

INTRODUCED: March 27, 2017

AN ORDINANCE No. 2017-079

To authorize the Chief Administrative Officer to accept funds in the amount of \$1,500,000 from the Commonwealth’s Development Opportunity Fund and to appropriate the increase to the Fiscal Year 2016-2017 General Fund Budget by increasing estimated revenues and the amount appropriated to a new line item in the Non-Departmental agency called the Owens & Minor Medical, Inc. (the Company) – Commonwealth Opportunity Fund line item for the purpose of providing funds to the Economic Development Authority to provide a grant to Owens & Minor Medical, Inc., pursuant to a Commonwealth’s Development Opportunity Fund Performance Agreement between the City of Richmond, Virginia, Owens & Minor Medical, Inc., and the Economic Development Authority of Richmond, Virginia, dated ____ __, 2017.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: APR 24 2017 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That the Chief Administrative Officer is authorized to accept funds in the amount of \$1,500,000 from the Commonwealth’s Development Opportunity Fund for the purpose of providing funds to the Economic Development Authority to provide a grant to Owens & Minor Medical, Inc., pursuant to a Commonwealth’s Development Opportunity Fund Performance

AYES: 8 NOES: 0 ABSTAIN: 1

ADOPTED: APR 24 2017 REJECTED: _____ STRICKEN: _____

Agreement between the City of Richmond, Virginia, Owens & Minor Medical, Inc., and the Economic Development Authority of Richmond, Virginia, dated ____ __, 2017.

§ 2. That the funds received are hereby appropriated to the General Fund Budget for the fiscal year commencing July 1, 2016, and ending June 30, 2017, by increasing estimated revenues by \$1,500,000, increasing the amount appropriated for expenditures by \$1,500,000, and allotting to a new line item in the Non-Departmental agency called the Owens & Minor Medical, Inc. (the Company) – Commonwealth Opportunity Fund line item the sum of \$1,500,000 for the purpose of providing funds to the Economic Development Authority to provide a grant to Owens & Minor Medical, Inc., pursuant to a Commonwealth’s Development Opportunity Fund Performance Agreement between the City of Richmond, Virginia, Owens & Minor Medical, Inc., and the Economic Development Authority of Richmond, Virginia, dated ____ __, 2017.

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

FEB 27 2017

Office of the
Chief Administrative Officer

4-6292



CITY OF RICHMOND

INTRACITY CORRESPONDENCE

O&R REQUEST

DATE: February 17, 2017

EDITION: 1

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor

THROUGH: Selena Cuffee-Glenn, Chief Administrative Officer

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

THROUGH: Jay A. Brown, Budget Director

FROM: Peter L. Downey, Deputy Chief Administrative Officer, Planning and Economic and Community Development

RE: Acceptance and Appropriation of the \$1,500,000 Commonwealth Opportunity Fund Grant for the Owens & Minor Medical, Inc. project

RECEIVED

MAR 15 2017

OFFICE OF CITY ATTORNEY

ORD. OR RES. No. _____

PURPOSE: To accept a \$1,500,000 Commonwealth Opportunity Fund ("COF") Grant and appropriate this same amount to a new Non-Departmental project named "Owens & Minor Medical, Inc. (the Company) – Commonwealth Opportunity Fund," for the purpose of accessing a grant from the State as an incentive for the Company to locate in the City Of Richmond.

REASON: The City Of Richmond has been awarded a Commonwealth Opportunity Fund (COF) grant of \$1,500,000 from the Commonwealth of Virginia to assist the City in attracting and locating Owens & Minor Medical, Inc. In accordance with the Performance Agreement, the funds will be transferred to the City, which in turn, will transfer the funds to the Economic Development Authority (EDA) of the City of Richmond. The EDA will disburse these funds to Owens & Minor Medical, Inc. for the facilitation of the Company's consolidated shared services operations in the Riverfront Plaza.

RECOMMENDATION: The City Administration recommends adoption of this ordinance.

