would move approval of the resolution.


COMMISSIONER ANAYA: Second.

CHAIRMAN MONTOYA: Motion by Commissioner Stefanics. Second by Commissioner Anaya. Any other discussion?

The motion passed by unanimous [5-0] voice vote.

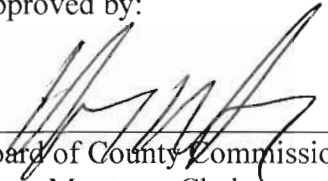
XV. ADJOURNMENT

Chairman Montoya declared this meeting adjourned at 4:40 pm.



ANTESTO
Valerie Espinoza
VALERIE ESPINOZA
SANTA FE COUNTY CLERK

Approved by:



Board of County Commissioners
Harry Montoya, Chairman

Respectfully submitted:

Karen Farrell
Karen Farrell, Wordswork
227 E. Palace Avenue
Santa Fe, NM 87501

1ST JUDICIAL COURTHOUSE UPDATE

Board of County Commissioners
Santa Fe County
July 27, 2010



1st Judicial Courthouse Current Financial Overview

▣ Revenue:	
▪ State Funds	1,026,500
▪ 2007 General Obligation Bond	27,289,191
▪ 2008 Revenue Bond	31,355,945
▪ 1/16 GRT Allocated To Date	<u>800,000</u>
Total Revenue	60,471,636

Courthouse Financial Overview

Total Revenue to Date	60,471,636
Total Expenses to Date	(17,542,965)
Total Encumbrance to Date	<u>(39,065,090)</u>
Balance to Date	3,863,581

1/16 GRT Overview

07/01/10	Balance	2,921,489
FY 11	Budget for Courthouse	(500,000)
FY 11	Projected Revenue	2,143,436
FY 11	Debt Service	<u>(1,442,656)</u>
FY 11	Ending Balance	3,122,269

Requesting Approval From BCC

Intera	335,454.97
Bradbury Stamm	867,831.17
Souder Miller	541,243.66
Gerald Martin	<u>631,490.06</u>
Total	2,376,019.86

Current Remediation Activities

- ▣ Excavation of petroleum contaminated soils
- ▣ Coordination with NMED regarding barrier wall repairs
- ▣ Installation of dewatering system
- ▣ Installation of additional shoring
- ▣ Additional excavation of petroleum contaminated soils at lowest depths
- ▣ Backfill site with clean fill material
- ▣ Begin construction of garage structure and courthouse building

Summary of Remediation to Date

- ▣ Excavation of contaminated soil totals approximately 20,000 tons
- ▣ The volume of gasoline removed is estimated from 10,000 to 15,000 gallons
- ▣ The final volume of gasoline removed is estimated at 20,000 gallons



**STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION, and
ECONOMIC DEVELOPMENT DEPARTMENT
SEVERANCE TAX BOND PROJECTS**

AMENDED AND RESTATED LEDA FILM GRANT AGREEMENT

THIS AMENDED AND RESTATED AGREEMENT is made and entered into as of this _____ day of _____ ~~January~~, 2010, by and between the Department of Finance and Administration (DFA), State of New Mexico, Bataan Memorial Building, Room 201, Santa Fe, New Mexico 87501 and the Economic Development Department (EDD), Joseph M. Montoya Bldg., 1100 S. St. Francis Dr., Santa Fe, New Mexico 87505, and Santa Fe County, 102 Grant Avenue, Santa Fe, New Mexico 87504, hereinafter called the **Grantee or County**.

RECITALS

WHEREAS, in the Laws of 2009, Chapter 5, Section 2(B)(8), the Legislature appropriated severance tax bond proceeds to DFA “for construction, renovation and improvements to media production, education and training facilities statewide” (“Project No. 09-3007”), a portion of which DFA may make available to the Grantee pursuant to this Agreement; and

WHEREAS, in the Laws of 2009, Chapter 5, Section 2(B)(14), the Legislature appropriated severance tax bond proceeds to DFA “for construction, renovation and improvements to film and media production, education and training facilities statewide” (“Project No. 09-3012”), a portion of which the DFA may make available to the Grantee pursuant to this Agreement; and

WHEREAS, in the Laws of 2009 (1st S.S.), Chapter 7, Section 3(83), the Legislature appropriated severance tax bond proceeds to DFA “to plan, design, construct, equip and furnish a film production education and training center and studio” (“Project No. 09-3821”), a portion of which DFA may make available to the Grantee pursuant to this Agreement; and

WHEREAS, in the Laws of 2009 (1st S.S.), Chapter 7, Section 3(14), the Legislature appropriated severance tax bond proceeds to EDD “to provide grants to political subdivisions of the state to achieve job growth by attracting new companies or expanding existing businesses pursuant to the Local Economic Development Act” (“Project No. 09-3766”), a portion of which EDD may make available to the Grantee pursuant to this Agreement; and

WHEREAS, throughout the remainder of this Agreement, the projects referenced in the preceding recitals are sometimes individually referred to as a “Project” and collectively referred to as the “Projects”; and

WHEREAS, the amount available to the Grantee from each Project and the reversion date for each Project is set forth in Exhibit A to this Grant Agreement; and

WHEREAS, all of the Projects are appropriations of severance tax bond proceeds; and

SFC CLERK RECORDED 09/03/2010

WHEREAS, severance tax bond appropriations are administered by the New Mexico State Board of Finance (BOF), an entity separate and distinct from DFA and EDD; and

WHEREAS, the BOF, through its counsel, has imposed, and may in the future impose, conditions upon the release of funds from the Projects, which conditions must be satisfied prior to money being released from the appropriations to DFA and EDD and, ultimately, the Grantee; and

WHEREAS, the DFA and EDD desire to grant to Grantee, and the Grantee desires to accept, the funds from the Projects, in accordance with the terms and conditions of this Agreement; and

WHEREAS, Santa Fe County is working with film and media companies to develop a media district which will create at least 500,000 hours of high-wage, environmentally-friendly jobs and comply with all the requirements of the Local Economic Development Act; and

WHEREAS, Santa Fe County plans to partner with local institutions of higher learning to provide a film and media education and training facility, in accordance with all of the requirements of the Local Economic Development Act; and

WHEREAS, current BOF conditions on the Projects require DFA and EDD to certify that the film studio project to be benefited with funds from the Projects complies with the Local Economic Development Act; and

WHEREAS, DFA and EDD require certain terms and conditions to be included in the agreements between the County and La Luz Holdings, LLC, and Santa Fe Film and Media Studios Inc. before it will provide the necessary certification; and

WHEREAS, the parties have agreed to amend the LEDA Film Grant Agreement to set forth the required terms and conditions and make other changes, so as to avoid a determination that activities under the LEDA Film Grant Agreement are not progressing satisfactorily; and

WHEREAS, this Amended and Restated LEDA Film Grant Agreement supersedes and replaces the LEDA Film Grant Agreement between the parties, effective as of February 5, 2010, when it was executed by DFA.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein and other valuable consideration, the receipt of which is hereby acknowledged, the parties hereby mutually agree as follows:

ARTICLE I- IMPLEMENTATION OF PROJECTS

A. The Projects that are subject to this Agreement are identified in Exhibit A attached hereto, which is incorporated by this reference as if set forth fully herein. Each Project subject to this Agreement has been assigned a project number, which is set forth in Exhibit A. The Grantee

shall reference this project number in all correspondence with and submissions to the DFA and/or EDD concerning the Project.

B. The Grantee shall implement, in all respects, the Projects contained in Exhibit A. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Projects contained in Exhibit A. Grantee shall finance its share (if any) of the costs of the Projects, including all Project overruns.

C. The Project descriptions in Exhibit A are intended to be identical to the corresponding appropriations in law. In the event of a conflict between the Project description in Exhibit A and the actual language of the appropriation in law, the language of the appropriation in law shall control.

D. Project funds shall not be used for purposes other than those specified in the Project description and Scope of Work contained in Exhibit A. By way of emphasis, all expenditures of Project funds must be permissible under both the Project description and the Scope of Work. By way of example, even though allowable under Project No. 09-3821, furnishings are impermissible expenditures, since they are outside the Scope of Work.

E. If Project funds are insufficient to meet all of the purposes included in the Project descriptions contained in Exhibit A, Project funds may be expended for any portion of the specified purposes, to the extent allowed by applicable law.

F. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE II – TERM OF AGREEMENT; REVERSION DATES

A. Upon being duly executed by the three parties, this Agreement shall be effective as of the date of execution by the DFA and EDD, whichever is latest. It shall terminate sixty (60) days after the economic development goals in Section 7.2.1 of the Restated and Amended Project Participation and Land Transfer Agreement have been met or the County has foreclosed on the mortgage securing those goals and returned to DFA and EDD their proportionate share of the recovery, whichever is earlier. In the event that a default of the Restated and Amended Project Participation and Land Transfer Agreement occurs and the County forecloses on the Property, this Agreement will remain in force until sixty (60) days after the County delivers the substantial equivalent of the economic development goals in the Restated and Amended Project Participation and Land Transfer Agreement; if the County is unable to achieve those goals within a reasonable time, the County shall reimburse DFA and EDD their share of the funds provided to the County under this Agreement; provided, however, that the amount due DFA and EDD shall be the amount of funds provided under this Agreement times a fraction, the numerator of which is the economic goals actually achieved and the denominator of which is the economic development goals in the Restated and Amended Project Participation and Land Transfer Agreement. The County may choose to liquidate the property to meet its obligations under the preceding sentence; if it does, DFA and EDD acknowledge and agree that (i) the County's obligations are payable solely from liquidation proceeds and no other source and (ii) the County will be entitled to credit its contributions to the property (road improvements, water and sewer service and improvements, high speed communication infrastructure, and any amounts drawn by Los Alamos National Bank against the County's loan guaranty but unreimbursed by La Luz Holdings, LLC, or Santa Fe Film and Media Studios, Inc. or through foreclosure of security interests), reduced according to the

proportion of economic goals actually achieved according to the methodology described in the previous sentence, against the reimbursement of DFA and EDD.

B. The corresponding appropriation for each Project that is subject to this Agreement has a reversion date specified by law. Exhibit A contains the DFA and EDD's estimate of the reversion date for each Project's appropriation. In the event of a conflict between the DFA and EDD's estimated reversion date and the reversion date specified by law, the reversion date specified by law shall control.

ARTICLE III – AMENDMENT

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

B. Projects can be added to and deleted from Exhibit A by written amendment. The Project description for a particular Project contained in Exhibit A, however, can only be amended in the following circumstances. First, in the event of a discrepancy between the Project description and the corresponding appropriation, the Project description shall be amended to make the Project description match the language of the appropriation. Second, in the event the Legislature reauthorizes the appropriation for different purposes, the Project description shall be amended to make the Project description match the language of the reauthorization language in law.

ARTICLE IV – REPORTS

A. Periodic Reports.

1. In order that DFA and EDD may adequately monitor Project activity, the Grantee shall submit to the DFA and EDD Periodic Reports for each Project. Periodic Reports shall be submitted on a form proscribed by DFA and EDD and contain such information as DFA and EDD may from time to time require. The initial Periodic and Final Report form is attached hereto as Exhibit B. The DFA and EDD shall provide the Grantee with a minimum of ninety (90) days advance written notice of any change to the Periodic Report format or content.

2. The Periodic Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by DFA and EDD and ending upon the submission of a Final Report for a Project. DFA and EDD may, in their discretion, change the reporting period from time to time by giving Grantee a minimum of ninety (90) days advance, written notice of any change to the reporting period; provided, however, that in no event shall the reporting period be less than one month.

B. Final Report. The Grantee shall submit to DFA and EDD a Final Report for each Project. The Final Report shall be submitted on a form proscribed by DFA and EDD and contain such information as DFA and EDD may from time to time require. The initial Periodic and Final Report form is attached hereto as Exhibit B. DFA and EDD shall provide Grantee with a minimum of ninety (90) days advance, written notice of any change to the Final Report format or content. The Final Report must be submitted with the final payment request for a Project or within 30 days after the Project's Reversion Date, which ever first occurs.

SHC CLERK RECORDED 05/03/2011

C. Paperless Reporting. In lieu of the paper reports described in subparagraphs A and B of this Article, DFA and EDD may, in their discretion, require Grantee to report periodic and final Project activity by entering such Project information as DFA and EDD may from time to time require directly into a database maintained by DFA. DFA and EDD shall give Grantee a minimum of ninety (90) days advance, written notice of the switch to or from paperless reporting. DFA and EDD shall also give Grantee a minimum of ninety (90) days advance written notice of any changes to the information the Grantee is required to report on a paperless basis.

D. Requests for Additional Information/Project Inspection. At any time during the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VII, DFA or EDD may (i) request such additional information regarding the Project as it deems necessary and (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the entity making the request. Requests made pursuant to this subparagraph D are in addition to and not in lieu of the periodic and final reporting described in subparagraphs A through C of this article.

ARTICLE V – PAYMENT PROCEDURES AND DEADLINES

A. For each Project included in this Agreement, DFA or EDD shall reimburse Grantee for qualifying expenditures in a total not to exceed the amount set forth for the Project in Exhibit A. Qualifying expenditures are those that are permissible under both the Project description and the Scope of Work. The total funds available under this Agreement for all Projects shall not exceed **\$10,000,000.00**. DFA's not to exceed amount is \$6,500,000 and EDD's not to exceed amount is \$3,500,000.

B. No funds shall be disbursed until DFA and EDD approve, in writing, of the underlying Local Economic Development Act project to be benefited with the funds as complying with all of the requirements of the Local Economic Development Act. Without limiting the generality of the foregoing, DFA and EDD must also approve of any amendments to agreements implementing the Local Economic Development Act project occurring after their approval is given.

C. The Grantee shall request payment by submitting a Request for Payment in such format and containing such information as DFA and EDD from time to time may require. The initial Request for Payment form is annexed hereto as Exhibit C. DFA and EDD shall provide Grantee with a minimum of ninety (90) days advance, written notice of any change to the Request for Payment format or content. Payment requests are subject to the following rules:

1. The Grantee must submit one original Request for Payment form.
2. A separate Request for Payment must be submitted for each Project.
3. Each Request for Payment must contain proof of payment in the form of a notarized certification from an authorized signatory that the expenditures are valid or actual receipts.

The Grantee's failure to abide by these rules may result in the denial of its payment requests or delay their processing.

D. Project funds must be expended in accordance with generally accepted principles of accounting by the reversion date for the particular Project, as established in applicable law. It is not sufficient to encumber Project funds by the Project's reversion date. Grantee must submit payment requests for all outstanding expenditures not previously reimbursed no later than the earlier of (i) 25 days after the end of the fiscal year in which Grantee incurred the expenditure; (ii) 25 days after the date of early termination pursuant to Article XIII or Article XV of this Agreement; or (iii) 25 days after the Termination Date pursuant to Article II(A) of this Agreement. By way of emphasis and example, regardless of the Project's Reversion Date and assuming no early termination, Grantee must submit to DFA and EDD Request(s) for Payment for all expenditures incurred in fiscal year 2010 by July 25, 2010. DFA and EDD shall revert to the appropriate fund unexpended funds including those for which a timely payment request has not been made.

E. Project funds may only be spent on permissible purposes within the scope of the Project and Scope of Work, as set forth in Exhibit A.

F. The DFA or EDD has the right to reject a payment request for a Project unless and until it is satisfied that the expenditures in the payment request are for valid purposes, in compliance with all the requirements of the Local Economic Development Act, and that the expenditures and the Grantee are otherwise in compliance with this Agreement. The DFA's or EDD's ability to reject payment requests is a right in addition to, and not in lieu of, any other legal or equitable remedy available to the DFA or EDD due to Grantee's violation of this Agreement.

G. Grantee acknowledges and agrees that, prior to the execution of this Grant Agreement, DFA provided to Grantee copies of the then current conditions imposed by the BOF upon the release of funds from Project Nos. 08-5251, 09-3007, and 09-3012. Grantee further acknowledges and agrees that (i) the BOF may in the future impose further or different conditions upon the Projects and (ii) that such conditions are effective without amendment of this Agreement. Grantee also acknowledges and agrees (i) that all applicable BOF conditions must be satisfied before the BOF will release to DFA funds subject to the condition(s) from the Projects; (ii) that DFA's obligation to reimburse Grantee from the Projects is contingent upon the then current BOF conditions being satisfied; and (iii) that all then current BOF conditions must be satisfied by the reversion date for the particular Project in order for Grantee to be reimbursed for eligible expenditures for which it has not been previously reimbursed.

ARTICLE VI- PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

- A. The following general conditions and restrictions are applicable to all Projects:
1. Project funds must be spent in accordance with applicable laws, regulations, policies, and guidelines, including, but not limited to, the Procurement Code (or local procurement ordinance, where applicable).
 2. Projects may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the State Constitution, the so-called Anti-Donation Clause, except that a Project may benefit an economic development project consistent with Art. IX, Section 14(D) of the Constitution

(2006) and as provided in the Local Economic Development Act, NMSA 1978, Sections 5-10-1 *et seq.*

3. No covered person shall have any interest (direct or indirect) (i) in a qualifying entity provided assistance pursuant to the Local Economic Development Act, NMSA 1978, Chapter 5, Article 10 (LEDA), with the funds that are the subject of this agreement, or (ii) any contract or subcontract of such a qualifying entity for work to be performed on the LEDA project. The Grantee shall (i) incorporate this or a substantively identical prohibition into the project participation agreement between it and such a qualifying entity and (ii) require the qualifying entity to include such a prohibition in all contracts and subcontracts for work to be performed on the LEDA project entered into after the effective date of this Agreement. As used in this section, "covered person" means a member, officer, or employee of the Grantee (or its designees or its agents), a member of the governing body of the locality in which the LEDA project is situated, and any public official that exercises any functions or responsibilities with respect to the LEDA project during his/her tenure and for one year thereafter.
4. The Grantee shall not at any time convert any property acquired or developed with Project funds to uses other than those specified in the Project description contained in Exhibit A without the DFA and EDD express, advance, written approval.

B. The Grantee hereby represents and warrants that:

1. It has the legal authority to receive and expend the Project funds.
2. This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
3. This Agreement and the Grantee's obligations hereunder do not conflict with any law applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which it is subject.
4. The Grantee has independently confirmed that the description, amount, and reversion date for each Project in Exhibit A matches the language, amount, and reversion date of each underlying appropriation in law.

ARTICLE VII – STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. For a period of six (6) years following a Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bids, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the DFA and EDD shall prescribe.

B. The Grantee shall be strictly accountable for receipts and disbursements of the funds that are the subject of this Agreement until the time the funds have been expended in accordance with the Local Economic Development Act and state law, as approved by DFA and EDD.

C. The Grantee shall make all Project records available to the Department of Finance and Administration, the Economic Development Department and the New Mexico State Auditor upon request.

ARTICLE VIII – RETURN OF SURPLUS FUNDS

If, upon the reversion date for each particular Project designated in Exhibit A or the termination date of this Agreement, any surplus Project funds are possessed by the Grantee, the Grantee shall return said to the DFA and EDD for disposition in accordance with law.

ARTICLE IX- LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party’s acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE X- GRANTEE REPRESENTATIVE

The Grantee hereby designates the person listed below as its official representative concerning all matters related to this Agreement:

Name and Title	Address	Email Address	Telephone Number	Facsimile Number
Stephen C. Ross County Attorney	PO Box 276, Santa Fe, NM 87504-0276	sross@santafecounty.org	505-986-6279	505-986-6362

The Grantee agrees that the DFA and EDD may send all notices, decisions, or other matters required under this Agreement to be set forth in writing to the above-named person by facsimile or regular mail. In the case of mailings, notices shall be deemed to have been given/received upon the date of Grantee’s actual receipt or five calendar days after mailing, whichever shall first occur. In the case of facsimile transmissions, the notice shall be deemed to have been given/received on the date reflected on the facsimile confirmation indicating a successful transmission of all pages included in the writing.

