



Committee: Directly to Council
Committee Review: N/A
Staff: Gene Smith, Legislative Analyst
Purpose: Final action – vote expected
Keywords: Economic Development

AGENDA ITEM #3E
November 10, 2020
Action

SUBJECT

Resolution to endorse a Maryland Economic Development Assistance Authority and Fund Loan to assist Supernus Pharmaceutical, Inc.'s retention in Montgomery County (\$800,000)

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- N/A

DESCRIPTION/ISSUE

The County must endorse the Maryland Economic Development Assistance Authority and Fund (MEDAAF) loan in a formal resolution, as required by the Economic Development Article §5-319(d) of the Maryland Code. The subject MEDAAF loan is part of a negotiated financial assistance package for the business's retention and expansion in the County.

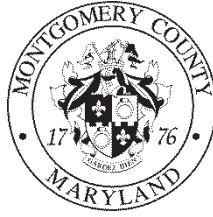
SUMMARY OF KEY DISCUSSION POINTS

- The Executive requests that the Council introduce and adopt the subject resolution to support the business's attraction to the County (see ©1-3).
- The State is providing an \$800,000 MEDAAF loan for the business's retention and expansion.
- The County is providing a \$500,000 conditional grant through the Economic Development Fund (EDF) (see ©4-9). The County's EDF contribution exceeds the 10% requirement by the State; therefore, the County is not required to guarantee any portion of the MEDAAF loan with the full faith and credit of the County.

This report contains:

Executive memo	© #1
Proposed resolution	© #2
EDF Agreement	© #4

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OFFICE OF THE COUNTY EXECUTIVE
Rockville, Maryland 20850

Marc Elrich
County Executive

MEMORANDUM

October 20, 2020

TO: Sidney Katz
President, Montgomery County Council

FROM: Marc Elrich
County Executive 

RE: Resolution in support of financial assistance for Supernus Pharmaceuticals, Inc. through the Maryland Economic Development Authority Administration Fund

Supernus Pharmaceuticals, Inc. is receiving a financial incentive of \$800,000 through the Maryland Economic Development Authority Administration Fund (MEDAAF). This incentive is in conjunction with a \$500,000 incentive the County has provided through the Economic Development Fund. These incentives are for the relocation and retention of the company's business operations and 750 full-time employees in the County.

The State requires a resolution of support from the local governing jurisdiction as a condition of MEDAAF disbursement. The resolution acknowledges that the State of Maryland is utilizing its MEDAAF to provide a financial incentive. The MEDAAF financing program does not require a local jurisdiction's full faith and credit guaranty, but does require that the local jurisdiction provide, at a minimum, a 10% funding match and pass a resolution of support.

Items 5 and 6 of the resolution provide background on the company, and summary project information. A copy of the executed Economic Development Fund Agreement with the company and the Council approval memorandum are included for your reference.

I would appreciate the Council's prompt action on this important matter.

ME/pmg

Attachments

Resolution No.: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Council President at the Request of the County Executive

SUBJECT: Maryland Economic Development Assistance Authority and Fund Loan to assist Supernus Pharmaceuticals, Inc. retention and expansion in Montgomery County (\$800,000)

Background

1. The County Executive endorses a conditional loan of \$800,000 to Supernus Pharmaceutical, Inc. (“Supernus”) from the State of Maryland under the Maryland Economic Development Assistance Authority and Fund (“MEDAAF”), which is codified as Md. Code Ann., Econ. Dev. §§5-301-5-349.
2. MEDAAF provides conditional grants and loans to businesses engaged in eligible industries locating to, or expanding in, a “priority funding area” in the State of Maryland. Proceeds from the grant or loan may be used by the borrower to reimburse it for the acquisition or construction of buildings or real estate, and acquisition, construction and installation of machinery, equipment, furnishings, fixtures, leasehold improvements, site improvements, or infrastructure improvements.
3. The County has approved a conditional grant of \$500,000 from the County’s Economic Development Fund (“EDF”) to assist Supernus’ retention and expansion in the County (the “County Match”) on October 12, 2019. The grant was funded by Supplemental Appropriation 19-333 as required by Section 20-75 (d) of the Montgomery County code. Through this grant Montgomery County has met the requirement of financing a part of the costs of the project which is equal to at least 10% of the financial assistance to be provided from MEDAAF as required by the Section 5-319(d) of the Economic Development Article, Annotated Code of Maryland.
4. The State will disburse the MEDAAF loan to Supernus upon the State entering a MEDAAF Agreement with the company. The County is not a party to this MEDAAF Agreement.
5. Supernus is a specialty pharmaceutical company focused on developing and commercializing products for the treatment of central nervous system diseases. Originally established as PharmAtherne and subsequently acquired by Shire Pharmaceuticals as its R&D Division, Supernus was created in 2005 as a spin-off from Shire. It currently produces and markets Trokendi XR (extended-release topiramate) for the prophylaxis of