BACKGROUND: As part of the incentive package offered to attract Owens & Minor, Medical, Inc., Governor McAuliffe announced a \$1.5 million grant from the Commonwealth's Development Opportunity Fund on February 16, 2017. These funds are provided to the City from the

O&R Request

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Commonwealth and the City must transfer the funds to the EDA for disbursement to the Company. This paper sets up the account to handle that transfer and gives the City the authority to carry out the transfer.

FISCAL IMPACT / COST: None.

FISCAL IMPLICATIONS: None.

BUDGET AMENDMENT NECESSARY: Yes.

REVENUE TO CITY: \$1,500,000 to be received from the Commonwealth of Virginia, which will be transferred to the EDA.

DESIRED EFFECTIVE DATE: Upon adoption.

REQUESTED INTRODUCTION DATE: March 13, 2017

CITY COUNCIL PUBLIC HEARING DATE: March 27, 2017

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: Chief Administrative Officer; City Attorney's Office; Economic and Community Development; and the Budget Department

RELATIONSHIP TO EXISTING ORD. OR RES.: None

REQUIRED CHANGES TO WORK PROGRAM(S): None

ATTACHMENTS: Commonwealth's Development Opportunity Fund Performance Agreement

STAFF: Lee Downey, Deputy Chief Administrative Officer, Planning and Economic and Community Development, 646-4848; and Jane Ferrara, Deputy Director, Economic and Community Development, 646-5633

COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** (this "Agreement") made and entered this ____ day of _____, 2017 (the "Effective Date"), by and among the **CITY OF RICHMOND, VIRGINIA** (the "Locality"), a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), **OWENS & MINOR MEDICAL, INC.** (the "Company"), a Virginia corporation, and the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF RICHMOND, VIRGINIA** (the "Authority"), a political subdivision of the Commonwealth. The Authority, Company, and Locality are referred to collectively in this Agreement as the "Parties" and individually, without differentiation, each as a "Party."

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive \$1,500,000 from the Commonwealth's Development Opportunity Fund (a "COF Grant") through the Virginia Economic Development Partnership Authority ("VEDP") for the purpose of inducing the Company to consolidate its current distribution center administrative and back-office operations and to improve, equip and operate a new centralized facility in the Locality for its distribution center administrative operations (the "Facility"), thereby making a significant Capital Investment, relocating and retaining a significant number of Baseline Jobs, and creating and Maintaining a significant number of New Jobs, as such capitalized terms are hereinafter defined;

WHEREAS, the Locality 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 promises to meet certain criteria relating to Capital Investment, Baseline Jobs and New Jobs;

WHEREAS, the Locality, the Authority and the Company desire to set forth their understanding and agreement as to the payout of the COF Grant, the use of the COF Grant proceeds, the obligations of the Company regarding Capital Investment, Baseline Jobs and New Jobs, and the repayment by the Company of all or part of the COF Grant under certain circumstances;

WHEREAS, the consolidation of the current distribution center administrative operations into a new centralized facility and the improvement, equipping and operation of the Facility will entail a capital expenditure by or on behalf of the Company of approximately \$15,000,000, of which approximately \$9,250,000 will be invested in furniture, fixtures equipment, software, related software as a service, and software implementation services, and approximately \$5,750,000 will be invested in the up-fit of the building (inclusive of approximately \$4,500,000 in tenant improvement allowance provided to Company by the Facility's landlord and used by the Company to pay for up-fit costs);

WHEREAS, the consolidation of the current distribution center administrative operations and the improvement, equipping and operation of the Facility will further entail the relocation

and retention of 200 Baseline Jobs and the creation and Maintenance of 300 New Jobs at the Facility; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment, Baseline Jobs and New Jobs constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the COF Grant:

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the Parties, 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:

“Baseline Job” means a full-time position at the Company’s facility located in the County of Hanover, Virginia (“Hanover”) existing as of the Effective Date. When the Company consolidates its current distribution center administrative operations, two hundred (200) Baseline Jobs will be relocated and retained at the Facility.

