

INTRODUCED: December 11, 2023

AN ORDINANCE No. 2023-365

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Performance Agreement between the City of Richmond, Alacer Corp., and the Economic Development Authority of the City of Richmond, for the purpose of providing the balance of the local match funds to Alacer Corp. through a grant from the Economic Development Authority of the City of Richmond in accordance with a Commonwealth's Development Opportunity Fund Performance Agreement as an incentive to improve, equip, and operate a research and development facility at 1211 Sherwood Avenue in the city of Richmond.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: JANUARY 8 2024 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute a Performance Agreement between the City of Richmond, Virginia, Alacer Corp., and the Economic Development Authority of the City of Richmond, for the purpose of providing the balance of the local match funds to Alacer Corp. through a grant from the Economic Development Authority of the City of Richmond in accordance with a Commonwealth's Development Opportunity Fund Performance Agreement as an incentive to

AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: JAN 8 2024 REJECTED: _____ STRICKEN: _____

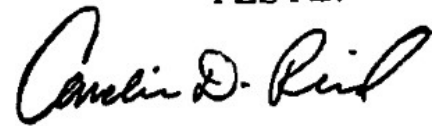
improve, equip, and operate a research and development facility at 1211 Sherwood Avenue in the city of Richmond. The Performance Agreement shall be approved as to form by the City Attorney and shall be substantially in the form of the document attached to this ordinance.

§ 2. This ordinance shall be in force and effect upon adoption.

APPROVED AS TO FORM:

City Attorney's Office

**A TRUE COPY:
TESTE:**

A handwritten signature in black ink, appearing to read "Carolin D. Rind". The signature is fluid and cursive, with a large initial 'C' and 'R'.

City Clerk



City of Richmond

900 East Broad Street
2nd Floor of City Hall
Richmond, VA 23219
www.rva.gov

Master

File Number: Admin-2023-1635

File ID: Admin-2023-1635

Type: Request for Ordinance or Resolution

Status: Regular Agenda

Version: 1

Reference:

In Control: City Clerk Waiting Room

Department: Economic Development

Cost:

File Created: 09/13/2023

Subject: Approval of the Performance Agreement between the City of Richmond, the Economic Development Authority

Final Action:

Title:

Internal Notes:

- Per the terms of the performance agreement approved by City Council (Ord. No. 2022-117), Alacer Corp. (a member of the Haleon group of companies and formerly known as GlaxoSmithKline/GSK) was awarded a Commonwealth Opportunity Fund grant for creating 57 new jobs and investing \$11,590,510 at its research and development facility at 1211 Sherwood Ave.
- On June 28, 2023, the City of Richmond received the \$265,275 grant from the Commonwealth (accounting string 0100-79130-21306).
- The COF grant requires the City to make a 1:1 match of the COF grant.
- Leveraging a prior performance grant and in-kind contributions, the City has already paid the company \$115,560.36 and has drafted the attached performance agreement for the remaining \$149,714.64.
- City funds have previously been appropriated for this purpose in Non-Departmental funds (Wyeth/GSK), and no additional City funds are needed.

Code Sections:

Agenda Date: 12/11/2023

Indexes:

Agenda Number:

Patron(s):

Enactment Date:

Attachments: Local Performance Agreement AATF, 2c- ORD. 2022-117 - Ord. No, 2d- Executed COF Agreement Alacer, 2e - COF award letter

Enactment Number:

Contact:

Introduction Date: 10/10/2023

Drafter: katie.mcconnell@rva.gov

Effective Date:

Related Files:

Approval History

Version	Seq #	Action Date	Approver	Action	Due Date
1	1	9/13/2023	Katie McConnell - FYI	Notified - FYI	
1	2	9/19/2023	Leonard Sledge	Approve	9/14/2023
1	3	9/19/2023	Alecia Blackwell - FYI	Notified - FYI	
1	4	9/22/2023	Sharon Ebert	Approve	9/20/2023
1	5	9/27/2023	Jason May	Approve	9/26/2023
1	6	9/29/2023	Sheila White	Approve	9/29/2023
1	7	9/29/2023	Cynthia Osborne - FYI	Notified - FYI	
1	8	9/30/2023	Sabrina Joy-Hogg	Approve	10/3/2023
1	9	10/27/2023	Lincoln Saunders	Approve	10/4/2023
1	10	12/6/2023	Mayor Stoney	Approve	10/31/2023