SFC CLERK RECORDED 09/03/2010

ARTICLE XI - EQUAL EMPLOYMENT OPPORTUNITY

The Grantee agrees to abide by all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this agreement.

ARTICLE XII - SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and DFA and EDD concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XIII - TERMINATION

DFA or EDD has the right to terminate this Agreement, in whole or in part, or with respect to a particular Project, if, in the judgment of DFA or EDD, the terms of the Agreement have been violated or the activities described in the attached Project descriptions are not progressing satisfactorily. The Grantee may terminate this Agreement at any time by giving DFA or EDD written notice of such termination, provided that adequate arrangements must be made to complete the Projects or well-defined phases of them. Any termination must be in writing and is effective upon receipt of the written notice or such later date set forth in the termination notice.

ARTICLE XIV - GRANTEE'S VIOLATION OF THIS AGREEMENT

In the event that the DFA or EDD determines that Grantee violated this Agreement, the DFA or EDD shall notify Grantee of its determination in writing. The DFA or EDD may require the Grantee to develop and implement a corrective action plan to remedy the violation(s). Such corrective action plan (i) must be submitted by the Grantee to DFA and EDD in writing within thirty (30) days after notice is given by DFA or EDD and (ii) must be approved by DFA and EDD in writing. DFA and EDD shall approve or reject the corrective action plan within twenty (20) days after its submission by Grantee. Alternatively, or if the Grantee fails to develop and implement a DFA/EDD-approved corrective action plan, or fails to submit a corrective action plan, the DFA or EDD may require the Grantee to repay the DFA and EDD all funds provided to the Grantee for the Projects as to which the violation(s) relate. This is in addition to, and not in lieu of, any other equitable or legal remedy available to the DFA or EDD for Grantee's breach of this Agreement.

ARTICLE XV - APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate

immediately upon written notice being given by the DFA and EDD to the Grantee. The DFA's or EDD's decision as to whether sufficient appropriations are available shall be accepted by the Grantee and shall be final.

ARTICLE XVI—DEFINITIONS APPLICABLE TO ARTICLES XVI, XVII, AND XVIII

As used in Articles XVI, XVII, and XVIII, the following words shall have the following meanings.

"Architecture Contract" means the architect's contract relating to the LEDA Project, if any.

"Commencement Date" means the first date of construction on the LEDA Project.

"Completion Date" means such date as the County establishes as the date by which La Luz/Santa Fe Studios is to have completed the LEDA Project. Completion Date shall be no later than seventy-two months (72) after the Commencement Date.

"Construction Contract" means and includes the Contract with the Contractor and any subcontracts with subcontractors, materialmen, laborers, or any other person or entity for performance of work on the LEDA Project or the delivery of materials to the LEDA Project.

"Contractor" means the General Contractor for the LEDA Project.

"County-La Luz/Santa Fe Studios Agreements" means every agreement between the County and La Luz/Santa Fe Studios concerning Project, including, but not limited to, that certain Restated and Amended Project Participation and Land Transfer Agreement, the LEDA Performance and Right of Repurchase Agreement, and agreements entered into pursuant to or furtherance of those agreements, including the Mortgage or other security agreement.

"Event of Default" means and includes, without limitation, any event of default set forth in Article XVIII(F) of this Agreement or any default under the County-La Luz/Santa Fe Studios Agreements.

"Granted Funds" means the funds provided to the County under this Agreement.

The terms "hazardous waste," "hazardous substance," "disposal," "release," and "threatened release," as used in this Agreement, shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or Federal laws, rules, or regulations adopted pursuant to any of the foregoing.

"Improvements" means and includes, without limitation, all existing and future permanent buildings, structures, facilities, fixtures, additions, and similar construction on the Property.

"La Luz/Santa Fe Studios" means La Luz Holdings, LLC, and Santa Fe Film and Media Studios, Inc., collectively and individually.

"LEDA Project" means the planning, designing, and construction of Phase IA of the Project, consisting initially of two soundstages and related warehouse and office facilities to be

located on the Property as more fully described in the Restated and Amended Project Participation and Land Transfer Agreement.

"LEDA Project Documents" means the Plans and Specifications, all studies, data and drawings relating to the LEDA Project, whether prepared by or for Borrower, the Construction Contract, the Architecture Contract, and all other contracts and agreements relating to the Project or the construction of the Improvements.

The "Mortgage" means that certain mortgage securing performance of La Luz/Santa Fe Studios' obligations under the County-La Luz/Santa Fe Studios Agreements.

"Project" means the film and multi-media production facility and related facilities to be constructed and operated on the real property shown on that certain Plat of Survey entitled "LOT LINE ADJUSTMENT PLAT AND EASEMENT PLAT FOR THE COUNTY OF SANTA FE, A NEW MEXICO POLITICAL SUBDIVISION", filed for record as Document Number 1585956, appearing in Plat Book 711 at pages 24-26, records of Santa Fe County, New Mexico.

"Property" means Lot 1 of the Real Property together with all Improvements, all equipment, fixtures, and other articles of personal property now or subsequently attached or affixed to the Real Property, together with all accessions, parts, and additions to, all replacements of, and all substitutions for any of such property, and all proceeds (including insurance proceeds and refunds of premiums) from any sale or other disposition of such property.

"Real Property" means the real property located in Santa Fe County, State of New Mexico, and legally described as Lot 1 as shown on that certain Plat of Survey entitled "LOT LINE ADJUSTMENT PLAT AND EASEMENT PLAT FOR THE COUNTY OF SANTA FE, A NEW MEXICO POLITICAL SUBDIVISION", filed for record as Document Number 1585956, appearing in Plat Book 711 at pages 24-26, records of Santa Fe County, New Mexico.

"Third-Party Loan" means the agreement between La Luz/Santa Fe Studios and a third party lending institution to provide a loan in an amount not less than \$6.5 million for the LEDA Project.

ARTICLE XVII—SPECIAL TERMS AND CONDITIONS

This Agreement is subject to the following special terms and conditions:

A. Condition Precedent to the Disbursement of Any Granted Funds. The following are conditions precedent to the disbursement of any funds under this Agreement:

1. As-Built Appraisal. The County and the Economic Development Department must receive from La Luz/Santa Fe Studios and approve an as-built appraisal based upon the County approved Plans and Specifications for the LEDA Project. The as-built appraisal must establish an as-built value of the LEDA Parcel sufficient to fully secure the Granted Funds plus any other assistance provided by the County under the County-La Luz/Santa Fe Studios Agreements or private funding that is secured in whole or in part by the LEDA Parcel. If the as-built appraised value of the LEDA Parcel is insufficient to fully secure the items contained in the previous sentence, La Luz/Santa Fe Studios must provide additional security in the amount of the shortfall, such as a letter of credit or escrow account, in a form and substance and from a source satisfactory to DFA, EDD, and the County.

2. Budget and Sources of Funds. The County and the Economic Development Department must receive from La Luz/Santa Fe Studios and approve detailed budget and cash flow

projections for the LEDA Project, which shall include evidence satisfactory to the County and the Economic Development Department that all funding required to complete the LEDA Project is secured.

3. Inclusion of Required Terms and Conditions. The County must include the terms and conditions contained in Article XVIII in the County-La Luz/Santa Fe Studios Agreements.

B. Implementation of LEDA Project. The County shall use its best efforts to ensure that the LEDA Project is completed in accordance with the County-La Luz/Santa Fe Studios Agreements, including, but not limited to, by pursuing appropriate remedies for any Event of Default.

C. Remittance of Recovered Funds. In the event the County recovers through foreclosure or otherwise any of the Granted Funds due to an Event of Default or otherwise, the County shall promptly remit such funds to DFA and/or EDD, in accordance with their reasonable instructions.

D. Effect of Adverse Court Ruling. In the event a court of competent jurisdiction rules the Granted Funds may not be used for the LEDA Project, that the County may not guarantee the Third-Party Loan, or that this Agreement or the County-La Luz/Santa Fe Studios Agreements are otherwise illegal such that the LEDA Project is not fully funded or otherwise not viable, the State may immediately terminate this Agreement, in which event it shall have no obligation to disburse any Granted Funds hereunder.

E. Event of Default. The County shall promptly notify EDD and DFA of an Event of Default. A material, uncured Event of Default constitutes just cause for termination of this Agreement; provided, however, that EDD and DFA agree to consult in good faith with the County about whether termination is appropriate under the circumstances or whether the County should be allowed to use the Granted Funds to complete the LEDA Project on its own account.

ARTICLE XVIII—REQUIRED TERMS AND CONDITIONS IN AGREEMENTS BETWEEN THE COUNTY AND LA LUZ HOLDINGS, LLC AND SANTA FE FILM AND MEDIA STUDIOS, INC.

This Agreement is contingent upon the County-La Luz/Santa Fe Studios Agreements containing the following or substantially similar, as determined by DFA and EDD in their absolute discretion, terms and conditions:

A. Conditions Precedent to Each Request for Payment. Each Application for Payment shall be subject to the fulfillment to the County's satisfaction of all of the conditions set forth in this Article XVIII(A), provided that shall indicates a mandatory condition precedent that must be met and may indicates a condition precedent that the County may, in its discretion, invoke.

1. List of Contractors, Subcontractors, and Materialmen. The County may, in its discretion, require a list of all contractors employed in connection with the construction of the Improvements, showing the name, address, and telephone number of each contractor, a general description of the nature of the work to be done, the labor and materials to be supplied, the names of materialmen, if known, and the approximate dollar value of the labor, work, or materials with respect to each contractor or materialman. The County shall have the right to communicate with any person to verify the facts disclosed by the list or by any Application for Payment, or for any other purpose.

2. Plans, Specifications, and Permits. The County shall have received and accepted a complete set of Plans and Specifications setting forth all Improvements for the LEDA Project, and La Luz/Santa Fe Studios shall have furnished to the County copies of all permits and requisite approvals of any governmental body necessary for the construction and use of the LEDA Project.

3. Architecture and Construction Contracts. If required by the County, La Luz/Santa Fe Studios shall have furnished in form and substance satisfactory to the County an executed copy of the Architecture Contract and an executed copy of the Construction Contract, which shall contain a conditional assignment to the County of the contract that shall terminate when the Mortgage and any other security interest in favor of the County is fully released.

4. La Luz/Santa Fe Studios' Authorization. La Luz/Santa Fe Studios shall have provided in form and substance satisfactory to the County properly certified resolutions, duly authorizing the execution and delivery of the County-La Luz/Santa Fe Studios Agreements, and the consummation of the LEDA Project, and such other authorizations and other documents as the County in its sole discretion may require.

5. Performance and Payment Bond. At the County's discretion, La Luz/Santa Fe Studios shall cause the Contractor to furnish a performance and payment bond or a materialmen's and mechanics' payment bond.

6. Plans and Specifications. If requested by the County, La Luz/Santa Fe Studios shall assign to the County, in a form satisfactory to the County, the Plans and Specifications for the LEDA Project, to the extent La Luz/Santa Fe Studios has the power to assign the same. Such assignment shall be conditional and shall terminate when the Mortgage and any other security interest in favor of the County has been fully released.

7. Soil Report. If requested by the County, La Luz/Santa Fe Studios shall have furnished to the County, at La Luz/Santa Fe Studios' expenses, a soil report for the Property in form and substance satisfactory to the County, prepared by a registered engineer satisfactory to the County stating that the Property is free from soil or other geological conditions that would preclude its use or development as contemplated without extra expense for precautionary, corrective or remedial measures.

8. If requested by the County, La Luz/Santa Fe Studios shall have furnished to the County a survey of recent date, prepared and certified by a qualified surveyor and providing that the Improvements, if constructed in accordance with the Plans and Specifications, shall lie wholly within the boundaries of the Property without encroachment or violation of any zoning ordinances, building codes or regulations, or setback requirements, together with such other information as the County in its sole discretion may require.

9. Zoning. La Luz/Santa Fe Studios shall have furnished evidence satisfactory to the County that the Property is duly and validly zoned for the construction, maintenance, and operation of the LEDA Project. The County Board of County Commissioners approved a Master Plan for portions of the Real Property on December 8, 2009.

10. Insurance. La Luz/Santa Fe Studios shall procure and maintain the following policies of insurance: (a) during the period of construction: an all risks course of construction insurance policy (builder's risk), with extended coverage endorsements on a replacement basis for the full insurable value of the Property covering all Improvements on the Real Property in an

amount sufficient to avoid application of any coinsurance clause, and covering theft of materials, with a standard mortgagee clause in favor of the County, insuring the County as loss payee and mortgagee, and with such endorsements as may be required by the County; and (b) after the period of construction until all obligations secured by the Mortgage have been fulfilled: a casualty insurance policy on a replacement basis for the full insurable value of the Property covering all Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, general liability insurance naming the County as an additional insured, flood insurance if required by the County or applicable law, and all other insurance required by any agreement between the County and La Luz/Santa Fe Studios, including, but not limited to, the Mortgage. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to the County. La Luz/Santa Fe Studios shall deliver to the County certificates of coverage from each insurer containing a stipulation that coverage will not be canceled or diminished without a minimum of ten (10) days' prior written notice to the County and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include an endorsement providing that coverage in favor of the County will not be impaired in any way by any act, omission or default of La Luz/Santa Fe Studios or any other person. Should the Real Property at any time become located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, La Luz/Santa Fe Studios agrees to obtain and maintain Federal Flood Insurance for the full unpaid principal balance of the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by the County, and to maintain such insurance until such time as all obligations secured by the Mortgage have been fulfilled.

11. **Workers' Compensation Coverage.** Provide to the County proof of the Contractor's compliance with all applicable workers' compensation laws and regulations with regard to all work performed on the LEDA Project.

12. **Satisfactory Construction.** All work usually done at the stage of construction for which Application for Payment is made shall have been done in a good and workmanlike manner and all materials and fixtures usually furnished and installed at that stage of construction shall have been furnished and installed, all in substantial compliance with the Plans and Specifications and without material deviations therefrom. La Luz/Santa Fe Studios shall also have furnished to the County such proofs as the County may require to establish the progress of the work, compliance with applicable laws, freedom of the Property from liens, and the basis for the requested disbursement.

13. **Certification.** La Luz/Santa Fe Studios shall have furnished to the County a certification by an engineer, architect, or other qualified inspector acceptable to the County that the construction of the Improvements has complied and will continue to comply with all applicable statutes, ordinances, codes, regulations, and similar requirements.

14. **Lien Waivers.** La Luz/Santa Fe Studios shall have obtained and attached to each Application for Payment executed acknowledgments of payments of all sums due and releases of mechanic's and materialmen's liens, satisfactory to the County, from any party having lien rights, which acknowledgments of payment and releases of liens shall cover all work, labor, equipment, materials done, supplied, performed, or furnished prior to such Application for Payment.

15. **Lack of Default.** There shall not exist at the time of any Request for Payment a condition which would constitute an Event of Default.

B. Disbursement of Granted Funds. The following provisions relate to the disbursement by the County of Granted Funds.

1. **Application for Payment.** Each application shall be stated on a standard AIA payment request form or other form approved by the County, executed by La Luz/Santa Fe Studios, and supported by such evidence as the County shall reasonably require. La Luz/Santa Fe Studios shall apply for disbursement only with respect to work actually performed and for materials and equipment actually incorporated into the LEDA Project or delivered to the Property, provided that title to such materials and equipment has transferred to La Luz/Santa Fe Studios, and that arrangements satisfactory to the County are made for the security and protection of such materials and equipment. Each Application for Payment shall be deemed a certification of La Luz/Santa Fe Studios that as of the date of such application, all representations and warranties contained in the County-La Luz/Santa Fe Studios Agreements are true and correct, and that La Luz/Santa Fe Studios is in compliance with all of the provisions of the County-La Luz/Santa Fe Studios Agreements. La Luz/Santa Fe Studios may make application for payment no more frequently than monthly.

2. **Payments.** At the sole option of the County, payments may be paid in the joint names of La Luz/Santa Fe Studios and the General Contractor, subcontractor(s), supplier(s), or other vendor(s) in payment of sums due under the Construction Contract. At its sole option, the County may directly pay the General Contractor and any subcontractors or other parties the sums due under any contract. La Luz/Santa Fe Studios appoints the County as its attorney-in-fact to make such payments. This power shall be deemed to be coupled with an interest, shall be irrevocable, and shall survive an Event of Default. Notwithstanding the foregoing, La Luz/Santa Fe Studios may give notice to the County that in good faith it contests an amount claimed by the General Contractor, subcontractor, supplier, or other vendor. In such event, and in the event La Luz/Santa Fe Studios commences an action, arbitration or mediation under the pertinent construction contract or otherwise, the County shall not be authorized to make any such payment until final adjudication or settlement of the same.

3. **Projected Cost Overruns.** If the County at any time determines in its sole discretion that the amount of secured funding for the LEDA Project is insufficient, or will be insufficient, to complete fully and to pay for the LEDA Project, then within ten (10) days after receipt of a written request from the County, La Luz/Santa Fe Studios shall deposit an amount equal to the deficiency as determined by the County in an escrow account established for that purpose by the County. The judgment and determination of the County under this section shall be final and conclusive. Any such amounts deposited by La Luz/Santa Fe Studios shall be disbursed prior to any Granted Funds.

4. **Construction Default.** If La Luz/Santa Fe Studios fails in any respect to comply with the provisions of any provision of County-La Luz/Santa Fe Studios Agreements or if construction ceases before completion regardless of the reason, the County, at its option, (i) may refuse to disburse any Granted Funds, and, after fifteen (15) days prior written notice to La Luz/Santa Fe Studios to cure such noncompliance or failure, (ii) may enter into possession of the construction site and perform or cause to be performed any and all work and labor necessary to complete the improvements, substantially in accordance with the Plans and Specifications.

5. **Damage or Destruction.** If any of the Property or Improvements is damaged or destroyed by casualty of any nature, within sixty (60) days thereafter La Luz/Santa Fe Studios shall (i) restore the Property and Improvements to the condition in which they were before such

damage or destruction with funds other than Granted Funds or those provided under the Third-Party Loan or (ii) commence restoration of the Property and Improvements to the condition in which they were before such damage or destruction with funds other than Granted Funds or those provided under the Third-Party Loan and proceed to diligently complete the same. The County shall not be obligated to make disbursements under this Agreement until such restoration has been accomplished. However, in the event of damage or destruction, the County shall make insurance proceeds available to La Luz/Santa Fe Studios for restoration and repair of the Property.

6. **Right to Advance Funds.** When any event occurs that the County determines may endanger completion of the LEDA Project or the fulfillment of any condition or covenant in this Agreement, the County may require La Luz/Santa Fe Studios to furnish, within ten (10) days after delivery of a written request, adequate security to eliminate, reduce, or indemnify the County against such danger. In addition, upon such occurrence, the County in its sole discretion may advance funds or agree to undertake to advance funds to any party to eliminate, reduce, or indemnify the County against, such danger or to complete the LEDA Project. All sums paid by the County pursuant to such agreements or undertakings shall be for La Luz/Santa Fe Studios' account and shall be without prejudice to La Luz/Santa Fe Studios' rights, if any, to receive such funds from the party to whom paid. All sums expended by the County other than Granted Funds in the exercise of its option to complete the LEDA Project or protect the County's interests shall be payable to the County on demand together with interest from the date of the payment at [insert interest rate description]. In addition, any payment pursuant to this paragraph, including without limitation direct disbursements to the Contractor or other parties in payment of sums due under the Construction Contract, shall be deemed to have been expended by or on behalf of La Luz/Santa Fe Studios and to have been secured by the County's Mortgage or Deed of Trust, if any, on the Property.

