



Committee: Directly to Council
Committee Review: N/A
Staff: Gene Smith, Legislative Analyst
Purpose: To introduce agenda item – no vote expected
Keywords: Economic Development

AGENDA ITEM #18E
July 12, 2022
Introduction

SUBJECT

Resolution to endorse a Maryland Economic Development Assistance Authority and Fund Loan to assist Novavax, Inc.'s retention and expansion in Montgomery County (\$4,000,000)

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 (see ©1-10). 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 ©2-3).
- The State is providing a \$4,000,000 MEDAAF loan for the business's retention and expansion. This loan will be disbursed in two tranches based the business's completion of certain performance metrics.
- The County provided a \$1,000,000 conditional grant through the Economic Development Fund (EDF), which will also be disbursed in two tranches based on the business's performance (see ©4-10). 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
Proposed resolution
Executed EDF Agreement

© #1
© #2-3
© #4-10

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OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

Richard S. Madaleno
Chief Administrative Officer

MEMORANDUM

July 5, 2022

TO: Gabe Albornoz, President
Montgomery County Council

FROM: Richard S. Madaleno, Chief Administrative Officer *Richard Madaleno*

SUBJECT: Resolution in support of financial assistance for Novavax, Inc. through the Maryland Economic Development Assistance Authority and Fund

Novavax, Inc. is receiving a financial incentive of \$4,000,000 through the Maryland Economic Development Assistance Authority and Fund (MEDAAF), which will be disbursed in two phases of \$2,000,000 each. This incentive is in conjunction with a \$1,000,000 incentive the County will provide through the Economic Development Fund, which will also be disbursed in two phases of \$500,000 each. These incentives will retain and expand the company's business operations in the County.

The State requires a resolution of support from the local governing body 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. However, it requires that the local jurisdiction provide a minimum of 10% funding match and pass a resolution of support.

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

I appreciate your prompt consideration of this action.

RS:pmg

Enclosures

Resolution No.: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Council President at the Request of the County Executive

SUBJECT: Maryland Economic Development Assistance Authority and Fund Loan to assist Novavax, Inc.’s retention and expansion in Montgomery County (\$4,000,000)

Background

1. The County Executive endorses a conditional loan of \$4,000,000 to Novavax, Inc. (“Novavax”) 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 through 5-349. This MEDAAF conditional loan will be disbursed in two phases of \$2,000,000 for each phase.
2. MEDAAF provides conditional loans to businesses engaged in eligible industries locating to or expanding in a “priority funding area” in the State of Maryland. Proceeds from the loan may be used by the borrower as reimbursement for the acquisition or construction of buildings or real estate, and the 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 \$1,000,000 from the County’s Economic Development Fund (“EDF”) to assist Novavax’ expansion in the County (the “County Match”) on September 16, 2020. This grant will be disbursed in two phases of \$500,000 each and will be funded by supplemental appropriations, as required by Section 20-75 (d) of the Montgomery County code. Through this conditional 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 Novavax upon the State entering a MEDAAF Agreement with the company. The County is not a party to this MEDAAF Agreement.
5. Novavax is late-stage biotechnology company focused on the discovery, development, and commercialization of vaccines for infectious diseases. Initially formed in New Jersey in 1987, the company relocated to Maryland in 1993 and established its headquarters and principal operations in Gaithersburg. Through the acquisition of Iscanova AB in 2013, Novavax has additional operations in Upsala, Sweden. Novavax uses proprietary

recombinant nanoparticle vaccine technology that provides the ability to tailor vaccines to key components of pathogens to enhance functional immunity and lead to better protection against infection and disease.

6. Novavax anticipates significant expansion in two phases. In addition to the 72,000 square feet Novavax presently occupies, the first phase of the expansion requires an additional 120,000 square feet of space to accommodate manufacturing capacity and employment growth from 142 to 586 employees by the end of 2023. The second phase estimates the same demand for space and personnel as the first phase - 120,000 square feet and 444 new permanent full-time jobs over a 5-year period. Novavax has identified 700 Quince Orchard Rd., Gaithersburg as the first phase location and an undeveloped parcel at 14 Firstfield Rd., Gaithersburg as a potential site for the second phase. Capital expenditure for each phase is projected to be \$43,000,000.
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 \$4,000,000 MEDAAF loan to support Novavax'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.