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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Text of Legislative File Admin-2023-1635

O&R REQUEST

DATE: September 13, 2023 **EDITION:** 1

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor

THROUGH: J.E. Lincoln Saunders, Chief Administrative Officer

THROUGH: Sabrina Joy-Hogg, DCAO of Finance and Administration

THROUGH: Sheila White, Director of Finance

THROUGH: Jason May, Director of Budget and Strategic Planning

THROUGH: Sharon Ebert, DCAO of Planning Community & Economic Development

FROM: Leonard L. Sledge, Director, Department of Economic Development

RE: Approval of the Performance Agreement between the City of Richmond, the Economic Development Authority of the City of Richmond, and Alacer Corp., a member of the Haleon group of companies

ORD. OR RES. No.

PURPOSE: To authorize the Chief Administrative Officer (CAO), on behalf of the City of Richmond, to execute the Performance Agreement for Alacer Corp., a California corporation and member of the Haleon group of companies, authorized to transact business in the Commonwealth (the Company), by and between the City of Richmond, Virginia (City), the Economic Development Authority of the City of Richmond (EDA) and the Company.

REASON: The City of Richmond was awarded a Commonwealth's Development Opportunity Fund (COF) grant of \$265,275 from the Virginia Economic Development Partnership (VEDP) to induce the growth and expansion of the Company's research and development facility located at 1211 Sherwood Ave. To fulfill the requirements of the COF grant agreement (Ord. No. 2022-117) the City of Richmond is obligated to provide matching funds. The City previously appropriated funds to meet its remaining match requirement through the budget process. The proposed Performance Agreement establishes the terms for the post-performance matching grant. City Council approval is required to

authorize the CAO to sign the Performance Agreement for this grant.

RECOMMENDATION: The City Administration recommends the adoption of this ordinance.

BACKGROUND: In October 2019, Haleon's corporate predecessor, GlaxoSmithKline, announced an expansion of its research and development operation in the city of Richmond. The Commonwealth awarded a performance-based grant of up to \$675,000 from the COF to induce the Company's decision to make a capital investment of approximately \$16,730,000 and create 158 new jobs with an average annual wage of \$110,000.

As of the December 31, 2022, performance date, the Company made a capital investment of \$11,590,510 and created 57 net new jobs over the baseline of 215 jobs. Per the terms of the COF performance agreement between the Company, VEDP, the City, and the EDA (Ordinance 2022-117), Haleon's performance entitles it to a \$265,275 COF grant, which was sent from the Commonwealth to the City in the summer of 2023. The Company cites its corporate restructuring, in which GlaxoSmithKline spun off its consumer healthcare assets, including its facility at 1211 Sherwood Ave, into the new Haleon group of companies, and a slowdown during the COVID-19 pandemic as reasons for the partial achievement of targets

The City is required to make a 1:1 match to the COF Grant by leveraging an existing local performance-based grant with Pfizer (Pfizer and GlaxoSmithKline formed a joint venture named GSK Consumer Healthcare in 2019), in-kind recruitment services, and a local performance-based grant. To date, the City has provided \$115,560.36 through the existing Pfizer grant and in-kind assistance. The proposed Performance Agreement establishes the terms for disbursing the remaining \$149,714.64 in a post-performance grant to complete the 1:1 match. City funds have previously been appropriated for this purpose, and no additional City funds are needed.

Haleon's continued expansion and investment in the city is an economic development success for Richmond's growing life science cluster. In addition to the new capital investment and high-paying jobs that resulted from this project, the Sherwood Avenue facility continues to be the flagship research and development facility center for Haleon's impressive catalog of well-known brands, including Centrum vitamins, Advil, Tums, and Flonase.