C. **Affirmative Covenants.** La Luz/Santa Fe Studios must covenant and agree with the County that, while the Mortgage is in effect, La Luz/Santa Fe Studios shall be obligated to do the following:

1. **Litigation.** Promptly inform the County in writing of (a) all material adverse changes in La Luz/Santa Fe Studios' financial condition, and (b) all existing and all threatened litigation, claims, investigations, administrative proceedings or similar actions affecting La Luz/Santa Fe Studios or any Guarantor which could materially affect the financial condition of La Luz/Santa Fe Studios or the financial condition of any Guarantor.

2. **Financial Records.** Maintain its books and records in accordance with Generally Accepted Accounting Principles, applied on a consistent basis, and permit the County, DFA, or EDD to examine and audit La Luz/Santa Fe Studios' books and records at all reasonable times.

3. **Additional Information.** Furnish such additional information and statements, lists of assets and liabilities, agings of receivables and payables, inventory schedules, budgets, forecasts, tax returns, and other reports with respect to La Luz/Santa Fe Studios' financial condition and business operations as the County may request from time to time.

4. **Compliance with Governmental Requirements.** Comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property. La Luz/Santa Fe Studios may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including

appropriate appeals, so long as La Luz/Santa Fe Studios has notified the County in writing prior to doing so and so long as, in the County's sole opinion, the County's interests in the Property are not jeopardized. The County may require La Luz/Santa Fe Studios to post adequate security or a surety bond, reasonably satisfactory to the County, to protect the County's interest.

5. Construction of the LEDA Project. Commence construction of the LEDA Project no later than the Commencement Date, and cause the Improvements to be constructed and equipped in a diligent and orderly manner and in strict accordance with the Plans and Specifications approved by County, the Construction Contract, and all applicable laws, ordinances, codes, regulations, and rights of adjoining or concurrent property owners.

6. Granted Funds. Use the Granted Funds solely for payment of bills and expenses directly related to the LEDA Project that are permissible expenditures under this Agreement.

7. Defects. Upon demand of the County, promptly correct any defect in the Improvements or any material departure from the Plans and Specifications not approved by the County before further work shall be done upon the portion of the Improvements affected.

8. LEDA Project Claims and Litigation. Promptly inform the County of (a) all material adverse changes in the financial condition of the General Contractor; (b) any litigation and claims, actual or threatened, affecting the LEDA Project or the General Contractor, which could materially affect the successful completion of the LEDA Project or the ability of the General Contractor to complete the LEDA Project as agreed; and (c) any condition or event which constitutes a breach or default under any of the County-La Luz/Santa Fe Studios Agreements or any contract related to the LEDA Project.

9. Payment of Claims and Removal of Liens. La Luz/Santa Fe Studios shall (a) cause all uncontested claims for labor done and materials and services furnished in connection with the Improvements to be fully paid and discharged in a timely manner, (b) diligently file or procure the filing of a valid notice of completion of the Improvements, or such comparable document as may be permitted under applicable lien laws, (c) diligently file or procure the filing of a notice of cessation, or such comparable document as may be permitted under applicable lien laws, upon the happening of cessation of labor on the Improvements for a continuous period of thirty (30) days or more, and (d) take all reasonable steps necessary to remove all claims of liens against the Property, the Improvements or any part of the Property or Improvements, or any rights or interests appurtenant to the Property or Improvements. Upon request by the County, La Luz/Santa Fe Studios shall make such demands or claims upon or against the General Contractor, laborers, materialmen, subcontractors, or other persons who have furnished or claim to have furnished labor, services, or materials in connection with the Improvements. La Luz/Santa Fe Studios shall, within thirty (30) days after La Luz/Santa Fe Studios receives notice of the filing of any claim of lien, cause the same to be discharged by payment, settlement or lien cancellation proceeding in accordance with New Mexico law. If La Luz/Santa Fe Studios fails to remove any lien on the Property or Improvements, the County may pay such lien, or may contest the validity of the lien, and La Luz/Santa Fe Studios shall pay all costs and expenses of such contest, including the County's reasonable attorneys' fees.

10. Taxes and Claims. Pay and discharge when due all of La Luz/Santa Fe Studios' indebtedness, obligations, and claims that, if unpaid, might become a lien or charge upon the Property or Improvements; provided, however, that La Luz/Santa Fe Studios shall not be

required to pay and discharge any such indebtedness, obligation, or claim so long as (a) its legality shall be contested in good faith by appropriate proceedings, (b) the indebtedness, obligation, or claim does not become a lien or charge upon the Property or Improvements, and (c) La Luz/Santa Fe Studios shall have established on its books adequate reserves with respect to the amount contested in accordance with generally accepted accounting practices. If the indebtedness, obligation, or claim does become a lien or charge upon the Property or Improvements, La Luz/Santa Fe Studios shall remove the lien or charge as provided in the preceding paragraph.

11. Performance. Perform and comply with all terms, conditions, and provisions set forth in the County-La Luz/Santa Fe Studios Agreements, and in all other loan agreements now or hereafter existing between La Luz/Santa Fe Studios and any other party. La Luz/Santa Fe Studios shall notify the County immediately in writing of any default in connection with any agreement.

12. Additional Assurances. Make, execute, and deliver to the County such Security Agreements, instruments, documents, and other agreements reasonably necessary to perfect the County's Security Interests in the Property and Improvements.

13. Expend the Granted Funds by the applicable reversion dates.

14. Complete construction no later than the Completion Date.

15. Hazardous Materials. Except as disclosed to and acknowledged by the County in writing, La Luz/Santa Fe Studios represents and warrants that: (a) During the period of La Luz/Santa Fe Studios' ownership of the Property, there shall be no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous waste or substance by any person on, under, about or from any of the Property. (b) La Luz/Santa Fe Studios has no knowledge of, or reason to believe that there will be (i) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance on, under, about or from the Property by any prior owners or occupants of any of the properties, or (ii) any actual or threatened litigation or claims of any kind by any person relating to such matters. (c) Neither La Luz/Santa Fe Studios nor any tenant, contractor, agent or other authorized user of any of the properties shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on, under, about or from the Property; and any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations, and ordinances, including without limitation those laws, regulations and ordinances described above. La Luz/Santa Fe Studios authorizes the County and its agents to enter upon the Property to make such inspections and tests as the County may deem appropriate to determine compliance of the Property with this section of the Agreement. Any inspections or tests made by the County shall be at La Luz/Santa Fe Studios' expense and for the County's purposes only and shall not be construed to create any responsibility or liability on the part of the County to La Luz/Santa Fe Studios or to any other person. The representations and warranties contained herein are based on La Luz/Santa Fe Studios' due diligence in investigating the properties for hazardous waste and hazardous substances. La Luz/Santa Fe Studios hereby (a) releases and waives any future claims against the County for indemnity or contribution in the event La Luz/Santa Fe Studios becomes liable for cleanup or other costs under any such laws, and (b) agrees to indemnify and hold harmless the County against any and all claims, losses, liabilities, damages, penalties, and expenses which the County may directly or indirectly sustain or suffer resulting from a breach of this section of the Agreement or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release of

a hazardous waste or substance on the properties. The provisions of this section of the Agreement, including the obligation to indemnify, shall survive the payment of the Indebtedness and the satisfaction of this Agreement and shall not be affected by The County's acquisition of any interest in any of the Property, whether by foreclosure or otherwise.

D. Negative Covenants. La Luz/Santa Fe Studios must covenant and agree with the County that while the Mortgage is in effect, La Luz/Santa Fe Studios shall not, without the prior written consent of the County:

1. Loans, Acquisitions and Guaranties. (a) Loan, invest in or advance money or assets, or (b) incur any obligation as surety or guarantor, which would impair La Luz/Santa Fe Studios' ability to repay the Third-Party Loan, or the County's security.

2. Modification of Contract. Make or permit to be made any material modification of the Construction Contract which increases the cost of the LEDA Project by more than \$25,000.

3. Liens. Create or allow to be created any lien or charge upon the Property or the Improvements, except as otherwise allowed under the County-La Luz/Santa Fe Studios Agreements.

E. General LEDA Project Provisions. La Luz/Santa Fe Studios must agree to the following provisions related to the construction and completion of the LEDA Project:

1. Change Orders. La Luz/Santa Fe Studios may approve change orders to the LEDA Project so long as the LEDA Project budget remains in balance after execution of each such change order and La Luz/Santa Fe Studios provides adequate funds or security to make payment of any increased costs. Requests for all other change orders must be in writing, signed by La Luz/Santa Fe Studios and the architect, and delivered to the County for its approval. La Luz/Santa Fe Studios will obtain any required permits or authorizations from governmental authorities having jurisdiction before approving or requesting a new change order; provided, that in the event the County fails to respond to any change order request within five (5) days after notice thereof is given to the County, then the County shall be deemed to have approved such change order.

2. Purchase of Materials; Conditional Sales Contracts. No materials, equipment, fixtures, or articles of personal property placed in or incorporated into the LEDA Project shall be purchased or installed under any Security Agreement or other agreement whereby the seller reserves or purports to reserve title or the right of removal or repossession, or the right to consider such items as personal property after their incorporation into the LEDA Project, unless otherwise authorized by the County in writing.

3. County's Right of Entry and Inspection. The County and its agents shall have at all times the right of entry and free access to the Property and the right to inspect all work done, labor performed, and materials furnished with respect to the LEDA Project. Any physical inspection may only be conducted with 96 hours or more prior written notice if film and media production activities are in process at the LEDA Project. The County shall have unrestricted access to and the right to copy all records, accounting books, contracts, subcontracts, bills, statements, vouchers, and supporting documents of La Luz/Santa Fe Studios relating in any way to the construction of the LEDA Project.

4. County's Right to Stop Work. If the County in good faith determines that any work or materials do not conform to the approved Plans and Specifications or sound building

practices, or otherwise depart from any of the requirements of the County-La Luz/Santa Fe Studios Agreements, the County may require the work to be stopped and withhold disbursements of Granted Funds until the matter is corrected. In such event, La Luz/Santa Fe Studios will promptly correct the work to the County's satisfaction. No such action by the County will affect La Luz/Santa Fe Studios' obligation to complete the Improvements on or before the Completion Date. The County is under no duty to supervise or inspect the construction or examine any books and records. Any inspection or examination by the County is for the sole purpose of protecting the County's security and preserving the County's rights under the County-La Luz/Santa Fe Studios Agreements. No default of La Luz/Santa Fe Studios will be waived by any inspection by the County. In no event will any inspection by the County be a representation that there has been or will be compliance with the Plans and Specifications or that the construction is free from defective materials or workmanship.

5. Indemnity. La Luz/Santa Fe Studios shall indemnify and hold the County harmless from any and all claims asserted against the County or the Property by any person, entity, or governmental body, or arising out of or in connection with the Property, Improvements, or LEDA Project. The County shall be entitled to appear in any action or proceeding to defend itself against such claims, and all costs incurred by the County in connection with such defense, including attorneys' fees, shall be paid by La Luz/Santa Fe Studios to the County. The County shall, in its sole discretion, be entitled to settle or compromise any asserted claims against it, and such settlement shall be binding upon La Luz/Santa Fe Studios for purposes of this indemnification. All amounts paid by the County under this paragraph shall be secured by the County's Mortgage or Deed of Trust, if any, on the Property, shall be payable upon demand, and shall bear interest at [insert interest rate provisions]. Notwithstanding the foregoing, La Luz/Santa Fe Studios shall not be required to indemnify or pay costs or expenses of the County arising from actions or claims of citizens, other governmental subdivisions or agencies or the State of New Mexico concerning the actions of the County in approving the LEDA Project, entering into the PPA, Related Documents or any document or agreement contemplated thereunder, or consummating any of the transactions contemplated thereunder.

6. Publicity. The County may obtain publicity in connection with the LEDA Project through press releases and participation in ground-breaking and opening ceremonies and similar events.

7. Actions. The County shall have the right to commence, appear in, or defend any action or proceeding purporting to affect the rights, duties, or liabilities of the parties to this Agreement, or the disbursement of Granted Funds. In connection with this right, the County may incur and pay reasonable costs and expenses, including, but not limited to, attorneys' fees, for both trial and appellate proceedings. La Luz/Santa Fe Studios covenants to pay to the County on demand all such expenses, together with interest from the date the County incurs the expense at [insert description of interest rates]. Notwithstanding the foregoing, La Luz/Santa Fe Studios shall not be required to pay costs or expenses of the County arising from actions or claims of citizens, other governmental subdivisions or agencies or the State of New Mexico concerning the actions of the County in approving the LEDA Project, entering into the PPA, Related Documents or any document or agreement contemplated thereunder, or consummating any of the transactions contemplated thereunder.

F. Events of Default. Each of the following shall constitute an Event of Default under this Article XVIII:

1. **False Statements.** Any warranty, representation or statement made or furnished to the County by or on behalf of La Luz/Santa Fe Studios or any Grantor under this Agreement or the Related Documents is false or misleading in any material respect at the time made or furnished, or becomes false or misleading at any time thereafter.

2. **Defective Collateralization.** Any of the County-La Luz/Santa Fe Studios Agreements ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

3. **Insolvency.** The dissolution or termination of La Luz/Santa Fe Studios' existence as a going business, the insolvency of La Luz/Santa Fe Studios, the appointment of a receiver for any part of La Luz/Santa Fe Studios' property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against La Luz/Santa Fe Studios or Guarantor.

4. **Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of La Luz/Santa Fe Studios, any creditor of any Grantor, including the Guarantor against any collateral securing the Indebtedness, or by any governmental agency. This includes a garnishment, attachment, or levy on or of any of La Luz/Santa Fe Studios' accounts.

5. **Breach of Construction Contract.** The Improvements are not constructed in accordance with the Plans and Specifications or in accordance with the terms of the Construction Contract, as the same may be modified by change orders or otherwise in accordance with its terms.

6. **Cessation of Construction.** Except as otherwise provided in Section 19.1.6 of the PPA, as amended, prior to the completion of construction of the Improvements and equipping of the LEDA Project, the construction of the Improvements or the equipping of the LEDA Project is abandoned or work thereon ceases for a period of more than thirty (30) days for any reason other than force majeure, or the Improvements are not completed for purposes of final payment to the General Contractor prior to the Completion Date represented by La Luz/Santa Fe Studios to the County, regardless of the reason for the delay. Notwithstanding the above, neither cessation of work for more than thirty (30) days nor completion of the LEDA Project after the Completion Date shall represent a default so long as La Luz/Santa Fe Studios demonstrates to the County's reasonable satisfaction that La Luz/Santa Fe Studios is diligently pursuing the resumption and/or completion of work on the LEDA Project.

7. **Transfer of Property.** Sale, transfer, hypothecation, assignment, or conveyance of the Property or the Improvements or any portion thereof or interest therein by La Luz/Santa Fe Studios or any Grantor without the County's prior written consent, except as permitted under the PPA.

8. **Condemnation.** All or any material portion of the Property is condemned, seized, or appropriated without compensation, and La Luz/Santa Fe Studios does not within thirty (30) days after such condemnation, seizure, or appropriation, initiate and diligently prosecute appropriate action to contest in good faith the validity of such condemnation, seizure, or appropriation.

G. **Effect of an Event of Default; Remedies.** Upon the occurrence of any Event of Default under Article VIII(F) hereof which is not cured within five (5) days after notice thereof from the County to La Luz/Santa Fe Studios, and at any time thereafter, and upon the occurrence of

any other Event of Default which is not cured within thirty (30) days after notice thereof from the County to La Luz/Santa Fe Studios, and at any time thereafter, the County may, at its option, but without any obligation to do so, and in addition to any other right the County may have, do any one or more of the following without further notice to La Luz/Santa Fe Studios: (a) Cancel County-La Luz/Santa Fe Studios Agreements; (b) Institute appropriate proceedings to enforce the performance of the County-La Luz/Santa Fe Studios Agreements; (c) Withhold further disbursement of Granted Funds; (d) Expend funds necessary to remedy the default; (e) Take possession of the Property and continue construction of the LEDA Project; (f) Foreclose the County's Mortgage or Deed of Trust, if any, on the Property in any manner available under law; (g) Appoint a receiver to complete, operate or maintain the LEDA Project; and (h) Exercise any other right or remedy which it has under the County-La Luz/Santa Fe Studios Agreements, or which is otherwise available at law or in equity or by statute.

H. Completion of Improvements by the County. If the County takes possession of the Property, it may take any and all actions necessary in its judgment to complete construction of the Improvements, including but not limited to making changes in the Plans and Specifications, work, or materials and entering into, modifying or terminating any contractual arrangements, subject to the County's right at any time to discontinue any work without liability. If the County elects to complete the Improvements, it will not assume any liability to La Luz/Santa Fe Studios or to any other person for completing the Improvements or for the manner or quality of construction of the Improvements, and La Luz/Santa Fe Studios expressly waives any such liability. La Luz/Santa Fe Studios irrevocably appoints the County as its attorney-in-fact, with full power of substitution, to complete the Improvements, at the County's option, either in La Luz/Santa Fe Studios' name or in its own name. In any event, all sums expended by the County in completing the construction of the Improvements will be considered to have been disbursed to La Luz/Santa Fe Studios and will be secured by the Mortgage. For these purposes, La Luz/Santa Fe Studios assigns to the County all of its right, title and interest in and to the LEDA Project Documents; however the County will not have any obligation under the LEDA Project Documents unless the County expressly hereafter agrees to assume such obligations in writing. The County will have the right to exercise any rights of La Luz/Santa Fe Studios under the LEDA Project Documents upon the occurrence of an Event of Default. All rights, powers, and remedies of the County under this Agreement are cumulative and alternative, and are in addition to all rights which the County may have under applicable law.

ARTICLE XIX—DELEGATION OF AUTHORITY TO COUNTY MANAGER TO SIGN AMENDMENTS TO THIS AGREEMENT

The County Manager may sign any amendment to this Agreement that, in the opinion of the County Attorney, does not materially change the County's obligations hereunder.

ARTICLE XX—EFFECT ON FEBRUARY 5, 2010 LEDA FILM GRANT AGREEMENT

This Amended and Restated LEDA Film Grant Agreement supersedes and replaces the LEDA Film Grant Agreement between the parties, effective as of February 5, 2010, which is hereby made null and void and shall be of no further force or effect.

[THIS SPACE LEFT BLANK INTENTIONALLY]

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

By: _____
~~Michael D. Anaya~~ Harry B. Montoya, Chair

Attest:

Valerie Espinoza, County Clerk

Approved as to form:

Stephen C. Ross, County Attorney

REVOKED

SFC CLERK RECORDED 09/03/2018

DEPARTMENT OF FINANCE AND ADMINISTRATION - DFA

By: ~~Katherine B. Miller~~ Rick Martinez

Its: Deputy Cabinet Secretary

(Date)

ECONOMIC DEVELOPMENT DEPARTMENT - EDD

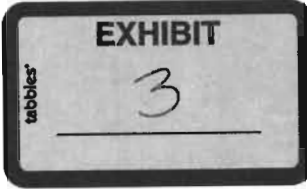
By: Fred Mondragon

Its: Cabinet Secretary

(Date)

REVISED

SFC CLERK RECORDED 09/03/2010



Draft 7/24/26/10

When recorded, return to:
SANTA FE COUNTY, NEW MEXICO
Attention: Stephen C. Ross, County Attorney
102 Grant Avenue
Santa Fe, NM 87501

SUPPLEMENTAL MORTGAGE

THIS SUPPLEMENTAL MORTGAGE is made this ___ day of _____, 2010, by and between **LA LUZ HOLDINGS, LLC**, a New Mexico limited liability company, whose address is 7 Plaza del Centro, Santa Fe, New Mexico 87506 (together with Santa Fe Film and Media Studios, Inc., the "Borrower"), which expression shall include Borrower's heirs, personal representatives, administrators, assigns, and successors in interest, and **SANTA FE COUNTY, NEW MEXICO**, whose address is 102 Grant Avenue Santa Fe, NM 87501 ("Mortgagee" or the "County") which expression shall include the Mortgagee's personal representatives, administrators, assigns, and successors in interest. This Supplemental Mortgage supplements the mortgage granted by Borrower to Mortgagee and recorded in the official records of Santa Fe County, New Mexico on February 17, 2010 as Document No. 1591147 (the "Prior Mortgage").

