

BA-119-11

Marlin O'Malley
Governor
Anthony G. Brown
Lt. Governor



Alvin C. Collins
Secretary

MARYLAND DEPARTMENT OF GENERAL SERVICES
FACILITIES OPERATIONS & MAINTENANCE • FACILITIES PLANNING, DESIGN & CONSTRUCTION
PROCUREMENT & LOGISTICS • REAL ESTATE

February 9, 2011

Ms. Elizabeth Y. Day
President
The Community Foundation of Frederick County
312 East Church Street
Frederick, Maryland 21701

Re: Montevue Home
08-G153

Dear Ms. Day:

Enclosed for your record is an executed Grant Agreement for the above referenced loan.
If you have any questions, please do not hesitate to call me at (410) 767-4058.

Sincerely,

Fran A. Vehstedt

Enclosure

STATE OF MARYLAND
CAPITAL PROJECTS GRANT AGREEMENT

THIS AGREEMENT ("Agreement") is entered into this 11th day of Jan 2011, by and between the State of Maryland ("State"), acting through the Board of Public Works ("BPW"), the Board of Trustees of the Community Foundation of Frederick County, Inc. ("Grantee"), 312 East Church Street Frederick, Maryland 21701, whose federal taxpayer identification number is 52-1488711, and the Board of County Commissioners of Frederick County, Maryland ("Beneficiary").

Recitals

- A. Grantee has requested grant assistance from the State and completed the Capital Projects Grant Application.
- B. The General Assembly has authorized this grant provided that Grantee expends the money only for the purposes outlined below.
- C. Grantee has no property interest in the Project, which is owned by the Beneficiary, a local government of the State of Maryland.
- D. The Beneficiary has agreed to join in this Grant Agreement to provide assurances the grant funds will be used for the intended purposes.

THEREFORE, the State, the Grantee and the Beneficiary agree as follows:

- 1. *Purpose.* Grantee and Beneficiary may use grant funds for the following purpose only: For the repair, reconstruction, and capital equipment of the Montevue Home, located in Frederick (Frederick County) ("Project"). (See DGS Item G153, Chapter 336 of the 2008 Laws of Maryland ("Enabling Act"), a copy of which is attached as Exhibit 1.)
- 2. *Grant.* After the BPW approves this Agreement, the State shall periodically provide to, or on behalf of, Grantee or Beneficiary funds (the "Grant") not to exceed Two Hundred Thousand Dollars (\$200,000) or the amount of Grantee's matching fund, if and as required by the Enabling Act.
- 3. *Termination of Authorization.* The Enabling Act's authorization to provide Grant funds may be reduced or terminated by the BPW, in its sole discretion, in the event: (a) Grantee fails to provide the required matching fund within 2 years; or (b) no part of the Project is under contract within 2 years; or (c) the Project is abandoned. The Enabling Act's authorization automatically terminates for any grant funds that are unexpended or unencumbered 7 years after authorization.

- 4. Matching Fund. Grantee must provide and expend a matching fund according to the requirements - if any - of the Enabling Act. Failure to provide proof of the required matching fund within 2 years of authorization may result in the reduction or termination of the authorization by the BPW.
- 5. Disbursement of Grant. Subject to the availability of funds, the BPW may periodically authorize payment to, or on behalf of, Grantee or Beneficiary funds in an amount not to exceed the Grant amount. Failure to expend or encumber grant funds within 7 years of authorization will result in the automatic termination of authorization for such unexpended or unencumbered amounts.
- 6. Limitations on Use. Any request to the BPW for disbursement of Grant funds or any expenditure of Grant funds by the Grantee that is not consistent with, or is not specifically and directly related to, the purposes described in Section 1 or with the terms of this Agreement may, in sole discretion of the BPW or its designee, be disapproved.
- 7. Payment Procedures. The State shall make payment to or on behalf of Grantee or Beneficiary in accordance with the procedures in the Capital Grants Projects booklet Information for State of Maryland Capital Grant Recipients www.dgs.maryland.gov/grants, and such other terms and conditions as the BPW, in its sole discretion, may impose.
- 8. Term of Grant Agreement. This Agreement shall terminate in the event the Enabling Act's authorization of grant funds is completely terminated by the BPW under Section 3, above, without the issuance of any bonds. Otherwise, this Agreement shall remain in full force and effect so long as any State general obligation bonds issued, sold and delivered for the purpose of providing any funds for this Grant, remain outstanding, or for such longer period as the parties may mutually agree.
- 9. Reports. Grantee, or Beneficiary acting on behalf of Grantee, shall submit reports in a form acceptable to the State:
 - (a) In accordance with § 7-402 of the State Finance and Procurement Article, of the Annotated Code of Maryland, on or before September 1 after the close of any fiscal year in which Grantee or Beneficiary received funds under this Agreement, a report, verified by an officer of Grantee or Beneficiary, of all expenditures of Grant funds made pursuant to this Agreement. This report must include documentation that Grantee or Beneficiary has expended the Grant funds only for the purposes stated in Section 1. The report must contain an itemized statement that fully and accurately accounts for how the Grant was spent.

