

COUNTY OF SANTA FE

ORDINANCE NO. 2006-1

AUTHORIZING THE ISSUANCE AND SALE OF \$6,735,000 COUNTY OF SANTA FE, NEW MEXICO CHARTER SCHOOL FOUNDATION REVENUE BONDS (ATC FOUNDATION PROJECT) SERIES 2006, IN TWO SERIES: TAX-EXEMPT SERIES 2006A AND TAXABLE SERIES 2006B TO PROVIDE FUNDS TO ACQUIRE, CONSTRUCT AND EQUIP A CHARTER SCHOOL FACILITY (THE "PROJECT") FOR USE BY THE ACADEMY FOR TECHNOLOGY AND THE CLASSICS AND TO REIMBURSE TEMPORARY ADVANCES MADE FOR CAPITAL EXPENDITURES FROM PROCEEDS OF THE BONDS AND RELATED MATTERS; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, LEASE AGREEMENT, BOND PURCHASE AGREEMENT, TAX CERTIFICATE, THE BONDS AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS AND THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE BONDS AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

WHEREAS, the County of Santa Fe (the "County"), in the State of New Mexico (the "State"), is a legally and regularly created, established, organized and existing political subdivision of the State; and

WHEREAS, pursuant to the County Industrial Revenue Bond Act, Sections 4-59-1 through 4-59-16, New Mexico Statutes Annotated, 1978 Compilation, as amended (the "Act"), the County Commission (the "Commission") of the County is authorized to issue industrial revenue bonds to acquire, construct and equip certain industrial or commercial projects to be located within the County and to issue its industrial revenue bonds to finance such projects and certain related costs for the purpose of promoting the general welfare by inducing 501(c)(3) corporations to locate, relocate, modernize or expand in the State of New Mexico; and

WHEREAS, the Commission is further authorized to adopt ordinances to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort, and convenience of the County and its inhabitants; and

WHEREAS, ATC Foundation (the "Foundation") is organized as a non-profit corporation under the laws of the State of New Mexico and as a 501(c)(3) corporation under the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the Foundation has requested that the County issue industrial revenue bonds for the purpose of providing funds to defray the cost of acquiring buildings and equipment located in Santa Fe County, New Mexico, which the Foundation will sublease to the Academy for Technology and the Classics (the "School"), a public charter school within the Santa Fe Public School District, for use as an educational facility (the "Project"); and

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WHEREAS, under the Foundation's proposal, the County would enter into an Indenture dated as of January 1, 2006 (the "Indenture"), between the County and Bank of Albuquerque, N.A., as trustee (the "Trustee"), pursuant to which, together with this ordinance (the "Bond Ordinance"), the County would issue its bonds designated as the County of Santa Fe, New Mexico Charter School Foundation Revenue Bonds (ATC Foundation Project), Series 2006 (the "Bonds") in two series: Tax-Exempt Series 2006A (the "Series 2006A Bonds") and Taxable Rate Series 2006B (the "Series 2006B Bonds," and together with the Series 2006A Bonds, the "Bonds"); and

WHEREAS, under the Foundation's proposal, the County and the Foundation would enter into an Lease Agreement dated as of January 1, 2006 (the "Lease Agreement"), pursuant to which the Foundation will lease the Project from the County and will make payments to the Trustee sufficient to pay the principal of and interest on the Bonds and to pay all other obligations incurred pursuant to the provisions of the Indenture and this Bond Ordinance; and

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

WHEREAS, on the date of issuance of the Bonds, the Foundation will, by quitclaim deed and bill of sale, or other appropriate conveyance instruments, sell its right, title and interest in and to the Project to the County and the County in consideration of the rent to be paid under the Lease Agreement, will lease the Project to the Foundation pursuant to the Lease Agreement; and

WHEREAS, the Bonds in the aggregate principal amount of \$6,735,000 will be issued, sold and delivered by the County to Kirkpatrick Pettis, a Division of D.A. Davidson & Co. (the "Underwriter") pursuant to a bond purchase agreement (the "Bond Purchase Agreement") by and among the County, the Underwriter and the Foundation; and

