RESOLUTION

WHEREAS, the City of Morgantown submitted the necessary paperwork to obtain $5,000 for the Members of Diversity(a 501(c)(3) organization) through the Governor's Community Participation Grant Program, and the grant application has been approved for funding; and

WHEREAS, the grant (11LEDA0652) will allow the Members of Diversity to purchase equipment and materials to assist in conducting career fairs and career training for Morgantown youth; and

WHEREAS, Morgantown City Council is of the opinion that this will be of great benefit to the residents of Morgantown, and therefore agrees to administer the grant contract.

NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown this 4th day of December, 2012, that the City agrees to the conditions of the contract and authorizes the Mayor to sign the West Virginia Development Office contract, and City Manager to administer the execution of the grant

_____

Mayor

_____

City Clerk

PROJECT NUMBER: 11LEDA0652

GOVERNOR'S COMMUNITY PARTICIPATION

GRANT PROGRAM CONTRACT

between the

WEST VIRGINIA DEVELOPMENT OFFICE

and the

CITY OF MORGANTOWN

THIS AGREEMENT, entered into this 1st day of July, 2010, by the West Virginia Department of Finance and Administration on behalf of the West Virginia Development Office hereinafter called the "WVDEVO" and the City of Morgantown and its authorized officers, agents, and representatives, hereinafter called the "Grantee."

WITNESS THAT:

WHEREAS, the WVDEVO has promised and agreed to assist the Grantee to perform such tasks hereafter described in the scope of services, which is to be partially financed by funds made available through the Governor's Community Participation Grant program.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. **Assistance of the Grantee**. The WVDEVO hereby agrees to assist the Grantee including all authorized officers, agents, and representatives, to perform such tasks and functions as set forth below in the scope of services.

2. **Scope of Services**. The Grantee, or its designated agent, shall do, perform and carry out, in a satisfactory and proper manner as determined by the WVDEVO, and appropriate regulatory agencies, if required, all duties, tasks, and functions necessary to purchase equipment and materials to assist Members of Diversity in conducting career fairs and career search training for Morgantown youths.

3. **Personnel**. The Grantee represents that it has, or will secure at its own expense, personnel with the necessary qualifications and experience required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with WVDEVO.

4. **Time Performance**. The Grantee will commence its duties under this Contract on July 1, 2010, and such duties shall be undertaken and completed in such sequences as to assure their expeditious completion in the light of the purpose of the Contract; but, in any event, all of the services required hereunder shall be completed by June 30, 2013. The completion date of this contract may only be extended by mutual written agreement of both parties dependent on the reappropriation of funds under the Governor's Community Participation Grant program. If no such agreement exists, the Grantee shall not receive payment for services rendered or work performed relative to this grant after June 30, 2013.

5. **Compensation**. In consideration of the services rendered by the Grantee, the WVDEVO agrees to pay the Grantee the sum of $5,000. This amount constitutes complete compensation for all services rendered. In no

instance shall the agreed upon compensation exceed $5,000 without the written consent of the Governor of the State of West Virginia.

6. **Method of Payment**. In order to receive payments under the terms of this Agreement, the Grantee shall submit the following: (a) a Letter of Transmittal containing a progress report, and (b) a Request for Payment Financial Report. The final ten percent shall be made available upon submission of certification of completion and acceptance of the project by the Grantee. Upon receipt of said documents, the WVDEVO shall review the same for reasonableness and appropriateness.

7. **Changes**. The WVDEVO and the Grantee may, from time to time, require changes in the scope of the services of the work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Grantee's compensation and work to be performed, which are mutually agreed upon by and between the WVDEVO and the Grantee, shall be incorporated in written amendments to this Contract.

8. **Sub-Grantees and Reversion of Property**. The Grantee may administer funds on behalf of sub-grantees, provided that such a sub-grantee is certified as a nonprofit organization by the United States Internal Revenue Service and the West Virginia Secretary of State's Office. Should such a sub-grantee cease to exist, all commodities or supplies purchased with funds provided under the auspices of this Contract by or for the sub-grantee shall become the property of the Grantee.