- (b) Such other reports or information as the State may from time to time require, including, when required by the BPW, an annual audit report certified by an independent certified public accountant.
- (c) All reports must be delivered to Director, General Accounting Division, Office of the Comptroller of the Treasury, Room 200, Louis L. Goldstein Treasury Building, Annapolis, Maryland 21401.

10. Inspection and Retention of Records. Grantee and Beneficiary shall permit any duly authorized representative of the State to inspect and audit all records and documents of Grantee and Beneficiary relating to this Grant. Grantee shall retain such records for at least three years after the termination of this Agreement.

11. Default. A default is Grantee's or Beneficiary's breach of any of the applicable covenants, agreements, or certifications contained in this Agreement.

12. Remedies Upon Default.

(a) Upon the occurrence of any default, the State, as the BPW in its sole discretion may determine, may require the defaulting party to:

- (i) repay the Grant, in whole or in part;
- (ii) recoup the amount of this Grant already paid from funds due the Grantee from any other current or future State grant or loan or any other funds, otherwise due and owing Grantee;
- (iii) withhold further payments under this Agreement; or
- (iv) terminate this Agreement.

(b) In addition to the rights and remedies contained in this Agreement, the State may at any time proceed to protect and enforce all rights available to it. All rights and remedies survive the termination of this Agreement.

13. Disposition of Property. Neither the Grantee nor Beneficiary may sell, lease, exchange, give away, or otherwise transfer or dispose of any interest in the real or personal property acquired by Grantee or Beneficiary with Grant funds unless the BPW gives prior written consent. This includes transfer or disposition to a successor on the merger, dissolution, or other termination of the existence of the Grantee. The Grantee or Beneficiary shall give the BPW written notice at least sixty (60) calendar days before any proposed transfer or disposition. If the BPW permits transfer or disposition, Grantee or Beneficiary may be required to repay the State that percentage of the proceeds allocable to the Grant that was used to acquire the property all as determined by the BPW in its sole discretion.

14. Insurance. For any item of real or personal property acquired by Grantee or Beneficiary with Grant funds that has an original fair market value of Five Thousand Dollars (\$5,000) or more, the Grantee or Beneficiary shall, at its own expense, and for the reasonable useful life of that item, obtain and maintain all risk or fire and extended coverage insurance or such similar insurance coverage as may be appropriate for the full value of the item, or in amounts as may be commercially reasonable under the circumstances from time to time. Each such policy shall:

- (a) name the State as an additional loss payee thereunder;
- (b) by its terms, be considered primary and non-contributory with respect to any other insurance (if any) provided by the State;
- (c) by its terms, be cancelable only on at least thirty (30) days prior written notice to the Grantee and the BPW; and
- (d) be issued by a reputable insurer authorized to issue such policy in Maryland.

The Grantee or the Beneficiary shall, on request, provide the BPW or its designee with satisfactory evidence of its compliance with this requirement. Proceeds of insurance required by this paragraph may be applied as the BPW, in its sole discretion, shall determine, to the replacement of the real or personal property or toward the partial or total repayment of the Grant to the State. Provided the Grantee or Beneficiary has adequate financial resources, as determined in the sole discretion of the BPW or its designee, the Grantee or Beneficiary may self-insure the property.

15. Indemnification. The Grantee and, to the extent permitted by law and subject to available appropriations, the Beneficiary shall be responsible for, and shall defend, indemnify, and hold harmless the State of Maryland, its officers, agents, and employees, whether or not the State be deemed contributorily negligent, from all suits, actions, liability, or claim of liability (including reasonable attorneys' fees) arising out of:

- (a) Grantee's and Beneficiary's involvement in the Project, including its construction;
- (b) Grantee's and Beneficiary's use, occupancy, conduct, operation, or management of the Project;
- (c) any negligent, intentionally tortious, or other act or omission of the Grantee, Beneficiary or any of their agents, contractors, servants, employees, subtenants, licensees, or invitees in connection with the

Project and.

- (d) any injury to or death of any person or damage to any property occurring in, on, or as a direct or indirect result of Grantee's or Beneficiary's

involvement in the Project or any of the Grantee's activities in connection therewith.

16. Registration. The Grantee is a (charitable) (religious) organization registered with the Maryland Secretary of State in accordance with the Business Regulation Article and/or the Corporations and Association Article (as appropriate) of the Annotated Code of Maryland, and it is in good standing and has filed all of its required reports with the Maryland Secretary of State. (If not applicable, check here).

