

**CITY of ALBUQUERQUE  
TWENTY-FOURTH COUNCIL**

COUNCIL BILL NO.     O-20-34     ENACTMENT NO.     0-2020-035    

SPONSORED BY: Brook Bassan, by request

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**ORDINANCE**

**APPROVING A PROJECT INVOLVING BAYOTECH INCORPORATED PURSUANT TO THE LOCAL ECONOMIC DEVELOPMENT ACT AND CITY ORDINANCE F/S O-04-10, AS AMENDED, THE CITY'S IMPLEMENTING LEGISLATION FOR THAT ACT, TO SUPPORT THE OPERATIONS OF BAYOTECH INCORPORATED, A BUSINESS OPERATING IN ALBUQUERQUE, NEW MEXICO; AUTHORIZING THE EXECUTION OF A PROJECT PARTICIPATION AGREEMENT AND OTHER DOCUMENTS IN CONNECTION WITH THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE PROJECT INCLUDING THE APPROPRIATION OF FUNDS; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.**

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

WHEREAS, the City provides public support of economic development projects to foster, promote and enhance local economic development efforts within the City pursuant to the Local Economic Development Act, Sections 5-10-1 through 5-10-13 NMSA 1978, as amended (the "Act"), and the City's Local Economic Development Act Plan adopted pursuant to Ordinance No. F/S O-04-10 (the "LEDA Plan"), codified in the City's Code of Ordinances at Sections 2-14-1-1 through 2-14-1-13; and

WHEREAS, the City is permitted under the Act to serve as fiscal agent for the State of New Mexico (the "State") to oversee and administer State local economic development funds committed to qualified entities located within the corporate limits of the City; and

1 WHEREAS, in response to the COVID-19 pandemic, the State Economic  
2 Development Department created a zero-interest loan program (the "Loan Program") for  
3 qualified entities that meet the requirements of the Act; and

4 WHEREAS, the State's Loan Program is intended to provide short-term  
5 financing for qualified entities with repayment of the loan due within two years and with  
6 the loan amount being fully securitized for the protection of the State and public funds;  
7 and

8 WHEREAS, the City is not providing any City funds for the qualified entity  
9 pursuant to the State's Loan Program and is solely serving as the State's fiscal agent  
10 consistent with the requirements of the Act; and

11 WHEREAS, pursuant to City Ordinance No. O-20-15, adopted on June 1, 2020,  
12 the City temporarily suspended the requirements under the LEDA Plan requiring a  
13 qualified entity to remain in operations in the City for a minimum of ten years as related  
14 solely to those projects receiving funding under the State's Loan Program; and

15 WHEREAS, pursuant to the Act, the LEDA Plan and the Loan Program,  
16 BayoTech Incorporated (the "Company"), has submitted to the Council and the  
17 Albuquerque Development Commission (the "Commission") an application (the  
18 "Application") requesting certain economic assistance to help sustain business  
19 operations and the retention of twenty (20) employees at a minimum monthly payroll of  
20 \$119,520.30 (the "Project"); and

21 WHEREAS, the City will administer and disburse to the Company loan funds  
22 totaling \$346,788.00 from the State Economic Development Department through the  
23 Loan Program, in eight quarterly disbursements of \$43,348.50; and

24 WHEREAS, the Act and the LEDA Plan require the City and the Company enter  
25 into a project participation agreement meeting the requirements of the Act and the  
26 LEDA Plan; and

27 WHEREAS, the State, City and Company have negotiated the terms of a project  
28 participation agreement (the "Agreement") and related documents that will govern the  
29 relationship between the City and the Company with respect to the Project; and

30 WHEREAS, the form of the proposed Agreement has been filed with the City  
31 Clerk and presented to the Council; and

32 WHEREAS, the proposed Agreement contains the provisions required by the  
33 Act and the LEDA Plan and, among other things, provides that the Company will grant

1 to the City a security instrument to secure the Company's obligations under the  
2 Agreement; and

3 WHEREAS, the Application, together with the cost-benefit analysis,  
4 demonstrates the benefits that will accrue to the community as a result of the donation  
5 of public resources and demonstrates that the Company will be making a substantive  
6 contribution to the community, as required by the LEDA Plan; and

7 WHEREAS, the Commission has considered the Project and the proposed  
8 Agreement and has recommended that the Council approve the Company's proposal;  
9 and

10 WHEREAS, the City anticipates that the State will transfer to it, for subsequent  
11 transfer to or on behalf of the Company pursuant to an intergovernmental agreement  
12 between the City and the State, certain funds of the State that are available for the  
13 Project; and

14 WHEREAS, after having considered the Application and the Agreement, the  
15 Council has concluded that the economic and other benefits of the Project to the City  
16 will be material, and that it is desirable and necessary at this time to authorize the City  
17 to enter into the Agreement; and

18 WHEREAS, there has been published in The Albuquerque Journal, a  
19 newspaper of general circulation in the City, public notice of the Council's intention to  
20 adopt this Ordinance, which notice was published at least fourteen (14) days prior to  
21 hearing and final action on this Ordinance.