FISCAL IMPACT / COST: None

FISCAL IMPLICATIONS: None

BUDGET AMENDMENT NECESSARY: None

REVENUE TO CITY: N/A

DESIRED EFFECTIVE DATE: Upon adoption

REQUESTED INTRODUCTION DATE: December 11, 2023

CITY COUNCIL PUBLIC HEARING DATE: January 8, 2023

REQUESTED AGENDA: Consent

RECOMMENDED COUNCIL COMMITTEE: Finance and Economic Development

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: The Economic Development Authority of the City of Richmond

AFFECTED AGENCIES: Department of Budget and Strategic Planning, the Department of Finance, and the Department of Economic Development.

RELATIONSHIP TO EXISTING ORD. OR RES.: Ordinance 2022-117

REQUIRED CHANGES TO WORK PROGRAM(S): None

ATTACHMENTS: Performance Agreement; Ordinance 2022-117 with attached Commonwealth's Development Opportunity Fund Performance Agreement; Commonwealth Opportunity Fund transfer letter from Virginia Economic Development Partnership

STAFF: Leonard L. Sledge, Director, Department of Economic Development - (804) 646-7576

Katie McConnell, Deputy Director, Department of Economic Development - (804) 646-3171

Sam Earl, Senior Management Analyst, Department of Economic Development - (804) 646-4248

June 7, 2023

Mr. Leonard Sledge
Director of Economic Development
City of Richmond
1500 East Main Street, Suite 400
Richmond, Virginia 23219

Dear Leonard:

The City of Richmond was awarded a \$675,000 grant from the Commonwealth's Opportunity Fund (COF) in 2020 for the benefit of Alacer Corp. (GSK) based on the company's promise to make capital investments in the City of at least \$16,730,000 and to create and maintain at least 158 new jobs in the City at an average annual wage of \$110,000 as of the performance date of December 31, 2022.

The statutory minimum eligibility requirements for this COF grant are a \$1,500,000 investment **and** the creation of 15 new jobs. Failure by the Company to meet either of these statutory minimums by the performance date requires that the entire COF grant be repaid.

Ten percent (10%) of the COF grant (\$67,500) was allocated to the capital investment commitment, and 90% (\$607,500) was allocated to the new jobs commitment.

Alacer reported that it invested \$11,590,510 during the performance period. Based on information provided by the City of Richmond and the company, this capital investment has been verified. Accordingly, Alacer is eligible to receive 69% (\$46,575) of the \$67,500 of the COF grant proceeds allocated to the capital investment commitment.

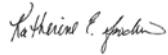
The company created 57 of the required 158 new employees at an average annual salary of \$119,390. As such, Alacer is entitled to receive 36% (\$218,700) of the \$607,500 of the COF grant proceeds allocated to the new jobs commitment.

Based on the calculations above, Alacer is eligible to receive \$265,275 of the COF grant proceeds. These funds have been requested and will be transferred to the City within four to six weeks for transmitting to the company. The remaining balance of \$409,725 will be returned to the COF for use with other projects.

Mr. Leonard Sledge
June 7, 2023
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Thank you for your assistance in this matter. We wish Alacer every continued success with its Richmond facility. If you have any questions, please contact Kim Ellett at 804-545-5618.

Sincerely,



Katherine E. Goodwin
Interim Vice President, Incentives

KEG:kme

Attachments

cc Katie McConnell, Deputy Director of Economic Development, City of Richmond
 Sam Earl, Senior Management Analyst, Richmond Economic Development
 Kim Ellett, Director of Compliance, VEDP

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** (the “Agreement”) made and entered this ____ day of _____, 2023, by and among the **CITY OF RICHMOND, VIRGINIA** (the “City”), a municipal corporation of the Commonwealth of Virginia; **ALACER CORP.**, a California corporation and member of the Haleon group of companies, authorized to transact business in the Commonwealth of Virginia (the “Company”); and the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF RICHMOND, VIRGINIA** (the “Authority”), a political subdivision of the Commonwealth.

