

**RESOLUTION OF THE INDUSTRIAL DEVELOPMENT AUTHORITY
OF THE COUNTY OF JAMES CITY, VIRGINIA
AUTHORIZING THE ISSUANCE OF UP TO \$3,500,000
IN AGGREGATE PRINCIPAL AMOUNT OF INDUSTRIAL DEVELOPMENT
REVENUE BONDS FOR THE PURPOSE OF FINANCING A
MANUFACTURING FACILITY**

WHEREAS, the Industrial Development Authority of the County of James City, Virginia, a political subdivision of the Commonwealth of Virginia (the "Authority"), is empowered by the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2 of the Code of Virginia, as amended (the "Act"), to issue its revenue bonds for the purpose of inducing manufacturing, industrial and commercial facilities to locate or remain in the Commonwealth of Virginia (the "Commonwealth") and to promote the commerce, safety, health, welfare, convenience or prosperity of the citizens of the Commonwealth;

WHEREAS, the Authority has received a request from Avid Medical, Inc. (the "Applicant"), a Delaware corporation, having its principal place of business currently at 9000 Westmont Drive, Toano, Virginia 23168, requesting that the Authority issue its revenue bonds to assist the Applicant in financing (1) the acquisition, construction and equipping of an approximately 45,000 square foot expansion of the Applicant's existing facility, which expansion will be used in the manufacturing of medical devices and the manufacturing process of assembling and packing procedure - ready kits and subassemblies primarily for sale to health care providers and which will be located on a 3 acre parcel of land adjacent to the existing facility at 9000 Westmont Drive, Toano, Virginia (the "Project") and (2) payment of the costs of issuing the Bonds;

WHEREAS, the issuance of bonds for the Project will induce the Applicant to locate the Project in James City County, Virginia (the "County") and thereby benefit the inhabitants of the County and the Commonwealth through the increase of their commerce and through the promotion of their safety, health, welfare, convenience and prosperity;

WHEREAS, the Applicant, in an appearance before the Authority by the Applicant's representatives and in the application filed with the Authority, has described the benefits of the Project to the inhabitants of the County and the Commonwealth;

WHEREAS, the Project has been described to the Authority, and a public hearing has been held as required by Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), and by the Act; and

WHEREAS, the Applicant has represented that the estimated cost of the Project and all expenses of the issue payable from bond proceeds will require an issue of industrial development revenue bonds in an aggregate principal amount not to exceed \$3,500,000 (the "Bonds");

NOW, THEREFORE, BE IT RESOLVED BY THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE COUNTY OF JAMES CITY, VIRGINIA:

1. It is hereby found and determined that the acquisition, construction and equipping of the Project will be in the public interest, will bring additional revenues and employment into the County and will promote the commerce, safety, health, welfare, convenience or prosperity of the Commonwealth, the County and their citizens. The Project is an "authority facility" within the meaning of the Act.

2. To induce the Applicant to complete the Project in the County, the Authority hereby agrees to assist the Applicant in financing the costs of the Project by undertaking the issuance of its Bonds in an amount not to exceed \$3,500,000 upon terms and conditions mutually agreeable to the Authority and the Applicant and loaning the proceeds of the Bonds to the Applicant pursuant to a loan agreement or similar agreement which will provide payments to the Authority in conformity with the Act sufficient to pay the principal of, premium, if any, and interest on, the Bonds and to pay all other expenses in connection with the Project.

3. The Bonds shall be issued in form acceptable to, and pursuant to terms to be set by, the Authority, and the payment of the Bonds shall be secured by an assignment, for the benefit of the holders thereof, of the Authority's rights to payments under the loan agreement or similar agreement with respect to the Project and may be additionally secured by any other collateral, agreement or assignment. The Bonds may be issued in one or more series at one time or from time to time. The final terms of, security for, and other provisions of, the Bonds shall be determined by the adoption of a final bond resolution by the Authority.