In connection with the development and construction of a film and media production studio and associated uses under the Local Economic Development Act, Sections 5-10-1 *et seq.* NMSA 1978, as amended (the "Project"), the County and the Borrower have entered into a Restated and Amended Land Transfer and Project Participation Agreement, as amended (the "PPA") and a LEDA Performance and Right of Repurchase Agreement by and between Borrower and the County (the "LEDA Agreement" and, together with the PPA, the "LEDA Agreements"). Pursuant to the LEDA Agreements, Mortgagee has executed and delivered to Los Alamos National Bank ("LANB") a loan guaranty (the "Loan Guaranty") in the maximum principal amount of SIX MILLION FIVE HUNDRED THOUSAND DOLLARS (\$6,500,000.00) relating to (1) a Loan Agreement of even date herewith by and between Borrower and LANSB (the "LANB Loan Agreement") and Borrower's promissory note to LANSB in the maximum amount of \$_____ dated the same date as this Supplemental Mortgage (the "Loan Note"), which provides for principal and interest payments and with the full indebtedness thereunder, if not paid earlier, due and payable not later than _____ (___) years after the date hereof; and (2) a Loan Guaranty Reimbursement Agreement of even date herewith by and between Borrower and Mortgagee, which provides for the repayment of all amounts paid by Mortgagee to LANSB, its successors or assigns, pursuant to the Loan Guaranty, including, without limitation, (aa) all amounts drawn by LANSB following Borrower's failure to timely pay principal of or interest pursuant to the LANSB Loan Agreement, and (bb) costs incurred by Mortgagee in providing the Loan Guaranty or in exercising remedies under the Loan Guaranty Reimbursement Agreement (the "Guaranty Indebtedness").

As contemplated in the LEDA Agreements, the County has separately entered into an Amended and Restated LEDA Film Grant Agreement (the "Grant Agreement") by and among the County, the New Mexico Department of Finance and Administration ("DFA") and the New Mexico Department of Economic Development ("EDD" and, together with DFA, the "State") dated as of _____, 2010,

SFC CLERK RECORDED 09/03/2010

In addition, Borrower grants Mortgagee a Uniform Commercial Code security interest in the Personal Property, subject only to the lien of the Prior Mortgage and Uniform Commercial Code security interest, to secure the performance of Borrower's obligations under the Secured Instruments. Thus the Uniform Commercial Code security interest granted herein secures the repayment of (1) all amounts paid by the County to LANB, its successors or assigns, pursuant to the Loan Guaranty, including, without limitation, (aa) amounts drawn by LANB following Borrower's failure to timely pay principal, interest or any other charges and amounts due pursuant to the LANB Loan Agreement, (bb) costs incurred by the County in providing the Loan Guaranty or in exercising remedies under the Loan Guaranty Reimbursement Agreement; and (2) all amounts paid or advanced by the County or the State pursuant to the Grant Agreement subject to repayment in the event of default by Borrower in its obligations under the LEDA Agreements, including (aa) amounts disbursed by the State or the County pursuant to the Grant Agreement, (bb) costs incurred by the County in completing the Project following a default and termination of the LEDA Agreements, and (cc) costs incurred by the County or the State in entering into the Grant Agreement or LEDA Agreements, or in exercising remedies thereunder. Hereinafter, the Real Property and the Personal Property shall be referred to collectively as the "Mortgaged Property."

Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Loan Guaranty Reimbursement Agreement, the Grant Agreement or in the Prior Mortgage.

In addition to the mortgage covenants and statutory mortgage condition, this Supplemental Mortgage is subject to the following covenants and conditions for the breach of which it is subject to foreclosure as provided by law and the Borrower hereby covenants and agrees with the Mortgagee as follows:

1. **Borrower's Representations.** At the time of the execution and delivery of this Mortgage, the Borrower is well seized of the Mortgaged Property in fee simple, and has good right, full power, and lawful authority to grant, bargain, sell, convey, and mortgage the same in manner and form aforesaid and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and encumbrance of whatsoever kind and nature, EXCEPT the Prior Mortgage and the other Permitted Liens, including without limitation, those items listed on Exhibit B hereto, and that the Borrower shall and will forever warrant and defend the Mortgagee's quiet and peaceable possession of the same against the lawful claims and demands of all persons, except as in this paragraph stated.

2. **Assignment of Rents and Revenues.** Borrower unconditionally assigns and transfers to Mortgagee all the rents and revenues of the Mortgaged Property. Borrower authorizes Mortgagee or Mortgagee's agents to collect the rents and revenues and hereby directs each tenant of the Mortgaged Property to pay the rents to Mortgagee or Mortgagee's agents. However, prior to Mortgagee's notice to Borrower of any default or breach of any covenant, term, condition, or agreement in the Mortgage, Borrower may collect, receive and use all rents and revenues of the Mortgaged Property. Notwithstanding the license granted to Borrower to collect and use said rents and revenues, this assignment of rents and constitutes an absolute assignment and not an assignment for additional security only. If Mortgagee gives notice of default or breach to Borrower: (a) all rents and revenues thereafter received by Borrower shall be held by Borrower as trustee for benefit of Mortgagee only, to be

5. **Performance of Obligations under LANB Loan Agreement, Loan Note, Loan Guaranty Reimbursement Agreement, Grant Agreement and LEDA Agreements.** The Borrower shall promptly pay and otherwise perform all obligations as provided in the LANB Loan Agreement, Loan Note Loan Guaranty Reimbursement Agreement, Grant Agreement and LEDA Agreements, and any renewal, extension or amendment thereof, and in the manner, form, and at the time or times provided therein.

6. **Payment of Taxes, Assessments and Utilities.** The Borrower shall pay or cause to be paid by tenants of the Real Property, when due and payable all rent, charges for electrical, gas, sewage, water, and all other utility and other charges, fines, or impositions, and all laborers', mechanics' or materialmen's or other liens that may be laid or assessed upon the Mortgaged Property or on any interest therein. The Borrower shall pay or cause to be paid when due and payable all taxes, assessments and other charges, fines and impositions attributable to the Mortgaged Property which may attain a priority over this Mortgage. Borrower shall promptly discharge any lien which has priority over this Mortgage; provided that Borrower shall not be required to discharge any such lien so long as Borrower shall agree in writing to the payment of the Secured Indebtedness secured by such lien in a manner acceptable to Mortgagee, or shall in good faith contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Mortgaged Property or any part thereof, all as provided in the LANB Loan Agreement. Borrower may also contest taxes as may be provided in the LANB Loan Agreement, the Grant Agreement and the LEDA Agreements.

7. **Care of the Mortgaged Property.** The Borrower shall, while any of the Secured Indebtedness secured hereby remains unreimbursed to Mortgagee, keep all buildings and other destructible improvements now existing or hereafter erected on the Mortgaged Property in good order, condition, and repair at Borrower's own expense and shall not commit or suffer any waste of the Mortgaged Property. Borrower shall not perform any act that will destroy or damage the Mortgaged Property. Borrower shall not allow the Mortgaged Property to deteriorate, reasonable wear and tear excepted. Borrower shall not perform any act that will unduly impair or depreciate the value of the Mortgaged Property. If Borrower fails to do anything required by this paragraph, Mortgagee may make necessary repairs to the Mortgaged Property and add the cost thereof to the Secured Indebtedness. Borrower shall not abandon or leave unattended the Personal Property. Borrower shall do all other acts, in addition to those acts set forth in this Mortgage, which are reasonably necessary to protect and preserve the Personal Property.

8. **Replacement of Personal Property.** Borrower shall not, without the prior written consent of Mortgagee, permit any of the Personal Property to be removed at any time from the Real Property, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Borrower subject to the liens and security interest of this Supplemental Mortgage and free and clear of any other lien or security interest except such as may be first approved in writing by Mortgagee.

9. **Insurance.** The provisions of this Section 9 shall only apply to the extent that the Prior Mortgage is no longer in effect, and Borrower shall not be required to obtain insurance as provided herein to the extent that Borrower is in compliance with the insurance requirements of the Prior

damage to the property of others caused by accident or other occurrence (including arising out of motor vehicles) resulting in liability, with such insurance to consist of (A) basic coverage in the minimum amounts of \$1,000,000 for the death or bodily injury of any one person, \$1,000,000 for all claims resulting from any one occurrence and \$500,000 for property damage, with a deductible amount of not more than \$100,000 per occurrence, and (B) "umbrella coverage" in excess of the aforesaid limits in the amount of \$3,000,000;

(iv) Business interruption insurance covering, for a period of at least one year, (A) the expenses of operating the Borrower's business during the time required to repair or restore the Mortgaged Property in the event of damage thereto or destruction thereof including the payments, employment expenses of key personnel and all other expenses necessary to preserve the Borrower's business as an operating entity, and (B) the expenses of providing alternative housing for displaced tenants of the Mortgaged Property;

(v) Medical liability insurance covering risks arising from the examination, diagnosis, treatment or care provided by the employees or agents of the Borrower in the amount of \$1,000,000 for any one person or occurrence; and

(vi) Fidelity bonds covering all officers and employees of the Borrower who collect or have custody of any funds, excluding, however, petty cash.

c. The Borrower shall appoint an insurance consultant who shall be a person who has had experience in dealing with the insurance requirements of similar institutions. The Borrower shall procure a review every two (2) years of its insurance requirements from the insurance consultant, the results of which shall be in writing and shall include the insurance consultant's recommendations, if any, for adjustments in any of the coverages required by Section (b) hereof and the deductibles. If such consultant makes reasonable recommendations for the change of any of such coverages or the deductibles, the Borrower shall change such coverages or the deductibles in accordance with the recommendations. A copy of the insurance review shall be provided upon Mortgagee's request.

It shall not be deemed a breach hereof if the Borrower shall procure insurance coverage below that required by Section (b) hereof if the insurance consultant certifies to the Mortgagee or if the insurance review states that the insurance coverage secured is the greatest amount of coverage commercially available for the risk being insured. The cost of

any such proceeding, the Mortgagee shall have the right to defend the same, and the expense thereof, including reasonable attorney fees, shall be a lien on said property and shall be secured by this Mortgage, repayable by the Borrower on demand.

Borrower hereby grants to Mortgagee the power (exercisable only during the continuance of an Event of Default), which power shall be deemed coupled with an interest, to file such claims (including filing claims in Borrower's name) and take such other actions as Mortgagee deems appropriate, with respect to any eminent domain, condemnation or similar proceedings, provided however, that Mortgagee shall have no obligation to do so.

In the event of a total taking of the Real Property, the proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Borrower. In the event of a partial taking, the proceeds shall first be applied to restoration necessitated by a partial taking, then if the loan to value ratio of the Mortgaged Property after completion of the restoration is less than 50%, as determined by the Mortgagee in its discretion based on its estimate of the market value of the Mortgaged Property, the remaining proceeds shall be returned to Borrower. If the loan to value ratio of the Mortgaged Property after completion of the restoration is 50% or greater, as determined by the Mortgagee in its discretion based on its estimate of market value of the Mortgaged Property, Mortgagee, in its sole discretion may apply the remaining proceeds to the sums secured by this Mortgage. If Borrower disagrees with Mortgagee's determination of market value, Mortgagee will engage an independent appraiser, at Borrower's expense, to determine the market value of the Mortgaged Property.

If an Event of Default has not occurred, all proceeds received by Mortgagee with respect to restoration of the Real Property necessitated by a partial taking of the Real Property will be applied to the expense of such restoration. Mortgagee will reasonably ascertain the portion of any governmental award or payment so allocable.

If the Real Property is abandoned by Borrower, or if, after notice by Mortgagee to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Mortgagee within thirty (30) days after the date such notice is mailed, Mortgagee is authorized to collect and apply the proceeds, at Mortgagee's option, either to restoration or repair of the Real Property or to the sums secured by this Mortgage.

11. **Hazardous Materials.** Borrower shall not cause or permit the presence, use, disposal, storage or release of any Hazardous Materials on or in the Mortgaged Property unless said use is in full compliance with Environmental Law. Borrower shall not do, nor allow anyone else to do, anything affecting the Mortgaged Property that is a violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use or storage on the Mortgaged Property of small quantities of Hazardous Materials that are generally recognized to be appropriate to normal commercial uses and to maintenance of the Mortgaged Property. Borrower shall promptly give Mortgagee written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Mortgaged Property and any Hazardous Materials or Environmental Laws of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Materials affecting the Mortgaged Property is necessary, Borrower shall promptly take all necessary remedial actions in

reasonable attorneys' fees and costs incurred in the investigation, defense and settlement of claims) that Mortgagee may suffer or incur (as holder of this Mortgage, as mortgagee in possession or as successor in interest to the Borrower as owner of the Mortgaged Property by virtue of foreclosure or acceptance of a deed in lieu of foreclosure) as a result of or in connection in any way with any of the Environmental Laws (including the assertion that any lien existing pursuant to the Environmental Laws takes priority over the lien of this Mortgage), any environmental assessment or study from time to time undertaken or requested by the Borrower or breach of any covenant or undertaking by the Borrower herein; provided, however, the Borrower shall have no obligation hereunder to Mortgagee with respect to indemnified liabilities arising solely from the gross negligence or willful misconduct of Mortgagee. It is expressly understood and agreed that the indemnifications granted herein are intended to protect Mortgagee, its past, present and future agents, officers and directors from any such claims which may arise by reason of the security interests, liens and/or mortgages granted to Mortgagee hereunder or under any other document or agreement given to secure repayment of the Secured Indebtedness, and whether or not such claims arise before or after Mortgagee has foreclosed upon and/or otherwise become the owner of the Mortgaged Property. All obligations of indemnity as provided hereunder shall be deemed a part of the Secured Indebtedness as defined in this Mortgage, the Loan Guaranty Reimbursement Agreement, the Loan Note, the LANB Loan Agreement, the Grant Agreement, the LEDA Agreements or any other provision of the Prior Mortgage shall be secured by the Mortgaged Property and/or any other Collateral now or hereafter delivered to Mortgagee as security for repayment of the Secured Indebtedness. It is expressly understood and agreed that the provisions hereof shall and are intended to be continuing and shall survive the repayment of the Secured Indebtedness. Notwithstanding the foregoing, Borrower shall not be required to indemnify or pay costs or expenses of the County arising from actions or claims of citizens, other governmental subdivisions or agencies or the State of New Mexico concerning the actions of the County in approving the Project, entering into the LEDA Agreements, Related Documents or any document or agreement contemplated thereunder, or consummating any of the transactions contemplated thereunder.

To the extent, if at all, that this Supplemental Mortgage is deemed to be a "construction contract" within the meaning of NMSA 1978 § 56-7-1 (2005) as amended from time to time, it shall not be construed to indemnify the indemnitee, its officers, employees or agents from their own negligence, acts or omissions, but shall be limited to liability, damages, losses or costs caused by, or arising out of, the acts or omissions of the indemnitor or its officers, employees or agents.

If the Mortgagee is made a party to any suit or proceedings by reason of the interest of Mortgagee in the Mortgaged Property, Borrower shall reimburse Mortgagee for all costs and expenses, including attorneys' fees, incurred by Mortgagee in connection therewith. All such amounts incurred by Mortgagee hereunder shall be secured hereby and shall be due and payable by Borrower to Mortgagee forthwith on demand, with interest thereon at the Interest Rate. The Mortgagor hereby assigns to the Mortgagee all judgments, decrees, and awards for injury or damage to the Mortgaged Property and the Borrower authorizes the Mortgagee at its sole election, to apply the same, or the proceeds thereof, to the Secured Indebtedness in such manner as they may elect, subject to the relevant provisions (if any) of the Loan Guaranty Reimbursement Agreement; and during the continuance of an Event of Default the Borrower hereby authorizes the Mortgagee, in the name of the Borrower, to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree.

editing, or post-production. Non-expendable Personal Property such as generators, lights or other tangibles shall be returned to the Mortgaged Property after use under the terms of any leasing or similar arrangement; provided further that expendables are not, by their nature, expected to be returned to the Mortgaged Property or to Borrower.

- e. Abandonment of the Mortgaged Property by Borrower;
- f. The filing, execution or occurrence of:
 - i. A petition in bankruptcy by or against Borrower which remains undismissed or unstayed for sixty (60) calendar days;
 - ii. A petition or answer seeking a reorganization, composition, readjustment, liquidation, dissolution or other relief of the same or different kind under any provision of the Bankruptcy Act which remains undismissed or unstayed for sixty (60) calendar days.
 - iii. Adjudication of Borrower as a bankrupt or insolvent, or insolvency in the bankruptcy equity sense which remains undischarged or unstayed for sixty (60) calendar days;
 - iv. An assignment by Borrower for the benefit of creditors, whether by trust, mortgage or otherwise;
 - v. A petition or other proceeding by or against Borrower for the appointment of a trustee, receiver, guardian, conservator or liquidator with respect to all or substantially all of Borrower's property which remains undischarged or unstayed for sixty (60) calendar days; or
- g. Borrower's dissolution or liquidation, or the taking of possession of Borrower's property by any governmental authority in connection with dissolution or liquidation; or
- h. A reasonable determination by Mortgagee that the security of the Supplemental Mortgage is inadequate or in danger of being impaired or threatened from any cause whatsoever.

20. **Acceleration and Foreclosure.** If there is any Default under the Loan Guaranty Reimbursement Agreement, the Loan Note, the LANB Loan Agreement, the Grant Agreement, the LEDA Agreements or any other provision of the Prior Mortgage or this Mortgage, all indebtedness secured by this Mortgage, whether the same shall be due and payable according to the tenor and effect thereof or not, and anything herein to the contrary notwithstanding, shall, at the option of the Mortgagee, immediately become due and payable without notice to the Borrower of the exercise of such option. Upon the happening of such event, the Mortgagee shall be entitled to appointment of a receiver to manage the Mortgaged Property and collect the rents, profits and income therefrom, this Supplemental Mortgage shall be subject to foreclosure at the option of the Mortgagee, and the Mortgaged Property may be sold in the manner and form prescribed by law. In the event of any sale hereunder, the Mortgagee may become the purchaser of the Mortgaged Property or any part thereof and shall be entitled to a credit on the purchase price in the amount of its interest in the Mortgaged Property, including, but not limited to all amounts paid in connection with the foreclosure and/or the preservation of the Mortgaged Property. Application of funds received by Mortgagee following Default shall be applied as set forth in Section 4 of this Mortgage.

concurrent; (b) may be pursued separately, successively or concurrently against Borrower or others obligated under the Loan Guaranty Reimbursement Agreement, this Mortgage, the Prior Mortgage, the LEDA Agreements and all other notes and instruments executed and delivered by Borrower or others on behalf of Borrower, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee; (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee in the enforcement of any rights, remedies or recourse under the Loan Guaranty Reimbursement Agreement, this Mortgage, the Prior Mortgage, the Grant Agreement, the LEDA Agreements or otherwise at law or in equity shall be deemed to cure any default by Borrower.

25. **Release of Mortgage.** This Supplemental Mortgage may be released when (1) all amounts due under the Reimbursement Agreement have been repaid, and (2) the loan guaranty itself has been terminated. Upon such release, Mortgagee shall record a release of this Mortgage.