RECITALS

WHEREAS, the Company expanded, equipped, improved and operates a research and development facility in the city of Richmond commonly known as 1211 Sherwood Avenue, Richmond, VA (the “Facility”), thereby making a significant Capital Investment, and creating and Maintaining a significant number of New Jobs, as such capitalized terms are hereinafter defined;

WHEREAS, the City, the Company, the Authority, and the Virginia Economic Development Partnership Authority entered into that certain Commonwealth’s Development Opportunity Fund Performance Agreement dated July 1, 2021 (“COF”);

WHEREAS, the City agreed in the COF to provide to the Company an economic development monetary grant and additional incentives for the purpose of providing a local match and thereby inducing the Company to expand, equip, improve and operate the Facility (“Local Match”);

WHEREAS, the City has provided a portion of the Local Match;

WHEREAS, the City desires to provide the balance of the Local Match to the Authority with the expectation that the Authority will provide the funds to or for the use of the Company, given that the Company met the criteria relating to the Capital Investment and the New Jobs in accordance with the terms and conditions of the COF;

WHEREAS, the expanding, equipping, improving, and operating the Facility entailed a Capital Investment of not less than \$4,886,000 in building upfits resulting in an increase in taxable real property; not less than \$6,519,000 in machinery and tools; and not less than \$186,000 in tangible personal property as of the Performance Date;

WHEREAS, the expanding, equipping, improving, and operating of the Facility entailed the creation of not less than 57 New Jobs as of the Performance Date;

WHEREAS, the City and the Authority have determined that the Company’s expanding, equipping, improving, and operating its primary research and development location at the Facility resulted in substantial benefits to the welfare of the city and its inhabitants; is in the public interest; and serves governmental interests, including but not limited to an increase in real estate and tangible personal property tax receipts and job creation;

WHEREAS, the stimulation of additional tax revenue and economic activity to be generated by the Capital Investment and New Jobs constitute a valid public purpose for the expenditure of public funds;

WHEREAS, the City is authorized by Section 15.2-953 of the Code of Virginia and other laws, and the Authority is authorized by the Industrial Development and Revenue Bond Act, contained in Chapter 49, Title 15.2 of the Code of Virginia and other laws to perform the activities contemplated in this Agreement; and

WHEREAS, this Agreement sets forth the understanding of the parties concerning the payment of the Local Match, subject to the approval of the Authority's Board of Directors and the Richmond City Council.

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

Section 1. Definitions.

For the purposes of this Agreement, the following terms shall have the following definitions:

“Capital Investment” means a capital expenditure by or on behalf of the Company of not less than \$4,886,000 in building upfits resulting in an increase in taxable real property; not less than \$6,519,000 in Machinery and Tools; and not less than \$186,000 in Tangible Personal Property from November 1, 2019 through the Performance Date. The purchase or lease of furniture, fixtures, and tangible personal property, including under an operating lease, and expected building up-fit and improvements by or on behalf of the Company will qualify as Capital Investment. The Capital Investment must be in addition to the capital improvements at the Facility as of November 1, 2019. For purposes of clarity, the fact that any capital expenditure qualifies for any tax incentive, deduction, grant, abatement, credit or similar favorable treatment shall not disqualify said expenditure from qualifying as a Capital Investment hereunder.

“Corporate Divestment” shall mean: (a) a sale, assignment or transfer of all or substantially all of the capital stock or assets of the Company; or (b) a merger or consolidation involving the Company and another entity with which the Company merges or consolidates which succeeds to substantially all the assets or stock of the Company. Without limiting the foregoing, the parties acknowledge that Company's ultimate parent entity effectuated a demerger of the joint venture (of which the Company is a part) and therefore agree that said demerger shall be considered a Corporate Divestment for purposes of this Agreement.

“Facility” means the real and personal property located at 1211 Sherwood Avenue (Tax Map Parcel No. N000-0857/003) in the city of Richmond.

“Machinery and Tools” has the meaning ascribed to it in Virginia Code §58.1-3507, as the same may be from time to time amended, and taxable by the City of Richmond, Virginia.

“Maintain” means that the New Jobs continued without interruption from the date of creation through December 31, 2022 and that the level of Capital Investment remained level from the time it was achieved through the Performance Date.