WHEREAS, the proceeds of the Bonds shall be applied to pay the costs of the Project and to pay certain related costs and expenses associated with the issuance of the Bonds; and

WHEREAS, the Commission has determined that it is in the best interest of the County to issue the Bonds and to execute and deliver the Bond Documents, defined below, and other documents related thereto; and

WHEREAS, there have been filed with the County Clerk the forms of the following documents:

1. Lease Agreement
2. Indenture
3. Bond Purchase Agreement
4. Tax Certificate (the Lease Agreement, Indenture, the Tax Certificate and Bond Purchase Agreement are collectively referred to in this Bond Ordinance as the "Bond Documents")

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5. A form of Official Statement describing the Bonds and related matters (the "Official Statement"); and

WHEREAS, the County is authorized to issue the Bonds under the Act and this Bond Ordinance and has concluded that it is desirable and necessary at this time to authorize the issuance of the Bonds to finance the Project and that the County's issuance of the Bonds will constitute and be a valid public purpose; and

WHEREAS, this Commission has been advised by the Foundation and the Underwriter that the proposed sale of the Bonds will occur in a primary offering in authorized denominations of not less than \$100,000; and

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

BE IT ORDAINED BY THE COMMISSION, THE GOVERNING BODY OF SANTA FE COUNTY:

Section 1. RATIFICATION. All actions not inconsistent with the provisions of this Bond Ordinance previously taken by the Commission and the officials of the County directed toward approval of the issuance and sale of the Bonds to the Underwriter be and the same hereby are ratified, approved and confirmed.

Section 2. THE PROJECT. The Project will consist of approximately 10 acres of land and an approximately 35,000 square foot facility which the Foundation will sublease to the School for use as an educational facility. The proceeds of the Bonds will be used to defray the cost acquiring, constructing and equipping the Project, and payment of certain costs of issuance.

Section 3. FINDINGS.

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

B. The Commission finds that:

(1) The Bonds will be issued for the purpose of financing the Project.

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(2) The aggregate face amount of obligations to be issued with respect to financing the Project is \$6,735,000.

(3) The developer of the Project is the Foundation.

(4) The Project is located at #74 A-VAN-NU-PO Road in unincorporated Santa Fe County, New Mexico.

Section 4. AUTHORIZATION AND APPROVAL OF PROJECT. The proceeds of the Bonds will be used to finance the costs of the Project and to pay certain costs related thereto. The Project is authorized and approved. The costs referred to in this paragraph include costs and expenses relating to the issuance of the Bonds.

Section 5. BONDS APPROVAL, AUTHORIZATION AND DETAIL.

A. Approval and Sale. The issuance of the Bonds in the aggregate principal amount of \$6,735,000 and the use of the proceeds of the Bonds to defray costs of the Project and to pay expenses relating thereto is hereby approved and confirmed.

B. Form and Terms. Subject to the limitations set forth in this Bond Ordinance, the Bonds shall be (i) issued as fully registered Bonds, without interest coupons; (ii) payable as to principal and interest and subject to optional and mandatory redemption and defeasance in the amounts, upon the conditions and at the times and prices set forth in the Indenture; and (iii) issued in the aggregate principal amount of \$6,735,000, bearing interest at the rates and maturing on the dates set forth in the Indenture but in any event maturing not later than the later of (i) the thirtieth anniversary of the issuance of the Bonds or (ii) January 15, 2036.

C. Execution. The Bonds shall be signed by the Chair of the Board of County Commissioners of Santa Fe County, New Mexico, or his designee.

Section 6. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS. The form, terms and provisions of the Bond Documents in the form on deposit in the office of the County Clerk are in all respects approved, authorized and confirmed.

The Chair of the Commission, the County Clerk, the County Manager, and the County Attorney are authorized to execute and deliver in the name and on behalf of the County, and to attest, as necessary, the Bond Documents and the Bonds, with such changes therein as are not inconsistent with this Bond Ordinance and the Bonds.