Borrower may request that Mortgagee release all or a portion of Lots 2, 3 and 4 of the Property from this Supplemental Mortgage. The County may release such portions of the Property upon demonstration, to the satisfaction of the County, that the fair market value of the Property and Improvements remaining subject to this Mortgage following such release, together with other security provided by Borrower and satisfactory to the County in its sole discretion, will fully secure (1) total dollar amount that the County could be obligated to pay in connection with the Loan Guaranty, (2) all amounts remaining due under the Land Note, and (3) any portion of the Economic Development Grant that could become subject to repayment as a result of Borrower's default under the LEDA Agreements, as provided in the Grant Agreement. Borrower shall be obligated to pay costs of any appraisal and all other costs incurred by the County in connection with Borrower's request for a release from this Supplemental Mortgage.

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26. **Notices.** Copies of all notices and communications concerning this Supplemental Mortgage shall be mailed to the parties at the addresses specified in this Supplemental Mortgage or as otherwise set forth in the LANB Loan Agreement, and any change of address shall be communicated to the other party in writing.

27. **Headings.** The marginal or topical headings of the provisions herein are for convenience only and do not define, limit or construe the contents of these provisions.

28. **Binding Effect.** All of the grants, covenants, terms, conditions, and agreements hereof shall be binding upon and inure to the benefit of all of the heirs, personal representatives, administrators, assigns, and successors in interest of the parties hereto.

29. **Additional Definitions.** Except as expressly defined herein, terms contained in the LANB Loan Agreement shall have the same meanings herein.

30. **Redemption Period.** If this Supplemental Mortgage is foreclosed, the redemption period after judicial sale shall be one (1) month in lieu of nine months.

31. **Governing Law; Severability.** This Supplemental Mortgage shall be subject to and

limited liability company

By: _____
Lance Hool, Manager

SANTA FE FILM AND MEDIA STUDIOS,
INC., a New Mexico corporation

By: _____
Conrad Hool, Vice President

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

The foregoing instrument was acknowledged before me this ____ day of _____, 2010, by
Lance Hool, Manager of La Luz Holdings, LLC, a New Mexico limited liability company, and by
Conrad Hool, Vice President of Santa Fe Film and Media Studios, Inc., a New Mexico corporation.

My commission
expires _____

NOTARY PUBLIC

SFC CLERK RECORDED 09/03/2010

EXHIBIT "B"

Permitted Liens

1. Prior Mortgage [See Attachment B-1]
2. Other Permitted Liens [See Attachment B-2]

SFC CLERK RECORDED 09/03/2010



Draft 7/24/10

LOAN GUARANTY REIMBURSEMENT AGREEMENT
BY AND BETWEEN SANTA FE COUNTY, NEW MEXICO, as Loan Guarantor,
and LA LUZ HOLDINGS, LLC, as borrower

THIS LOAN GUARANTY REIMBURSEMENT AGREEMENT by and between LA LUZ HOLDINGS, LLC and SANTA FE FILM AND MEDIA STUDIOS, INC. (together, the "Borrower") and SANTA FE COUNTY, NEW MEXICO (the "County" or "Guarantor") is made and executed in connection with the following facts and circumstances.

RECITALS

- A. Borrower has requested that the County provide to Los Alamos National Bank ("LANB") a guaranty of the obligations of Borrower to pay the principal of and interest on a construction loan made by LANB to Borrower to finance the cost of constructing Phase 1A of the Santa Fe Studio Project pursuant to the Local Economic Development Act, Sections 5-10-1 through 5-10-13 NMSA 1978, County Ordinance No. 2008-07 and the Land Transfer and Project Participation Agreement, as amended, approved pursuant thereto (the "Project").
B. The County is willing, solely under the terms and conditions specified in this Agreement and in the Related Documents, to guaranty Borrower's obligations pursuant to a loan agreement (the "Loan Agreement" by and between Borrower and LANB of even date herewith and Borrower's promissory note (the "Construction Note") delivered to LANB by Borrower, pursuant to which the County will execute and deliver a guaranty agreement (the "Guaranty Agreement") to LANB and, pursuant to the terms thereof, deposit the Guaranty Amount of \$6,500,000 in an account held and administered by LANB as provided in the Guaranty Agreement, from which LANB may withdraw amounts due from but not timely paid by Borrower under the Construction Loan Agreement and Construction Note, including, without limitation, late charges, interest, collection fees and attorneys' fees.
C. Borrower understands and agrees that: (a) in agreeing to guaranty Borrower's obligations under the Loan Agreement and Note pursuant to the terms of this Agreement, the County is relying upon Borrower's representations, warranties, and agreements as set forth in this Agreement, and (b) any payments made by the County in connection with all such Loans shall be and remain subject to the terms and conditions of this Agreement.

WHEREFORE, THE COUNTY AND BORROWER AGREE as follows:

AGREEMENT

- 1. TERM; FUTURE ADVANCE UNDER MORTGAGE.
1.1 This Agreement shall be effective as of _____, 2010 and shall continue thereafter until all Guaranty Indebtedness has been paid in full and all other obligations of Borrower hereunder have been performed in full and the parties terminate this Agreement in writing.

SFC CLERK RECORDED 09/03/2010

1.2 This Agreement constitutes a "Future Advance" in connection with the mortgage granted by Borrower to Mortgagee and recorded in the official records of Santa Fe County, New Mexico on February 17, 2010 at Book _____, Page _____ as Document No. 1591147 (the "Prior Mortgage"), and is further secured by the supplemental mortgage recorded in the official records of Santa Fe County, New Mexico on _____, 2010 at Book _____, Page _____ (the "Guaranty Mortgage") as Document Number _____.

2. DEFINITIONS. The following words shall have the following meanings when used in this Agreement. Terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

"Agreement" means this Loan Guaranty Reimbursement Agreement, as the same may be amended or modified from time to time, together with all exhibits and schedules attached hereto from time to time.

"Borrower" means, jointly and severally, La Luz Holdings, LLC and SF Film and Media Studios, Inc.

"Closing Date" means the closing date for the Construction Loan and Guaranty Agreement.

"Collateral" or "collateral" means and includes without limitation all property and assets granted as collateral security for a Loan, whether real or personal property, whether granted directly or indirectly, whether granted now or in the future, and whether granted in the form of a security interest, mortgage, deed of trust, assignment, pledge, chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt lien, charge, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

"Construction Loan" means the amount loaned to the Borrower by LANB to finance costs of constructing the Project.

"Construction Loan Agreement" means the agreement by and between the Borrower and LANB pursuant to which LANB will make a loan to Borrower to finance costs of constructing the Project.

"Construction Note" means the promissory note delivered by the Borrower to LANB evidencing the Borrower's obligation to repay the Construction Loan.

"Economic Development Grant" means the \$10,000,000 grant from the State to the County to finance a portion of the costs of the Project.

"Economic Development Grant Agreement" means the Agreement by and among the New Mexico Department of Finance and Administration and the New Mexico Economic Development Department as grantors, and the County, as Grantee, entered into in connection with the Economic Development Grant.

"Event of Default" means and includes, without limitation, any of the Events of Default set forth below in the section titled "Events of Default."

"General Contractor" means the general contractor hired by Borrower to construct the Project.

"Grantor" means and includes without limitation each and all of the persons or entities granting a Security Interest in any Collateral for the Indebtedness, including without limitation all Borrowers granting such a Security Interest.

"Guaranty Account" means the account held and administered by LANB pursuant to the Guaranty Agreement.

"Guaranty Agreement" means the agreement by and between the County and LANB pursuant to which the County has agreed to guaranty the obligations of the Borrower under the Construction Loan Agreement and Construction Note.

"Guaranty Indebtedness" means and includes without limitation, all amounts paid by the County to LANB pursuant to the Guaranty Agreement, including, without limitation, amounts withdrawn from the Guaranty Account, interest, late charges, collection fees and attorneys' fees.

"Guaranty Mortgage" means that certain security instrument securing this Agreement.

"Improvements" means and includes, without limitation, all existing and future permanent buildings, structures, facilities, fixtures, additions, and similar construction on the Property.

"Land Transfer and Project Participation Agreement" or "PPA" means the Land Transfer and Project Participation Agreement entered into by and among the County and Borrower, authorized by County Ordinance No. 2008-07, as amended.

"LEDA Agreements" means, together, the Land Transfer and Project Participation Agreement and the LEDA Performance Agreement.

"LEDA Performance Agreement" means that certain LEDA Performance and Right of Repurchase Agreement of even date between Borrower and the County.

"LEDA Project" means the local economic development project under the LEDA Performance Agreement and PPA Agreements.

"Letter of Credit" means the letter of credit provided by a federally insured banking institution acceptable to the County providing, for the benefit of the County, for payment of the principal of and interest on the Loan up to the amount of \$2,000,000, and any letter of credit replacing the initial letter of credit.

"Plans and Specifications" means the plans and specifications for the Project which have been submitted to and initialed by the County, together with such changes and additions as may be approved by the County in writing.

"Prior Mortgage" means the mortgage granted by Borrower to Mortgagee and recorded in the official records of Santa Fe County, New Mexico on February 16, 2010 at Book ___, Page ___.

"Project" means the construction and completion of all Improvements on the Property constituting Phase 1A under the PPA, including without limitation the erection of the building or structure, installation of equipment and fixtures, landscaping, and all other work necessary to make the Property usable and complete for the intended purposes.

"Project Documents" means the Plans and Specifications, all studies, data and drawings relating to the Project, whether prepared by or for Borrower, the Construction Contract, the Architecture Contract, and all other contracts and agreements relating to the Project or the construction of the Improvements.

"Property" means Lot 1 of the Real Property together with all Improvements, all equipment, fixtures, and other articles of personal property now or subsequently attached or affixed to the Real Property, together with all accessions, parts, and additions to, all replacements of, and all substitutions for any of such property, and all proceeds (including insurance proceeds and refunds of premiums) from any sale or other disposition of such property.

"Real Property" means the real property located in Santa Fe County, State of New Mexico, and legally described as Lot 1 as shown on that certain filed Plat of Survey entitled "LOT LINE

ADJUSTMENT PLAT AND EASEMENT PLAT FOR THE COUNTY OF SANTA FE, A NEW MEXICO POLITICAL SUBDIVISION", filed for record as Document Number 1585956, appearing in Plat Book 711 at pages 24-26, records of Santa Fe County, New Mexico.

"Related Documents" means and includes, without limitation, the Guaranty Mortgage, the Prior Mortgage, [the Letter of Credit], the Land Transfer and Project Participation Agreement, and any other mortgages, deeds of trust, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Guaranty Indebtedness.

"Security Agreement" means and includes without limitation the Mortgage and any agreements, promises, covenants, arrangements, understandings, mortgages, deeds of trust or other agreements, whether created by law, contract, or otherwise, evidencing, governing, representing, or creating a Security Interest for repayment of the Indebtedness.

"Security Interest" means and includes without limitation any type of collateral security, whether in the form of a lien, charge, mortgage, deed of trust, assignment, pledge, chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

"SFS" means Santa Fe Film and Media Studios, Inc.

"Value" means such amount or worth as defined and determined by County in its sole discretion unless agreed to the contrary by the County in writing.

3. REIMBURSEMENT OBLIGATION OF BORROWER.

3.1 The Borrower shall reimburse the County for Guaranty Indebtedness within [30] days following receipt of notice from the County that Guaranty Indebtedness has been incurred. Amounts constituting Guaranty Indebtedness shall bear at the rate [12]% per annum, which shall begin to accrue from the date that LANB has levied on the Guaranty Account or on which the County has otherwise made any payment pursuant to the Guaranty Agreement.

3.2 FEES AND EXPENSES. As a condition precedent of this Agreement, Borrower shall pay, at or prior to the Closing Date, all out-of-pocket expenses incurred by the County in connection with the preparation of the Loan Guaranty Agreement and Loan Guaranty Reimbursement Agreement, including without limitation the following: (a) all closing costs, fees, and other expenses incurred by the County in connection with the Guaranty Agreement, Loan Guaranty Reimbursement Agreement and the Related Documents, including, without limitation, attorneys' fees; and (b) all title examination fees, title insurance premiums, appraisal fees, survey costs, required fees, and filing and recording fees.

4. REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants to the County, as of the date of this Agreement, as of the date of each disbursement of Construction Loan proceeds, as of the date of any renewal, extension or modification of any Loan to which the Guaranty Agreement applies, and at all times any Guaranty Indebtedness exists:

4.1 Authorization. The execution, delivery, and performance of this Agreement by Borrower, to the extent to be executed, delivered or performed by Borrower, have been duly authorized by all necessary action by Borrower; do not require the consent or approval of any other person, regulatory authority or governmental body; and do not conflict with, result in a violation of, or constitute a default under (a) any provision of any agreement or other instrument binding upon Borrower or (b) any law, governmental regulation, court decree, or order applicable to Borrower.

4.2 Financial Information. Each financial statement of Borrower supplied to the County truly and completely disclosed Borrower's financial condition as of the date of the statement, and there has

been no material adverse change in Borrower's financial condition subsequent to the date of the most recent financial statement supplied to the County. Borrower has no material contingent obligations except as disclosed in such financial statements.

4.3 Litigation and Claims. No litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Borrower is pending or threatened, and no other event has occurred which may materially adversely affect Borrower's financial condition or properties, other than litigation, claims, or other events, if any, that have been disclosed to and acknowledged by the County in writing. The County hereby acknowledges James McDaughey, F. Gregg Bemis, Jr. and Jack Stamm, Petitioners, vs. Santa Fe County Board of County Commissioners, Respondents, First Judicial District Court No. D-101-CV-2010-00784.

4.4 Title to Property. Borrower has, or on the date of first disbursement of Construction Loan proceeds will have, good and marketable title to the Property free and clear of all defects, liens, and encumbrances, excepting only liens for taxes, assessments, or governmental charges or levies not yet delinquent or payable without penalty or interest, a lease agreement by and between Borrower and Santa Fe Film and Media Studios, LLC, and such liens and encumbrances as may be approved in writing by the County.

4.5 Hazardous Substances. The terms "hazardous waste," "hazardous substance," "disposal," "release," and "threatened release," as used in this Agreement, shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or Federal laws, rules, or regulations adopted pursuant to any of the foregoing. Except as disclosed to and acknowledged by the County in writing, Borrower represents and warrants that: (a) During the period of Borrower's ownership of the Property, there shall be no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous waste or substance by any person on, under, about or from any of the Property. (b) Borrower has no knowledge of, or reason to believe that there will be (i) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance on, under, about or from the Property by any prior owners or occupants of any of the properties, or (ii) any actual or threatened litigation or claims of any kind by any person relating to such matters. (c) Neither Borrower nor any tenant, contractor, agent or other authorized user of any of the properties shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on, under, about or from the Property; and any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations, and ordinances, including without limitation those laws, regulations and ordinances described above. Borrower authorizes the County and its agents to enter upon the Property to make such inspections and tests as the County may deem appropriate to determine compliance of the Property with this section of the Agreement. Any inspections or tests made by the County shall be at Borrower's expense and for the County's purposes only and shall not be construed to create any responsibility or liability on the part of the County to Borrower or to any other person. The representations and warranties contained herein are based on Borrower's due diligence in investigating the properties for hazardous waste and hazardous substances. Borrower hereby (a) releases and waives any future claims against the County for indemnity or contribution in the event Borrower becomes liable for cleanup or other costs under any such laws, and (b) agrees to indemnify and hold harmless the County against any and all claims, losses, liabilities, damages, penalties, and expenses which the County may directly or indirectly sustain or suffer resulting from a breach of this section of the

Agreement or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release of a hazardous waste or substance on the properties. The provisions of this section of the Agreement, including the obligation to indemnify, shall survive the payment of the Indebtedness and the satisfaction of this Agreement and shall not be affected by The County's acquisition of any interest in any of the Property, whether by foreclosure or otherwise.

4.6 Project Budget. The Project budget to be furnished to LANB by Borrower in connection with the Construction Loan will be true and accurate estimates of the costs necessary to complete the Improvements in a good and workmanlike manner according to the Plans and Specifications, and Borrower shall take all commercially reasonable steps necessary to prevent the actual cost of the Improvements from exceeding the Project costs.

4.7 Access. The Property has access to publicly dedicated streets, roads, or highways via recorded easements granted by the Commissioner of Public Lands of the State of New Mexico to the County.

4.8 Assessment of Property. The Property will subject to taxes and assessments as an independent parcel by all governmental authorities.

4.9 Compliance with Governing Restrictions. Borrower has examined and is familiar with all the easements, covenants, conditions, restrictions, reservations, building laws, regulations, zoning ordinances, and federal, state, and local requirements affecting the Project. The Project will at all times and in all respects conform to and comply with the requirements of such easements, covenants, conditions, restrictions, reservations, building laws, regulations, zoning ordinances, and federal, state, and local requirements.

4.10 Legal Effect. This Agreement constitutes, and any instrument or agreement required hereunder to be given by Borrower when delivered will constitute, legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms.

5. CONDITIONS PRECEDENT TO GUARANTY.

5.1 Upon satisfaction of the following conditions, the County shall deliver the Guaranty Agreement to LANB:

A. The Borrower shall have executed and delivered this Agreement and all the Related Documents to the County.

B. The Borrower and LANB shall have entered into a Construction Loan Agreement which ~~provides~~ includes provisions substantially as follows:

~~(1) that any~~(1) No Acceleration of Loan Guaranty: Any acceleration of amounts due thereunder shall not permit the acceleration of the Loan Guaranty or the collection or withdrawal of any amounts under the Loan Guaranty except an amount equal to the scheduled payments of principal and interest on the Construction Loan due in the fiscal year in which default under the Construction Loan Agreement has occurred;

~~(2) that performance~~No Subordination of Prior Mortgage or Supplemental Mortgage: Performance by the Borrower of its obligations thereunder shall not be secured by a mortgage on the Property or other security agreement to which the Prior Mortgage or the Guaranty Mortgage is to be subordinated;

~~(3) that the~~Maximum Guaranty Amount: The maximum guaranty amount ~~guarantied by the County~~ under the Loan Guaranty is \$6,500,000, notwithstanding that LANB

may advance additional amounts to the Borrower under the Construction Loan Agreement or other instrument;

(4) ~~that the Maximum Term of Construction Loan Agreement:~~ The Construction Loan shall be fully repaid in not more than ___ years.

~~C. Expenditure of all Economic Development Grant funds for the construction of the Project.~~

~~D(5) Standard Form of Payment Request:~~ Each application for disbursement of Construction Loan proceeds shall be stated on a standard AIA payment request form or other form approved by the County, executed by Borrower, and supported by such evidence as the County shall reasonably require. Borrower shall apply for disbursement only with respect to work actually performed by the General Contractor and for materials and equipment actually incorporated into the Project or delivered to the Property, provided that title to such materials and equipment has transferred to Borrower, and that arrangements satisfactory to the County are made for the security and protection of such materials and equipment. Each application for an Advance shall be deemed a certification of Borrower that as of the date of such application, all representations and warranties contained in the Agreement are true and correct, and that Borrower is in compliance with all of the provisions of this Agreement. Borrower may make application for payment no more frequently than monthly.

(6) Payments: At the sole option of the County, disbursements under the Construction Loan may be paid in the joint names of Borrower and the General Contractor, subcontractor(s), or supplier(s) in payment of sums due under the Construction Contract. At its sole option, the County may directly pay the General Contractor and any subcontractors or other parties the sums due under the Construction Contract. Borrower appoints the County as its attorney-in-fact to make such payments. This power shall be deemed to be coupled with an interest, shall be irrevocable, and shall survive an Event of Default under the Construction Loan Agreement and the Loan Guaranty Reimbursement Agreement. Notwithstanding the foregoing, Borrower may give notice to the County that in good faith it contests an amount claimed by the General Contractor, subcontractor or supplier. In such event, and in the event Borrower commences an action, arbitration or mediation under the pertinent construction contract or otherwise, the County shall not be authorized to make any such payment until final adjudication or settlement of the same.