“Capital Investment” means an expenditure by or on behalf of the Company in taxable real property, taxable tangible personal property, software as a service (“SaaS”), or all, at the Facility. A capital expenditure related to a leasehold interest in real property will be considered to be made “on behalf of the Company” if a lease between a developer and the Company is a capital lease, or is an operating lease having a term of at least ten years, and the real property would not have been constructed or improved but for the Company’s interest in leasing some or all of the real property. Only the capital expenditures allocated to the portion of the real property to be leased by the Company will count as “Capital Investment.” The purchase or lease of furniture, fixtures and equipment, including under an operating lease, and expected tenant improvements by or on behalf of the Company will qualify as Capital Investment.

“Maintain” means that the New Jobs will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to: (i) temporary reductions in the Company’s employment levels (so long as there is active recruitment for open positions); (ii) strikes; and (iii) other temporary work stoppages.

“New Job” means 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 compensation (inclusive of wages, salary, cash bonuses and stock grants) of at least \$52,700. The average annual wage of at least \$52,700 will be the average of the combined New and Baseline Jobs. Each New Job must require a minimum of either: (i) thirty-five (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 forty-eight (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. The New Jobs must be in addition to the two hundred (200) Baseline Jobs. Notwithstanding the foregoing, and to permit the early hiring of New Jobs prior to the Company's completion and occupancy of the Facility (the "Build-Out Period"), the Locality and Authority expressly agree that new, permanent, full-time employees hired by the Company may qualify as New Jobs pursuant hereto even if temporarily located at Hanover during the Build-Out Period provided that such jobs are then subsequently relocated to and retained at the Facility with the Baseline Jobs.

"Performance Date" means March 31, 2020. If the Locality, in consultation with the Authority and VEDP, deems that good faith and reasonable efforts have been made and are being made by the Company to achieve the Targets, the Locality may agree to extend the Performance Date by up to fifteen (15) months. If the Performance Date is extended, the Locality shall send written notice of the extension to the Authority, the Company and VEDP and the date to which the Performance Date has been extended shall be the "Performance Date" for the purposes of this Agreement.

"Targets" means the Company's obligations to make Capital Investments at the Facility of at least \$15,000,000, and to create and Maintain at least three hundred (300) New Jobs at the Facility, all as of the Performance Date.

"Virginia Code" means the Code of Virginia of 1950, as amended.

Section 2. Targets; Statutory Criteria.

(a) *Targets:* The Company will consolidate its current distribution center administrative operations and improve, equip and operate the Facility in the Locality, make a Capital Investment of at least \$15,000,000, and create and Maintain at least three hundred (300) New Jobs at the Facility, all as of the Performance Date.

(b) *Encouragement to Offer New Jobs to Residents of the Commonwealth:* The Locality and the Authority hereby strongly encourage the Company to ensure that at least thirty percent (30%) of the New Jobs are offered to "Residents" of the Commonwealth, as defined in Virginia Code Section 58.1-302. In pertinent part, that definition includes natural persons domiciled in Virginia or natural persons who, for an aggregate of more than one hundred eighty-three (183) days of the year, maintained a place of abode within the Commonwealth, whether domiciled in the Commonwealth or not.

(c) *Encouragement to Offer New Jobs to Residents of the Locality:* The Locality, the Authority, and VEDP hereby strongly encourage the Company to offer New Jobs to current residents of the Locality to the extent reasonable and the Company hereby agrees to use best efforts to offer New Jobs to current residents of the Locality to the extent reasonable.

(d) *Relocation:* The Commonwealth's Secretary of Commerce and Trade has delivered to the Co-Chairs of the Senate Finance Committee and the Chair of the House

Appropriations Committee a letter indicating that, although the Company is consolidating its current distribution center operations and relocating two hundred (200) Baseline Jobs to the Locality, the reasons for the move and the desire to retain the Company's operations in Virginia justify the use of incentives to move such facility from one Virginia locality to another. The Locality and VEDP have informed Hanover of the move and of the use of incentives.

