

CITY of ALBUQUERQUE

TWENTY-FIFTH COUNCIL

COUNCIL BILL NO. F/S O-22-27

ENACTMENT NO. O-2022-029

SPONSORED BY: Renee Grout

1 ORDINANCE

2 AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE,
3 NEW MEXICO INDUSTRIAL REVENUE BOND (BLUEHALO PROJECT), SERIES
4 2022 IN THE MAXIMUM PRINCIPAL AMOUNT OF \$16,175,675 TO PROVIDE
5 FUNDS TO FINANCE THE RENOVATION, DEVELOPMENT, IMPROVEMENT AND
6 EQUIPPING OF A FACILITY INCLUDING OFFICE COMPLEX, LABORATORIES,
7 MANUFACTURING FACILITIES, TEST AREAS AND SECURE SPACES FOR AN
8 INTEGRATED TECHNOLOGY COMPANY; AUTHORIZING THE EXECUTION AND
9 DELIVERY OF AN INDENTURE, LEASE AGREEMENT, BOND PURCHASE
10 AGREEMENT, BOND, AND OTHER DOCUMENTS IN CONNECTION WITH THE
11 ISSUANCE OF THE BOND AND THE PROJECT; MAKING CERTAIN
12 DETERMINATIONS AND FINDINGS RELATING TO THE BOND AND THE
13 PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND
14 REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

15 WHEREAS, the City of Albuquerque (the "City") is a legally and regularly
16 created, established, organized, and existing municipal corporation of the State
17 of New Mexico (the "State"); and

18 WHEREAS, pursuant to Sections 3-32-1 through 3-32-16, New Mexico
19 Statutes Annotated, 1978 Compilation, as amended (the "Act"), the City is
20 authorized to acquire industrial revenue projects located within the corporate
21 limits of the municipality for the purpose of promoting industry and trade by
22 inducing commercial enterprises to locate or expand in the State of New
23 Mexico; and

1 WHEREAS, pursuant to the Act, the City is authorized to issue revenue
2 bonds for the purpose of defraying the cost of acquiring any project and to
3 secure the payment of such bonds, all as provided in the Act; and

4 WHEREAS, BlueHalo, LLC (the "Company") is a corporation organized
5 under the laws of the State of Alabama and is authorized to do business in
6 New Mexico; and

7 WHEREAS, the Company has requested that the City issue its industrial
8 revenue bond pursuant to the Act for the purpose of providing funds to finance
9 the renovation, development, improvement and equipping of a facility
10 including office complex, laboratories, manufacturing facilities, test areas and
11 secure spaces within the corporate limits of the City (the "Project"); and

12 WHEREAS, the City Council of the City of Albuquerque (the "Council") has
13 adopted an ordinance establishing the Albuquerque Development Commission
14 (the "Commission") to review projects proposed to be financed with an
15 industrial revenue bond pursuant to City Resolution No. 16-1985, as amended;
16 and

17 WHEREAS, the Company has presented to the City and the Commission a
18 proposal (the "Project Plan") whereby the City shall, pursuant to the Act,
19 acquire and improve certain property and equipment (the "Project Property")
20 for the purpose of operating facilities at 10800 Gibson Blvd SE, consisting of
21 approximately 73,000 square feet, for an office complex, laboratories,
22 manufacturing facilities, test areas and secure spaces, within the boundaries of
23 the City, and pursuant to which the City would issue its taxable industrial
24 revenue bond in order to finance the Project; and

25 WHEREAS, the Commission has reviewed the Project Plan, and on April 21,
26 2022, has determined that the Company has complied with City Resolution No.
27 16-1985, and has recommended approval of the Project Plan by the Council;
28 and

29 WHEREAS, under the Company's Project Plan, the City would enter into an
30 Indenture dated as of July 1, 2022 (the "Indenture") between the City and a

1 corporate depository satisfactory to the City to be designated at a later date, as
2 depository (the "Depository"), pursuant to which, together with this ordinance
3 (the "Bond Ordinance"), the City would issue its bond designated as the City of
4 Albuquerque, New Mexico Taxable Industrial Revenue Bond (BlueHalo
5 Project), Series 2022 (the "Bond"); and

6 WHEREAS, under the Company's Project Plan, the City and the Company
7 would enter into a Lease Agreement dated as of July 1, 2022 (the "Lease"),
8 pursuant to which the Company will lease the Project Property from the City
9 and will make payments to the Depository sufficient to pay the principal of,
10 redemption premium, if any, and interest on the Bond, and to pay all other
11 obligations incurred pursuant to the provisions of the Lease and the Bond
12 Ordinance; and