The County understands that the Underwriter intends to use the Official Statement in substantially such form as submitted to this meeting in connection with the public offering and sale of the Bonds. The County further understands that such Official Statement will be revised as may be necessary to reflect the sale of the Bonds on the terms hereby authorized and that a final Official Statement reflecting such revisions will be provided to persons purchasing the Bonds. Neither the County nor any official or employee of the County has assumed responsibility for the content, accuracy or completeness of the information in the Official Statement, and neither the County nor any official or employee of the County is authorized to assume such responsibility as to those matters.

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

Section 7. DELIVERY OF BONDS. Upon the execution of the Bond Documents, the satisfaction of the conditions set forth in the Bond Documents and upon receipt of the purchase price for the Bonds, the Bonds shall be executed, authenticated and delivered to the Underwriter. No Bond shall be valid for any purpose until such Bond has been properly authenticated as set forth in the Indenture.

Section 8. FUNDS AND ACCOUNTS. There are established in the Indenture, and on and after the date on which the Bonds are issued, there shall be maintained, the funds and accounts as set forth in the Indenture. Other funds and accounts may be established as are necessary under the Indenture.

Section 9. FINDINGS REGARDING PAYMENT OF INTEREST AND PRINCIPAL AND OTHER MATTERS. The following determinations are made:

A. (i) The Series 2006A Bonds shall be dated the date of delivery, are issuable in denominations of not less than \$100,000, numbered consecutively from 1 upwards, shall bear interest from the date of delivery until maturity at the rates hereinafter designated payable semiannually on January 15 and July 15 in each year until maturity, commencing July 15, 2006, and shall mature on January 15 in each of the years hereinafter designated, as follows:

<u>Amounts</u> <u>Maturing</u>	<u>Interest Rate</u> <u>(Per Annum)</u>	<u>Years</u> <u>Maturing</u>
\$2,515,000	6.500%	2026*
4,030,000	6.625%	2036*

* Term Bonds, subject to mandatory sinking fund redemption

(ii) The Series 2006B Bond shall be dated the date of delivery, is issuable in a denomination of not less than \$100,000, shall bear interest from the date of delivery until maturity at the rate hereinafter designated payable semiannually on January 15 and July 15 in each year until maturity, commencing July 15, 2006, and shall mature on January 15 in each of the years hereinafter designated, as follows:

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<u>Amounts Maturing</u>	<u>Interest Rate (Per Annum)</u>	<u>Years Maturing</u>
\$190,000	7.550%	2010*

* Term Bond, subject to mandatory sinking fund redemption

B. (i) Series 2006A Bonds maturing on and after January 15, 2017, shall be subject to prior redemption at the County's option in one or more units of principal of \$5,000 on and after June 15, 2016, in whole or in part at any time thereafter in such order of maturities as the County may determine for the principal amount of each \$5,000 unit so redeemed and accrued interest thereon to the redemption date.

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(ii) The Series 2006A Bonds maturing on January 15, 2026 are subject to mandatory sinking fund redemption on January 15 in the years and principal amounts stated below at a redemption price equal 100% of the principal amount thereof plus accrued interest to the redemption date. As and for a sinking fund for the redemption of Series 2006A Bonds maturing on January 15, 2026, the County shall cause to be deposited in the Bond Fund a sum which is sufficient to redeem the following principal amounts of such Bonds plus accrued interest to the redemption date:

<u>Year ending</u> <u>January 15</u>	<u>Principal</u>
2010	5,000
2011	95,000
2012	100,000
2013	105,000
2014	115,000
2015	120,000
2016	130,000
2017	135,000
2018	145,000
2019	155,000
2020	165,000
2021	175,000
2022	190,000
2023	200,000
2024	215,000
2025	225,000
2026	240,000

(iii) The Series 2006A Bonds maturing on January 15, 2036 are subject to mandatory sinking fund redemption on January 15 in the years and principal amounts stated below at a redemption price equal 100% of the principal amount thereof plus accrued interest to the redemption date. As and for a sinking fund for the redemption of Series 2006A Bonds maturing on January 15, 2036, the County shall cause to be deposited in the Bond Fund a sum which is sufficient to redeem the following principal amounts of such Bonds plus accrued interest to the redemption date