(7) Projected Cost Overruns: If the County at any time determines in its sole discretion that the amount available under the Construction Loan Agreement is insufficient, or will be insufficient, to complete fully and to pay for the Project, then within ten (10) days after receipt of a written request from the County, Borrower shall deposit in a restricted account acceptable to the County an amount equal to the deficiency as determined by the County. The judgment and determination of the County under this section shall be final and conclusive. Any such amounts deposited by Borrower shall be disbursed prior to any additional proceeds available under the Construction Loan Agreement.

(8) Final Payment to Contractor: Upon completion of the Project and fulfillment of the Construction Contract to the satisfaction of the County and SFS, and provided sufficient Loan Funds are available, the County shall make an Advance to cover the final payment due to the General Contractor upon delivery to the County of endorsements to the New Mexico title insurance policy following the posting of the completion notice, as provided

under applicable law. Construction shall not be deemed complete for purposes of final disbursement unless and until the County shall have received all of the following:

(a) Evidence satisfactory to the County that all work under the Construction Contract requiring inspection by any governmental authority with jurisdiction has been duly inspected and approved by such authority, that a certificate of occupancy has been issued, and that all parties performing work have been paid, or will be paid, for such work;

(b) A certification by an engineer, architect, or other qualified inspector acceptable to the County that the Improvements have been completed substantially in accordance with the Plans and Specifications and the Construction Contract, that direct connection has been made to all utilities set forth in the Plans and Specifications, and that the Project is ready for occupancy; and

(c) Acceptance of the completed Improvements by the Borrower and, to the extent that any of the improvements are to be dedicated to the County, by the County.

Notwithstanding the foregoing, Borrower may give notice to the County that in good faith it contests an amount claimed by the General Contractor, subcontractor or supplier. In such event, and in the event Borrower commences an action, arbitration or mediation under the pertinent construction contract or otherwise, the County shall not be authorized to make any such payment until final adjudication or settlement of the same.

(9) Construction Default: If Borrower fails in any respect to comply with the provisions of the Construction Loan Agreement or if construction ceases before completion regardless of the reason, the County, at its option, (i) may terminate the Construction Loan Guaranty Agreement, and, after fifteen (15) days prior written notice to Borrower to cure such noncompliance or failure, may enter into possession of the construction site and perform or cause to be performed any and all work and labor necessary to complete the improvements, substantially in accordance with the Plans and Specifications.

(10) Damage or Destruction: If any of the Property or Improvements are damaged or destroyed by casualty of any nature, within sixty (60) days thereafter Borrower shall (i) restore the Property and Improvements to the condition in which they existed before such damage or destruction with funds other than proceeds available under the Construction Loan Agreement or (ii) commence restoration of the Property and Improvements to the condition in which they existed before such damage or destruction with funds other than proceeds available under the Construction Loan Agreement and proceed to diligently complete the same. No additional disbursements under the Construction Loan Agreement shall be permitted until such restoration has been accomplished.

(11) Right to Advance Funds: When any event occurs that the County determines may endanger completion of the Project or the fulfillment of any condition or covenant in the Construction Loan Agreement, the County may require Borrower to furnish, within ten (10) days after delivery of a written request, adequate security to eliminate, reduce, or indemnify the County against, such danger. In addition, upon such occurrence, the County in its sole discretion may advance funds or agree to undertake to advance funds to any party to eliminate, reduce, or indemnify the County against, such danger or to complete the Project. All sums paid by the County pursuant to such agreements or undertakings shall be for Borrower's account and shall be without prejudice to Borrower's rights, if any, to receive such funds from the party to whom paid. All sums expended by the County in the exercise of its

option to complete the Project or protect the County's interests shall be payable to the County on demand together with interest from the date of the Advance at the rate applicable to the Construction Loan. In addition, any disbursement of funds under the Construction Loan Agreement, including without limitation direct disbursements to the Contractor or other parties in payment of sums due under the Construction Contract, shall be deemed to have been expended by or on behalf of Borrower and to have been secured by the County's Mortgage, if any, on the Property.

(12) Limitation of Responsibility: The making or approval of any advance or disbursement by the County pursuant to the Construction Loan Agreement or the Loan Guaranty Reimbursement Agreement shall not constitute or be interpreted as either (a) an approval or acceptance by County of the work done through the date of such advance or disbursement, or (b) a representation or indemnity by the County to any party against any deficiency or defect in the work or against any breach of any contract. Inspections and approvals of the Plans and Specifications, the Improvements, the workmanship and materials used in the Improvements, and the exercise of any other right of inspection, approval, or inquiry granted to the County in this Agreement are acknowledged to be solely for the protection of the County's interests, and under no circumstances shall they be construed to impose any responsibility or liability of any nature whatsoever on the County to any party. Neither Borrower nor any contractor, subcontractor, materialman, laborer, or any other person shall rely, or have any right to rely, upon the County's determination of the appropriateness of any Advance. No disbursement or approval by the County shall constitute a representation by the County as to the nature of the Project, its construction, or its intended use for Borrower or for any other person, nor shall it constitute an indemnity by the County to Borrower or to any other person against any deficiency or defects in the Project or against any breach of any contract.

C. The Borrower and LANB shall have executed a Construction Escrow Trust Agreement with a County-approved Title Company, providing procedures for draw requests, inspection and certification of construction progress, lien release requirements and other standard construction loan disbursement procedures.

D. The County and the State shall have entered into the Economic Development Grant Agreement.

E. The Borrower shall have paid the costs and expenses of the County incurred in connection with this Guaranty Agreement, as provided in Section 3.2 hereof.

5.2 List of Contractors, Subcontractors, and Materialmen. The County may, in its discretion, require a list of all contractors employed in connection with the construction of the Improvements, showing the name, address, and telephone number of each contractor, a general description of the nature of the work to be done, the labor and materials to be supplied, the names of materialmen, if known, and the approximate dollar value of the labor, work, or materials with respect to each contractor or materialman. F. The County shall have the right to communicate with any person to verify the facts disclosed by the list or by any application for any Advance, or for any other purpose.

5.3 Plans, Specifications, and Permits. The County shall have received and accepted a complete set of Plans and Specifications setting forth all Improvements for the Project, and Borrower shall have furnished to the County copies of all permits and requisite approvals of any governmental body necessary for the construction and use of the Project.

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5.4— ~~Architecture and Construction Contracts.~~ If required by the County, ~~_____~~ G. Borrower shall ~~have furnished~~ furnish in form and substance satisfactory to the County an executed copy of the Architecture Contract and an executed copy of the Construction Contract. ~~Such Borrower shall assign the Architecture Contract and Construction Contract to the County, provided that such assignment shall be conditional and shall terminate when the \$6,500,000 Indebtedness has been repaid in full upon expiration of this Agreement.~~

5.5— ~~Support Documents.~~ H. Borrower shall provide to the County in form satisfactory to the County such documents evidencing the Borrower's ability to reimburse the County for all Guaranty Indebtedness as the County requires.

5.6— ~~Budget and Schedule of Estimated Advances.~~ I. The County shall have approved detailed budget and cash flow projections of total Project Costs and a schedule of the estimated amount and time of disbursements of each Advance.

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5.7— ~~Borrower's Authorization.~~ J. Borrower shall have provided in form and substance satisfactory to the County properly certified resolutions, duly authorizing the execution and delivery of the Loan documents, and the consummation of the Project, and such other authorizations and other documents as the County in its sole discretion may require.

5.8— ~~Performance and Payment Bond.~~ K. ~~At the County's discretion, Borrower shall cause the Contractor to furnish a performance and payment bond or a materialmen's and mechanics' payment bond.~~

5.9— ~~Appraisal.~~ If required by the County, an appraisal shall be prepared for the Property, at Borrower's expense, which in form and substance shall be satisfactory to the County, in its sole discretion, including applicable regulatory requirements.

5.10— ~~Plans and Specifications.~~ If requested by the County, Borrower shall assign to the County, in a form satisfactory to the County, the Plans and Specifications for the Project, to the extent Borrower has the power to assign the same. Such assignment shall be conditional and shall terminate when the Guaranty Indebtedness has been repaid in full.

5.11— ~~Environmental Report.~~ If requested by the County, Borrower shall have furnished to the County, at Borrower's expense, an environmental report and certificate on the Property in form and substance satisfactory to the County, prepared by an engineer or other expert satisfactory to the County stating that the Property complies with all applicable provisions and requirements of the "Hazardous Substances" paragraph set forth above.

5.12— ~~Soil Report.~~ If requested by the County, Borrower shall have furnished to the County, at Borrower's expenses, a soil report for the Property in form and substance satisfactory to the County, prepared by a registered engineer satisfactory to the County stating that the Property is free from soil or other geological conditions that would preclude its use or development as contemplated without extra expense for precautionary, corrective or remedial measures.

5.13— ~~Survey.~~ If requested by the County, Borrower shall have furnished to the County a survey of recent date, prepared and certified by a qualified surveyor and providing that the Improvements, if constructed in accordance with the Plans and Specifications, shall lie wholly within the boundaries of the Property without encroachment or violation of any zoning ordinances, building codes or regulations, or setback requirements, together with such other information as the County in its sole discretion may require.

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5.14 ~~Zoning~~—Borrower shall have furnished evidence satisfactory to the County that the Property is duly and validly zoned for the construction, maintenance, and operation of the Project. The County Board of County Commissioners approved a Master Plan for portions of the Real Property on December 8, 2009.

5.15 ~~Title Insurance~~—L. Borrower shall have provided to the County a lender's policy of title insurance, deleting preprinted exceptions 1 through 6 and 8, and modifying preprinted exception 7 as allowed by regulation with such endorsements as the County may require, issued by a title insurance company acceptable to the County and in a form, amount, and content satisfactory to the County, insuring or agreeing to insure that the County's Mortgage or Deed of Trust on the Property is or will be upon recordation a valid first lien on the Property free and clear of all defects, liens, encumbrances, and exceptions except those as specifically accepted by the County in writing. If requested by the County, Borrower shall provide to the County, at Borrower's expense, a pending improvements down date endorsement to the title policy upon the completion of each foundation for the Improvements, showing no encroachments, and upon completion an endorsement which insures the lien-free completion of the Improvements. Specifically, Borrower shall provide to the County the following title insurance endorsements: (a) Comprehensive Endorsement No. 50, (b) NM No. 52 Endorsement: Designation of Improvements; Address, (c) Interim Certification Endorsement (including standard interim mechanics' lien coverage), (d) NM No. 29 Endorsement: Environmental Lien Endorsement, and (e) such other endorsements as the County requires.

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5.166. AFFIRMATIVE COVENANTS. Borrower covenants and agrees with the County that, while this Agreement is in effect, Borrower shall be obligated to do the following:

6.1 County to receive all copies of all applications for advances of funds under the Construction Loan. Borrower shall, at the time that it submits any request to LANB for payment to the General Contractor or subcontractors, or any other request for a draw under the Construction Loan Agreement, simultaneously provide a copy of such request to the County, which copy shall include all supporting documentation and certifications provided to LANB (each such request and supporting documentation referred to below as a "Payment Request"). Each Payment Request shall be deemed a certification of Borrower that, as of the date of such Payment Request, all representations and warranties contained in the Agreement are true and correct, and that Borrower is in compliance with all of the provisions of this Agreement.

6.2 List of Contractors, Subcontractors, and Materialmen. Borrower shall provide to the a list of all contractors employed in connection with the construction of the Improvements, showing the name, address, and telephone number of each contractor, a general description of the nature of the work to be done, the labor and materials to be supplied, the names of materialmen, if known, and the approximate dollar value of the labor, work, or materials with respect to each contractor or materialman. The County shall have the right to communicate with any person to verify the facts disclosed by the list or by any application for any Advance, or for any other purpose.

6.3 Performance and Payment Bond. At the County's discretion, Borrower shall cause the Contractor to furnish a performance and payment bond or a materialmen's and mechanics' payment bond.

6.4 Appraisal. If requested by the County, an appraisal shall be prepared for the Property, at Borrower's expense, which in form and substance shall be satisfactory to the County, in its sole discretion, including applicable regulatory requirements.

6.5 Plans and Specifications. If requested by the County, Borrower shall assign to the County, in a form satisfactory to the County, the Plans and Specifications for the Project, to the extent Borrower has the power to assign the same. Such assignment shall be conditional and shall terminate when the Guaranty Indebtedness has been repaid in full.

6.6 Environmental Report. If requested by the County, Borrower shall furnish to the County, at Borrower's expense, an environmental report and certificate on the Property in form and substance satisfactory to the County, prepared by an engineer or other expert satisfactory to the County stating that the Property complies with all applicable provisions and requirements of the "Hazardous Substances" paragraph set forth above.

6.7 Soil Report. If requested by the County, Borrower shall furnish to the County, at Borrower's expense, a soil report for the Property in form and substance satisfactory to the County, prepared by a registered engineer satisfactory to the County stating that the Property is free from soil or other geological conditions that would preclude its use or development as contemplated without extra expense for precautionary, corrective or remedial measures.

6.8 Survey. If requested by the County, Borrower shall furnish to the County a survey of recent date, prepared and certified by a qualified surveyor and providing that the Improvements, if constructed in accordance with the Plans and Specifications, shall lie wholly within the boundaries of the Property without encroachment or violation of any zoning ordinances, building codes or regulations, or setback requirements, together with such other information as the County in its sole discretion may require.

6.9 Insurance. Borrower shall procure and maintain the following policies of insurance: (a) during the period of construction: an all risks course of construction insurance policy (builder's risk), with extended coverage endorsements on a replacement basis for the full insurable value of the Property covering all Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and covering theft of materials, with a standard mortgagee clause in favor of the County, insuring the County as loss payee and mortgagee, and with such endorsements as may be required by the County; and (b) after the period of construction: a casualty insurance policy on a replacement basis for the full insurable value of the Property covering all Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, general liability insurance naming the County as an additional insured, flood insurance if required by the County or applicable law, and all other insurance required by this Agreement, the Mortgage or the Related Documents. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to the County. Borrower shall deliver to the County certificates of coverage from each insurer containing a stipulation that coverage will not be canceled or diminished without a minimum of ten (10) days' prior written notice to the County and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include an endorsement providing that coverage in favor of the County will not be impaired in any way by any act, omission or default of Borrower or any other person. Should the Real Property at any time become located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Borrower agrees to obtain and maintain Federal Flood Insurance for the full unpaid principal balance of the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by the County, and to maintain such insurance for the term of the loan.

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~~5.17~~ 6.10 Workers' Compensation Coverage. Provide Borrower shall provide to the County proof of the Contractor's compliance with all applicable workers' compensation laws and regulations with regard to all work performed on the Project.

~~5.18~~ 6.11 Payment of Fees and Expenses. Borrower shall have paid pay to the County all expenses specified in this Agreement as are then due and payable.

~~5.19~~ 6.12 Satisfactory Construction. All work usually done at the stage of construction for which disbursement is requested shall have been done in a good and workmanlike manner and all

materials and fixtures usually furnished and installed at that stage of construction shall have been furnished and installed, all in substantial compliance with the Plans and Specifications and without material deviations therefrom. Borrower shall also have furnished to the County such proofs as the County may require to establish the progress of the work, compliance with applicable laws, freedom of the Property from liens, and the basis for the requested disbursement.

~~5.20~~ 6.13 Certification. Borrower shall have furnished to the County a certification by an engineer, architect, or other qualified inspector acceptable to the County that the construction of the Improvements has complied and will continue to comply with all applicable statutes, ordinances, codes, regulations, and similar requirements.

~~5.21~~ 6.14 Lien Waivers. Borrower shall copy the County on all executed acknowledgments of payments of all sums due and releases of mechanic's and materialmen's liens, satisfactory to LANB, from any party having lien rights, which acknowledgments of payment and releases of liens shall cover all work, labor, equipment, materials done, supplied, performed, or furnished prior to such application for an Advance.

~~6.15~~ 6.15 AFFIRMATIVE COVENANTS. Borrower covenants and agrees with the County that, while this Agreement is in effect, Borrower shall be obligated to do the following:

~~6.1~~ 6.1 County to receive all Information Provided to Construction Lender. Provide to the County, while this Agreement is in effect, copies of all information provided to LANB in connection with the Construction Loan and Construction Note following the closing of the Construction Loan.

~~6.2~~ 6.2 Litigation. Promptly inform the County in writing of (a) all material adverse changes in Borrower's financial condition, and (b) all existing and all threatened litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower or any Guarantor which could materially affect the financial condition of Borrower or the financial condition of any Guarantor.

~~6.3~~ 6.16 Financial Records. Maintain its books and records in accordance with Generally Accepted Accounting Principles, applied on a consistent basis, and permit the County to examine and audit Borrower's books and records at all reasonable times.

~~6.4~~ 6.17 Additional Information. Furnish such additional information and statements, lists of assets and liabilities, agings of receivables and payables, inventory schedules, budgets, forecasts, tax returns, and other reports with respect to Borrower's financial condition and business operations as the County may request from time to time.

~~6.5~~ 6.18 Compliance with Governmental Requirements. Comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property. Borrower may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Borrower has notified the County in writing prior to doing so and so long as, in the County's sole opinion, the County's interests in the Property are not jeopardized. The County may require Borrower to post adequate security or a surety bond, reasonably satisfactory to the County, to protect the County's interest.

~~6.6~~ 6.19 Construction of the Project.—~~Commence~~ Borrower shall commence construction of the Project no later than sixty (60) days after the date on which the Construction Loan Agreement becomes effective, and cause the Improvements to be constructed and equipped in a diligent and orderly manner and in strict accordance with the Plans and Specifications approved by County, the Construction Contract, and all applicable laws, ordinances, codes, regulations, and rights of adjoining or concurrent property owners.

6.720 Loan Proceeds.—Use Borrower shall use the Construction Loan funds solely for payment of bills and expenses directly related to the Project.

6.821 Defects. Upon demand of the County, Borrower shall promptly correct any defect in the Improvements or any material departure from the Plans and Specifications not approved by the County before further work shall be done upon the portion of the Improvements affected.

6.922 Project Claims and Litigation.—~~Promptly~~ Borrower shall promptly inform the County of (a) all material adverse changes in the financial condition of the General Contractor; (b) any litigation and claims, actual or threatened, affecting the Project or the General Contractor, which could materially affect the successful completion of the Project or the ability of the General Contractor to complete the Project as agreed; and (c) any condition or event which constitutes a breach or default under any of the Related Documents or any contract related to the Project.

6.4023 Payment of Claims and Removal of Liens. Borrower shall (a) cause all uncontested claims for labor done and materials and services furnished in connection with the Improvements to be fully paid and discharged in a timely manner, (b) diligently file or procure the filing of a valid notice of completion of the Improvements, or such comparable document as may be permitted under applicable lien laws, (c) diligently file or procure the filing of a notice of cessation, or such comparable document as may be permitted under applicable lien laws, upon the happening of cessation of labor on the Improvements for a continuous period of thirty (30) days or more, and (d) take all reasonable steps necessary to remove all claims of liens against the Property, the Improvements or any part of the Property or Improvements, or any rights or interests appurtenant to the Property or Improvements. Upon request by the County, Borrower shall make such demands or claims upon or against the General Contractor, laborers, materialmen, subcontractors, or other persons who have furnished or claim to have furnished labor, services, or materials in connection with the Improvements. Borrower shall, within thirty (30) days after Borrower receives notice of the filing of any claim of lien, ~~Borrower shall~~ take action to cause the same to be discharged by payment, settlement or lien cancellation proceeding in accordance with New Mexico law. If Borrower fails to remove any lien on the Property or Improvements, the County may pay such lien, or may contest the validity of the lien, and Borrower shall pay all costs and expenses of such contest, including the County's reasonable attorneys' fees.