“New Job” means 57 new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are provided by the Company for the employee, and for which the Company pays an average annual wage of at least \$110,000. Average annual wage means the average annual salary of full-time positions at the Facility determined by dividing total payroll (of a type included in W-2 compensation) provided to full-time positions at the Facility by the number of full-time positions at the Facility. Each New Job must require a minimum of either (i) 35 hours of an employee’s time per week for the entire normal year of the Company’s operations, which “normal year” must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs. Net new jobs in the city of Richmond for contractors or employees of contractors who provide dedicated full-time service to the Company may count as New Jobs, even though the Company is not directly paying the wages or providing the fringe benefits, if the other conditions set forth in this paragraph have been satisfied. For purposes of clarity, the term “spin off jobs” shall not disqualify New Jobs created or maintained as a result of the demerger referenced in the definition of “Corporate Divestment. The New Jobs must be in addition to the 215 full-time jobs at the Facility as of November 1, 2019.

“Performance Date” means December 31, 2022.

“Tangible Personal Property” means all personal property not classified as intangible personal property, merchants capital, or daily rental property as defined by Code of Virginia §§ 58.1-1100 and 58.1-3510, as the same may be from time to time amended, and taxable by the City of Richmond, Virginia.

“Targets” means the Company’s obligations to make the Capital Investment and to create New Jobs as of the Performance Date.

Section 2. Targets.

2.1 Capital Investment. The Company made a minimum Capital Investment of not less than \$4,886,000 in building upfits resulting in an increase in taxable real property; not less than \$6,519,000 in locally taxable Machinery and Tools; and not less than \$186,000 in locally taxable Tangible Personal Property by the Performance Date.

2.2 New Jobs. The Company created at least 57 New Jobs by the Performance Date.

Section 3. Disbursement of Grant.

3.1 Grant Amount. As a result of the Company having met its Targets, the City shall, through the Authority, provide the Company with the balance of the Local Match in the form of an economic development grant in a total amount of \$149,714.64 (the “Grant”).

3.2 Payment of Grant. The City, through the Authority, shall pay the Grant in one lump sum as soon as practicable following full execution of this Agreement.

3.2.1 Certification of Performance Requirements. The Company may request payment of the Grant in writing no earlier than the full execution of this Agreement. Such request must include a certification by a Certified Public Accountant licensed in the Commonwealth of Virginia that the Capital Investment has been made in accordance with the terms of this Agreement, together with documentation acceptable to the City in the City’s sole discretion detailing such Capital Investment. The Company shall also certify and attest to the creation of 57 New Jobs acceptable to the City in the City’s sole discretion. Once the Company’s request in writing has been received by the City and the City has approved the certifications and related documentation, the City shall, within 30 days, request the Authority to provide the Company with the Grant.

3.2.2 Forfeiture of Grant. Should the Company fail to adequately certify or document the achievement of the Targets pursuant to section 3.2.1, the Company will be deemed to have forfeited the Grant. Upon such forfeiture, this Agreement shall terminate and the City and the Authority will have no obligation to the Company pursuant to this Agreement.

3.3 Appropriations Required. The City’s and the Authority’s obligation to provide the Grant to the Company is subject to and contingent upon the appropriation of all necessary funds by the Richmond City Council for such purposes and upon action of the Authority’s Board of Directors.

Section 4. Administration of Grant.

4.1 The City agrees to transfer to the Authority, as and when appropriated by the City Council, the funds necessary for the Authority to meet its obligations under the Agreement relating to the Grant. No administrative fees or expenses shall be paid by the City.

4.2 The Authority’s obligation to undertake the activities herein is specially conditioned upon the City providing funding on a timely basis; provided, however, the City’s obligation is subject to appropriation by the City Council and availability of funds.

4.3 The Authority agrees to provide the City’s Chief Administrative Officer, or the designee thereof, with copies of all documents related to this Agreement and will keep the Chief Administrative Officer fully and timely informed of all matters related to the Agreement.

4.4 The Authority agrees that all funds transferred by the City to the Authority for the Grant shall be deposited by the Authority within a Project Fund, to be used only to satisfy the obligations contained in this Agreement related to the Grants.

