

**ELEVENTH AMENDED PARTNERSHIP AGREEMENT
BETWEEN
WORKFORCE SOLUTIONS BORDERPLEX, INC.
AND
CHIEF ELECTED OFFICIALS OF
THE BORERPLEX WORKFORCE DEVELOPMENT AREA**

This Eleventh Amended Partnership Agreement (hereinafter referred to as the “Agreement”) is entered into between Workforce Solutions Borderplex, Inc. (formerly known as the Upper Rio Grande Workforce Development Board, Inc. and/or Workforce Solutions Upper Rio Grande and hereinafter referred to as “WSB”), and the Chief Elected Officials (County Judges) of the Texas Counties of Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, and Presidio, and the Mayor of El Paso, as defined by Texas legislation and governing rules and obligations.

WHEREAS, WSB was duly certified by the Governor of the State of Texas on October 14, 1997, is recognized as the entity in the Borderplex Workforce Development Area in the Texas Counties of Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, and Presidio (formerly referred to as the Upper Rio Grande Workforce Development Area or URGWDA and hereinafter referred to as the “Borderplex-WDA” or informally, as the “region”) with responsibility to provide planning, oversight, and evaluation of programs funded through the Texas Workforce Commission (the “TWC”); and

WHEREAS, it is necessary for the Chief Elected Officials of the Borderplex-WDA (the “CEOs”) and WSB to enter into a partnership agreement, setting forth the roles, responsibilities, relationships, and functions of each party hereto, and to determine procedures for the development of the local workforce development plan; and

WHEREAS, the CEOs are required to be parties to this agreement, and have selected the County Judge of El Paso County, Texas as their authorized representative to enter into this agreement on their behalf and perform the duties as signatory authority; and

WHEREAS, a Chairperson has been duly elected by members of WSB and is the authorized representative to enter into this agreement on WSB’s behalf,

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL OBLIGATIONS AND AGREEMENTS SET FORTH HEREIN, IT IS HEREBY RESOLVED THAT THE PARTIES AGREE THAT THE MANDATORY PARTNERSHIP AGREEMENT TO ESTABLISH THE RULES, RESPONSIBILITIES, RELATIONSHIPS, AND FUNCTIONS IS AS FOLLOWS:

I. PURPOSE OF THE AGREEMENT

The purpose of the Agreement is to reduce to writing an agreement defining the authority, roles, and responsibilities of WSB and the CEOs, and determining the procedures for developing the local Borderplex-WDA Plan.

II. GENERAL RESPONSIBILITIES OF WSB AND CEOs

- (a) WSB is directly responsible for the strategic and operations planning, oversight, evaluation and administration of workforce training services of the Borderplex-WDA. WSB will submit all required strategic and operations plan for review and approval by the CEOs.
- (b) The CEOs will take an active role in promoting effective workforce programs and through WSB, assure the proper use of federal and state funds for workforce program development, implementation, and oversight.
- (c) WSB shall be the designated grant recipient/fiscal agent and the administrative entity for the Borderplex-WDA.
- (d) WSB is directly responsible for establishing a regional, strategic Borderplex-WDA Plan, as further described herein, in partnership with the CEOs. WSB shall adopt procedures for the development of the regional Borderplex-WDA Plan and any annual modifications thereto.
- (e) WSB is directly responsible for preparing an annual operating budget and obtaining input and approval from the CEOs prior to WSB's approval of the budget.
- (f) WSB is directly responsible for negotiating and obtaining approval of the CEOs and the Office of the Governor concerning adopted regional performance measures relative to the actions of WSB and the Borderplex-WDA Plan.
- (g) WSB will seek the input of the CEOs in establishing the criteria for any requests for proposals to be issued by WSB for one-stop workforce service delivery and child care providers whose contractual budgets exceed \$2 million per year (hereinafter "Workforce Services Contractors"). WSB is further directly responsible to advise the CEOs of WSB's intended selection of any Workforce Services Contractors to be designated or certified by WSB in order to allow the CEOs sufficient time to submit their input and direction, if any, with regard to the selection of the Workforce Services Contractors and any contracts to be executed between WSB and any one-stop operator or service provider
- (h) WSB shall be directly responsible for delivering to the CEOs the following documents on not less than a quarterly basis:
 - (1) quarterly written reports summarizing administrative, operational, one-stop career center, monitoring, evaluation, and financial activities;
 - (2) copies of all annual audit reports and special or periodic reports required by the TWC or higher authority;
 - (3) briefings and/or special reports as may be requested by CEOs;
- (i) Upon at least five business days' advance written notice, the CEOs and any of their duly authorized representatives shall have access to any books, documents, papers and records