6.424 Taxes and Claims.—~~Pay~~ Borrower shall pay and discharge when due all of Borrower's indebtedness, obligations, and claims that, if unpaid, might become a lien or charge upon the Property or Improvements; provided, however, that Borrower shall not be required to pay and discharge any such indebtedness, obligation, or claim so long as (a) its legality shall be contested in good faith by appropriate proceedings, (b) the indebtedness, obligation, or claim does not become a lien or charge upon the Property or Improvements, and (c) Borrower shall have established on its books adequate reserves with respect to the amount contested in accordance with generally accepted accounting practices. If the indebtedness, obligation, or claim does become a lien or charge upon the Property or Improvements, Borrower shall remove the lien or charge as provided in the preceding paragraph.

6.425 Performance.—~~Perform~~ Borrower shall perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between Borrower and the County, and in all other loan agreements now or hereafter existing between Borrower and any other party. Borrower shall notify the County immediately in writing of any default in connection with any agreement.

6.426 Additional Assurances.—~~Make~~ Borrower shall make, execute, and deliver to the County such Security Agreements, instruments, documents, and other agreements reasonably necessary to

document and secure the Loan and to perfect the County's Security Interests in the Property and Improvements.

7. NEGATIVE COVENANTS. Borrower covenants and agrees with the County that while this Agreement is in effect, Borrower shall not, without the prior written consent of the County:

7.1 Loans, Acquisitions and Guaranties. (a) Loan, invest in or advance money or assets, or (b) incur any obligation as surety or guarantor, which would impair Borrower's ability to repay the Construction Loan, or impair the County's security hereunder.

7.2 Modification of Contract. Make or permit to be made any material modification of the Construction Contract which increases the cost of the Project by more than \$25,000.

7.3 Liens. Create or allow to be created any lien or charge upon the Property or the Improvements, except as otherwise ~~allowed under~~provided in this Agreement, including, without limitation, in Section 6.23 hereof.

8. GENERAL PROJECT PROVISIONS. The following provisions relate to the construction and completion of the Project:

8.1 Change Orders. Borrower may approve change orders to the Project so long as the Loan budget remains in balance after execution of each such change order and Borrower provides adequate funds or security to make payment of any increased costs. Requests for all other change orders must be in writing, signed by Borrower and the architect, and delivered to the County for its approval. Borrower will obtain any required permits or authorizations from governmental authorities having jurisdiction before approving or requesting a new change order; provided, that in the event the County fails to respond to any change order request within five (5) days after notice thereof is given to the County, then the County shall be deemed to have approved such change order.

8.2 Purchase of Materials; Conditional Sales Contracts. No materials, equipment, fixtures, or articles of personal property placed in or incorporated into the Project shall be purchased or installed under any Security Agreement or other agreement whereby the seller reserves or purports to reserve title or the right of removal or repossession, or the right to consider such items as personal property after their incorporation into the Project, unless otherwise authorized by the County in writing.

8.3 County's Right of Entry and Inspection. The County and its agents shall have at all times the right of entry and free access to the Property and the right to inspect all work done, labor performed, and materials furnished with respect to the Project. Any physical inspection may only be conducted with 96 hours or more prior written notice if film and media production activities are in process at the Project. The County shall have unrestricted access to and the right to copy all records, accounting books, contracts, subcontracts, bills, statements, vouchers, and supporting documents of Borrower relating in any way to the construction of Project.

8.4 County's Right to Stop Work. If the County in good faith determines that any work or materials do not conform to the approved Plans and Specifications or sound building practices, or otherwise depart from any of the requirements of this Agreement or the Construction Loan Agreement, the County may require the work to be stopped until the matter is corrected. In such event, Borrower will promptly correct the work to the County's satisfaction. No such action by the County will affect Borrower's obligation to complete the Improvements on or before the completion date specified in the Construction Loan Agreement. The County is under no duty to supervise or inspect the construction or examine any books and records. Any inspection or examination by the County is for the sole purpose of protecting the County's security and preserving the County's rights under this Agreement and the LEDA ~~Performance Agreement~~Agreements. No default of Borrower will be waived by any inspection by the County. In no event will any inspection by the County be a

representation that there has been or will be compliance with the Plans and Specifications or that the construction is free from defective materials or workmanship.

8.5 Indemnity. Borrower shall indemnify and hold the County harmless from any and all claims asserted against the County or the Property by any person, entity, or governmental body, or arising out of or in connection with the Property, Improvements, or Project. The County shall be entitled to appear in any action or proceeding to defend itself against such claims, and all costs incurred by the County in connection with such defense, including attorneys' fees, shall be paid by Borrower to the County. The County shall, in its sole discretion, be entitled to settle or compromise any asserted claims against it, and such settlement shall be binding upon Borrower for purposes of this indemnification. All amounts paid by the County under this paragraph shall be secured by the Guaranty Mortgage, shall be included as part of the Guaranty Indebtedness, payable upon demand, and shall bear interest at the rate applicable to the Construction Loan. Notwithstanding the foregoing, Borrower shall not be required to indemnify or pay costs or expenses of the County arising from actions or claims of citizens, other governmental subdivisions or agencies or the State of New Mexico concerning the actions of the County in approving the Project, entering into the PPALEDA Agreements, Related Documents or any document or agreement contemplated thereunder, or consummating any of the transactions contemplated thereunder.

8.6 Publicity. The County may obtain publicity in connection with the Project through press releases and participation in ground-breaking and opening ceremonies and similar events.

8.7 Actions. The County shall have the right to commence, appear in, or defend any action or proceeding purporting to affect the rights, duties, or liabilities of the parties to this Agreement, or the disbursement of funds from the Loan Fund. In connection with this right, the County may incur and pay reasonable costs and expenses, including, but not limited to, attorneys' fees, for both trial and appellate proceedings. Borrower covenants to pay to the County on demand all such expenses, together with interest from the date the County incurs the expense at the rate specified in the Note, and the County is authorized to disburse funds from the Loan Fund for such purposes. Notwithstanding the foregoing, Borrower shall not be required to pay costs or expenses of the County arising from actions or claims of citizens, other governmental subdivisions or agencies or the State of New Mexico concerning the actions of the County in approving the Project, entering into the PPALEDA Agreements, Related Documents or any document or agreement contemplated thereunder, or consummating any of the transactions contemplated thereunder.

9. EVENTS OF DEFAULT. Each of the following shall constitute an Event of Default under this Agreement:

9.1 Default on Indebtedness. Failure of Borrower to make any payment when due on the Construction Loan.

9.2 Other Defaults. Failure of Borrower or any Grantor to comply with or to perform when due any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents.

9.3 False Statements. Any warranty, representation or statement made or furnished to the County by or on behalf of Borrower or any Grantor under this Agreement or the Related Documents is false or misleading in any material respect at the time made or furnished, or becomes false or misleading at any time thereafter.

9.4 Defective Collateralization. This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

9.5 Insolvency. The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower or Guarantor.

9.6 Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower, any creditor of any Grantor, including the Guarantor against any collateral securing the Indebtedness, or by any governmental agency. This includes a garnishment, attachment, or levy on or of any of Borrower's accounts.

9.7 Events Affecting Letter of Credit Provider. Any of the preceding events described in Sections 9.1 through 9.6 occurs with respect to any provider of the Letter of Credit, or revokes or disputes the validity of, or liability under, the Letter of Credit.

9.8 Breach of Construction Contract. The Improvements are not constructed in accordance with the Plans and Specifications or in accordance with the terms of the Construction Contract, as the same may be modified by change orders or otherwise in accordance with its terms.

9.9 Cessation of Construction. Except as otherwise provided in Section 19.1.6 of the PPA, as amended, prior to the completion of construction of the Improvements and equipping of the Project, the construction of the Improvements or the equipping of the Project is abandoned or work thereon ceases for a period of more than thirty (30) days for any reason other than force majeure, or the Improvements are not completed for purposes of final payment to the General Contractor prior to the Completion Date represented by Borrower to the County, regardless of the reason for the delay. Notwithstanding the above, neither cessation of work for more than thirty (30) days nor completion of the Project after the Completion Date shall represent a default so long as Borrower demonstrates to the County's reasonable satisfaction that Borrower is diligently pursuing the resumption and/or completion of work on the Project.

9.10 Transfer of Property. Sale, transfer, hypothecation, assignment, or conveyance of the Property or the Improvements or any portion thereof or interest therein by Borrower or any Grantor without the County's prior written consent, except as permitted under the PPALEDA Agreements.

9.11 Condemnation. All or any material portion of the Property is condemned, seized, or appropriated without compensation, and Borrower does not within thirty (30) days after such condemnation, seizure, or appropriation, initiate and diligently prosecute appropriate action to contest in good faith the validity of such condemnation, seizure, or appropriation.

10. EFFECT OF AN EVENT OF DEFAULT; REMEDIES. Upon the occurrence of any Event of Default under Section 9 hereof which is not cured within five (5) days after notice thereof from the County to Borrower, and at any time thereafter, and upon the occurrence of any Event of Default under any other Section hereof which is not cured within thirty (30) days after notice thereof from the County to Borrower, and at any time thereafter, the County may, at its option, but without any obligation to do so, and in addition to any other right the County may have, do any one or more of the following without further notice to Borrower: (a) Cancel this Agreement; (b) Institute appropriate proceedings to enforce the performance of this Agreement; (c) Expend funds necessary to remedy the default; (d) Take possession of the Property and continue construction of the Project; (e) Accelerate the Guaranty Indebtedness and demand payment of all sums due hereunder; (f) Bring an action on the Note and/or Indebtedness; (g) Foreclose the Guaranty Mortgage in any manner available under law; (h) Appoint a receiver to complete, operate or maintain the Project; and (i) Exercise any other right or remedy which it has under this Agreement or the Related Documents, or which is otherwise available at law or in equity or by statute.

11. COMPLETION OF IMPROVEMENTS BY THE COUNTY. If the County takes possession of the Property, it may take any and all actions necessary in its judgment to complete construction of the Improvements, including but not limited to making changes in the Plans and Specifications, work, or materials and entering into, modifying or terminating any contractual arrangements, subject to the County's right at any time to discontinue any work without liability. If the County elects to complete the Improvements, it will not assume any liability to Borrower or to any other person for completing the Improvements or for the manner or quality of construction of the Improvements, and Borrower expressly waives any such liability. Borrower irrevocably appoints the County as its attorney-in-fact, with full power of substitution, to complete the Improvements, at the County's option, either in Borrower's name or in its own name. In any event, all sums expended by the County in completing the construction of the Improvements will be considered to have been disbursed to Borrower and will be secured by the collateral for the Loan. Any such sums that cause the principal amount of the Loan to exceed the face amount of the Note will be considered to be an additional Loan to Borrower, bearing interest at the Note rate and being secured by the collateral. For these purposes, Borrower assigns to the County all of its right, title and interest in and to the Project Documents; however the County will not have any obligation under the Project Documents unless the County expressly hereafter agrees to assume such obligations in writing. The County will have the right to exercise any rights of Borrower under the Project Documents upon the occurrence of an Event of Default. All rights, powers, and remedies of the County under this Agreement are cumulative and alternative, and are in addition to all rights which the County may have under applicable law.

12. MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

12.1 Agency. Nothing in this Agreement shall be construed to constitute the creation of a partnership or joint venture between the County and Borrower or any contractor. The County is not an agent or representative of Borrower. This Agreement does not create a contractual relationship with and shall not be construed to benefit or bind the County in any way with or create any contractual duties by the County to any contractor, subcontractor, materialman, laborer, or any other person.

12.2 Force Majeure. Notwithstanding any provision above, the following shall apply to this Agreement and the obligations of the parties hereunder.

(a) The duties and obligations of Borrower 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 Project plus one hundred twenty calendar (120) days for the start-up of activities at the 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 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, Borrower shall give written notice to the County 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.

12.3 Amendments. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

12.4 Applicable Law. This Agreement has been delivered to the County and accepted by the County in the State of New Mexico. If there is a lawsuit, Borrower agrees upon the County's request to submit to the jurisdiction of the First Judicial District Court of New Mexico. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

12.5 Authority to File Notices. Borrower appoints and designates the County as its attorney-in-fact to file for record any notice that the County deems necessary to protect its interest under this Agreement. This power shall be deemed coupled with an interest and shall be irrevocable while any sum or performance remains due and owing under any of the Related Documents.

12.6 Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

12.7 Costs and Expenses. Borrower agrees to pay upon demand all of the County's expenses, including without limitation attorneys' fees, incurred in connection with the preparation, execution, enforcement, modification and collection of this Agreement or in connection with the Loans made pursuant to this Agreement. The County may pay a third party to collect amounts due under the Loans and to enforce this Agreement, and Borrower shall pay amounts due any such third party. This includes, subject to any limits under applicable law, the County's attorneys' fees and legal expenses,

whether or not there is a lawsuit, including attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated postjudgment collection services. Borrower also will pay any court costs, in addition to all other sums provided by law.

12.8 Entire Agreement. This Agreement, the PPALEDA Agreements and the Related Documents constitute all of the agreements between the parties relating to the Project and supersede all other prior or concurrent oral or written agreements or understandings relating to the Project. In the event of any conflict in the provisions of this Agreement and the PPALEDA Agreements, the provisions of this Agreement shall control with respect to the Loan.

12.9 Notices. All notices, requests, demands and other communications given, or required to be given, hereunder shall be in writing and shall be given (a) by personal delivery with a receipted copy of such delivery, (b) by certified or registered United States mail, return receipt requested, postage prepaid to the following addresses:

To County: Santa Fe County, New Mexico
Attn: County Manager and County Attorney
102 Grant Avenue
P.O. Box 276
Santa Fe, New Mexico 87504-0276

To Borrower:

Attn: Lance Hool
7 Plaza del Centro
Santa Fe, New Mexico 87506

Any such notice sent by registered or certified mail, return receipt requested, shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed and mailed with postage prepaid. Notice sent by recognized overnight delivery service shall be effective only upon actual receipt thereof at the office of the addressee set forth above, and any such notice delivered at a time outside of normal business hours shall be deemed effective at the opening of business on the next day. Any party may change its address for purposes of this Section 6 by giving notice to the other party as provided above.

12.10 Successors and Assigns. All covenants and agreements contained by or on behalf of Borrower shall bind its successors and assigns and shall inure to the benefit of the County, its successors and assigns. Borrower shall not, however, have the right to assign its rights under this Agreement or any interest therein, without the prior written consent of the County.

12.11 Severability. If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

12.12 Survival. All warranties, representations, and covenants made by Borrower in this Agreement or in any certificate or other instrument delivered by Borrower to the County under this Agreement

shall be considered to have been relied upon by the County and will survive the making of the Loan and delivery to the County of the Related Documents, regardless of any investigation made by the County or on its behalf.

12.13 Time Is of the Essence. Time is of the essence in the performance of this Agreement.

12.14 Waiver. The County shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by an authorized officer of the County. No delay or omission on the part of the County in exercising any right shall operate as a waiver of such right or any other right. A waiver by the County of a provision of this Agreement shall not prejudice or constitute a waiver of the County's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by the County, nor any course of dealing between the County and Borrower, or between the County and any Grantor, shall constitute a waiver of any of the County's rights or of any obligations of Borrower or of any Grantor as to any future transactions. Whenever the consent of the County is required under this Agreement, the granting of such consent by the County in any instance shall not constitute continuing consent in subsequent instances where such consent is required, and in all cases such consent may be granted or withheld in the sole discretion of the County.

12.15 Workmanship. The County makes no representation as to the quality or adequacy of the workmanship of the General Contractor or its servants, affiliates or subcontractors. Any and all disbursements made by the County under this Agreement are made without representation or warranty as to the quality or adequacy of the work performed by the General Contractor or its servants, affiliates or subcontractors. Any and all inspections of the Property and/or Improvements conducted by the County or its agents are for the sole benefit of the County, and no representation or warranty should be inferred therefrom.

12.16 Limitation on Indemnification. To the extent, if at all, a court of competent jurisdiction determines that Section 56-7-1 NMSA 1978 applies to any indemnification provisions in this Agreement, including certain types of insurance coverage as set forth in Section 56-7-1 NMSA 1978, such provisions shall not extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the indemnitee or additional insured, as the case may be, its officers, employees or agents and shall further be modified, if required, by the provisions of Section 56-7-1(B) NMSA 1978.

BORROWER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS LOAN GUARANTY AGREEMENT, AND BORROWER AGREES TO ITS TERMS. THIS AGREEMENT IS DATED AS OF FEBRUARY 16, 2010.

LA LUZ HOLDINGS, LLC SANTA FE FILM AND MEDIA STUDIOS, INC.

By: _____

Its: _____

SANTA FE FILM AND MEDIA STUDIOS, INC.

By: _____

Its: _____

SANTA FE COUNTY, NEW MEXICO

By: _____
Authorized Officer

SFC CLERK RECORDED 09/03/2010

Rev

ASSIGNMENT OF DEPOSIT ACCOUNT

DATE AND PARTIES. The date of this Assignment of Deposit Account ("the Agreement") is _____, 2010. The parties and their addresses are:

SECURED PARTY:**LOS ALAMOS NATIONAL BANK**

1200 Trinity Drive
Los Alamos , NM 87544

ASSIGNOR/COUNTY/GUARANTOR:**THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY, NEW MEXICO**

102 GRANT AVENUE
SANTA FE, NEW MEXICO 87504

WHEREAS, The Secured Party has agreed to lend Santa Fe Film and Media Studios Inc. and La Luz Holdings LLC (together "Borrower") up to \$10,000,000.00 for the purpose of constructing a film and media studio complex in Santa Fe County, New Mexico ("the Loan");

WHEREAS, The Board of County Commissioners of Santa Fe County, New Mexico ("County" or "Guarantor") has agreed to guaranty the payment and performance of the Borrower's obligations under the Loan as provided in this Assignment;

WHEREAS, to secure the Borrower's obligations to the Secured Party under the Loan and the County's obligations to the Secured Party ~~under the Guaranty~~, the County shall, pursuant to the terms of this Agreement, deposit with the Secured Party \$6,500,000.00 to be held in a "lock-boxed" deposit account as collateral; and

WHEREAS, the Secured Party has agreed that, in the event of Borrower's default under the Loan or County's default under this Agreement, ~~the Guaranty~~, the Secured Party will not immediately offset the funds held in the Deposit Account to pay off the total balance owed under the Loan or accelerate the Loan, but will instead only set off so much of the funds from the lock-boxed Deposit Account to meet the regular payment obligations owed under the Loan and Guaranty, as though there had been no default.

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

1. DEFINITIONS. The pronouns "you" and "your" refer to the Secured Party. The pronouns "I," "me" and "my" refer to each person or entity signing this Agreement as County/Guarantor and agreeing to give the Property described in this Agreement as security for the Secured Debts. "Loan Documents" refer to all the documents executed in connection with the Secured Debts.

2. SECURED DEBTS. The term "Secured Debts" includes, and this Agreement will secure, each of the following:

A. Specific Debts. The following debts and all extensions, renewals, refinancings, modifications and replacements. A promissory note or other agreement, No. _____, dated _____, 2010, from Santa Fe Film and Media Studios, LLC ("Borrower") to you, in the amount of \$6,500,000.00.