migraine and the treatment of epilepsy, and Oxtellar XR (extended-release oxcarbazepine), an epilepsy drug. Supernus is also developing multiple products to treat Impulsive Aggression and ADHD, and has one drug in Phase III clinical trials and another in Phase IIB. The addressable market for these two drugs is approximately \$11 billion.

Supernus was named Top Bioscience Employer by the Washington Business Journal in 2015 and claimed the number one spot in Deloitte's 2015 Fastest Growing Company in North America for the biotech/pharma industry due to its impressive growth. In 2016 the company reported revenues of \$215 million - a 46 % increase over the prior year and its CEO, Jack Khattar was honored with the Life Science CEO of the Year Award by the Maryland Tech Council.

6. Supernus will relocate from the 67,000 Sq. Ft. it currently occupies at 1500-1550 Gude Drive, Rockville to 136,000 Sq. Ft. at 9715-9717 Kew West Avenue, Rockville. The new location will include headquarters operations, laboratories, scale-up manufacturing space and conference/training facilities. This expansion project will incur over \$18 million in capital expenditures, retain 156 jobs in Montgomery County and create 146 new jobs over the next five years with an expected average salary of \$113,100.
7. Section 5-319(d) of the Economic Development Article of the Maryland Code Annotated requires the governing body of the jurisdiction in which the project is located to endorse, by a formal resolution, the State's grant of the MEDAAF loan for the project.
8. The County has determined that granting the MEDAAF loan for the project is in the best interest of the citizens of the County.
9. The County Executive requests that the Council adopt this formal resolution approving the MEDAAF loan for the project.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

The County Council hereby endorses the granting of the State's grant of \$800,000 MEDAAF loan to support Supernus Pharmaceutical, Inc.'s retention and expansion in Montgomery County.

This Resolution is effective upon its adoption in accordance with applicable law.

This is a correct copy of Council action.

Selena Mendy Singleton, Esq.
Clerk of the Council

ECONOMIC DEVELOPMENT FUND AGREEMENT

THIS ECONOMIC DEVELOPMENT FUND AGREEMENT is made this 17th day of October, 2019 between MONTGOMERY COUNTY, MARYLAND (the County) and SUPERNUS PHARMACEUTICALS, INC. (the Recipient).

R E C I T A L S

A. The purpose of this Agreement is to set forth the agreement of the Recipient and the County with respect to the application of funds from the Economic Development Fund, repayment of funds from the Economic Development Fund and the Recipient's commitment to maintain or establish jobs and an economic presence in the County.

B. Establishing and maintaining jobs and business retention and development in Montgomery County are matters of high priority to the County. Recipient intends to establish or maintain at least 316 jobs in Montgomery County. Recipient operates a specialty pharmaceuticals business with 156 employees at the time negotiations for funding commenced.

C. The County has pursuant to Emergency Bill No. 19-95 (§§ 20-73, *et seq.* of the Montgomery County Code), created the Economic Development Fund, the primary purpose of which is to assist private employers who are located or planning to locate or substantially expand operations in Montgomery County.

D. The County by providing assistance pursuant to this Economic Development Fund Agreement intends to materially improve the County's economy and advance County economic development objectives.

E. Recipient has been determined by the County to be eligible to receive funds from the County's Economic Development Fund.

NOW THEREFORE, the parties in consideration of their respective obligations and undertakings hereinafter set forth agree as follows:

1. Recipient will locate or maintain premises at 9715 and 9717 Key West Avenue, Rockville, Maryland 20850 which may be relocated periodically within the County and which will be used for the purpose of headquarters, R&D and scale-up manufacturing operations.

2. Recipient will maintain a minimum employment base of 316 full time employees (full time is defined as an employee that works at least 1,800 hours per year), according to the terms and conditions of the Exhibit A and B in the County or part time employees who work an equivalent total number of hours per year.