of WSB, WSB's contractors and service providers, that are related to the regional workforce system in the Borderplex-WDA, for the purpose of conducting surveys, audits, program evaluations of the regional workforce system and oversight and/or investigative review of the Borderplex-WDA Programs. The surveys, audits and/or program evaluations will be conducted in accordance with generally accepted governmental auditing standards, as well as, OMB Circular A-133. The costs of such surveys, audits, and/or program evaluations will be categorized as administrative grant expenses and borne by the respective Programs.

- (j) WSB is directly responsible for providing the CEOs with notification of upcoming monthly or special full board meetings, executive committee meetings, oversight and evaluation committee meetings and policy and planning committee, and copies of all agendas of these meetings, at the same time such documents are delivered to WSB's board members.
- (k) The CEOs or their authorized designee may serve as non-voting, ex-officio members of WSB and may attend any regular, special or committee meeting of WSB's board members, with the exclusion of any board meetings which occur under the Executive Session exemptions of the Texas Open Meetings Act, Tex. Gov't Code Ann. §§ 551.071 to 551.086.
- (l) WSB is responsible for the employment of an Executive Officer to manage the day-to-day operations and lead the direction of WSB. WSB will establish the terms and conditions of employment for its Executive Officer. The CEOs, however, shall be provided an opportunity to provide their input regarding the hiring of the Executive Officer of WSB and shall be entitled to provide input in the performance evaluation process of the Executive Director once employed, and may recommend removal of the Executive Officer, subject to WSB's approval and according to its bylaws and policies, by majority vote of the CEOs.
- (m) The CEOs shall review and may comment upon WSB's by-laws, vision/mission statement and all strategic planning documents establishing the goals and objectives of WSB whenever any material revisions or changes to the by-laws, vision/mission statement or strategic planning documents are proposed.
- (n) The CEOs shall be provided an advance opportunity to review, analyze and provide their input and direction regarding grant agreements, contracts with service providers, and contracts with one-stop operators and training providers in excess of the amount of \$2 million; if the Designated CEO or his authorized representative has not responded to a request for input and direction within ten (10) working days from receipt, the review period and assent of the Designated CEO may be assumed by WSB. WSB may expedite the CEOs review process in case of emergencies. In such instances, WSB will provide the CEOs as much time as practicable to review the application/contract before it is submitted/executed.
- (o) The CEOs may remove any appointed board member for cause based on any of the following eight factors:

- (1) Impermissible conflict of interests, including but not limited to non-compliance with WSB's adopted Conflict of Interest Policy, Integrity of the Workforce System Policy, or failure to comply with the recusal provisions of Section 2308.257 of the Texas Government Code;
- (2) Conduct in violation of federal, state or local statutes, rules, policies, procedures or grant agreements;
- (3) Violation of procurement policies or procedures;
- (4) Poor attendance, as defined by WSB's bylaws;
- (5) Change in employment to the extent they do not represent the public or private area, which they were appointed;
- (6) Transfer or a move outside the Borderplex-WDA;
- (7) Failure to comply with this agreement, the Interlocal Agreement between the CEOs, WDB by-laws or decisions, or the grant agreements;
- (8) Any other reason allowed by federal and state statutes, regulations, policies or procedures.

WSB and CEOs roles, functions, and responsibilities as established by the most recently approved Borderplex-WDA Interlocal Agreement and amendments, (attached hereto as Attachment A) are incorporated into this Agreement by reference. (In the event of a conflict between such laws and regulations governing the Borderplex-WDA and the terms and conditions of this Agreement, precedence shall be given to the laws and regulations.)