9. **Competitive Bid Procedures**. Competitive bidding shall be pursued in all instances. The Grantee must follow the more stringent of either state or local purchasing regulations. The West Virginia Purchasing Division requirements, at a minimum, are as follows: Commodities and services expected to cost $2,500 or less require no bids, however, competition is encouraged. Purchases between $2,500.01 and $5,000 require three verbal bids to be documented on a verbal bid quotation summary. Purchases $5,000.01 to $25,000 require three written bids.

The Grantee shall solicit competitive, sealed bids for commodities and supplies related to this project which have an estimated value of over $25,000. Any attempts by the Grantee to segregate the project into sections having an estimated value of less than $25,000 shall be cause for termination of this agreement under the provisions of Paragraph 28. These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions West Virginia Code §59-3. This notice shall be published by the Grantee in the newspaper with the largest circulation serving the general area once a week for two successive weeks preceding the final bid date.

The Grantee shall also, where feasible, solicit sealed bids by listing the project in the F. W. Dodge Reports, sending requests by mail to prospective suppliers or contractors, and by posting notice on a bulletin board in a public place. The Grantee shall have available upon request for review by the WVDEVO or its designated representative, bid documents and other evidence of compliance with these procedures.

10. **Project Wage Rates.** Every contract involving construction, reconstruction, demolition, improvement, enlargement, painting, decoration, alteration, and/or repair work which involves the employment of any contractor and/or subcontractor necessary for the undertaking and completion of this project, regardless of the source of funds utilized to pay such contract, must comply with the West Virginia Act on Wages on Construction of Public Improvements, West Virginia Code §21-5A. **This law applies to all construction contracts, regardless of cost.**

The receipt and utilization of funds procured under this agreement mandate that all construction contracts necessary for the undertaking and completion of this project, regardless of the source of funds utilized to pay such construction contracts, must comply with the provisions of West Virginia Code § 21-5A.

Such provisions shall include the payment of the Fair Minimum Wage Rates as determined by the West Virginia Commissioner of Labor for each craft or classification of all workmen needed to perform the contract in the locality in which the public work is performed. For projects involving federal funds which are covered by the provisions of the Davis Bacon Act (40 U.S.C. 276-a 276a-5), the Grantee shall cause the contractor and/or subcontractors to pay the higher wage rate, federal or state.

Further, the Grantee shall note this requirement in the advertisement for bids and print these wage rates on all bid documents. The Grantee shall also have available upon request for review by the WVDEVO or its designated representative, bid documents and other evidence of compliance including copies of contractor's payrolls.

11. **Construction**. The Grantee shall procure construction contracts in accordance with West Virginia Code §5-22-1. **The state and its subdivisions shall, except as provided in this section, solicit competitive bids for every construction project exceeding $25,000 in total cost.**

Further, the receipt and utilization of funds procured under this agreement mandate that ALL CONSTRUCTION CONTRACTS NECESSARY FOR THE UNDERTAKING AND COMPLETION OF THIS PROJECT, regardless of the source of funds utilized to pay such construction contracts, must comply with the provisions of West Virginia Code § 21-5A.

The term construction shall mean any construction, reconstruction, improvement, enlargement, painting, decorating, or repair of any public improvement let to contract. These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions West Virginia Code §59-3. This notice shall be published by the Grantee in the newspaper with the largest circulation serving the general area once a week for two successive weeks preceding the final bid date.

Any contracts under this agreement must comply with the West Virginia Act on Wages on Construction of Public Improvements, West Virginia Code §21-5A. This law applies to all construction contracts, regardless of cost. The Grantee shall note this requirement in the advertisement for bids and print these wage rates on all bidding blanks.

The Grantee shall designate the time and place for opening such construction bids in accordance with West Virginia Code §5-22-2.

12. **Bonding**. The Grantee shall secure bonding in accordance with West Virginia Code §5-22-1. All bids submitted pursuant to this chapter shall include a valid bid bond or other surety as approved by the state of West Virginia or its subdivisions. Following the solicitation of such bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: provided, that the state and its subdivisions may reject all bids and solicit new bids.

In the procurement of contracts or subcontracts for construction of less than $100,000, the Grantee shall follow local or State requirements relating to bid guarantees, performance bonds, and payment bonds, provided that the Grantee's and State's interests are adequately protected and that such contracts can be executed in a timely manner.

