

0-2019-025

**CITY OF ALBUQUERQUE
CITY COUNCIL**

INTEROFFICE MEMORANDUM

TO: Timothy M. Keller, Mayor

FROM: Stephanie M. Yara, Director of Council Services *SY 9/20/19*

SUBJECT: Transmittal of Legislation

Transmitted herewith is Bill No. F/S O-19-74 Authorizing The Issuance And Sale Of The City Of Albuquerque, New Mexico Taxable Industrial Revenue Bond (Nypro Healthcare Baja Inc.) Series 2019 In The Maximum Principal Amount Of \$36,000,000 To Provide Funds To Finance The Equipping Of A Manufacturing Facility; Authorizing The Execution And Delivery Of An Indenture, Lease Agreement, Bond Purchase Agreement, Bond, And Other Documents In Connection With The Issuance Of The Bond And The Project (Benton, by request), which was passed at the Special Council meeting of September 18, 2019, by a vote of 8 FOR AND 0 AGAINST.

Excused: Harris

In accordance with the provisions of the City Charter, your action is respectfully requested.

SY:dm
Attachment
9/20/2019

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1 WHEREAS, Nypro Healthcare Baja Inc. (the "Company") is a corporation
2 organized under the laws of the State of Nevada and is authorized to do
3 business in New Mexico; and

4 WHEREAS, the Company has requested that the City issue its industrial
5 revenue bond pursuant to the Act for the purpose of providing funds to finance
6 the equipping of a manufacturing facility within the corporate limits of the City
7 (the "Project"); and

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

13 WHEREAS, the Company has presented to the City and the Commission a
14 proposal (the "Project Plan") whereby the City shall, pursuant to the Act,
15 acquire certain equipment (the "Project Property") for the purpose of operating a
16 233,000 square foot facility for the manufacture of medical devices and related
17 products, within the boundaries of the City, and pursuant to which the City
18 would issue its taxable industrial revenue bond in order to finance the Project;
19 and

20 WHEREAS, the Commission has reviewed the Project Plan, and on August
21 15, 2019, has determined that the Company has complied with City Resolution
22 No. 16-1985, and has recommended approval of the Project Plan by the
23 Council; and

24 WHEREAS, under the Company's Project Plan, the City would enter into an
25 Indenture dated as of November 1, 2019 (the "Indenture") between the City
26 and a corporate depository satisfactory to the City to be designated at a later
27 date, as depository (the "Depository"), pursuant to which, together with this
28 ordinance (the "Bond Ordinance"), the City would issue its bond designated as
29 the City of Albuquerque, New Mexico Taxable Industrial Revenue Bond (Nypro
30 Healthcare Baja Inc. Project), Series 2019 (the "Bond"); and

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1 WHEREAS, under the Company’s Project Plan, the City and the Company
2 would enter into a Lease Agreement dated as of November 1, 2019 (the
3 “Lease”), pursuant to which the Company will lease the Project Property from
4 the City and will make payments to the Depository sufficient to pay the principal
5 of, redemption premium, if any, and interest on the Bond, and to pay all other
6 obligations incurred pursuant to the provisions of the Lease and the Bond
7 Ordinance; and

8 WHEREAS, under the Company’s Project Plan, the Lease will provide that
9 the Company shall maintain the Project and carry all proper insurance with
10 respect thereto; and

11 WHEREAS, the proceeds of the Bond shall be used for the purpose of
12 financing the acquisition of the Project (the “Financing”); and

13 WHEREAS, the City is authorized to enter into the Lease, the Indenture, and
14 other related documents and to issue the Bond pursuant to the Act and the
15 Bond Ordinance; and

16 WHEREAS, the Bond in an aggregate principal amount not to exceed
17 \$36,000,000 will be issued, sold and delivered by the City in a private sale to
18 an affiliate of the Company (the “Purchaser”) pursuant to a bond purchase
19 agreement (the “Bond Purchase Agreement”) among the City, the Company,
20 and the Purchaser; and