13 WHEREAS, under the Company's Project Plan, the Lease will provide that
14 the Company shall maintain the Project and carry all proper insurance with
15 respect thereto; and

16 WHEREAS, the proceeds of the Bond shall be used for the purpose of
17 financing the renovation, development, improvement and equipping of the
18 Project (the "Financing"); and

19 WHEREAS, the City is authorized to enter into the Lease, the Indenture, and
20 other related documents and to issue the Bond pursuant to the Act and the
21 Bond Ordinance; and

22 WHEREAS, the Bond in an aggregate principal amount not to exceed
23 \$16,175,675 will be issued, sold, and delivered by the City in a private sale to
24 an affiliate of the Company (the "Purchaser") pursuant to a bond purchase
25 agreement (the "Bond Purchase Agreement") among the City, the Company,
26 and the Purchaser; and

27 WHEREAS, the proceeds of the Bond shall be applied to pay the costs of the
28 Project and to pay certain costs associated with the transaction; and

29 WHEREAS, after having considered the provisions of the Project Plan and
30 the Financing, the Council has concluded that it is in the best interest of the

1 City to authorize the issuance of the Bond to finance the Project, and that the
2 City's issuance of the Bond shall constitute a valid public purpose under the
3 Act; and

4 WHEREAS, the Council has been advised by the Company that the
5 disclosure provisions of Rule 15c2-12 of the Securities and Exchange
6 Commission are not applicable to this transaction inasmuch as the Bond is
7 being sold to the Purchaser, which is an affiliate of the Company, in a private
8 sale without the participation of an underwriter; and

9 WHEREAS, there has been published in the Albuquerque Journal, a
10 newspaper of general circulation in the City, public notice of the Council's
11 intention to adopt this Bond Ordinance, which notice contained certain
12 information concerning the ownership, purpose, location, and size of the
13 Project and the Project Property, and the amount of the Bond to be issued to
14 finance the Project, which notice was published at least fourteen (14) days
15 prior to hearing and final action on this Bond Ordinance; and

16 WHEREAS, the proposed forms of the following documents have been filed
17 with the City Clerk and presented to the Council: (1) Project Plan; (2) Lease; (3)
18 Indenture; and, (4) Bond Purchase Agreement (collectively the "Bond
19 Documents"); and

20 WHEREAS, the City has delivered notice to the County of Bernalillo, State of
21 New Mexico, of its intent to consider issuance of the Bond, which notice was
22 given at least thirty (30) days prior to the meeting at which final action is to be
23 taken on this Bond Ordinance as required by Section 3-32-6.1, New Mexico
24 Statutes Annotated, 1978 Compilation, as amended;

25 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
26 ALBUQUERQUE:

27 Section 1. RATIFICATION. All actions not inconsistent with the provisions of
28 this Bond Ordinance previously taken by the Council and the officials of the City
29 directed toward approval of the issuance and sale of the Bond be approved and the
30 same hereby are ratified, approved and confirmed.

1 Section 2. THE PROJECT PLAN. The Project to be financed with the Bond
2 consists of the renovation, development, improvement and equipping of facilities for
3 an integrated technology company. The Company may use additional available
4 money to accomplish the Project. The Project Plan is hereby approved in all
5 respects.

6 Section 3. FINDINGS.

7 (A) General. The Council hereby declares that it has considered all
8 relevant information presented to it relating to the Bond and the Project and
9 hereby finds and determines that the issuance of the Bond pursuant to the
10 Bond Ordinance and the Act to provide funds for the Project is necessary and
11 advisable and in the interest of
12 the public, and will promote the public health, safety, morals, convenience,
13 economy, and welfare of the City and the residents of the City.

14 (B) The Council finds that:

15 (1) The Bond will be issued for the purpose of financing the
16 Project;

17 (2) The aggregate face amount of obligations to be issued for the
18 purpose of financing the Project is \$16,175,675;

19 (3) The developer and operator of the Project is the Company;
20 and,

21 (4) The Project Property is located in the City.

22 Section 4. AUTHORIZATION AND APPROVAL OF THE BOND. To finance
23 the cost of renovating, developing, improving and equipping the Project Property, the
24 City hereby authorizes and approves the issuance and sale of its industrial revenue
25 bond to be designated "City of Albuquerque, New Mexico Taxable Industrial
26 Revenue Bond (BlueHalo Project), Series 2022" in a principal amount not to exceed
27 \$16,175,675 and the use of the proceeds of the Bond to finance the cost of the
28 Project and to pay expenses relating thereto.