Judy Rupp
Clerk of the Council

ECONOMIC DEVELOPMENT FUND AGREEMENT

THIS ECONOMIC DEVELOPMENT FUND AGREEMENT (this "Agreement") is made this 9th day of March, 2022 (the "Agreement Date") between MONTGOMERY COUNTY, MARYLAND (the "County") and NOVAVAX, INC. (the "Recipient").

RECITALS:

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 five hundred forty-two (542) jobs in Montgomery County in Phase 1 of a 2-Phase expansion project. Recipient operates a late-stage biotechnology company with one hundred forty-two (142) 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. The 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. The Recipient will locate or maintain premises at 22 and 21 Firstfield Road, Gaithersburg and 700 Quince Orchard Road, Gaithersburg which may be relocated or supplemented within the County from time to time in the sole discretion of the Recipient and which will be used for the purpose of headquarters operations, research & development, and manufacturing.

2. The Recipient will maintain a minimum employment base of 542 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 Exhibit A and B attached hereto and incorporated herein by reference, 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 Phase 1 relocation- and/or expansion-related expenses and for no other purpose.

4. Upon written request by the County, the Recipient agrees to provide the County with reasonably acceptable evidence that all of 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 fifteen (15) working days of Recipient's satisfaction of the conditions set forth above and as specified in Exhibit A required to be met. For purposes hereof, a working day is any day other than a Saturday, Sunday or other day on which County offices are not open for business.

6. The 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. Each payment is to be made by the fifteenth (15th) day of the month in which due. Any payment made after the twenty-fifth (25th) of the month in which it is due is subject to a five percent (5%) late charge. If the 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, the County shall provide written notice thereof setting forth in reasonable detail the breach or failure to satisfy and, at its election, a demand for repayment. Recipient must, within thirty (30) days following receipt of such written demand by the County, or in accordance with such schedule and upon such other terms as Recipient and the County may agree, 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%) from the date of disbursement to the date of repayment. 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 the 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 the Recipient may apply to the Department of Finance to assume the outstanding amount under this Agreement. It shall be 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 to the 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 the Recipient fails to satisfy the conditions for an initial disbursement as specified in Exhibit A by the **thirtieth (30th) day of June, 2022**, this Economic Development Fund Agreement will automatically expire and the County will have no obligation to make any disbursement to the Recipient from the Economic Development Fund.

9. The 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, provided that the Recipient shall have no obligation to indemnify the County for any losses caused by any (a) breach of this Economic Development Fund Agreement by the County or (b) any negligent actions, willful misconduct or violation of law by the County. To the extent settlement of a claim does not release the County from any and all liability, the Recipient shall not settle any such claim without the prior written consent of the County, which consent shall not unreasonably be denied, delayed or

conditioned. The County shall have the right to participate in the defense of the claim and select and obtain representation by separate legal counsel at its own expense.


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

11. The Recitals are incorporated herein.

The remainder of this page is intentionally blank. Signature Page follows.

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

NOVAVAX, INC.

By: 
E3F2D70765104ED...
Jonathan Wallinger

Date: 2/7/2022 

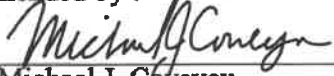
VP, Associate General Counsel

MONTGOMERY COUNTY, MARYLAND

By: 
for Marc Elrich
County Executive

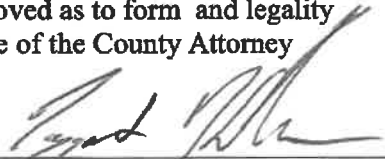
Date: 3/10/22

Recommended by :