III. FUNCTION OF WSB

WSB shall:

- (a) provide travel and training funds for the CEOs of the Borderplex-WDA, or their authorized representatives, as may be necessary, to the extent travel and training funds are available and approved for this purpose by WSB;
- (b) upon request from the CEOs, set aside discretionary administrative funds, if any, to be used by the CEOs or their authorized representatives as necessary for surveys, audits, program evaluations and oversight and/or investigative review conducted in accordance with Sections II(i) or VIII(d) of this Agreement;
- (c) be directly responsible and accountable to TWC for the planning and oversight of all workforce training and services and the evaluation of all workforce development programs in the Borderplex-WDA;
- (d) ensure effective outcomes consistent with statewide goals, objectives, and performance standards approved by the Governor of Texas;
- (e) be directly responsible to TWC for the operation, planning, and administration of all workforce training and services funded through TWC to the region;

- (f) be directly responsible to TWC and/or the United States Department of Labor (“DOL”) or other federal agency in cases where funding or programs are not overseen by the DOL, as applicable, for the administration of programs operated in the Borderplex-WDA under the following programs
- Workforce Innovation and Opportunity Act (“WIOA”), which was enacted in July 2014 and went into effect in July 2015, superseding the Workforce Investment Act Title I [with the following programs under WIOA: Youth, Adult and Dislocated Worker] ;
 - Wagner-Peyser Act of 1933, as amended [Employment Services & Migrant and Seasonal Farm Worker] (“ES & MSFW”);
 - Temporary Assistance to Needy Families/Choices (“TANF/Choices”);
 - Supplemental Nutrition Assistance Program Employment and Training (“SNAP E&T”)
 - Noncustodial Parent program (“NCP”)
 - Trade Adjustment Assistance (“TAA”);
 - Child Care Services;
 - Rapid Response;
 - Grant-funded and special TWC-funded projects (“Special TWC Projects”)
 - Grant-funded and special DOL-funded projects (“Special DOL Projects”); and
 - Other grants and funding as determined by the state and federal law or regulations to be appropriate for administration and oversight by WSB;
- (g) serve as a single point of contact for regional businesses to communicate their skill needs and influence the direction of all workforce development programs in the Borderplex-WDA;
- (h) develop a local and regional plan for addressing the workforce development needs of the Borderplex-WDA that:
- (1) is responsible to the goals, objectives, and performance standards established by the governor;
 - (2) targets services to meet local and regional needs, including the identification of industries and employers likely to employ workers who complete job training programs; and
 - (3) ensures that workforce development systems, including the education system, have the flexibility to meet the needs of local and regional businesses.
- (i) ensure the operation of workforce and career development centers as established in the WIOA and applicable state laws and regulations;
- (j) create and oversee a standing Youth Advisory Committee as advised by WIOA (“Education and Youth Committee”), whether such Education and Youth Committee is performed by WSB’s Board of Directors or a subcommittee of WSB’s Board of Directors, in partnership with the CEOs, with the Education and Youth Committee to contribute an informed critical youth voice and perspective for the WSB;