29 Section 5. SALE OF THE BOND. The sale of the Bond to the Purchaser at a
30 purchase price equal to the par amount of the Bond is hereby authorized and
31 approved.

1 Section 6. FORM AND TERM OF THE BOND. Subject to the limitations set
2 forth in this Bond Ordinance, the Bond shall be: (i) in the form and shall be
3 numbered and dated all as set forth in the Indenture; (ii) payable as to principal and
4 interest, and subject to optional and mandatory redemption and defeasance in the
5 amounts, upon the conditions and at the times and prices set forth in the Indenture;
6 and, (iii) issued in a principal amount not to exceed \$16,175,675, bearing interest at
7 the rates and maturing on the dates set forth in the Indenture. The interest rate on
8 the Bond shall not exceed 12% per annum. The Mayor or the Chief Administrative
9 Officer of the City shall sign the Bond.

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

17 (A) The Council authorizes the Mayor or the Chief Administrative Officer
18 of the City to execute and deliver the Bond Documents in the name and on
19 behalf of the City, and the Council authorizes the City Clerk or Deputy City Clerk
20 to attest to, as necessary, the Bond Documents and the Bond with such
21 changes therein as are not inconsistent with this Bond Ordinance.

22 (B) The Mayor, Chief Administrative Officer, Chief Financial Officer, City
23 Treasurer, and City Clerk are further authorized to execute, authenticate, and
24 deliver such certifications, instruments, documents, letters, and other
25 agreements, including security agreements, and to do such other acts and
26 things, either prior to or after the date of delivery of the Bond, as are necessary
27 or appropriate to consummate the transactions contemplated by the Bond
28 Documents.

29 (C) The officers of the City shall take such action as is necessary to
30 effectuate the provisions of the Indenture and shall take such action as is
31 necessary in conformity with the Act and this Bond Ordinance to finance the

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

Section 8. DELIVERY OF THE BOND. Upon the execution of the Bond Documents and the satisfaction of the conditions set forth in the Bond Documents, the Bond shall be executed, authenticated, and delivered to the Purchaser. No Bond shall be valid for any purpose until such Bond has been properly authenticated as set forth in the Indenture.

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

(A) The maximum amount necessary in each year to pay the principal of and interest on the Bond, assuming issuance of the Bond on or about July 1, 2022 in the amount of \$16,175,675 and bearing interest at the rate of 3.00%, or as otherwise provided in the Indenture, is as follows:

<u>Year Ended</u>	<u>Maturing Principal</u>	<u>Interest Amount</u>	<u>Total Debt Service</u>
12/31/23	\$0	\$485,270.25	\$485,270.25
12/31/24	\$0	\$485,270.25	\$485,270.25
12/31/25	\$0	\$485,270.25	\$485,270.25
12/31/26	\$0	\$485,270.25	\$485,270.25
12/31/27	\$0	\$485,270.25	\$485,270.25
12/31/28	\$0	\$485,270.25	\$485,270.25
12/31/29	\$0	\$485,270.25	\$485,270.25
12/31/30	\$0	\$485,270.25	\$485,270.25
12/31/31	\$0	\$485,270.25	\$485,270.25
12/31/32	\$0	\$485,270.25	\$485,270.25
12/31/33	\$0	\$485,270.25	\$485,270.25
12/31/34	\$0	\$485,270.25	\$485,270.25
12/31/35	\$0	\$485,270.25	\$485,270.25
12/31/36	\$0	\$485,270.25	\$485,270.25

1	12/31/37	\$0	\$485,270.25	\$485,270.25
2	12/31/38	\$0	\$485,270.25	\$485,270.25
3	12/31/39	\$0	\$485,270.25	\$485,270.25
4	12/31/40	\$0	\$485,270.25	\$485,270.25
5	12/31/41	\$0	\$485,270.25	\$485,270.25
6	12/31/42	\$16,175,675	\$485,270.25	\$16,660,945.25

(B) The terms under which the Project Property is leased provide that the Company shall maintain the Project Property and carry all proper insurance (or self-insure) with respect to the Project Property.