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<u>Year ending</u> <u>January 15</u>	<u>Principal</u>
2027	260,000
2028	275,000
2029	295,000
2030	310,000
2031	335,000
2032	355,000
2033	380,000
2034	405,000
2035	430,000
2036	985,000

(iv) The Series 2006B Bond maturing on January 15, 2010 is subject to mandatory sinking fund redemption on January 15 in the years and principal amounts stated below at a redemption price equal 100% of the principal amount thereof plus accrued interest to the redemption date. As and for a sinking fund for the redemption of Series 2006B Bonds maturing on January 15, 2010, the County shall cause to be deposited in the Bond Fund a sum which is sufficient to redeem the following principal amounts of such Bonds plus accrued interest to the redemption date:

<u>Year ending</u> <u>January 15</u>	<u>Principal</u>
2008	25,000
2009	80,000
2010	85,000

C. The Lease Agreement requires that the Foundation maintain the Project in good repair and condition (excepting reasonable wear and tear) and that the Foundation cause the School to carry proper insurance with respect to the Project.

D. The Lease Agreement requires the Foundation to make payments sufficient to pay the principal of and interest on the Bonds as principal and interest become due and to make all payments of or relating to the Project as they become due.

Section 10. LIMITED OBLIGATIONS. The Bonds shall be special limited obligations of the County, payable solely from the revenues derived from the Lease Agreement and payable by the Foundation as described in the Indenture, and shall never constitute a debt or indebtedness of the County or the State or any political subdivision thereof within the meaning of any provision or limitation of the State Constitution or laws of the State, and shall not constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power. Nothing contained in this Bond Ordinance or in the Bond Documents or any other instrument shall be construed as obligating the County (except with respect to the Project and the application of the revenues therefrom and the proceeds of the Bonds, all as provided in

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

Section 11. [Reserved]

Section 12. APPROVAL OF INDEMNIFICATION. The Commission specifically approves the provisions of the Lease Agreement relating to indemnification which provide that the Foundation shall indemnify and hold harmless the County and its Commissioners, officials, members, officers, employees and agents against liability to the Foundation, or to any third parties that may be asserted against the County or its Commissioners, officials, members, officers, employees or agents with respect to the County's approval of the Project, ownership and lease of the Project, the issuance of the Bonds, or otherwise arising in any manner from the condition of the Project or the acquisition, construction and operation of the Project by the Foundation, except claims for any loss or damage arising out of or resulting from the gross negligence or willful misconduct of the County or any member, officer, employee or agent of the County.

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

Section 14. REPEALER. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent with this Bond Ordinance are repealed by this Bond Ordinance but only to the extent of that inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, previously repealed.

Section 15. SEVERABILITY. If any section, paragraph, clause or provision of this Bond Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of that section, paragraph, clause or provision shall not affect any of the remaining provisions of this Bond Ordinance.

Section 16. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE DATE. This Ordinance, immediately upon its final passage and approval, shall be recorded in the ordinance book of the County, kept for that purpose, and shall be there authenticated by the signature of the Chair of the Commissioners and by the signature of the County Clerk, and notice of adoption thereof shall be published once in *The Santa Fe New Mexican* and the Ordinance shall be in full force and effect thirty days following such publication.

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PASSED, ADOPTED, SIGNED AND APPROVED THIS 18th DAY OF JANUARY, 2006.

SANTA FE COUNTY, NEW MEXICO



By [Signature]
Chair, Board of County Commissioners

ATTEST:

By [Signature]
County Clerk



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss
I hereby certify that this instrument was filed for
Record on the 18th Day of January, A.D. 2006 at 03:01
PM and duly Recorded as Instrument # 1416361
of the Records of Santa Fe County
Witness My Hand And Seal of Office
Valerie Espinoza
County Clerk, Santa Fe, NM

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