3. Subject to the appropriation and availability of funds and to the terms and conditions of the attached exhibits, the County agrees to disburse from the Economic Development Fund to the Recipient the sum of Five Hundred Thousand Dollars (\$500,000.00) to be used only for the purpose of relocation and/or expansion related expenses and for no other purpose.

4. Upon request by the County, Recipient agrees to provide the County with evidence, that the funds provided hereunder, have been used solely for the purposes stated in paragraph 3 above.

5. The Montgomery County Department of Finance will process a request for disbursement from the Economic Development Fund in the amount of Five Hundred Thousand Dollars (\$500,000.00) within twenty (20) working days of Recipient's satisfaction of the conditions set forth above and as specified in Exhibit A.

6. Recipient agrees that the funds provided pursuant to this Agreement and interest thereon, if any, are to be repaid in accordance with the conditions and schedule set out in Exhibit A and B attached hereto and incorporated herein. Payments are to be made on the 15th of the month in which due. Payments made after the 25th of the month in which due are subject to a five percent (5%) late charge. If Recipient breaches or fails to satisfy any of the conditions specified in Exhibit B or any other terms of this Agreement, including, but not limited to failure to make any payment as due, Recipient must within thirty (30) days after demand by the County, or within such schedule and upon such other terms as the County may determine, repay the full amount of the disbursement to Recipient from the Economic Development Fund with interest thereon accrued annually at the rate of three percent (3.0%). Unless otherwise directed by the Director of the Department of Finance, all payments to the County are to be delivered to the Director, Montgomery County Department of Finance, 101 Monroe Street, Suite 1500, Rockville, Maryland 20850. Payments must be made by check payable to Montgomery County, Maryland.

7. Sale, transfer, assignment or other conveyance by Recipient of its business, a majority of its assets or a majority of its corporate or partnership interests or controlling or managing interests will require immediate repayment of any amounts outstanding hereunder during the term of this Agreement. The purchaser, transferee, assignee or other successor-in-interest to Recipient may apply to the Department of Finance to assume the outstanding amount under this Agreement. It is within the sole discretion of the County to determine whether or not it chooses to enter into an assignment and assumption agreement with the purchaser, transferee, assignee or other successor-in-interest of Recipient.

8. This Economic Development Fund Agreement expires, in the absence of any default or breach of the terms hereof, when the Recipient fully repays the loan or grant disbursed under this Economic Development Fund Agreement or upon satisfactory performance by the Recipient of the Exhibit B conditions. In the event of a default or breach of this Economic Development Fund Agreement, the Agreement will terminate upon full repayment of all sums due hereunder. Unless waived in writing by the County, if Recipient fails to satisfy the conditions for an initial disbursement as specified in Exhibit A by the 31st day of March, 2020, this Economic Development Fund Agreement will automatically expire and the County will have no obligation to make any disbursement to Recipient from the Economic Development Fund.

9. Recipient indemnifies and holds the County harmless from any claims, costs, liabilities, judgments or damages, including but not limited to reasonable attorney fees, arising out of or related to Recipient's business and the use of the grant funds.

10. This Economic Development Fund Agreement and Exhibits hereto represent the entire agreement between Recipient and the County.

11. The Recitals are incorporated herein.

IN WITNESS WHEREOF, this ECONOMIC DEVELOPMENT FUND AGREEMENT is executed by the parties as of the above-written date.

SUPERNUS PHARMACEUTICALS, INC.


By: 
Jack Khattar
President and Chief Executive Officer

Date: 10/4/19

MONTGOMERY COUNTY, MARYLAND

By: 
Marc Elrich
County Executive

Date: 10/12/19

Recommended by : 
Michael J. Coveyou
Acting Director
Department of Finance

Date: 10/15/19

The Economic Development Fund Agreement, in its template form, including the Exhibit A and B conditions, has been approved as to form and legality by the County Attorney's Office on January 4, 2017.

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ECONOMIC DEVELOPMENT FUND AGREEMENT
BETWEEN MONTGOMERY COUNTY AND SUPERNUS PHARMACEUTICALS, INC.

Exhibit A

1. Grant Disbursement Conditions: The grant will be disbursed to Supernus Pharmaceuticals, Inc. (“the Recipient”), upon submission of the following documentation to the Department of Finance (DOF):

(A) The Recipient will provide an executed lease for at least 135,000 square feet of space at the Project Site for a minimum term of 10 years. If the term of the executed lease is shorter than the term of the Conditional Grant the Recipient must provide a Letter of Commitment to lease a comparable amount of space in Montgomery County for a term of no less than the term of the Conditional Grant.