- (k) review plans for workforce education to ensure that plans address the needs of local businesses and recommend changes in the delivery of education services as appropriate;
- (l) assume the functions and responsibilities of regional workforce development advisory boards, councils, and committees, authorized by federal or state laws, including private industry councils, workforce planning committees, job service employer committees, and local general vocational program advisory committees;
- (m) monitor and evaluate the effectiveness of the career development centers, state agencies and other contractors providing workforce training and services, and vocational technical education programs operated by local education agencies and institutions of higher education to ensure that performance is consistent with state and local goals and objectives;
- (n) provide cooperation and coordination among public organizations, community organizations, and private businesses providing workforce development services; and
- (o) ensure that employment services are provided for persons seeking employment in the local workforce development area;
- (p) provide to the CEOs, within five working days of receipt, copies of all audits and audit findings, monitoring findings and reports, and all lawsuits and administrative claims/action (except those covered by insurance) exceeding the amount of \$100,000.00 brought against WSB or any other circumstance which could potentially create a financial liability on the part of the Borderplex-WDA Counties or the City of El Paso, and any WDB responses thereto; and provide updates to the CEOs concerning the resolution of any audit or monitoring findings and legal claims and/or actions; and
- (q) obtain sufficient liability insurance and a fidelity/fiduciary bond to cover all actions and liability of WSB, its employees, officers, agents, etc. to the satisfaction of the CEOs; copies of all certificates and insurance policies required herein shall be provided to the CEOs and any increase in risk due to increase in contractual obligations or funding or as defined by the insurance providers shall be addressed by WSB by obtaining increased insurance coverage hereunder.

IV. DEVELOPMENT OF THE BORDERPLEX-WDA PLAN

WSB shall develop a single plan (referred herein as the “WSB Plan”) that includes the components specified below:

- (a) A strategy component that:
 - (1) assesses the labor market needs of the Borderplex-WDA;
 - (2) identifies existing workforce development programs;
 - (3) evaluates the effectiveness of existing programs and services; and

- (4) sets board goals and objectives for all workforce development programs in the Borderplex-WDA consistent with, statewide goals, objectives, and performance standards.
- (b) An operation component that specifies how all of the resources available in the Borderplex-WDA be used to achieve the goals and objectives of the plan for the Borderplex-WDA. At a minimum, this component must establish:
- (1) the goals, objectives, and performance measures to be used in overseeing and evaluating the operation of all workforce training and services;
 - (2) the segments of the population targeted for various services;
 - (3) the mix of services to be provided and how they are to be provided; and
 - (4) the structure of the local service delivery system.
- (c) Each of the federally funded categorical programs listed below must be addressed in the operational plan. In cases where WSB is not contracting with TWC for the provision of services, the local delivery system for each program must be described. For programs that will be operated by TWC under contract with WSB, describe the schedule for the eventual assumption of the programs by WSB, if applicable.
- (1) Workforce Innovation and Opportunity Act;
 - (2) Basic and Individualized Career Services;
 - (2) Employment Services;
 - (3) Temporary Assistance to Needy Families (TANF)/Choices;
 - (4) Child Care;
 - (5) SNAP E&T;
 - (6) Non-custodial Parent;
 - (7) Trade Adjustment Assistance Act;
 - (8) Rapid Response; and
 - (9) Business Services
- (d) The strategy and operational sections of the local plan may be amended to comply with the requirements set forth by the TWC for local workforce plans.

V. DESIGNATED GRANT RECIPIENT/FISCAL AGENT

WSB is currently serving and pursuant to this Agreement will continue to serve as grant recipient/fiscal agent to receive and disburse workforce development funds.

VI. DESIGNATED ADMINISTRATIVE ENTITY

WSB is currently serving and pursuant to this Agreement will continue to serve as administrative entity to provide management of workforce training activities. WSB shall have responsibility for the allocation of funds, programmatic decision making, program compliance, and ensuring that workforce funds are expended in accordance with applicable law.

VII. ALLOCATION OF RESOURCES

Available funds will be distributed within the Borderplex-WDA by WSB according to a formula or process in a fair, equitable, and lawful manner. Factors to be considered for allocation of resources include, but are not limited to: nature of funds, unemployment rates, employment opportunities, population, level of poverty, capacity for training services, and other relevant factors.

