

INTRODUCED: January 8, 2018

AN ORDINANCE No. 2018-008

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Permit Fees Grant Agreement between the City of Richmond, Owens & Minor Medical, Inc., and the Economic Development Authority of the City of Richmond to induce Owens & Minor Medical, Inc. to improve, equip, and operate a new centralized facility for its distribution center administrative operations in the city of Richmond.

\_\_\_\_\_  
Patron – Mayor Stoney

\_\_\_\_\_  
Approved as to form and legality  
by the City Attorney  
\_\_\_\_\_

PUBLIC HEARING: JAN 22, 2018 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 Permit Fees Grant Agreement between the City of Richmond, Owens & Minor Medical, Inc., and the Economic Development Authority of the City of Richmond to induce Owens & Minor Medical, Inc. to improve, equip, and operate a new centralized facility for its distribution center administrative operations in the city of Richmond.

AYES:            8            NOES:            0            ABSTAIN:            1  
\_\_\_\_\_

ADOPTED:    JAN 22 2018    REJECTED:            \_\_\_\_\_    STRICKEN:            \_\_\_\_\_

The Permit Fees Grant 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.



CITY OF RICHMOND
INTRACITY CORRESPONDENCE

O & R REQUEST

4-7323

DEC 12 2017

Office of the Chief Administrative Officer

RECEIVED

JAN 05 2018

OFFICE OF CITY ATTORNEY

O&R REQUEST

DATE: December 11, 2017

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor

Levar Stoney signature

THROUGH: Selena Cuffee-Glenn, Chief Administrative Officer

Selena Cuffee-Glenn signature

THROUGH: Lenora Reid, Deputy Chief Administrative Officer, Finance and Administration

Lenora Reid signature

FROM: Lee Downey, Deputy Chief Administrative Officer for Planning and Economic Development and Interim Director of Economic and Community Development

Lee Downey signature and date 12-11-17

RE: Owens & Minor Medical, Inc. Permit Fee Grant Agreement

ORD. OR RES. No. \_\_\_\_\_

PURPOSE: To authorize the Chief Administrative Officer to execute a Permit Fee Grant Agreement between the City of Richmond, Owens & Minor Medical, Inc. and the Economic Development Authority of the City Richmond. Agreement.

REASON: To induce the Company to improve, equip, and operate a new facility for shared services that includes administrative and back office operations in the City of Richmond, thereby incurring significant private "Facility Renovation Expenses" and making a significant net new taxable investment.

This grant is also a requirement of the Commonwealth Opportunity Fund Performance Agreement, which has been executed.

RECOMMENDATION: Approve the authorization to execute this Agreement which is attached.

BACKGROUND: In order to help induce Owens & Minor to select the City of Richmond, the \$50,000 permit fee grant was offered as part of the City of Richmond's match to the \$1.5 million Commonwealth Opportunity Fund (COF).

After an extensive site selection process the Company chose to expand their shared services operations in approximately 85,000 square feet in Riverfront Plaza. The Company's occupancy will reduce the vacancy rate in downtown office space.

**FISCAL IMPACT / COST:** A \$50,000 permit fee grant to help match the COF. This grant will assist the Company with the construction of tenant improvements.

**FISCAL IMPLICATIONS:** According to a Jobs EQ analysis of the economic impact of this project, the Company's shared service operation is expected to generate in excess of \$62 million in direct and indirect economic impact in the City.

This grant is to be paid once the Company occupies the new facility.

**BUDGET AMENDMENT NECESSARY:** No. Funding for the \$50,000 grant is in the current FY18 budget.

**REVENUE TO CITY:** Company intends to make capital expenditures in taxable real estate, via renovations to the Facility, of not less than \$5,750,000.

**DESIRED EFFECTIVE DATE:** Upon adoption.

**REQUESTED INTRODUCTION DATE:** January 8, 2018

**CITY COUNCIL PUBLIC HEARING DATE:** January 22, 2018

**REQUESTED AGENDA:** Consent

**RECOMMENDED COUNCIL COMMITTEE:** Finance and Economic Development, January 18, 2018

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

**AFFECTED AGENCIES:** None

**RELATIONSHIP TO EXISTING ORD. OR RES.:** 2017-079; 2017-078

**REQUIRED CHANGES TO WORK PROGRAM(S):** None

**ATTACHMENTS:** Permit Fee Grant Agreement

**STAFF:** Jane Ferrara, Economic and Community Development, 646-6737

**PERMIT FEES GRANT  
AGREEMENT**

This **PERMIT FEES GRANT AGREEMENT** (the "Agreement") is made and entered this \_\_\_\_ day of \_\_\_\_\_, 2018, by and among the **CITY OF RICHMOND, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia ("the City") and **OWENS & MINOR MEDICAL, INC.**, a Virginia corporation ("the Company"), and the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF RICHMOND, VIRGINIA**, a political subdivision of the Commonwealth of Virginia ("the Authority").

