

CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Economic & International Development Department
AGENDA DATE: CCA Consent September 29, 2020
CONTACT PERSON/PHONE NUMBER: Jessica Herrera, Director – 915-212-1615
DISTRICT(S) AFFECTED: ALL Districts

SUBJECT:

That the Mayor be authorized to sign the Interlocal and Partnership Agreement by and between the Chief Elected Officials of the Borderplex Workforce Development Areas and Workforce Solutions Borderplex (“Agreement”). The Agreement provides information concerning the formation of the workforce development board, as required by the Workforce Investment Act (Texas Government Code, Chapter 2308), and includes a partnership agreement between the parties governing the operations and responsibilities of the regional workforce development board.

BACKGROUND / DISCUSSION:

On April 15, 1997 the Chief Elected Officials of the local workforce development area (WDA) formed a local workforce development board to plan and oversee the delivery of all workforce training and services programs, evaluate all workforce development programs in the Borderplex WDA, and carry out the governmental functions and responsibilities of a local workforce development board in accordance with federal and state law. The CEOs of the Borderplex Workforce Development Area are required to execute and maintain an interlocal agreement amongst the CEOs pertaining to the operation of the regional workforce development board. This interlocal agreement is entered into by and between the City of El Paso and the Texas Counties of Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, and Presidio.

The interlocal agreement delineates:

- 1) The purpose of the agreement
- 2) The process used to select the CEO who will act on the behalf of the other CEOs and the name of the CEO selected
- 3) The process that will be used to keep CEOs informed regarding local workforce development activities
- 4) The size of the local workforce development board
- 5) How resources and liabilities allocated to the workforce development board will be shared among the parties to the agreement
- 6) The process to be used to appoint or remove members of the Board of Directors of the local workforce development board
- 7) The terms of office of the members of the Board of Directors of the local workforce development board

The partnership portion of the agreement is entered into by and between the Workforce Solutions Borderplex (WSB) and the CEOs. WSB is certified and recognized as the entity with responsibility to provide planning, oversight, and evaluation of programs funded through the Texas Workforce Commission. The partnership agreement between WSB and the CEOs sets forth the roles, responsibilities, and functions of each party and the procedures for the development of the local workforce development plan.

PRIOR COUNCIL ACTION:

None.

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD: Jessica Herrera

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign the Interlocal and Partnership Agreement by and between the Chief Elected Officials of the Borderplex Workforce Development Areas and Workforce Solutions Borderplex (“Agreement”). The Agreement provides information concerning the formation of the workforce development board, as required by the Workforce Investment Act (Texas Government Code, Chapter 2308), and includes a partnership agreement between the parties governing the operations and responsibilities of the regional workforce development board.

Approved this ____ day of _____, 2020.


THE CITY OF EL PASO

Dee Margo
Mayor

Attest:

Laura D. Prine
City Clerk

Approved as to Form:



Roberta Brito
Assistant City Attorney

**Interlocal and Partnership Agreement by and between the
Chief Elected Officials of the Borderplex Workforce Development Area
And Workforce Solutions Borderplex**

This Interlocal and Partnership Agreement by and between the Chief Elected Officials of the Borderplex Workforce Development Area and Workforce Solutions Borderplex (the “*Agreement*”) is dated effective October 1, 2020.

Whereas, the Chief Elected Officials of the Borderplex Workforce Development Area (the “*CEOs*”) are required execute and maintain an interlocal agreement amongst the CEOs pertaining to the operation of the regional workforce development board operating within the collective jurisdictions of the CEOs;

Whereas, the CEOs are further required to execute and maintain a partnership agreement between them, on the one hand, the workforce development board operating in their jurisdictions; and

Whereas, the CEOs and workforce development board are in agreement to execute this Agreement to serve as both the (1) interlocal agreement and (2) partnership agreement for workforce development role in the jurisdictions of the CEOs:

Now, therefore, the CEOs agree among themselves to the terms of the interlocal set forth in Article I of this Agreement and the CEOs agree with Workforce Solutions Borderplex to the terms of the partnership agreement set forth in Article II of this Agreement, and to any other provisions or obligations set forth herein:

I. Terms of the Borderplex Area Interlocal Agreement

Sub-Recitals for Article I – The Interlocal Agreement

Whereas, this Article I is the Interlocal portion of the Agreement, and is entered into by and between the City of El Paso, a municipal corporation organized and existing under the laws of the State of Texas (the “*City*”), and the Texas Counties of Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, and Presidio, who are political subdivisions of the State of Texas (collectively referred to as the “*Counties*”);

Whereas, the Texas Legislature has enacted legislation for the operation for a state-wide integrated workforce development system; and