4.5 It is the intent of the parties not to impose upon the Authority any responsibility, duty or obligation other than what may be required to implement the Grant. Accordingly, Authority does

not assume any responsibility or liability whatsoever except as specifically stated herein. If litigation involving the Grant is initiated or expected to be filed against the Authority, the Authority shall immediately notify the City Attorney and Chief Administrative Officer.

4.6 The Authority shall keep records of its financial transactions, if any, related to the Agreement in accordance with generally accepted accounting principles. The City Auditor or a designee thereof may at any time audit the financial transactions undertaken under this Agreement.

4.7 The Authority shall not be required to furnish the City with surety.

Section 5. Representations.

5.1 The Company is empowered to enter into this Agreement, to be bound hereby, and to perform according to the terms hereof.

5.2 Any and all actions necessary to enable the Company to enter into this Agreement, and to be bound hereby, have been duly taken.

5.3 The person or persons executing or attesting the execution of this Agreement on behalf of the Company has or have been duly authorized and empowered to so execute or attest.

5.4 The execution of this Agreement on behalf of the Company will bind and obligate the Company to the extent provided by the terms hereof.

5.5 There exists no litigation pending against the Company or to the Company's actual knowledge threatened, which if determined adversely, would materially and adversely affect the ability of the Company to carry out its obligations under this Agreement or the transactions contemplated hereunder.

Section 6 Default.

6.1 Events of Default. Each of the following will constitute a default by the Company under this Agreement (each an "Event of Default"):

6.1.1 Any court of competent jurisdiction enters an order, judgment, or decree approving a petition seeking reorganization of the Company or all or a substantial part of the assets of the Company or any guarantor of the Company or appointing a receiver, sequestrator, trustee or liquidator of the Company, or any guarantor of the Company or any of their property and such order, judgment or decree continues unstayed and in effect for at least 60 Days.

6.1.2 The Company (i) makes a general assignment for the benefit of creditors, (ii) is adjudicated as either bankrupt or insolvent, (iii) files a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors, (iv) either (a) takes advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or (b) admits the material allegations of a petition filed against the Company in any proceedings under

such a law or (v) any guarantor of the Company takes action for the purposes of effecting any item identified in item (iv).

6.1.3 The Company fails to maintain its corporate existence.

6.2 Effect of Default. In the case of an occurrence of an Event of Default, the Grant provisions of Section 3 of this Agreement shall terminate immediately and neither the City nor the Authority will have any further obligation relating thereto and the Company will no longer be eligible for the Grant.

Section 7 Notices.

All notices, demands or other communications under this Agreement shall be in writing and shall be sent to each other party, at its address specified below (or such other address as a party may from time to time specify to the other parties by notice given in accordance with this Agreement), and shall be deemed to have been duly given when actually received by the addressee or when served (a) personally; (b) by independent, reputable, overnight commercial carrier; or (c) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

If to the City:

Chief Administrative Officer
900 East Broad Street, 14th Floor
Richmond, Virginia 23219

with a copy to:

Department of Economic Development
City of Richmond, Virginia
1500 East Main Street, Suite 400
Richmond, Virginia 23219
Attention: Director of Economic Development
and

City Attorney
900 East Broad Street, Suite 400
Richmond, Virginia 23219

If to the Authority:

Economic Development Authority of the City of Richmond,
Virginia
1500 East Main Street, Suite 400
Richmond, Virginia 23219
Attention: Chairman

with a copy to:

Economic Development Authority of the City of Richmond,
Virginia
1500 East Main Street, Suite 400
Richmond, Virginia 23219
Attention: Executive Director

and

City Attorney
900 East Broad Street, Suite 400
Richmond, Virginia 23219

If to the Company:

Haleon
1211 Sherwood Avenue
Richmond, VA 23220
Attn: Peter J. Ramsey, Chief Scientific Officer

with a copy to:

Haleon
184 Liberty Corner Road
Warren, NJ 07059
Attn: David Moss, VP Legal Operations

Section 8 General Terms and Conditions.