VIII. ALLOCATION OF LIABILITY

Responsibility for disallowed costs and other liabilities, including but not limited to court costs, settlements, judgments and attorney's fees shall be as follows:

- (a) first: WSB will endeavor to recover the disallowed funds from the service provider or subcontractor(s) responsible for providing the training and services related to the disallowed costs;
- (b) second: WSB will seek to recover funds from the insurance carriers or fidelity bond issuer governing WSB and its employees, officers, agents, etc.;
- (c) third: WSB will seek to recover funds from available local workforce development funds, including any available discretionary funds, to the extent allowed by law;
- (d) fourth: WSB will as a last resort, seek to recover funds to the extent allowed by law, from the local government jurisdictions represented by the CEOs, on a prorated basis, according to the distribution of funds in the affected programs. WSB shall immediately notify the CEOs of any settlement proposal or resolution agreement, and the CEOs shall review and approve any settlement or other resolution agreement which creates liability under this paragraph. The CEOs may retain legal or auditing services to review the cause of any adverse circumstance which might result in liability hereunder. These costs shall be reimbursed by WSB as provided in Section III(b).
- (e) If liability arises under Paragraph D above, liability shall be apportioned as follows:
 - (1) If the liability or disallowance is directly attributable to services to residents of one or more of the rural counties, the rural county or counties in which the services or benefits were delivered shall assume liability or disallowance for those costs.
 - (2) If the liability or disallowance is directly attributable to services to residents of the City of El Paso or El Paso County, the jurisdiction in which the services or benefits were delivered shall assume liability or disallowance for those costs.
 - (3) In the event the liability or disallowance is administrative or otherwise is not attributable in accordance with e(1) or e(2) above, the CEOs shall apportion the costs in proportion to their respective populations as determined by the 2010 Census.

IX. DISPUTE RESOLUTION

In any case of dispute or disagreement between WSB and the CEOs, the CEOs may issue a final decision concerning the disputed issue and the parties shall attempt to abide by that decision, to the maximum extent allowed by law. Before issuing a final decision, WSB and the CEO's shall attempt to resolve the dispute through an expedited dispute resolution process mutually agreed upon between the parties. Any and all reasonable costs, including but not limited to attorneys' fees, associated with dispute resolution shall be paid by each respective party. To the extent that a disputed issue may not be resolved through the dispute resolution process, before the CEOs issue a final decision, WSB and CEOs will submit the dispute to the TWC to obtain the TWC's advice and position on the disputed issue.

X. NO WAIVER OF SOVEREIGN IMMUNITY

The CEOs and WDB agree that neither the CEOs nor WSB waive their sovereign immunity or immunity to suit, liability or limitation upon damages by executing this Agreement or any other contract or agreement related to the Agreement.

XI. AMENDMENTS

This Agreement may be amended at any time by written agreement signed by the parties. Any alterations, additions, or deletions to the terms of this agreement which are required by changes in federal or state law or regulations are automatically incorporated into this Agreement without written amendment hereto and shall become effective on the date that portion of the law or regulations becomes effective.

XII. SEVERABILITY

It is agreed that if any provisions of this Agreement is determined to be invalid, illegal, or unenforceable, applicable law and/or regulations shall take precedence in resolving any inconsistencies, and that the remainder of the Agreement shall remain valid and binding.

XIII. TERM OF THE AGREEMENT

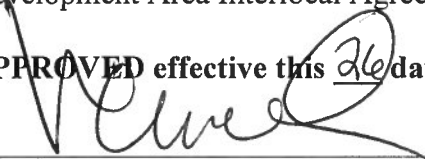
This Agreement is effective from date of signing through October 31, 2019. It may terminate, however, prior to that date if either WSB or CEOs provides 180 days notice of intention to terminate. This Agreement may be terminated by the CEOs, with 180 days advance notice and a right to cure if the CEOs determine that there is a substantial failure to comply with applicable state law, rules or regulations governing the workforce development programs in the Borderplex-WDA.

[remainder of page intentionally left blank; signatures on following page]

IX. CONFLICT AMONG AGREEMENTS

The terms of this Agreement, and the responsibilities, duties and functions of WSB and CEOs delineated herein, shall prevail to the extent of any conflict between the responsibilities, duties and functions of WSB and CEOs set forth in the most recently executed Borderplex Workforce Development Area Interlocal Agreement executed among the CEOs.

APPROVED effective this 26 day of September, 2016.



Lead CEO, Borderplex
Workforce Development Area



Leo A. Duran, Sr.
Chairperson
Workforce Solutions Borderplex, Inc.