In the procurement of contracts or subcontracts for construction that exceed $100,000, the Grantee shall obtain the following:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. This bid guarantee shall consist of a firm commitment such as bid bond, certified check, or other negotiable instrument accompanying a bid that the bidder will, upon acceptance of the bid, execute the contractual documents as may be required with the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. This performance bond shall be executed by the successful contractor in connection with the contract to secure fulfillment of the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. This payment bond shall be executed in connection with a contract to assure payment is required by law of all persons supplying labor and materials in the execution of the work provided for in the contract.

13. **Architecture and Engineering**. The Grantee shall procure architectural or engineering services in accordance with West Virginia Code §5G. In the procurement of architectural and engineering services for projects estimated to cost $250,000 or more, the Grantee shall publish a Class II legal ad in compliance with West Virginia Code §59-3. In the procurement of services for projects estimated to cost less than $250,000, the Grantee shall conduct discussions with three or more professional firms.

14. **Design-Build**. The Grantee shall procure design-build projects in accordance with West Virginia Code §5-22A-1. This applies solely to building projects. Highways, water, sewer, and all other public works projects are specifically prohibited from using the design-build method.

15. **Environmental and Historical Assessment.** The Grantee shall comply with all applicable federal, state and local environmental and historical preservation laws and regulations. The Grantee acknowledges this requirement and certifies that the project will be in compliance with such laws and regulations.

16. **Equal Employment Opportunity**. With respect to employment in carrying out the program objectives, the Grantee agrees that it will not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, national origin, or physical handicap.

17. **Facilities Accessible to the Handicapped**. The Grantee shall require any facilities constructed under the auspices of this Contract to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A11/.1-1961, as modified (41CFR101-17.1703 and (13CFR309.14)). The Grantee shall be responsible for conducting inspections to ensure compliance with these specifications.

18. **Facilities Operation**. The Grantee shall operate and maintain all facilities constructed under the auspices of this Contract in accordance with minimum standards as may be required or prescribed by the applicable federal, state and local statute, law, ordinance or regulation as to actual construction procedures, as well as maintenance and operation of such facilities upon completion.

19. **Interest of Members of WVDEVO and Others**. No officer, member or employee of the WVDEVO or officer, member or employee of the Grantee who exercises any function or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Contract which affects his personal interest or the interest of any corporation, partnership, or association in which he is directly or indirectly interested or has any personal or pecuniary interest, nor shall any officer, member of, or employee of, the Grantee or any member of its governing body, or officer, member, or employee of the contractor have any interest, direct or indirect, in this Contract or the proceeds thereof.

20. **Officials Not To Benefit**. No member of the Legislature of the State of West Virginia, or individual performing a service for the Grantee in connection with this project, shall be admitted to any share thereof or to any benefit to arise from this Agreement.

21. **Inspections of Project Records**. At any time during normal business hours and as often as the WVDEVO or its designated representative may deem necessary, there shall be made available to the WVDEVO or its

designated representative for examination, all of its records with respect to all matters covered by this Contract and permit the WVDEVO or its designated representative to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records and personnel, conditions of employment and other data relating to all matters covered by this Contract during the entire time period beginning with project approval and ending three years after the final disbursement of grant funds.

22. **Project Audits**. (a) The Grantee shall cause an audit of this program to be included in the audit of the Grantee performed by the West Virginia State Auditor's Office, Chief Inspection Division, or its designated representative in accordance with West Virginia Code
§6-9-7. The audit shall be performed in conformance with generally acceptable accounting procedures.

(b) In accordance West Virginia Code §12-4-14, if the grantee is not audited by the West Virginia State Auditor's Office and the grantee received state funds or grants in the amount of fifteen thousand dollars or more, the grantee shall file an audit of the disbursement of funds with the legislative auditor's office. The audit shall be filed within two years of the disbursement of funds or grants by the grantee and shall be made by an independent certified public accountant at the cost of the corporation, association or other organization, and must show that the funds or grants were spent for the purposes intended when the grant was made. State funds or audits of state funds or grants under fifteen thousand dollars ($15,000) may be authorized by the joint committee on government and finance to be conducted by the legislative auditor's office at no cost to the grantee.

23. **Reporting**. The Grantee shall submit any reports requested by the WVDEVO concerning financial status and program progress. Failure to provide such reports as required by WVDEVO in a timely manner shall be cause for termination of this Contract under the terms of Paragraph 7.