(e) *Prevailing Wage; Unemployment and Poverty Rates:* The average annual wage of the New Jobs of at least \$52,700 is less than the prevailing average annual wage in the Locality of \$58,289, but is more than eighty-five percent (85%) of that prevailing average annual wage (\$49,546). The Locality is a high-unemployment locality, with an unemployment rate for 2015, which is the last year for which such data is available, of five and two-tenths percent (5.2%) as compared to the 2015 statewide unemployment rate of four and four-tenths percent (4.4%). The Locality is a high-poverty locality, with a poverty rate for 2014, which is the last year for which such data is available, of twenty-five percent (25.0%) as compared to the 2014 statewide poverty rate of eleven and eight-tenths percent (11.8%).

(f) *Disclosure of Political Contributions:* The Company acknowledges that the name of the Company will be shared by VEDP with the Governor of Virginia, and any campaign committee or political action committee associated with the Governor. The Company acknowledges that within eighteen (18) months of the date of this Agreement, the Governor, his campaign committee, and his political action committee will submit to the Virginia Conflict of Interest and Ethics Advisory Council a report listing any contribution, gift, or other item with a value greater than \$100 provided by the Company to the Governor, his campaign committee, or his political action committee, respectively, during the period from the date of the Company's application for the COF Grant through the one-year period immediately after the Effective Date.

Section 3. Disbursement of COF Grant.

(a) *Disbursement of the COF Grant:* Concurrent with its execution of this Agreement, the Locality is requesting the disbursement to it of the COF Grant. Within sixty (60) days of its receipt of the COF Grant proceeds, the Locality will disburse the COF Grant proceeds to the Authority.

The disbursement of the COF Grant proceeds to the Company will serve as an inducement to the Company to achieve the Targets at the Facility. The COF Grant proceeds shall be retained by the Authority and shall be disbursed in two payments as follows:

First Payment: The Company shall provide notice and evidence reasonably satisfactory to the Locality, the Authority, and VEDP that the Company: (1) has made Capital Investments at the Facility of at least \$7,500,000; and (2) has relocated and retained one hundred (100) Baseline Jobs at the Facility and created and Maintained at least one hundred fifty (150) New Jobs at the Facility (which New Jobs, for the purposes of this paragraph, need only be in addition to the one hundred (100) relocated and retained Baseline Jobs referenced above), without consideration of the average annual compensation. Such evidence shall be subject to verification by the Locality and VEDP. Within thirty (30) days

of verification from both the Locality and VEDP, the Authority will disburse \$750,000 of the COF Grant proceeds to the Company.

Second Payment: The Company shall provide notice and evidence reasonably satisfactory to the Locality, the Authority, and VEDP that the Company: (1) has made Capital Investments at the Facility of at least \$15,000,000 total (inclusive of those Capital Investments used to induce the first payment) and (2) has relocated and retained another one hundred (100) Baseline Jobs at the Facility (for an aggregate total of two hundred (200) Baseline Jobs) and has created and Maintained at least another one hundred fifty (150) New Jobs at the Facility (for an aggregate total of three hundred (300) New Jobs), without consideration of the average annual compensation. Such evidence shall be subject to verification by the Locality and VEDP. Within thirty (30) days of verification from both the Locality and VEDP, the Authority will disburse the remaining \$750,000 of the COF Grant proceeds to the Company.

If any COF Grant proceeds have not been disbursed to the Company within ninety (90) days after the Performance Date, the Authority shall return such proceeds to VEDP for redeposit to the Commonwealth's Development Opportunity Fund.

(b) *Use of the COF Grant Proceeds:* The Company will use the COF Grant proceeds to pay or reimburse the costs of the build-out of the Facility and/or training costs (including but not limited to costs related to change management), as permitted by Section 2.2-115(D) of the Virginia Code.

Section 4. Break-Even Point; State and Local Incentives.