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

23 WHEREAS, after having considered the provisions of the Project Plan and the
24 Financing, the Council has concluded that it is in the best interest of the City to
25 authorize the issuance of the Bond to finance the Project, and that the City’s
26 issuance of the Bond shall constitute a valid public purpose under the Act; and

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

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1 **WHEREAS**, there has been published in the Albuquerque Journal, a
2 newspaper of general circulation in the City, public notice of the Council’s
3 intention to adopt this Bond Ordinance, which notice contained certain
4 information concerning the ownership, purpose, location and size of the Project
5 and the Project Property, and the amount of the Bond to be issued to finance
6 the Project, which notice was published at least fourteen (14) days prior to
7 hearing and final action on this Bond Ordinance; and

8 **WHEREAS**, the proposed forms of the following documents have been filed
9 with the City Clerk and presented to the Council: (1) Project Plan; (2) Lease; (3)
10 Indenture; and, (4) Bond Purchase Agreement (collectively the “Bond
11 Documents”); and

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

17 **BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF**
18 **ALBUQUERQUE:**

19 Section 1. **RATIFICATION.** All actions not inconsistent with the provisions of
20 this Bond Ordinance previously taken by the Council and the officials of the City
21 directed toward approval of the issuance and sale of the Bond be approved and the
22 same hereby are ratified, approved and confirmed.

23 Section 2. **THE PROJECT PLAN.** The Project to be financed with the Bond
24 consists of the acquisition of equipment to be used at the Company’s facility. The
25 Company may use additional available money to accomplish the Project. The
26 Project Plan is hereby approved in all respects.

27 Section 3. **FINDINGS.**

28 **(A) General.** The Council hereby declares that it has considered all
29 relevant information presented to it relating to the Bond and the Project and
30 hereby finds and determines that the issuance of the Bond pursuant to the Bond
31 Ordinance and the Act to provide funds for the Project is necessary and
32 advisable and in the interest of

1 the public, and will promote the public health, safety, morals, convenience,
2 economy, and welfare of the City and the residents of the City.

3 (B) The Council finds that:

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

5 (2) The aggregate face amount of obligations to be issued for the
6 purpose of financing the Project is \$36,000,000;

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

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

9 Section 4. AUTHORIZATION AND APPROVAL OF THE BOND. To finance
10 the cost of acquiring the Project Property, the City hereby authorizes and approves
11 the issuance and sale of its industrial revenue bond to be designated "City of
12 Albuquerque, New Mexico Taxable Industrial Revenue Bond (Nypro Healthcare Baja
13 Inc. Project), Series 2019" in the principal amount of \$36,000,000 and the use of the
14 proceeds of the Bond to finance the cost of the Project and to pay expenses relating
15 thereto.

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

19 Section 6. FORM AND TERM OF THE BOND. Subject to the limitations set
20 forth in this Bond Ordinance, the Bond shall be: (i) in the form and shall be
21 numbered and dated all as set forth in the Indenture; (ii) payable as to principal and
22 interest, and subject to optional and mandatory redemption and defeasance in the
23 amounts, upon the conditions and at the times and prices set forth in the Indenture;
24 and, (iii) issued in the principal amount of \$36,000,000, bearing interest at the rates
25 and maturing on the dates set forth in the Indenture. The interest rate on the Bond
26 shall not exceed 12% per annum. The Mayor or the Chief Administrative Officer of
27 the City shall sign the Bond.

28 Section 7. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS.
29 The form, terms, and provisions of the Bond Documents in the form on deposit
30 in the office of the City Clerk are in all respects approved, authorized, and
31 confirmed, and the City shall enter into such Bond Documents substantially in
32 the form of each such document on deposit with the City Clerk, with only such

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1 changes as are not inconsistent with this Bond Ordinance or such other changes
2 as may be approved by supplemental resolution of the Council.

