

RESOLUTION

APPROVAL FOR AVID MEDICAL, INC., REVENUE BOND ISSUE

- WHEREAS, the Industrial Development Authority of the County of James City, Virginia (the "Authority") on May 16, 2002, considered the application of AVID Medical, Inc., (the "Applicant"), a Delaware corporation, having its principal place of business currently at 9000 Westmont Drive, Toano, Virginia 23168. In that application, the Applicant requested the Authority to issue, pursuant to the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2 of the Code of Virginia of 1950, as amended (the "Act"), up to \$3.5 million of its revenue bonds for a manufacturing facility (the "Bonds"); and
- WHEREAS, the proceeds of the Bonds would be used 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 would 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 would be located on a three-acre parcel of land adjacent to the existing facility at 9000 Westmont Drive, Toano, Virginia (the "Project"); and (2) the payment of the costs of issuing the Bonds; and
- WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), provides that both the governmental unit having jurisdiction over the issuer of private activity bonds and the governmental unit having jurisdiction over the area in which any facility financed with the proceeds of private activity bonds is located, must approve the issuance of the bonds. The Project is located in James City County, Virginia (the "County"), the Authority issues its bonds on behalf of the County and the Board of Supervisors of the County (the "Board") constitutes the highest elected governmental unit of the County; and
- WHEREAS, the Authority held a public hearing on May 16, 2002, regarding this matter on behalf of the Authority and the County and adopted an inducement resolution, and this Board adopted a resolution in June 2002 approving the Project; and
- WHEREAS, however, subsequent to the adoption of the aforementioned resolutions by the Authority and the County, the Applicant and its lender agreed to finance construction of the Project through an interim taxable conventional loan with the issuance of the bonds being delayed until on or about the time of construction completion. The Code requires that bonds for manufacturing purposes be issued within one year of the approval of the Board, thus necessitating a new approval by the Board and a new public hearing; and
- WHEREAS, the Authority held a new public hearing as required by Section 147(f) of the Code and by the Act on June 17, 2003, and has recommended that the Board approve the issuance of the Bonds and has forwarded to the Board: (1) a copy of the Authority's resolution approving the issuance of the Bonds, subject to terms to be agreed upon, which was adopted following its public hearing on June 17, 2003; (2) a copy of the Authority's original inducement resolution adopted on May 16, 2002; (3) a copy of the Fiscal Impact Statement submitted by the Applicant; and (4) a reasonably detailed summary of the comments made at the public hearings on June 17, 2003, and May 16, 2002.

NOW, THEREFORE, BE IT RESOLVED by at the Board of Supervisors of James City County, Virginia:

1. The recitals made in the first and second paragraphs of this resolution are hereby adopted as a part of this resolution.
2. The Board approves the issuance of the Bonds by the Authority in an aggregate principal amount not to exceed \$3.5 million for the benefit of the Applicant to the extent required by Section 147(f) of the Code and Section 15.2-4906 of the Code of Virginia of 1950, as amended.
3. The approval of the issuance of the Bonds does not constitute an endorsement to a prospective purchaser of the Bonds of the creditworthiness of the Applicant or the Project; and, as required by the Act and Virginia law, the Bonds shall provide that none of the Commonwealth of Virginia, the County, or the Authority shall be obligated to pay the principal, or premium, if any, of the Bonds or the interest thereon, or other costs incident thereto except from the revenues and moneys pledged therefor, and neither the faith and credit, nor the taxing power of the Commonwealth of Virginia, nor any political subdivision thereof shall be pledged thereto.
4. The County, including its elected representatives, officers, employees, and agents shall not be liable and hereby disclaims all liability for any damage to the Applicant or the Project, direct or consequential, resulting from the Authority's failure to issue the Bonds for any reason.
5. This Resolution shall take effect immediately upon its adoption.

Jay T. Harrison, Sr.
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 8th day of July, 2003.