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

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

Section 11. LIMITED OBLIGATIONS. The Bond shall be a special limited obligation of the City payable solely from the revenues derived from the Lease and payable by the Company as described in the Indenture, and shall never constitute a debt or indebtedness of the City or the State or any political subdivision thereof within the meaning of any provision or limitation of the State Constitution, statutes, or home-rule charter of the City, and shall not constitute or give rise to a pecuniary liability of the City or a charge against its general credit or taxing power. Nothing contained in the Bond Ordinance or the Bond Documents, or any other instrument, shall be construed as obligating the City (except with respect to the Project Property

1 and the application of the revenues therefrom and the proceeds of the Bond, all as
2 provided in the Bond Documents), nor as incurring a pecuniary liability or charge
3 upon the general credit of the City or against its taxing power, nor shall the breach of
4 any agreement contained in the Bond Ordinance, the Bond Documents, the Bonds,
5 or any other instrument be construed as obligating the City (except with respect to
6 the Project Property and the application of revenues therefrom and the proceeds of
7 the Bond all as provided in the Bond Documents) nor as incurring a pecuniary
8 liability or a charge upon the general credit of the City or against its taxing power, the
9 City having no power to pay out of its general funds, or otherwise contribute any part
10 of the costs of acquiring the Project Property, nor power to operate the Project as a
11 business or in any manner except as lessor and seller of the Project Property.

12 Section 12. APPROVAL OF INDEMNIFICATION. The Council specifically
13 approves the provisions of the Lease relating to indemnification which provide that
14 the Company shall indemnify and hold harmless the City and its City Councilors,
15 officials, members, officers, employees, and agents against liability to the Company
16 or to any third parties that may be asserted against the City, its City Councilors,
17 officials, members, officers, employees, and agents with respect to the City's
18 ownership of the Project Property or the issuance of the Bond and arising from the
19 condition of the Project Property or the acquisition or operation of the Project
20 Property by the Company, except to the extent that Section 56-7-1, New Mexico
21 Statutes Annotated, 1978 Compilation, as amended, applies, and except claims for
22 any loss or damage arising out of or resulting from the gross negligence or willful
23 misconduct of the City or any official, member, officer, employee, or agent of the
24 City.

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

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

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

6 Section 16. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE
7 DATE. This Bond Ordinance, immediately upon its final passage and approval, shall
8 be recorded in the ordinance book of the City, kept for that purpose, and shall be
9 there authenticated by the signature of the Mayor and the presiding officer of the
10 City Council, and by the signature of the City Clerk or any Deputy City Clerk, and
11 notice of adoption thereof shall be published once in a newspaper that maintains an
12 office in, and is of general circulation in, the City, and shall be in full force and effect
13 five (5) days following such publication

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

17 CITY OF ALBUQUERQUE, NEW MEXICO

18 NOTICE OF ADOPTION OF ORDINANCE

19 Notice is hereby given of the title and of a general summary of the subject matter
20 contained in City Ordinance No. F/S O-22-27 (the "Ordinance"), duly adopted and approved
21 by the City Council of the City of Albuquerque, New Mexico, on June 22, 2022. Complete
22 copies of the Ordinance are available for public inspection during the normal and regular
23 business hours of the City Clerk in the office of the City Clerk, Albuquerque, New Mexico.

24 The title of the Ordinance is:

25 AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE,
26 NEW MEXICO INDUSTRIAL REVENUE BOND (BLUEHALO PROJECT), SERIES
27 2022 IN THE MAXIMUM PRINCIPAL AMOUNT OF \$16,175,675 TO PROVIDE
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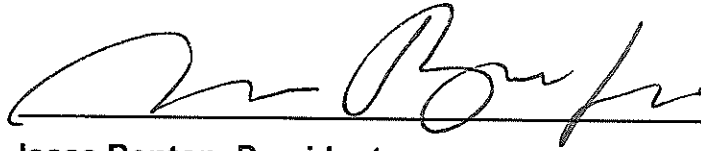
5 The title sets forth a general summary of the subject matter contained in the
6 Ordinance.

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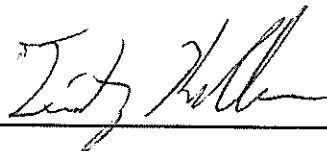
1 PASSED AND ADOPTED THIS 22nd DAY OF June, 2022
2 BY A VOTE OF: 9 FOR 0 AGAINST.

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9 Isaac Benton, President
10 City Council
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14 APPROVED THIS 29 DAY OF June, 2022
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17 Bill No. F/S O-22-27

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22 Timothy M. Keller, Mayor
23 City of Albuquerque
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28 ATTEST:

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31 Ethan Watson, City Clerk
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