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

8 (B) The Mayor, Chief Administrative Officer, Chief Financial Officer, City
9 Treasurer and City Clerk are further authorized to execute, authenticate and
10 deliver such certifications, instruments, documents, letters and other
11 agreements, including security agreements, and to do such other acts and
12 things, either prior to or after the date of delivery of the Bond, as are necessary
13 or appropriate to consummate the transactions contemplated by the Bond
14 Documents.

15 (C) The officers of the City shall take such action as is necessary to
16 effectuate the provisions of the Indenture and shall take such action as is
17 necessary in conformity with the Act and this Bond Ordinance to finance the
18 costs of the Project and for carrying out other transactions as contemplated by
19 this Bond Ordinance and the Bond Documents including, without limitation, the
20 execution and delivery of any closing documents to be delivered in connection
21 with the sale and delivery of the Bond.

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

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

30 (A) The maximum amount necessary in each year to pay the principal of
31 and interest on the Bond, assuming issuance of the Bond as of October 24,

1 2019 in the amount of \$36,000,000 and bearing interest at the rate of 4% is
 2 as follows:

3	<u>Year Ended</u>	<u>Maturing Principal</u>	<u>Interest Amount</u>	<u>Total Debt Service</u>
4	12/31/20	-\$0-	\$1,440,000	\$1,440,000
5	12/31/21	-\$0-	\$1,440,000	\$1,440,000
6	12/31/22	-\$0-	\$1,440,000	\$1,440,000
7	12/31/23	-\$0-	\$1,440,000	\$1,440,000
8	12/31/24	-\$0-	\$1,440,000	\$1,440,000
9	12/31/25	-\$0-	\$1,440,000	\$1,440,000
10	12/31/26	-\$0-	\$1,440,000	\$1,440,000
11	12/31/27	-\$0-	\$1,440,000	\$1,440,000
12	12/31/28	-\$0-	\$1,440,000	\$1,440,000
13	12/31/29	-\$0-	\$1,440,000	\$1,440,000
14	12/31/30	-\$0-	\$1,440,000	\$1,440,000
15	12/31/31	-\$0-	\$1,440,000	\$1,440,000
16	12/31/32	-\$0-	\$1,440,000	\$1,440,000
17	12/31/33	-\$0-	\$1,440,000	\$1,440,000
18	12/31/34	-\$0-	\$1,440,000	\$1,440,000
19	12/31/35	-\$0-	\$1,440,000	\$1,440,000
20	12/31/36	-\$0-	\$1,440,000	\$1,440,000
21	12/31/37	-\$0-	\$1,440,000	\$1,440,000
22	12/31/38	-\$0-	\$1,440,000	\$1,440,000
23	12/31/39	\$36,000,000	\$1,440,000	
24		\$37,440,000		

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

28 (C) The lease rentals payable under the Lease shall be at least sufficient to
 29 pay the principal and interest payments on the Bond set forth in Paragraph (A)
 30 of this Section 9 when due and otherwise render the financing of the acquisition
 31 of the Project Property entirely self-liquidating.

1 There shall be no payments to any reserve fund or sinking fund installment
2 payments.

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

12 Section 11. LIMITED OBLIGATIONS. The Bond shall be a special limited
13 obligation of the City payable solely from the revenues derived from the Lease and
14 payable by the Company as described in the Indenture, and shall never constitute a
15 debt or indebtedness of the City or the State or any political subdivision thereof
16 within the meaning of any provision or limitation of the State Constitution, statutes, or
17 home-rule charter of the City, and shall not constitute or give rise to a pecuniary
18 liability of the City or a charge against its general credit or taxing power. Nothing
19 contained in the Bond Ordinance or the Bond Documents, or any other instrument,
20 shall be construed as obligating the City (except with respect to the Project Property
21 and the application of the revenues therefrom and the proceeds of the Bond, all as
22 provided in the Bond Documents), nor as incurring a pecuniary liability or charge
23 upon the general credit of the City or against its taxing power, nor shall the breach of
24 any agreement contained in the Bond Ordinance, the Bond Documents, the Bonds,
25 or any other instrument be construed as obligating the City (except with respect to
26 the Project Property and the application of revenues therefrom and the proceeds of
27 the Bond all as provided in the Bond Documents) nor as incurring a pecuniary
28 liability or a charge upon the general credit of the City or against its taxing power, the
29 City having no power to pay out of its general funds, or otherwise contribute any part
30 of the costs of acquiring the Project Property, nor power to operate the Project as a
31 business or in any manner except as lessor and seller of the Project Property.