**WITNESSETH:**

**WHEREAS**, the City was awarded a grant of \$1,500,000 from the Commonwealth's Development Opportunity Fund (a "COF Grant") through the Virginia Economic Development Partnership Authority ("VEDP") to use for the purpose of inducing the Company to improve, equip, and operate a new centralized Facility, as hereinafter defined, in the City for its distribution center administrative operations, thereby incurring significant Facility Renovation Expenses, as hereinafter defined, and making a significant net new taxable investment; and

**WHEREAS**, the City, the Company, and the Authority entered into that certain Commonwealth's Development Opportunity Fund Performance Agreement dated July 10, 2017 (the "COF Grant Agreement") for the purpose of facilitating the disbursement of the COF Grant funds to the Company subject to the Company meeting certain criteria; and

**WHEREAS**, Section 4(b) of the COF Grant Agreement states that the City expects to provide the Company with certain incentives, as matching grants or otherwise, including a Permit Fees Grant; and

**WHEREAS**, the City and the Authority have determined that the Company's improvement, equipment, and operation of the Facility result 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 personal property tax receipts and job creation; and

**WHEREAS**, as set forth in the COF Grant Agreement, the City desires to provide to the Company an economic development monetary grant (the "Permit Fees Grant") for the purpose of inducing the Company to improve, equip, and operate the Facility in the City of Richmond, thereby incurring significant Facility Renovation Expenses and making a significant net new taxable investment; and

**WHEREAS**, the City is willing to provide the funds to the Authority with the expectation that the Authority will provide the funds to or for the use of the Company, provided that the Company meets certain criteria relating to the net new taxable investment; and

**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**, the City, the Authority and the Company desire to set forth their understanding and agreement as to the payout of the Permit Fees Grant, the obligations of the Company regarding Facility Renovation Expenses; and

**WHEREAS**, the Company intends to make capital expenditures in taxable real estate, via renovations to the Facility, of not less than \$5,750,000.00; and

**WHEREAS**, the stimulation of the additional tax revenue and economic activity to be generated by the net new taxable investment constitutes a valid public purpose for the expenditure of public funds; and

**WHEREAS**, this Agreement sets forth the understanding of the parties concerning the Company's obligations, the Authority's obligations, and the incentives offered by the City, subject to the approval of the Authority's Board and the Richmond City Council and subject to appropriations.

**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 covenant and agree as follows.

**Section 1. Definitions.**

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

"Facility" means the portion of real property located at Riverfront Towers, East Tower, 951 East Byrd Street, Richmond, VA 23219, Parcel ID No. E000-0037/003, Floors, 8, 10 and 11 and partial floors 4 and 9, which floors will be improved, equipped, and operated by the Company as a new centralized facility for its distribution center administrative operations.

"Facility Renovation Expenses" means capital expenditures made by or on behalf of the Company to renovate the Facility for the Company's use.

"Grant Period" shall mean the period of time beginning July 10, 2017 and ending January 11, 2019.

"Permit Fees" means those City fees associated with permits required to inspect and complete renovations to the Facility.

"Permit Fees Grant Payment" means the lesser of (1) an amount equal to 80% of the Permit Fees paid to the City by or on behalf of the Company for the Facility renovations or (2) fifty-thousand dollars (\$50,000).

"Target" means the Company's obligation to expend at least \$5,750,000 in Facility Renovation Expenses in accordance with the time frames set forth in this Performance Agreement.

**Section 2. Target: Facility Renovation Expenses.** To qualify for the Permit Fees Grant, the Company must meet or exceed \$5,750,000 in Facility Renovation Expenses prior to expiration of the Grant Period.

**Section 3. Disbursement of Grant.**

**3.1 Permit Fees Grant.** Subject to Company meeting the Target and pursuant to the terms of this Agreement, the City shall, through the Authority, provide the Company with an incentive in the form of the Permit Fees Grant Payment.

**3.2 Permit Fees Grant Payment.** The amount of the Permit Fees Grant Payment shall be the lesser of (1) an amount equal to an amount equal to 80% of the Permit Fees paid to the City by or on behalf of the Company for the Facility renovations or (2) fifty-thousand dollars (\$50,000). By way of illustration, if 80% of the Permit Fees paid to the City exceeds fifty-thousand dollars (\$50,000), then the Permit Fees Grant Payment shall be fifty-thousand dollars (\$50,000); however, if 80% of the Permit Fees paid to the City is an amount less than \$50,000 then the Permit Fees Grant Payment shall be such amount.