8.1 Entire Agreement; Amendments. This Agreement constitutes the entire agreement among the parties hereto and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Company may not assign its rights and obligations under this Agreement without the prior written consent of the City and the Authority; provided, however, that no prior consent shall be required for an assignment of the Company's rights or obligations under this Agreement in whole or in part by the Company pursuant to a Corporate Divestment.

8.2 Governing Law; Venue. This Agreement is made, and is intended to be performed, in the Commonwealth of Virginia and shall be construed and enforced by the laws of the Commonwealth of Virginia. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the City of Richmond, and such litigation shall be brought only in such court.

8.3 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument. This Agreement is signed when a party's signature is delivered by facsimile, email, or other electronic medium. These signatures must be treated in all respects as having the same force and effect as original signatures.

8.4 Severability. If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

8.5 Subject-to-Appropriations. All payments and other performances by the City and the Authority under this Agreement are subject to City Council approval, Authority Board approval and annual appropriations by the City Council. It is understood and agreed among the parties that the City and the Authority shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Agreement. Under no circumstances shall the City's or the Authority's total liability under this Agreement exceed the total amount of funds appropriated by the City Council for the payments hereunder for the performance of this Agreement.

8.6 Public Disclosure.

8.6.1 Applicable Law. The parties to this Agreement acknowledge that records maintained by or in the custody of the City and the Authority are subject to the provisions of the Virginia Public Records Act, Va. Code §§ 42.1-76 through 42.1-90.1, and the Virginia Freedom of Information Act, Va. Code §§ 2.2-3700 through 2.2-3714 and thus are subject to the records retention and public disclosure requirements set forth in those statutes.

8.6.2 Challenges to Nondisclosure. If a party submitting records to the City or the Authority requests that those records not be disclosed under applicable law and the City or the Authority consequently denies a request for disclosure of such records based on the submitting party's request, and the City's or the Authority's denial of a request for disclosure of records is challenged in court, the submitting party shall indemnify, hold harmless and defend the City or the Authority, their respective officers and employees from any and all costs, damages, fees and penalties (including attorney's fees and other costs related to litigation) relating thereto.

8.7 No Waiver. Neither failure on the part of the City or the Authority to enforce any covenant or provision contained in this Agreement nor any waiver of any right under this Agreement shall discharge or invalidate such covenant or provision or affect the right of the City or the Authority to enforce the same right in the event of any subsequent default.

8.8 Effective Date of the Agreement. The effective date of this Agreement shall be the date upon which it has been fully executed by the parties following approval by City Council and by the Authority's Board of Directors.

8.9 No Partnership or Joint Venture. It is mutually understood and agreed that nothing contained in this Agreement is intended or shall be construed in any manner or under any

circumstance whatsoever as creating and establishing the relationship of copartners or creating or establishing a joint venture between or among any of the parties or as designating any party to the Agreement as the agent or representative of any other party to the Agreement for any purpose.

8.10 No Third Party Beneficiaries. Notwithstanding any other provision of this Agreement, the parties agree that (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Agreement; (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the City, the Authority, or the Company; (iii) no other individual or entity shall obtain any right to make any claim against the City, the Authority, or the Company under the provisions of this Agreement; and (iv) no provision of this Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity.

8.11 Attorney's Fees. Each party will bear its own attorney's fees.

8.12 Authorization to Act. The Chief Administrative Officer of the City of Richmond, Virginia or a designee thereof and the Chairman of the Economic Development Authority of the City of Richmond, Virginia are authorized to act on behalf of the City and the Authority, respectively, under this Agreement.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

CITY OF RICHMOND, VIRGINIA

a municipal corporation of the
Commonwealth of Virginia

By: _____
Lincoln Saunders Date
Chief Administrative Officer

Authorized by Ordinance No. _____

Approved as to Form:

By: Bonnie M. A. Mc
City Attorney's Office

ALACER CORP., a California corporation

By: _____
Date

Name: _____
Title: _____

**ECONOMIC DEVELOPMENT OF THE
CITY OF RICHMOND, VIRGINIA,**

a political subdivision of the
Commonwealth of Virginia

By: _____
Chairman Date

Approved as to Form:

By: _____
General Counsel to Authority