(a) *State-Level Incentives:* VEDP has estimated that the Commonwealth will reach its "break-even point" by the Performance Date. The break-even point compares new revenues realized as a result of the Capital Investment and New Jobs at the Facility with the Commonwealth's expenditures on incentives, including but not limited to the COF Grant. With regard to the Facility, the Commonwealth expects to provide incentives in the following amounts:

<u>Category of Incentive:</u>	<u>Total Amount</u>
COF Grant	\$1,500,000
Virginia Jobs Investment Program ("VJIP") (Estimated)	300,000
Enterprise Zone Real Property Improvement Grant ("E. Z. Real Property Improvement Grant") (Estimated)	200,000
Enterprise Zone Job Creation Grant ("E. Z. Job Creation Grant" (Estimated)	1,184,000

The proceeds of the COF Grant shall be used for the purposes described in Section 3(b). The VJIP grant proceeds shall be used by the Company to pay or reimburse itself for recruitment and training costs. The proceeds of E. Z. Real Property Improvement Grant and the E. Z. Job Creation Grant may be used by the Company for any lawful purpose.

(b) *Locality-Level Incentives:* The Locality expects to provide the following incentives, as matching grants or otherwise, for the Facility (“Local Incentives”):

<u>Category of Local Incentive:</u>	<u>Total Amount</u>
In-Kind Workforce Services	\$750,000
On-the-Job Training and Work Experience Workforce Services	120,000
Parking Availability and Savings	170,000
Permit Fees Grant	50,000
Bike Share Station	75,000
Local Enterprise Zone Benefits (“Local E. Z. Benefits”)	25,000
Enterprise Zone – Moving Expense Reimbursement	10,000

In his approval of the COF Grant, the Governor approved reduced a local match by the Locality in the amount of \$1,200,000. If, by March 31, 2022, the value or the proceeds of the Local Incentives disbursed or committed to be disbursed by the Locality to the Company total less than the \$1,200,000 COF Grant local match requirement for this COF Grant (the shortfall between the value of the Local Incentives and \$1,200,000 being the “Difference”), the Locality, subject to appropriation, will make an additional grant, or will provide additional in-kind services, either or both, in the Locality’s discretion, to the Company in a value equal to the Difference, so long as the Company has met its Targets.

Notwithstanding the foregoing, the Company and VEDP acknowledge and agree that the value of the Locality-level incentives in the amounts set forth above is based upon estimated value of the availability of the incentives to the Company. The Company and VEDP further acknowledge and agree that so long such incentives are made available to the Company, the Locality shall be deemed to have met its obligations related thereto and met its local match requirement in the amount corresponding thereto, regardless of whether the Company avails itself to any particular incentive, in whole or in part. The Company, VEDP, the Locality and the Authority acknowledge and agree that the Company and the Locality may mutually agree (outside of this Agreement) to increase or decrease the availability of one or more Locality-level incentives, so long as the Locality makes available Locality-level incentives having an estimated value of at least \$1,200,000, but need not provide Locality-level incentives having an estimated value in excess of \$1,200,000.

The value of the Locality-level incentives in the amounts set forth above is based on the assumption that the Company will apply, and qualify, for the incentives and relief for which it is eligible. If the Company neglects to properly apply for the incentives and relief for which it is eligible then for the purposes of meeting its local match requirement under this Agreement, the Locality shall be deemed to have provided the incentives in the corresponding amounts set forth above.

The Locality may provide the “Installation of Bike Share Station” incentive by installing a bike share station within a reasonable proximity of the Facility. Notwithstanding the actual cost to the Locality and the actual use of the bike share station by the Company, the Company and

VEDP acknowledge that the value of such incentive is the corresponding amount set forth above and that, for the purposes of meeting its local match requirement under this Agreement, the Locality shall be deemed to have provided the incentive in the corresponding amount set forth above. Moreover, if by March 31, 2022, the Company does not request the City install a bike share station within a reasonable proximity of the Facility then the Locality shall be deemed to have provided the incentive in the corresponding amount set forth above regardless of whether it installed a bike share station in such area.