22 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF  
23 ALBUQUERQUE:

24 Section 1. RATIFICATION. All actions not inconsistent with the provisions of  
25 this Ordinance previously taken by the Council and the officials of the City directed  
26 toward the provision of economic development assistance in connection with the Project  
27 be approved and the same hereby are ratified, approved and confirmed.

28 Section 2. GOALS AND OBJECTIVES. The goals and objectives of the  
29 Project are, as set forth in the Agreement, to create and support an economic  
30 development project that fosters, promotes and enhances local economic development  
31 efforts and that provides job security and career opportunities for Albuquerque-area  
32 residents and otherwise makes a substantive contribution to the community.

1           Section 3.    **THE PROJECT.** The Project will consist of economic assistance to  
2 the Company through the State's Loan Program to help sustain the Company's  
3 business operations within the City and the retention of twenty (20) employees at a  
4 minimum monthly payroll of \$119,520.30.

5           Section 4.    **FINDINGS.** The Council hereby declares that it has considered all  
6 relevant information presented to it relating to the Project and the Agreement and  
7 hereby finds and determines that the provision of economic development assistance for  
8 the Project is necessary and advisable and in the interest of the public and will promote  
9 the public health, safety, morals, convenience, economy, and welfare of the City and its  
10 residents.

11           Section 5.    **AUTHORIZATION AND APPROVAL OF THE PROJECT AND THE**  
12 **AGREEMENT; APPROPRIATION OF FUNDS.** The City hereby approves the Project  
13 and the Agreement, which provides, among other things, that the City will administer  
14 and disburse State funds to the Company through the Loan Program in the amount of  
15 \$346,788.00, in exchange for which the Company will complete the Project as specified  
16 in the Agreement. There is hereby appropriated for the Project \$346,788.00 of funds  
17 received from the State Economic Development Department through the Loan Program.

18           Section 6.    **AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS.**

19                   (A)    The form, terms, and provisions of the Agreement in the form  
20 presented to the Council with this Ordinance are in all respects approved, authorized,  
21 and confirmed, and the City is authorized to enter into the Agreement in substantially  
22 the form thereof, with only such changes as are not inconsistent with this Ordinance or  
23 such other changes as may be approved by supplemental resolution of the Council.

24                   (B)    The Council authorizes the Mayor or the Chief Administrative  
25 Officer of the City to execute and deliver the Agreement in the name and on behalf of  
26 the City, with only such changes therein as are not inconsistent with this Ordinance or  
27 such changes as may be approved by supplemental resolution of the Council.

28                   (C)    The Mayor, Chief Administrative Officer, Chief Financial Officer,  
29 City Treasurer, and City Clerk are further authorized to execute, authenticate and  
30 deliver such certifications, instruments, documents, letters and other agreements,  
31 including an intergovernmental agreement with the State Economic Development  
32 Department and any appropriate security agreements, and to do such other acts and  
33 things, either prior to or after the date of delivery of the executed Agreement, as are

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1 necessary or appropriate to consummate the transactions contemplated by the  
2 Agreement.

3 (D) City officials shall take such action as is necessary in conformity  
4 with the Act, the LEDA Plan and this Ordinance to effectuate the provisions of the  
5 Agreement and carry out the transactions as contemplated by this Ordinance and the  
6 Agreement, including, without limitation, the execution and delivery of any documents  
7 deemed necessary or appropriate in connection therewith.

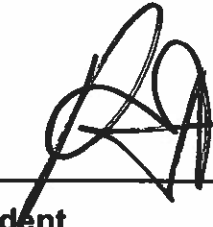
8 Section 7. SEVERABILITY. If any section, paragraph, clause or provision of  
9 this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity  
10 or unenforceability of that section, paragraph, clause, or provision shall not affect any of  
11 the remaining provisions of this Ordinance.

12 Section 8. REPEALER. All bylaws, ordinances, resolutions, and orders, or  
13 parts thereof, inconsistent with this Ordinance are repealed by this Ordinance but only  
14 to the extent of that inconsistency. This repealer shall not be construed to revive any  
15 bylaw, ordinance, resolution, or order, or part thereof, previously repealed.

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

1 PASSED AND ADOPTED THIS 21<sup>st</sup> DAY OF September, 2020  
2 BY A VOTE OF: 8 FOR 0 AGAINST.

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4 Excused: Harris

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9 Patrick Davis, President  
10 City Council

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13 APPROVED THIS 1 DAY OF October, 2020

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17 Bill No. O-20-34

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23 Timothy M. Keller, Mayor  
24 City of Albuquerque

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28 ATTEST:

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31 Ethan Watson, City Clerk

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