4. It having been represented to the Authority that it is necessary to proceed immediately with the planning and acquisition, construction and equipping of the Project, the Authority hereby agrees that the Applicant may proceed with its plans for the Project, enter into contracts for construction, materials and equipment for the Project and take such other steps as it may deem appropriate in connection therewith; provided, however, that nothing herein shall be deemed to authorize the Applicant to obligate the Authority without its consent in each instance to the payment of any moneys or the performance of any acts in connection with the Project. The Authority agrees that the Applicant may be reimbursed from the proceeds of the Bonds for all costs so incurred by the Applicant, insofar as such costs are properly reimbursable under the Act and other applicable state and federal laws.

5. At the request of the Applicant, the Authority hereby appoints Troutman Sanders LLP, Richmond, Virginia, as Bond Counsel to supervise the proceedings and approve the issuance of the Bonds.

6. In adopting this Resolution, the Authority intends to take "official action" toward the issuance of the Bonds and to evidence its "official intent" to the extent necessary to allow for the use of the proceeds of the Bonds to reimburse the Applicant for "original expenditures" associated with the development or financing of the Project, to the full extent

permitted by Treasury Regulation Section 1.150-2. The Applicant reasonably expects that it will reimburse the “original expenditures” with the proceeds of the Bonds.

7. All costs and expenses in connection with the financing and the acquisition, construction and equipping of the Project, including but not limited to the fees and expenses of the Authority, Authority counsel and Bond Counsel, shall be paid from the proceeds of the Bonds or funds provided by the Applicant. If for any reason the Bonds are not issued, it is understood that all such expenses shall be paid by the Applicant and that the Authority shall have no responsibility therefor.

8. The Applicant hereby agrees to indemnify and save harmless the Authority, its officers, directors, employees and agents from and against all liabilities, obligations, claims, damages, penalties, losses, costs and expenses in any way connected with the Project, the application submitted by the Applicant or the issuance of the Bonds.

9. Neither the Authority, including its officers, directors, employees and agents, nor the County shall be liable and hereby disclaim all liability to the Applicant and all other persons or entities for any damages, direct or consequential, resulting from the failure of the Authority to issue the Bonds for any reason.

10. The Applicant agrees to pay the Authority the fees set forth in the Authority’s application.

11. The Authority hereby (a) recommends that the Board of Supervisors of James City County, Virginia (the “Board”) approve the issuance of the Bonds to the extent required by Section 147(f) of the Code within sixty days of the date of the adoption of this Resolution by the Authority and (b) directs the Chairman or Vice Chairman and the Secretary or Assistant Secretary of the Authority to file with the Board this Resolution, the Applicant’s Fiscal Impact Statement and a reasonably detailed summary of the statements made at the public hearing held by the Authority.

12. The Authority agrees to file a request to the Virginia Small Business Financing Authority for an allocation of up to \$3,500,000 with respect to the Bonds, which allocation is a condition precedent to the issuance of the Bonds as tax-exempt obligations pursuant to federal law. The Applicant in requesting the approval of this Resolution understands that it may not receive allocation of private activity bond volume cap from the State Ceiling or otherwise and understands that the adoption of this Resolution neither carries nor implies any assurance of or commitment for an allocation, nor any obligation with respect thereto. By accepting any proceeding under authority of this Resolution, the Applicant agrees (i) to indemnify and hold the Authority harmless for any damages, direct or consequential, suffered by it as a result of any action or inaction of the Virginia Small Business Financing Authority with respect to such allocations or otherwise, (ii) to provide for such indemnification in all documents to which the Applicant and the Authority are parties, (iii) to provide in such documents that they will forbear to bring any action for such damages as aforesaid, and (iv) to assume the risk that the

entire volume of tax exempt notes or bonds authorized to be issued in the Commonwealth in any period may be allocated to others.

13. All other acts of the officers of the Authority which are in conformity with the purposes and intent of this Resolution and in furtherance of the issuance and sale of the Bonds and the undertaking of the Project are hereby approved and confirmed.

14. This Resolution shall take effect immediately upon its adoption.

ADOPTED: May 16, 2002