The Locality may provide the “In-Kind Workforce Services” and “On-the-Job Training and Work Experience Workforce Services” incentives by offering to work collaboratively with the Company to help meet its workforce needs, through the Locality’s Center for Workforce Innovation (“CWI”) or otherwise, including, but not limited to, the following:

- Serving as a facilitator to connect qualified job seekers with the Company.
- Conducting a workforce needs assessment built upon the Company’s job descriptions and hiring criteria.
- Providing workplace readiness and technical job skills training.
- Holding recruitment events including on or off-site job fairs.
- Providing knowledge and skills essential to the full and adequate performance of jobs at the Company to participants in the Locality’s CWI On-the-Job Training program run by CWI, or equivalent program (“OJT Program”).

Notwithstanding the actual cost to the Locality and the actual use of the In-Kind Workforce Services and On-the-Job Training and Work Experience Workforce Services incentives by the Company, the Company and VEDP acknowledge that the value of the availability of such incentives is the corresponding amount set forth above and that for the purposes of meeting its local match requirement under this Agreement, the Locality shall be deemed to have provided the incentives in the corresponding amount set forth above.

The Locality may provide the Parking Availability and Savings incentive (the “Parking Incentive”) by giving the Company or its employees or contractors, for a period of five years from August 1, 2018 or from the date occurring 30 days after the Company provides the Locality written notice of its intent to begin utilizing the Parking Incentive, whichever date occurs first (the “Parking Incentive Commencement Date”), the first opportunity to license, lease, or otherwise use up to 150 spaces, as such spaces come available in the parking garage owned by the Locality and located at 901 E. Canal Street, at a rate of \$105.00 per month per space for up to five years from the Parking Incentive Commencement Date. To meet the Parking Incentive, the Locality will notify the Company when space becomes available. In order to utilize such space, the Company must, in writing, request use of such space within sixty (60) days of notification of its availability. Upon such notification, to meet the Parking Incentive, the City will allow the use of such space (by license, lease, or otherwise as determined by the Locality in its sole discretion) to the Company or its employee or contractor for \$105.00 per space per month and continue to allow the Company or its employee or contractor to use such space, unless the Company chooses to abandon use, for such rate until five years from the Parking Incentive Commencement Date. If the Locality notifies the Company of the availability of space and the Company does not request to use such space within 60 days of such notification, then the City shall be deemed to have met

the requirements of providing the Parking Incentive as it applies to such space. Notwithstanding the actual amount of parking spaces that become available, the date upon which such parking spaces become available, and the extent to which the Company avails itself to use such parking spaces, provided the Locality notifies the Company when spaces become available and offers the use of such spaces to the Company, as set forth herein, the Company and VEDP acknowledge that the value of the availability of such spaces is the corresponding amount set forth above and that, for the purposes of meeting its local match requirement under this Agreement due five years from the Parking Incentive Commencement Date, the Locality shall be deemed to have provided the incentive in the corresponding amount set forth above.

The Locality may provide the "Permit Fees Grant" incentive by entering into a separate agreement, by and between the Locality, the Authority, and the Company (the "Permit Fees Grant Agreement"), pursuant to which the Locality will, through the Authority, grant an amount equivalent to 80% of the permit fees associated with renovation of the Facility paid by or on behalf of the Company to the Locality, capped at a maximum amount of \$50,000 (the "Permit Fees Grant Payment"). The Permit Fees Grant Agreement is subject to approval by the City Council for the City of Richmond and will provide that in order to receive Permit Fees Grant Payment, the Company must (1) invest a minimum of \$5,750,000 to renovate the Facility within 18 months from the execution of this Agreement and (2) request the Permit Fees Grant Payment within nine (9) months of receiving a Certificate of Occupancy or equivalent documents showing completion of the renovations and documentation showing the investment made and permit fees paid for such renovation. For the purposes of meeting its local match hereunder, upon entering into the Permit Fees Grant Agreement with the Authority and the Company, the Locality shall be deemed to have provided or promised to provide the Permit Fees Grant incentive in the amount of \$50,000 so long as the Locality is not in breach of such agreement and regardless of the actual Permit Fees Grant Payment amount and the Company's eligibility to receive the Permit Fees Grant Payment pursuant to the Permit Fees Grant Agreement.