32 Section 12. APPROVAL OF INDEMNIFICATION. The Council specifically
33 approves the provisions of the Lease relating to indemnification which provide that

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1 the Company shall indemnify and hold harmless the City and its City Councilors,
2 officials, members, officers, employees, and agents against liability to the Company
3 or to any third parties that may be asserted against the City, its City Councilors,
4 officials, members, officers, employees, and agents with respect to the City's
5 ownership of the Project Property or the issuance of the Bond and arising from the
6 condition of the Project Property or the acquisition or operation of the Project
7 Property by the Company, except to the extent that Section 56-7-1, New Mexico
8 Statutes Annotated, 1978 Compilation, as amended, applies, and except claims for
9 any loss or damage arising out of or resulting from the gross negligence or willful
10 misconduct of the City or any official, member, officer, employee, or agent of the
11 City.

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

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

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

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

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

4 CITY OF ALBUQUERQUE, NEW MEXICO
5 NOTICE OF ADOPTION OF ORDINANCE

6 Notice is hereby given of the title and of a general summary of the subject matter
7 contained in City Ordinance No. F/S O-19-74 (the "Ordinance"), duly adopted and approved
8 by the City Council of the City of Albuquerque, New Mexico, on September 18, 2019.
9 Complete copies of the Ordinance are available for public inspection during the normal and
10 regular business hours of the City Clerk in the office of the City Clerk,
11 Albuquerque/Bernalillo County Government Center, One Civic Plaza, N.W., Albuquerque,
12 New Mexico.

13 The title of the Ordinance is:

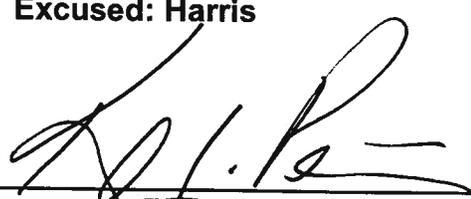
14 **AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE, NEW**
15 **MEXICO TAXABLE INDUSTRIAL REVENUE BOND (NYPRO HEALTHCARE BAJA INC.)**
16 **SERIES 2019 IN THE MAXIMUM PRINCIPAL AMOUNT OF \$36,000,000 TO PROVIDE**
17 **FUNDS TO FINANCE THE EQUIPPING OF A MANUFACTURING FACILITY;**
18 **AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, LEASE**
19 **AGREEMENT, BOND PURCHASE AGREEMENT, THE BOND, AND OTHER**
20 **DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BOND AND THE**
21 **PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE**
22 **BOND AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY;**
23 **AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.**

24 The title sets forth a general summary of the subject matter contained in the
25 Ordinance.
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1 PASSED AND ADOPTED THIS 18th DAY OF September, 2019
2 BY A VOTE OF: 8 FOR 0 AGAINST.

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4 Excused: Harris

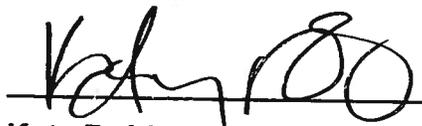
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9 Klariessa J. Peña, President
10 City Council

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12 APPROVED THIS 3 DAY OF October, 2019

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16 Bill No. F/S O-19-74

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20 Timothy M. Keller, Mayor
21 City of Albuquerque

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24 ATTEST:

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27 Katy Duhigg, City Clerk

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