Michael J. Coveyou
Director
Department of Finance

Date: 3/8/2022

Approved as to form and legality
Office of the County Attorney

By: 
Taggart Hutchinson
Associate County Attorney

Date: 2/22/22

**ECONOMIC DEVELOPMENT FUND AGREEMENT
BETWEEN MONTGOMERY COUNTY AND NOVAVAX, INC.**

Exhibit A

1. **Term:** The term of the Conditional Grant would be ten (10) years from the initial disbursement of grant funds (the “Disbursement Date”).
2. **Grant Disbursement Conditions:** The conditional grant will be disbursed to Novavax, Inc. (“Recipient”), upon submission of the following documentation to the Department of Finance (“DOF”):
 - A. The Recipient will invest or cause to be invested a minimum of \$50,000,000 at 700 Quince Orchard Road (“Phase 1 Project Site”) by June 30, 2022 and provide evidence of such investment in a manner acceptable to the County.
 - B. 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 542 full-time employees on the company payroll in Montgomery County.
 - B. The Recipient will provide an enumerated “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. If job growth is required, the list should also include a marker indicating whether the employee was a new hire or not.

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ECONOMIC DEVELOPMENT FUND AGREEMENT
BETWEEN MONTGOMERY COUNTY AND NOVAVAX, INC.

Exhibit B

1. **Performance Provisions:** The Recipient agrees to repay the grant in part or in full under the following circumstances:
 - A. The Recipient will maintain its headquarters and any and all related business operations for which this grant is provided in the County for the term of the Conditional Grant. If the Recipient fails to maintain its headquarters and such business operations in the County for the entire term of the Conditional Grant, then the Recipient will repay all principal, with interest, of the Conditional Grant.
 - B. Throughout the term of the Conditional Grant, the Recipient must maintain, at a minimum, five hundred forty-two (542) full-time, permanent employees. Full-time employment will be measured on a calendar year basis as of December 31st of each calendar year (each a "Measurement Date"), using the documents submitted under the Reporting section. The Recipient would repay a pro-rata portion of the principal (\$922.50) and the associated portion of accrued interest due, for every permanent full-time employee less than five hundred forty-two (542) but greater than one hundred forty-two (142) determined as of a Measurement Date, provided that at such time as the Recipient repays any portion of the disbursed principal and pays the associated portion of accrued but unpaid interest pursuant to this provision, the required minimum number of employees shall be reduced from five hundred forty-two (542) by the number of employees with respect to which such repayment has been made. Such repayment would be due no later than ninety (90) days from the most recent Measurement Date.
 - C. If, at any time during the term of the Conditional Grant, the Recipient employs fewer than one hundred forty-two (142) full-time employees, if it has not already done so, the Recipient will repay the Conditional Grant and all outstanding interest in full. Any such sum, less any amounts previously repaid, would be due no later than ninety (90) days from the most recent Measurement Date.
 - D. The Recipient must submit all documentation stipulated in the Reporting Requirements for the term of the Conditional Grant. If the Recipient fails to provide any required documents within sixty (60) days of their due date, the County provides written notice of such failure and the Recipient thereafter fails to provide all such required documentation within fourteen (14) days following receipt of such County notice, the Recipient will repay all disbursed principal plus interest, of the Conditional Grant.
2. **Reporting Requirements:** The Recipient must submit the following reports to the County until the tenth (10th) anniversary of the Disbursement Date.
 - A. Commencing January 31, 2023, and through January 31, 2032, the Recipient will submit full 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 calendar year 2022 through calendar year 2031.

- B. Commencing January 31, 2023, and through January 31, 2032, the Recipient will provide, in an enumerated format, a "Certified Payroll Report" that lists each full-time employee on its payroll as of December 31 of the prior calendar year. For each employee, the list must include a unique identifier, employee initials, annual salary, and zip code of residence, and a marker indicating if the employee was a new hire. The report must be certified by an appropriately authorized officer or senior manager of the Recipient.
- C. The Recipient will provide, in writing, the name and contact information of the person or persons to whom the County may direct any inquiries or correspondence related to this conditional grant and shall promptly notify the County of any changes in this regard.
- D. The Recipient will use commercially reasonable efforts to provide the County copies of press releases related to or associated with the Recipient's operations in the County by adding the following to Recipient's press release distribution list, to automatically provide copies of Recipient's press releases on an ongoing basis to the following:

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

or to such other person or address as the County shall provide to the Recipient in writing.

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