Whereas, the Governor of the State of Texas has designated local workforce development areas, and has specifically designated the Counties of Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, and Presidio as the Upper Rio Grande Workforce Development Area (the “*Borderplex-WDA*”); and

Whereas, on April 15, 1997, the CEOs of a local workforce development area formed a local workforce development board to plan and oversee the delivery of all

workforce training and services programs, evaluate all workforce development programs in the Borderplex-WDA, and carry out the governmental functions and responsibilities of a local workforce development board in accordance with federal and state law; and

Whereas, a workforce development board, in partnership with the CEOs, shall continue to be responsible for providing policy guidance and exercising oversight by, among other activities, reviewing, monitoring, and evaluating the job training plan activities of the workforce development area; and

Whereas, in any case in which there is more than one CEO in a workforce development area, a decision must be made to have a single CEO as a designated CEO to act on behalf of the other CEOs; and

Whereas, the CEOs must agree to the formation of a local workforce development board and sign an interlocal agreement delineating the following:

- (I) Purpose of the agreement;
- (II) Process used to select the CEO who will act on behalf of the other CEOs, and the name of such CEO if the person has been selected;
- (III) Process that will be used to keep the CEOs informed regarding local workforce development activities;
- (IV) The size of the local workforce development board;
- (V) How resources and liabilities allocated to the local workforce development board will be shared among the parties to this agreement;
- (VI) The process to be used to appoint or remove members of the Board of Directors of the local workforce development board; and
- (VII) The terms of office of the members of the Board of Directors of the local workforce development board.

Now, therefore, as the terms of the Interlocal, as set forth in this Article I, the CEOs agree:

A. Purpose and Term

1. The purpose of this Article I is to inform the Governor of the continuing desire of CEOs of the Borderplex-WDA to maintain the operation of a local workforce development board under the name “*Workforce Solutions Borderplex*” (“*WSB*”), and to provide information, as required by the application process, to the Texas Workforce Commission (“*TWC*”) and/or United States Department of Labor (“*DOL*”).

2. This Agreement shall be effective upon its execution and shall remain in effect until otherwise amended or terminated in accordance with Section K of this Agreement. Upon execution of this Agreement, the terms and conditions of this Agreement shall supersede any prior Interlocal Agreements entered into between the CEOs governing the Borderplex-WDA.

B. General Responsibilities of the CEOs

1. The CEOs shall conduct oversight and shall fulfill those responsibilities required by applicable federal and state statutes, rules, policies, procedures, and grant agreements governing the Borderplex-WDA. Duties of CEOs shall include, but need not be limited to the following areas:

a. Appointments to the Board of Directors of the WSB as further discussed herein and as guided by applicable law;

b. Removal for cause of Board of Director members appointed to the WSB, in accordance with the provisions of this Agreement and applicable law;

c. Selection of a single chief elected official as the designated chief elected official for the Borderplex-WDA;

d. Providing input and consenting to the appointment of the Executive Officer of the WSB to oversee the staff and day-to-day operations of the WSB, participation in the performance evaluation process of the Executive Officer once appointed, and authority to recommend the removal of the Executive officer by majority vote of the CEOs;

e. Review and comment on the WSB's bylaws, vision/mission statement and all major planning documents, the Borderplex-WDA Strategic Plan, and any and all modifications to any of the aforementioned documents;

f. Review, evaluation of and comment on approval of all grant applications, grant agreements and contracts in excess of the amount of \$2 million proposed to be entered into by the WSB; if the Designated CEO or his authorized representative, has not responded with a requested amendment thereto, or an approval or disapproval thereto within ten (10) working days from receipt, the assent of the Designated CEO may be assumed by the Board.

g. Review and approval of the WSB's annual operating budget;

h. Review and approval of local workforce development and educational systems;

i. Adopt policies defining the scope, timing and process for the review and approval functions listed in this Agreement; and

j. Appoint one or more representatives, in the CEOs discretion, to assist the CEOs in conducting oversight, and examine the operations of the WSB for the purposes of ensuring compliance by the WSB with applicable federal and state statutes, rules, policies, procedures, planning documents (including the Strategic Plan), grant agreements, this Agreement and the Agreement between the

WSB and the CEOs of the Borderplex-WDA, hereinafter referred to as the “Partnership Agreement”. The appointed representative(s) of the CEOs may perform periodic fiscal and programmatic monitoring of the WSB as deemed necessary for the above purposes.

2. Recognizing the need to be informed Borderplex-WDA partners, the CEOs or their authorized representatives may participate in training activities provided or contracted for by the WSB. The cost of any travel and training funds for the CEOs, or their authorized representatives shall be paid for by the WSB in accordance with the Partnership Agreement.