Section 5. Repayment Obligation.

(a) *If Statutory Minimum Eligibility Requirements are Not Met:* Section 2.2-115 of the Virginia Code requires that the Company make a Capital Investment of at least \$1,500,000 in the Facility and create and Maintain at least fifteen (15) New Jobs at the Facility in order to be eligible for the COF Grant. Failure by the Company to meet either of these statutory minimum eligibility requirements by the Performance Date shall constitute a breach of this Agreement and the Company must repay to the Authority all of the COF Grant proceeds previously disbursed to the Company. In such event, the Authority will repay to VEDP all of the COF Grant proceeds not previously disbursed to the Company.

(b) *Allocation of COF Proceeds:* For purposes of repayment under subsection (c), the COF Grant is to be allocated as fifty percent (50%) (\$750,000) for the Company's Capital Investment Target and fifty percent (50%) (\$750,000) for the Company's New Jobs Target.

(c) *If Statutory Minimum Eligibility Requirements are Met:* The provisions of this subsection (c) shall become applicable only if the Company has met the statutory minimum eligibility requirements set forth in subsection (a). If the Company has met at least ninety percent

(90%) of both of the Targets at the Performance Date, then and thereafter the Company is no longer obligated to repay any portion the COF Grant. If the Company has not met at least ninety percent (90%) of either or both of its Targets as of the Performance Date, then the Company shall repay to the Authority that part of the COF Grant previously disbursed to the Company that is proportional to the Target or Targets for which there is a shortfall. For example, if as of the Performance Date, the entire \$1,500,000 COF Grant has been paid to the Company, but the Capital Investment is only \$12,000,000 (80% of the Capital Investment Target), and only 240 New Jobs have been created and Maintained (80% of the New Jobs Target), then the Company shall repay to the Authority twenty percent (20%) of the COF Grant proceeds that it received allocated to the Capital Investment Target (or \$150,000, in this example), and twenty percent (20%) of the COF Grant proceeds that it received allocated to the New Jobs Target (or \$150,000, in this example). In such event, the Authority will repay to VEDP all of the COF Grant proceeds not previously disbursed to the Company.

(d) *Determination of Inability to Comply:* If the Locality or VEDP shall reasonably determine at any time prior to the Performance Date (a "Determination Date") that the Company is unable or unwilling to meet and Maintain its Targets by and through the Performance Date, and if the Locality, the Authority or VEDP shall have promptly notified the Company of such determination, then the Company must repay to the Authority all of the COF Grant proceeds previously disbursed to the Company. In such event, the Authority will repay to VEDP all of the COF Grant proceeds not previously disbursed to the Company. Such a determination will be based on such extraordinary circumstances as a filing by or on behalf of the Company under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of the Company, an abandonment of the Facility by the Company, or other similar significant event that conclusively demonstrates that the Company will be unable or is unwilling to satisfy the Targets for the COF Grant.

(e) *Repayment Dates:* *Such repayment shall be due from the Company to the Authority within ninety (90) days of the Performance Date or the Determination Date, as applicable.* Any moneys repaid by the Company to the Authority hereunder shall be repaid by the Authority to VEDP for redeposit into the Commonwealth's Development Opportunity Fund. The Locality and the Authority shall use their best efforts to recover such funds, including legal action for breach of this Agreement. Neither the Locality nor the Authority shall have any responsibility for the repayment of any sums payable by the Company hereunder unless said sums have been received by the Authority from the Company.

Section 6. Company Reporting.

The Company shall provide, at the Company's expense, detailed verification reasonably satisfactory to the Locality, the Authority and VEDP of the Company's progress on the Targets. Such progress reports will be provided annually, starting at June 30, 2018, and covering the period through the prior March 31. Further, the Company shall provide such progress reports at such other times as the Locality, the Authority or VEDP may reasonably require.