**3.2.1 Permit Fees Grant Payment; Request.** To receive the Permit Fees Grant Payment, the Company must meet the Target prior to the end of the Grant Period and request the Permit Fees Grant Payment from the City and the Authority in writing within nine months of receiving a Certificate of Occupancy for the Facility or equivalent documents showing the Company has completed the Facility renovations.

**3.2.2 Permit Fees Grant Payment; Documentation.** Upon requesting the Permit Fees Grant Payment, the Company shall provide the City with documentation, satisfactory in the sole discretion of the City, showing the following:

**3.2.2.1** That the Company met or exceeded the Target by making at least \$5,750,000 in Facility Renovation Expenses.

**3.2.2.2** The amount of the Permit Fees Grant Payment being requested by the Company based on the amount of Permit Fees actually paid to the City by or on behalf of the Company for the Facility renovations as set forth in section 3.2. Such documentation shall clearly identify the permits for which were paid; proof of payment of such fees; evidence of the actual issuance of the permits; and identify the permits for which fees were paid and proof of payment of such fees.

**3.3 Disbursement to the Company.** Upon receiving satisfactory evidence, in its sole discretion, showing (1) that the Target was met and (2) the Permit Fees Grant Payment amount based upon Permit Fees paid to the City, the City shall notify the Authority in writing requesting the Authority remit the Permit Fees Payment to the Company. The Authority shall remit the Permit Fees Grant Payment to the Company within 90 days of receiving written notice from the City. If the Permit Fees Grant Payment is an amount less than \$50,000 then the Authority shall remit the remainder of funds (i.e., the difference between \$50,000 and the Permit Fees Grant Payment Amount) to the City within 90 days of receiving written notice.

#### **Section 4. Administration of Grant**

**4.1** Subject to appropriation by the City Council, within 90 days of execution of this Agreement, the City agrees to transfer to the Authority funds in the amount of \$50,000, which is the maximum amount of funds necessary for the Authority to meet its obligations under the Agreement relating to the Permit Fees Grant Payment. No administrative fees or expenses shall be paid by the City.

**4.2** If the Permit Fees Grant Payment amount is less than \$50,000 then the Authority shall remit to the City the remainder of the funds as set forth in section 3.3. If the Permit Fees Grant Payment is not made to the Company due to an Event of Default as set forth in section 6 then the Authority shall remit to the City the entirety of the funds (i.e., \$50,000) within 180 days of such Event of Default.

**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 Permit Fees Grant Payment 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 Grant.

**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 Permit Fees Grant Payment. 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 his designee may at any time audit the financial transactions undertaken under this Agreement. The Authority shall cooperate to ensure that the City Auditor is granted reasonable access on a timely basis to all books and records of the Authority necessary to complete such audits.

**4.7** The Authority shall not be required to furnish the City a blanket corporate fidelity bond with surety.



**Section 5. Representations of the Company**

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. Events of Default.**

6.1.1 The Company's failure to meet the Target by more than \$50,000 prior to or within sixty (60) days following the expiration of the Grant Period or any other material breach of this Agreement shall be an Event of Default.

6.1.2 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 shall have any further obligation relating thereto and the Company shall no longer be eligible for any grant payments hereunder. Notwithstanding the foregoing, the provisions of Section 6.2 below shall survive the termination of this Agreement until all of the Company's obligations have been satisfied.

**Section 7. Company Reporting.**

The Company shall provide, at the Company's expense and not more than quarterly, detailed verification reasonably satisfactory to the City and the Authority of the Company's progress on the Targets.

**Section 8. Notices.**

Any notices required or permitted under this Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return of certified mail or overnight courier package not accepted by the addressee):

if to the Company, to:

Owens & Minor Medical, Inc.  
9120 Lockwood Boulevard  
Mechanicsville, VA 23116  
Attn: SVP & Chief Administrative Officer

with a copy to:

Owens & Minor, Inc.  
9120 Lockwood Boulevard  
Mechanicsville, VA 23116  
Attn: General Counsel

if to the City, to:

City of Richmond  
Chief Administrative Officer  
900 East Broad Street, Suite 201  
Richmond, Virginia 23219

with a copy to:

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

if to the Authority, to:

Economic Development Authority  
2401 West Leigh Street  
Richmond, Virginia 23230  
Attention: Chairman

with a copy to:

City Attorney  
City of Richmond  
900 East Broad Street, Suite 400  
Richmond, Virginia 23219  
Attention: General Counsel, EDA

## **Section 9. General Terms and Conditions.**

**9.1 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.

**9.2 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.

**9.3 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.

**9.4 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.

**9.5 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.

**9.6 Public Disclosure.**

**9.6.1 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.

**9.7 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.

**9.8 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.

**9.9 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.

**9.10 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.

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

**CITY OF RICHMOND, VIRGINIA**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 2018

Approved as to form:

  
Deputy City Attorney

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

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 2018

**OWENS & MINOR MEDICAL, INC.**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 2018