17. Equal Employment Opportunity. The Grantee and the Beneficiary agree:

- (a) Not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment;
- (b) To include a provision similar to that contained in subsection (a), above, in any contract under this Grant except a contract for standard commercial supplies or raw materials; and
- (c) To post and to cause contractors to post in conspicuous places available to employees and applicants for employment notices setting forth the substance of this clause.

18. Drug and Alcohol Policy. Grantee and Beneficiary certify that they shall make a good faith effort to eliminate illegal drug use and alcohol and drug abuse from its workplace during the term of this Agreement. Specifically, Grantee and Beneficiary shall:

- (a) Prohibit the unlawful manufacture, distribution, dispensation, possession, or use of drugs in its workplace;
- (b) Prohibit its employees from working under the influence of alcohol or drugs;
- (c) Not hire or assign to work on an activity funded in whole or part with State funds, anyone whom it knows, or in the exercise of due diligence should know, currently abuses alcohol or drugs and is not actively engaged in a bona fide rehabilitation program;

- (d) Promptly inform the appropriate law enforcement agency of every drug related crime that occurs in its workplace if it or its employee has observed the violation or otherwise has reliable information that a violation has occurred; and
- (e) Notify employees that drugs and alcohol abuse are banned in the workplace, impose sanctions on employees who abuse drugs and alcohol in the workplace, and institute steps to maintain a drug and alcohol free workplace.

19. Compliance with Applicable Law. The Grantee and the Beneficiary hereby represent and warrant that:

- (a) They are qualified to do business in the State of Maryland and that they will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- (b) They are not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that they shall not become so in arrears during the term of this Grant;
- (c) They shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Grant; and
- (d) They shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Grant.

20. Non-Debarment. Neither the Grantee nor any of its officers, directors, or any of its employees directly involved in obtaining or performing grants or contracts with public bodies has:

- (a) Been convicted of bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law; or of the law of any other state or federal law;
- (b) Been convicted under state or federal statute of any offense enumerated in § 16-203 of the State Finance and Procurement Article of the Annotated Code of Maryland; or
- (c) Been found civilly liable under a State or federal antitrust statute as provided in § 16-203 of the State Finance and Procurement Article of the Annotated Code of Maryland.

21. Non-Collusion. Neither the Grantee nor or any of its officers, directors, or any of its employees directly involved in obtaining or performing grants or contracts with public bodies has:

(a) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in obtaining or performing this Grant.

(b) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of any bidder or offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with this Grant.

22. Financial Disclosure. The Grantee is aware of, and the Grantee will comply with, the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

23. Political Contributions. The Grantee is aware of, and the Grantee will comply with, Article 33, Sections 10 through 14-104 of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$100,000 or more shall file with the State Administrative Board of Election Laws a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

24. No Contingent Fees. The Grantee has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Grantee, to solicit or secure the Grant, and that the Grantee has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of the Grant.

25. No Lobbying Fees. In accordance with § 7-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, the Grantee certifies that no State money has been paid or promised to any legislative agent, lawyer, or lobbyist for any service to obtain the legislation establishing or appropriating funds for the Grant.

- 26. Non-hiring of State Employees. No employee of the State of Maryland or any unit thereof, whose duties as such employee include matters relating to or affecting the subject matter of this Grant, shall, while so employed, become or be an employee of the Grantee.
- 27. Amendment. This Agreement may be amended only in a writing executed by the parties.
- 28. Assignment. Grantee may not assign this Agreement without the prior written approval of the BPW. When so approved, this Agreement shall bind the Grantee's successors and assigns.
- 29. Exhibits. The following documents are incorporated by reference and made a part of this Agreement:

 - Exhibit 1: DGS Item G153, Chapter 336, 2008 Laws of Maryland
 - Exhibit 2: Brochure - Capital Grants Projects - Information for State of Maryland Capital Grant Recipients www.dgs.maryland.gov/grants
- 30. Entire Agreement. This Agreement, including the Exhibits, represents the complete and final understanding of the parties. No other understanding or representations, oral or written, regarding the subject matter of this Agreement, shall be deemed to exist or to bind the parties at the time of execution.
- 31. Maryland Law. The laws of Maryland shall govern the interpretation and enforcement of this Agreement.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

WITNESS our hands and seals, all as of the date first above written.

WITNESS:

David M Fitzgerald

GRANTEE

By: Elizabeth Day (SEAL)
Name: Elizabeth Day
Title: President

WITNESS:

Mary E Baugh

BENEFICIARY

By: Jan H. Gardner
Name: Jan H Gardner
Title: President, BACC

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WITNESS:

STATE OF MARYLAND
BOARD OF PUBLIC WORKS

By: Shella McDonald
Shella McDonald
Executive Secretary

Steven W. Vanderbosch

Approved as to form and legal
sufficiency for the State of Maryland.
Steven W. Vanderbosch
Assistant Attorney General
as of June 01, 2008