24. **Fiscal Management**. The Grantee shall be responsible for establishing and maintaining adequate procedures and internal financial controls governing the management and utilization of funds provided under this Contract, as well as funds provided as the Grantee's matching share.

25. **Political Activity**. No officer or employee of the Grantee whose principal employment is in connection with any activity which is financed in whole or in part pursuant to this agreement shall take part in any of the activities expressly prohibited by the Hatch Act.

26. **Repayment**. The Grantee shall refund to the State any expenditures determined to be made for an ineligible purpose for which State funds were received.

27. **Resolution of Disputes**. Resolution of disputes between the State and the Grantee concerning administrative and programmatic matters during the terms of this Agreement shall be initiated through consultation and discussion at the State's Administrative Offices with final decision on questions of policy or fact being determined by the Director of the Community Development Division or his/her designated representative. Nothing in this Agreement shall be construed as making the final decision on a question of law, or to limit in any manner any remedies or recourses available under applicable laws. Citizen's complaints or disputes regarding Grantee performance or actions relative to the approved project are the responsibility of the Grantee.

28. **Termination of Contract for Cause**. If, through any cause, the Grantee shall fail to fulfill in a necessary and proper manner his obligations under this Contract, or if the Grantee shall violate any of the covenants, agreements, or stipulations of this Contract, the WVDEVO shall thereupon have the right to terminate this Contract by giving written notice to the Grantee of such termination and specifying the effective date thereof, at least fifteen days before the effective date of such termination. The Grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed on the described project.

Notwithstanding the above, the Grantee shall not be relieved of liability to the WVDEVO for damages sustained by the WVDEVO by virtue of any breach of the Contract by the Grantee, and the WVDEVO may withhold any payments to the Grantee for the purpose of set-off until such time as the exact amount of damages due the WVDEVO from the Grantee is determined.

29. **Termination for Convenience of WVDEVO**. The WVDEVO may terminate this Contract at any time by giving written notice to the Grantee of such termination and specifying the effective date of termination. If the Contract is terminated by the WVDEVO as provided herein, the Grantee will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Grantee covered by this Contract, less payments of compensation previously made.

30. **Termination by the Grantee**. The Grantee may unilaterally rescind this agreement at any time prior to the commencement of the project. After project commencement, this agreement may be rescinded, modified, or amended only by mutual agreement. A project shall be deemed commenced when the Grantee makes any expenditure or incurs any obligation with respect to the project.

31. **Signing**. This Contract shall be signed by the Executive Director of the West Virginia Development Office and by the Mayor of the City of Morgantown upon authorization of the City of Morgantown by adoption and passage of a resolution, motion or similar official action.

IN WITNESS WHEREOF, the WVDEVO and the Grantee have executed this Agreement as of the date first above written.

STATE OF WEST VIRGINIA
WEST VIRGINIA DEVELOPMENT OFFICE

_____
J. Keith Burdette, Executive Director

CITY OF MORGANTOWN

By:_____
Jim Manilla, Mayor

Federal Employee Identification Number

_____
F.E.I.N.

Project Number: 11LEDA0652

State of West Virginia
Earl Ray Tomblin
Governor

Office of the Governor
State Capitol
1900 Kanawha Boulevard, East
Charleston, WV 25305

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October 29, 2012

The Honorable Jim Manilla
Mayor
City of Morgantown
389 Spruce Street
Morgantown, West Virginia 26505

2ND COPY

Dear Mayor Manilla:

Thank you for your application to the Governor's Community Participation Grant Program.

I, along with Delegate Barrill, Delegate Fleischauer, Delegate Marshall, and Delegate Pasdon, am pleased to approve your request in the amount of $5,000. These funds will enable you to purchase equipment and materials to assist Members of Diversity in conducting career fairs and career search training for Morgantown youths.

To proceed with this project, please fax this letter to 304-558-2246, or mail a copy to: Community Participation Program, West Virginia Development Office, 1900 Kanawha Boulevard, East, Charleston, West Virginia 25305. Please note that funds should not be obligated prior to the full execution of a contract with the State of West Virginia.

We are pleased to work with you to make this improvement a reality for the citizens of Morgantown.

Sincerely,

Earl Ray Tomblin
Governor

ERT:kf

Project Number: 11LEDA0652