(B) The Recipient will invest or cause to be invested a minimum of \$18,200,000 at the Project Site by March 31, 2020 and provide evidence of such investment in a manner acceptable to the County.

(C) The Recipient will provide proof of occupancy of the project site.

(D) The Recipient will submit to the County a copy of the most recent Maryland Unemployment Insurance Quarterly Contribution Report or company payroll report acceptable to the County showing at least 156 full-time employees on the company payroll in Montgomery County.

(E) The Recipient will submit to the County a “Certified Payroll Report”, meaning a list that includes for each full-time employee on its payroll, a unique employee/position identifier number, the employee’s initials, annual salary, and zip code of residence.

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ECONOMIC DEVELOPMENT FUND AGREEMENT
BETWEEN MONTGOMERY COUNTY AND SUPERNUS PHARMACEUTICALS, INC.

Exhibit B

1. Performance Provisions: Supernus Pharmaceuticals, Inc (“the Recipient”) agrees to repay the grant in part or in full under the following circumstances:
2. Term: The term of this conditional grant convertible to a loan is 10 years from the disbursement date of the grant.
3. Performance Provisions: The Recipient agrees to repay the grant in part or in full under the following circumstances:

(A) The Recipient will employ a minimum of 156 full-time permanent employees at the time of Conditional Grant disbursement and maintain that average for the remainder of the term of the Conditional Grant. Full-time employment will be measured using the documents submitted under the Reporting Section.

(B) The Recipient will employ an additional 160 full-time permanent employees at the Project Site by December 31, 2024 for a total of 316 full-time permanent employees and maintain that average for the remainder of the term of the Conditional Grant. Full-time employment will be measured using the documents submitted under the Reporting Section.

The Recipient would repay a pro-rata portion of the principal (\$1,582.28) and the associated portion of accrued interest due for every permanent full-time employee less than 316 but greater than 156. If the Recipient employs less than 156 full-time employees, the Recipient would repay the conditional grant and all outstanding interest in full. Any such sum, less any amounts previously repaid, would be due no later than 90 days from the measurement date.

(C) The Recipient will maintain the headquarters and related business operations in the County for the term of the Conditional Grant.

If the Recipient fails to maintain its business operations in the County for the term of the Conditional Grant, then the Recipient will repay all principal with interest of the Conditional Grant.

(D) The Recipient must submit all documentation requested in the Reporting Requirements for the term of the Conditional Grant. If the Recipient fails to provide any required documents within 60 days of their due date and after 14 days upon receipt of notice from the County, then the Recipient will repay all principal with interest of the Conditional Grant.

3. Repayment: In the event that any of the Performance Criteria are not met, the Conditional Grant would be converted into a loan, bearing an interest rate of three percent (3%) per annum, and calculated on a 360-day basis from the date the funds were disbursed. Repayment will be made in a lump sum on demand, or at the County's discretion, amortized over a two-year period from the conversion date into a loan and payable in monthly installments.
4. Reporting Requirements: The Recipient must submit the following reports to the County until the tenth anniversary date of the grant's disbursement, or if the grant is converted into a loan, until the loan is fully repaid.

(A) Commencing January 31, 2021 and through January 31, 2030, the Recipient must submit copies of its Maryland Unemployment Insurance Quarterly Contribution Report filings for all four quarters of each calendar year, or other documents acceptable to the County, showing the full-time employees on the Recipient's payroll in the County, from 2021 through 2030.

(B) Commencing January 31, 2021 and through January 31, 2030 the Recipient will provide a "Certified Payroll Report" that lists each full-time employee on its payroll. For each employee, the list must include a unique identifier, employee initials, annual salary, and zip code of residence. As job growth is required, the list should also include a marker indicating whether an employee was a new hire or not.

(C) The Recipient will use commercially reasonable efforts to provide to the County a copy of all press releases related to or associated with the Recipient's operations in the County within 30 days of the release date via mail, fax, or e-mail to the following:

Mr. Peter McGinnity
Economic Development Fund Administrator
Montgomery County Department of Finance
101 Monroe Street, Suite 1500
Rockville, Maryland 20850
Tel: (240) 777-2011
Email: peter.mcginny@montgomerycountymd.gov

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