B. Sums Advanced. All sums advanced and expenses incurred by you under the terms of this Agreement.

3. ASSIGNMENT. To secure the payment and performance of the Secured Debts, I assign and grant a security interest to you in all of the Property described in this Agreement that I own or have sufficient rights in which to transfer an interest, now or in the future, wherever the Property is or will be located, and all additions, proceeds, and products of the Property (including, but not limited to, all renewals, replacements, modifications and substitutions to the Property). "Proceeds" includes anything acquired upon the sale, lease, license, exchange, or other disposition of the Property; any rights and claims arising from the Property; and any collections and distributions on account of the Property.

Property also includes any original evidence of title or ownership. I will deliver any certificates, documents or instruments evidencing the Property and properly execute all items as necessary to reflect your security interest.

This Agreement remains in effect until the secured debt is paid in full and you are no longer obligated to advance funds. At such time, you will return to me all the Property in your possession which has not been used or applied toward payment of the Secured Debts.

4. PROPERTY DESCRIPTION. The Property is described as follows:

A. Deposit Account: Deposit Account Number _____, with a face amount of \$6,500,000.00, issued on _____, 2010 to be held and controlled in a "lock-boxed" deposit account by secured party and issued by Los Alamos National Bank located at 1200 Trinity Drive, Los Alamos, New Mexico 87544.

5. WARRANTIES AND REPRESENTATIONS.

A. I have the right and authority to enter into this Agreement. The execution and delivery of this Agreement will not violate any agreement governing me or to which I am a party. I am located at the address indicated in the DATE AND PARTIES section. I will provide you with at least 30 days notice prior to any change in my name or principal residence location.

SFC CLERK RECORDED 09/03/2010

B. I represent that I own all of the Property. Your claim to the Property is ahead of the claims of any other creditor, except as disclosed in writing to you prior to any advance on the Secured Debts.

6. DUTIES TOWARD PROPERTY.

A. **Protection of Secured Party's Interest.** I will defend the Property against any other claim. I agree to do whatever you require to protect your security interest and to keep your claim in the Property ahead of the claims of other creditors. I will not do anything to harm your position.

B. **Notices and Documents.** I will furnish you, promptly upon receipt, copies of all material notices, requests and other documents I receive relating to the Property.

C. **Protection of the Property.** I will notify you in writing prior to any change in my name or address. Until the Secured Debts are fully paid and this Agreement is terminated, I will not grant a security interest in any of the Property without your prior written consent.

D. **Taxes and Assessments.** I will pay all taxes and assessments levied or assessed against me or the Property and provide timely proof of payment of these taxes and assessments upon request.

E. **Selling or Encumbering the Property.** I will not sell, offer to sell, or otherwise transfer or encumber the Property without your prior written permission. Any disposition of the Property contrary to this Agreement shall violate your rights. Your permission to sell the Property may be reasonably withheld without regard to the creditworthiness of any buyer or transferee. I will not permit the Property to be the subject of any court order affecting my rights to the Property in any action by anyone other than you. If the Property includes chattel paper or instruments, either as original collateral or as proceeds of the Property, I will note your security interest on the face of the chattel paper or instruments.

7. **AUTHORITY TO PERFORM.** I authorize you to do anything you deem reasonably necessary to protect the Property, and perfect and continue your security interest in the Property. If I fail to perform any of my duties under this Agreement or any other Loan Document, you are authorized, without notice to me, to perform the duties or cause them to be performed.

These authorizations include, but are not limited to, permission to:

A. pay and discharge taxes, liens, security interests or other encumbrances at any time levied or placed on the Property.

B. handle any suits or other proceedings involving the Property in my name.

If you perform for me, you will use reasonable care. If you exercise the care and follow the procedures that you generally apply to the collection of obligations owed to you, you will be

deemed to be using reasonable care. Reasonable care will not include: any steps necessary to preserve rights against prior parties; the duty to send notices, perform services or take any other action in connection with the management of the Property; or the duty to protect, preserve or maintain any security interest given to others by me or other parties. Your authorization to perform for me will not create an obligation to perform and your failure to perform will not preclude you from exercising any other rights under the law or this Agreement. All cash and non-cash proceeds of the Property may be applied by you only upon your actual receipt of cash proceeds against such of the Secured Debts, matured or unmatured, as you determine in your sole discretion.

8. DEFAULT. I will be in default if any of the following occur:

A. Payments. The Borrower or I fail to make a payment in full when due.

B. Insolvency or Bankruptcy. The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against the County, Borrower, or any co-signer, endorser, surety or guarantor of this Agreement.

C. Failure to Perform. I fail to perform any condition or to keep any promise or covenant of this Agreement.

D. Other Documents. A default occurs under the terms of any other Loan Document.

E. Misrepresentation. I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

F. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

G. Name Change. I change my name or assume an additional name without notifying you before making such a change.

9. REMEDIES. After I default, and after you give any legally required notice and opportunity to cure the default, you may at your option do any one or more of the following.

A. Sources. You may use any and all remedies you have under state or federal law or in any Loan Document.

B. Payments Made On My Behalf. Amounts advanced on my behalf will be immediately due and may be added to the Secured Debts.

C. Withdrawal of Property. You may withdraw as much of the Property as is necessary to cure any default by continuously making payments toward the Secured Debt from the Property when due under the Loan Agreement. You may apply what you receive from the withdrawal of the Property to your expenses, your attorneys' fees and legal expenses (where not prohibited by law), and any debt I owe you. ~~If what you receive from the withdrawal of the Property does not satisfy the debt, I will be liable for the deficiency (where permitted by law). You will provide me with any required explanation of deficiency calculation. In some cases, you may keep the Property to satisfy the debt.~~

~~In the event that withdrawals are made from the Property for application to the Secured Debt, the County agrees to make deposits to the Property so that the balance of the Property never falls below the amount then due on the Loan for any 90 day period. Notwithstanding anything to the contrary contained in this Agreement, the Guaranty and this Agreement is an are-independent obligations of the County and this Agreement shall be effective without regard to the enforceability of the underlying Secured Debt or Guaranty.~~

Where a notice is required, I agree that ten days prior written notice sent by first class mail to my address listed in this Agreement will be reasonable notice to me under the New Mexico Uniform Commercial Code.

D. Waiver. By choosing any one or more of these remedies you do not give up your right to use any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

10. APPLICABLE LAW. This Agreement is governed by the laws of New Mexico, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

11. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. The County's obligations under this Agreement are independent of the obligations of any other obligor under the Loan or Guaranty. You may sue each Obligor individually or together with any other Obligor. You may release any part of the Property and I will still be obligated under this Agreement for the remaining Property. The County agrees that you and any party to this Agreement may extend, modify or make any change in the terms of the Loan ~~this Agreement~~ or any evidence of debt without the County's consent. Such a change will not release the County from the terms of this Agreement. ~~If you assign any of the Secured Debts, you may assign all or any part of this Agreement without notice to me or my consent, and this Agreement will inure to the benefit of your assignee to the extent of such assignment.~~ You will continue to have the unimpaired right to enforce this Agreement as to any of the Secured Debts that are not assigned. This Agreement shall inure to the benefit of and be enforceable by you and your successors and assigns and any other person to whom you may grant an interest in the Secured Debts and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

12. AMENDMENT, INTEGRATION AND SEVERABILITY. This Agreement may not be amended or modified by oral agreement. No amendment or modification of this Agreement is effective unless made in writing and executed by you and me. This Agreement and the other Loan Documents are the complete and final expression of the understanding between you and me. If any provision of this Agreement is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

13. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Agreement.

14. NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Guarantor will be deemed to be notice to all Guarantors. I will inform you in writing of any change in my name, address or other application information. I will provide you any financial statement or information you request. All financial statements and information I give you will be correct and complete. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Agreement and to confirm your lien status on any Property. Time is of the essence.

SIGNATURES. By signing, I agree to the terms contained in this Agreement. I also acknowledge receipt of a copy of this Agreement.

**COUNTY/GUARANTOR:
BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY, NEW MEXICO**

By: _____
XXX

Date: July 27, 2010

To: Santa Fe Film and Media Studios, Inc.
7 Plaza del Centro
Santa Fe, NM 87506

Re: Film Studio

LETTER OF INTENT

This Term Sheet indicates our desire to enter into and continue discussions with you toward providing financing for your Project as described more fully below. This Letter of Intent is not meant to be, nor shall it be construed as, a commitment by LANB or any other bank or entity to extend credit or to enter into syndication efforts in order to extend credit. Moreover, it does not attempt to describe all other terms and conditions that would pertain to such financing, nor do its terms suggest the specific phrasing of documentation clauses. Instead, it is intended to outline certain basic points of business understanding around which the financing could be structured. This Letter of Intent may, if so decided by LANB in its discretion, be superseded by a written commitment to extend credit by LANB. The closing of any financial transaction relating to the financing would be subject to various conditions precedent, including but not limited to the conditions set forth below.

Borrower: The Borrower shall be Santa Fe Film and Media Studios, Inc., a New Mexico Corporation ("SFS").

Purpose: Phase I of the financing would be a 24 month line of credit loan to finance the construction of a film studio on 65 acres in Santa Fe, New Mexico ("Construction Loan"); Phase II would be a 25 year amortizing term loan ("Installment Loan").

A. Line of Credit Loan Terms:

1. Loan: \$10,000,000.00 subject to the terms and conditions required by LANB as outlined herein.

2. Use: Construction of a film studio facility in Santa Fe, New Mexico ("the Project"). Loan proceeds may only be used for the costs described in the Project Budget approved by Santa Fe County and any use of loan proceeds must comply with the Loan Guaranty Reimbursement Agreement by and between Santa Fe County, La Luz Holdings LLC and Santa Fe Film and Media Studios Inc. and any other agreement related to the Project.

3. Collateral: The Line of Credit Loan would be secured by an Assignment of Deposit account hypothecated by the County of Santa Fe for the benefit of SFS and held and controlled by LANB per the loan documents. The lockbox agreement terms must provide that LANB may access the funds to pay the debt when due in the event that Borrower defaults without any further approvals required. In addition, a security interest subordinate only to that of Santa Fe County in the real property of approximately eight (8) acres known as Phase IA shall be hypothecated from La Luz Holdings, LLC for the benefit of SFS and mortgaged to LANB. A Leasehold Mortgage covering the aforementioned real property located in Santa Fe, NM shall also be granted to LANB subordinated only to that of

Santa Fe County. Santa Fe County shall hold a first lien position on the entire subject property. LANB would also hold a first priority security interest in other collateral granted to LANB by Borrower in connection with any Loan, including, but not limited to, Borrower's deposit accounts and instruments such as CD's issued by LANB. LANB may record partial releases of the mortgage should the property be sold and the lockbox account remains as collateral.

4. Guarantors: Santa Fe County and La Luz Holdings, LLC.

5. Term of Loan: The Line of Credit Loan would mature after twelve (12) months, subject to demand. There will be an option of one addition twelve (12) month term.

6. Banking Relationship: SFS and La Luz Holdings, LLC would be required to retain their primary banking relationships, including all deposit accounts, at LANB. Notwithstanding the foregoing, LANB may permit deposits for which LANB does not have sufficient insurance coverage, whether through the FDIC or other insurers, to reside at certain other depository institutions, subject to control agreements in favor of LANB.

7. Reserves: A twenty-four (24) month interest reserve account will be required within the approved construction budget.

8. Interest Rate: The Line of Credit would bear interest on the outstanding principal balance at a variable rate equal to the highest base rate on corporate loans posted by at least 75% of the nation's 30 largest banks that The Wall Street Journal publishes as the prime rate, plus 1.00%, to be adjusted annually, with a 6.50% floor and no ceiling.

9. Payments: Interest would be payable quarterly.

10. Fees: A 1.00% Origination Fee would be charged on the loan amount at closing of Line of Credit Loan. A Commitment Fee is a non-refundable fee, payable at the time of issuance of a binding Commitment Letter and would be applied to the Origination Fee at closing of the Line of Credit Loan.

11. Funding: Funding would be advanced based on the requirements set forth in all Project documents.

B. Installment Loan Terms:

1. Loan: \$10,000,000.00 subject to the terms and conditions required by LANB as outlined herein. The principal balance of this Note shall not be greater than the payoff of Phase I plus any fees or payment reserves and shall not be in excess of the amounts held in the Lockbox Account.

2. Use: Conversion of the Line of Credit Loan to payments and any use of loan proceeds must comply with the loan documents.

3. Collateral: The Installment Loan would be secured by an Assignment of Deposit account hypothecated by the County of Santa Fe for the benefit of SFS and held and controlled by LANB per the loan documents. The lockbox agreement terms must provide that LANB may access the funds to pay the debt when due in the event that Borrower defaults without any further approvals required. In

addition, a security interest subordinate only to that of Santa Fe County in the real property of approximately eight (8) acres known as Phase IA shall be hypothecated from La Luz Holdings, LLC for the benefit of SFS and mortgaged to LANB. A Leasehold Mortgage covering the aforementioned real property located in Santa Fe, NM shall also be granted to LANB subordinated only to that of Santa Fe County. Santa Fe County shall hold a first lien position on the entire subject property. LANB would also hold a first priority security interest in other collateral granted to LANB by Borrower in connection with any Loan, including, but not limited to, Borrower's deposit accounts and instruments such as CD's issued by LANB. LANB may record partial releases of the mortgage should the property be sold and the lockbox account remains as collateral.

4. Personal Guaranties: Santa Fe County and La Luz Holdings, LLC.

5. Term of Loan: The Installment Loan would be for twenty-five (25) years subject to demand.

6. Banking Relationship: SFS and Guarantor(s) would be required to retain their primary banking relationships, including all deposit accounts, at LANB. Notwithstanding the foregoing, LANB may permit deposits for which LANB does not have sufficient insurance coverage, whether through the FDIC or other insurers, to reside at certain other depository institutions, subject to control agreements in favor of LANB.

7. Interest Rate: The Installment Loan would be a 5/1 ARM. The Installment Loan interest rate during the first sixty (60) months would be the then-current commercial real estate loan fixed rate at the time of closing. The Installment Loan interest rate from the sixty-first (61) month until payoff in full would be based on the following index: the weekly average yield on United States Treasury securities adjusted to a constant maturity of one year plus 3.00% adjusted annually.

8. Prepayment Penalties: In the event the Installment Loan is prepaid in whole or in part, with the limited exception of payments required for partial release of unimproved land, prior to the sixtieth (60) month, prepayment penalties may apply. The requirement for prepayment penalties may be waived by LANB's Board Loan Committee. The prepayment penalties would be percentages of the outstanding principal balance at the time of the full or partial prepayment. The percentages are based upon the date of receipt of the prepayment by LANB.

Month 1 - 12 of the Installment Loan = 2.5%
Month 13 - 24 of the Installment Loan = 2%
Month 25 - 36 of the Installment Loan = 1.5%
Month 37 - 48 of the Installment Loan = 1 %
Month 49 - 60 of the Installment Loan = 1%

9. Payments: Monthly principal and interest payments would be required on the Installment Loan.

C. Contingencies:

1. Disbursements, Appraisal(s) and Equity:

a. LANB will not permit extensions on the Line of Credit Loan in excess of the amounts held in the Lockbox Account.

b. Under the project documents LANB will disburse funds for construction costs incurred pursuant to the approved construction budget and instructions provided by Santa Fe County. Those instructions will include but are not limit to the following terms:

- i. SFS would be required to have a minimum of 30% equity in the Project at closing. The Loan-to-Value ratio may never exceed 70% and the Loan-to-Cost ratio may never exceed 70% during the term of the Construction Loan or the Installment Loan. LANB would only advance on the Construction Loan within these Loan-to-Value and loan to cost limitations. LANB would require cost accountings from SFS to support the Loan-to-Cost ratio.
- ii. LANB would require an acceptable appraisal or appraisals from an approved appraiser which will establish the Loan-to-Value ratio. For the Line of Credit Loan, LANB would use the "as built" appreciated value reached in the appraisal(s). New appraisals would be required not less frequently than at the initiation of each phase, but updated or new appraisals may be required at any time. SFS would pay the cost of the appraisal(s) and any updates.

2. Environmental Assessment: SFS, at its own expense, shall provide LANB with a Phase I Environmental, complying with all applicable regulations, representing, for the benefit of LANB, that no hazardous substances have been found upon the real property upon which the Project will be constructed. If the Phase I Environmental Assessment reveals the existence of any hazardous substances, a Phase II Environmental Assessment, meeting the foregoing criteria shall be prepared. This commitment to extend credit is conditioned upon LANB's acceptance of the environmental condition of the real property.

3. Title Insurance: Loan Policy of Title Insurance from *Title Guaranty and Insurance Company*. SFS must, at its sole expense, provide LANB with an ALTA Loan Policy of Title Insurance, subject only to exceptions accepted by LANB in writing, in the full amount of each loan. The title policy must be prepared by a title company, and insured by an underwriter, acceptable to LANB. Standard exception numbers 1 through 7 shall be deleted at SFS's expense. LANB would use its best efforts to close the Line of Credit Loan and Installment Loan in such a manner as to minimize the costs of title insurance to SFS.

4. Insurance: SFS shall, until the loan is paid in full, maintain policies of insurance acceptable to LANB and identifying LANB as mortgagee (or leasehold mortgagee) and lien holder, insuring the collateral in an amount at least equal to the greater of the replacement cost or the loan balance. Such policies of insurance shall provide that LANB will receive notice of cancellation of such policies.

5. Extension: There is no agreement concerning extension of either loan except as explicitly stated herein.

6. Costs: SFS would be obliged to pay LANB'S costs associated with the Loan(s), including but not limited to attorney fees, appraisal fees, title insurance and closing costs. The obligation to reimburse LANB for its costs would become effective upon SFS's acceptance of the terms of a Commitment Letter. The reimbursement obligation would be binding on SFS regardless of whether it discontinues pursuit of the Project, fails to close on the Loan(s) through no fault of LANB or decides to proceed with the Project using financing of another lender.

D. Conditions Required Prior to Issuance of a Binding Commitment:

1. LANB's Board Loan Committee must approve the proposed Loan(s);
2. LANB's satisfactory review of financial, projections and corporate information for Santa Fe Film and Media Studios, Inc. and any other principal and guarantor;
3. Commitments from guarantors (Santa Fe County and La Luz Holdings);
4. Commitments from acceptable participants in the event that the amounts required for Project or Phase completion exceed the respective loan amounts;
5. Receipt of satisfactory evidence by LANB of SFS's Leasehold interest and that LANB would have a lien subordinate only to that of Santa Fe County on SFS's interest in the approximately eight (8) acres known as Phase IA of real property; Santa Fe County shall have a first lien on the entire subject property.
6. Receipt of satisfactory evidence by LANB of Santa Fe County's acceptance of the Guaranty and hypothecation and control agreement providing \$6.5 million in cash funds as security for the loans;
7. SFS must provide any additional documentation required by LANB; and
8. SFS must pay a 1.00% Commitment Fee upon issuance of a binding Commitment Letter which shall be non-refundable in the event the Loan does not close for any reason. The Commitment Fee would be applied toward the Origination Fee required for the Construction Loan at closing.

E. Jurisdiction. New Mexico law will govern any disputes that arise under the loan documents, or any other dispute related to the Project or proposed transaction and venue for any dispute will be in the First Judicial District Court in Santa Fe County, New Mexico.

The summary of Terms and Conditions contained herein is not meant to be, nor shall it be construed as, an attempt to define all the terms and conditions applicable to the proposed transaction. It is intended only as an outline of the basic business points of the proposed transaction.

The foregoing is intended to provide a substantive outline of LANB's Terms rather than a complete statement of all terms, conditions and documents, which would be required in connection with the loans described above. It is possible that substantive terms or conditions may change in order to account for, or reflect, changes in underwriting, LANB's understanding of or additional information regarding the Project, statutory or regulatory authorities governing the subject matter of the transaction or other conditions affecting the financing or the Project. This Letter of Intent is no way a commitment to make the loans referenced herein nor is it a guarantee of approval.