With each such progress report, the Company shall report to VEDP the amount paid by the Company in the prior calendar year in Virginia corporate income tax. VEDP has represented to the Company that it considers such information to be confidential proprietary information that

is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by VEDP solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

The Company hereby authorizes the Locality, including the Locality's Commissioner of the Revenue and Treasurer, to release to VEDP the Company's real estate tax, business personal property tax and machinery and tools tax information. Such information shall be marked and considered confidential and proprietary and shall be used by VEDP solely for verifying satisfaction of the Capital Investment Target. If the Locality, the Office of the Commissioner of the Revenue or the Office of the Treasurer should require additional documentation or consents from the Company to access such information, the Company shall promptly provide, at the Company's expense, such additional documentation or consents as the Locality, the Authority or VEDP may request.

If requested by VEDP, the Company shall provide to VEDP copies of the Company's quarterly filings with the Virginia Employment Commission covering the period from the date of this Agreement through the Performance Date.

Section 7. Notices.

Formal notices and communications between the Parties shall be given either by: (i) personal service; (ii) delivery by a reputable document delivery service that provides a receipt showing date and time of delivery; (iii) mailing utilizing a certified or first class mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery; or (iv) delivery by electronic mail with transmittal confirmation and confirmation of delivery, addressed as noted below. Notices and communications personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices and communications mailed shall be deemed effective on the second business day following deposit in the United States mail. Notices and communications delivered by email shall be deemed effective the next business day, not less than twenty-four (24) hours, following the date of transmittal and confirmation of delivery to the intended recipient. Such written notices and communications shall be addressed to:

if to the Company, to:

Owens & Minor Medical, Inc.
Attn: Chief Administrative Officer
9170 Lockwood Boulevard
Mechanicsville, VA 23116

with a copy to:

Owens & Minor Medical, Inc.
Attn: General Counsel
9170 Lockwood Boulevard
Mechanicsville, VA 23116

if to the Locality, to:

City of Richmond
900 E. Broad Street
Room _____

with a copy to:

City of Richmond
900 E. Broad Street
Room 300

Richmond, Virginia 23219
Email: _____
Attention: _____

Richmond, Virginia 23219
Email: _____
Attention: City Attorney

if to the Authority, to:

with a copy to:

Economic Development Authority
of the City of Richmond, Virginia
c/o City of Richmond Department of
Economic and Community Development
Main Street Station
1500 East Main Street
Suite 400
Email: _____
Attention: Chair

City of Richmond Department of
Economic and Community Development
900 E. Broad Street
Room 300
Richmond, Virginia 23219
Email: _____
Attention: General Counsel

if to VEDP, to:

with a copy to:

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Email: smoret@yesvirginia.org
Attention: President and CEO

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Email: smcninch@yesvirginia.org
Attention: General Counsel

Section 8. Miscellaneous.

(a) *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement among the Parties as to the COF Grant and may not be amended or modified, except in writing, signed by each of the Parties and consented to by VEDP. This Agreement shall be binding upon and inure to the benefit of the Parties 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 Locality, the Authority and VEDP, which shall not be unreasonably conditioned, delayed or denied.

(b) *Governing Law; Venue:* This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. 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.

(c) *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.

(d) *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.

(e) *Attorney's Fees:* Attorney's fees shall be paid by the Party incurring such fees.

(f) *Subject to Appropriations:* Notwithstanding any provision of this Agreement to the contrary, the Locality shall be obligated to perform under this Agreement, financially and otherwise, only to the extent that sufficient funds for such performance are appropriated by the City Council for the City of Richmond, Virginia.

(g) *Signature Authority:* Unless otherwise specified herein and to the extent permitted by law, the Chief Administrative Officer for the City of Richmond or the designee thereof may provide any authorizations, approvals, and notices contemplated herein on behalf of the Locality.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have executed this Performance Agreement as of the Effective Date.

CITY OF RICHMOND, VIRGINIA

By _____
Name: _____
Title: _____
Date: _____

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

By _____
Name: _____
Title: _____
Date: _____

OWENS & MINOR MEDICAL, INC.

By _____
Name: _____
Title: _____
Date: _____