3. The CEOs shall have the final decision in any case of any dispute or disagreement between the WSB and the CEOs. Before issuing a final decision, the CEOs and the WSB shall attempt to resolve the dispute through negotiation between the parties. Any and all costs, including but not limited to attorney's fees, associated with dispute resolution shall be paid for by the WSB.

C. Designated Chief Elected Official (CEO)

As attested to by this Agreement, the CEOs of the Borderplex-WDA have designated the County Judge of Brewster County, Texas, for a term of two (2) years from October 1, 2020 to September 30, 2022 as the Designated Chief Elected Official (“*Designated CEO*”) to act on behalf of other CEOs in the Borderplex-WDA. The Designated CEO shall carry out all duties and responsibilities assigned to the CEOs under applicable law, this Agreement, and the Partnership Agreement, unless stated otherwise. The Designated CEO may appoint an authorized representative to act on behalf of the Designated CEO with respect to certain responsibilities under this Agreement and the Partnership Agreement.

The CEOs shall meet for the purpose of electing a new Designated CEO at least every three years, with such election to take place on or before August 31st of the year in which the current Designated CEO’s term is expiring, and with the new Designated CEO to assume all responsibilities and powers as the Designated CEO on October 1st. If no election is held, the holdover Designated CEO shall remain in office as, and exercise the responsibilities and powers of, Designated CEO on a month-to-month basis until such time the CEOs meet and elect a replacement.

In the event a Designated CEO shall resign as Designated CEO or such Designated CEO’s county/city withdraws from this Interlocal, the CEOs shall meet within 60 days of such resignation or withdrawal for the purpose of electing a replacement Designated CEO.

D. Process for Keeping the CEOs Informed

The CEOs of the Borderplex-WDA may at their election meet to review the operations of the WSB. The CEOs will require the Chairperson of the WSB or his/her designee to be responsible for keeping the CEOs informed of workforce development activities by providing the following documents no less than on a quarterly basis (except as noted in subparagraph d. Below):

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 the CEOs; and
4. a copy of agendas, minutes and materials provided to the WSB Board of Directors and Executive Committee members for all regular or special meetings at the same time as such documents are delivered to the WSB.

In addition, the CEOs will require the WSB, within five working days of receipt, to inform the Designated CEO of all monitoring findings, audit findings, legal claims and/or actions 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. The Designated CEO shall assess the extent of the contingent liability and inform the other CEOs in a timely manner.

E. Size and Composition of the WSB's Board of Directors

The Board of Directors of the WSB shall consist of no less than twenty-five (25) and no more than thirty-three (33) members to be appointed by the CEOs and certified by the Governor in conformity with state and federal law. The CEOs may agree to change the number of board members from time to time, subject to the minimum and maximum number of members, as stated above. The appointed board members shall be broadly representative of the geographic, occupational, and ethnic make-up of the Borderplex-WDA.

1. Representatives of the private sector appointed to the Board of Directors of WSB will be selected from nominations submitted by area chambers of commerce and other general purpose business organizations. Nominees will be business owners, chief executives, chief operating officers, or other individuals with substantial management experience or substantial policy responsibilities in their positions.

2. At least one representative will serve on the Board of Directors of the WSB as a representative of an Economic Development Organization, and this representative will be selected from nominations submitted by area chambers of

commerce, economic development corporations, industrial foundations and other local organizations responsible for regulating, promoting or assisting in local economic development efforts.

3. At least one representative will serve on the Board of Directors of the WSB as a representative of secondary education, and this representative will be selected from nominations submitted by regional or local education agencies, vocational education institutions, institutions of higher education, area independent school districts. The secondary education representative must be selected from school board members, teachers, administrators, counselors or others actively engaged in the education field.

4. At least one representative will serve on the Board of Directors of the WSB as a representative of post-secondary education, and this representative will be selected from nominations submitted by area institutions of higher education and proprietary training institutions.

5. At least one representative will serve on the Board of Directors of the WSB as a representative of adult basic and continuing education representative who will be selected from nominations submitted by area institutions of higher education and the Region XVIII and Region XIX Education Service Centers. This member must be a board member, employee, or volunteer and shall be actively engaged in the provision of adult basic and continuing education.

6. At least one representative will serve on the Board of Directors of the WSB as a representative of a literacy council representative, and this representative must be selected from nominations submitted by area non-profit literacy councils and other literacy program providers. This member must be a board member, employee, or active volunteer of a local literacy council or of a literacy provider funded by a local literacy council.

7. At least one representative will serve on the Board of Directors of the WSB as a representative of a vocational rehabilitation organization will be selected to serve on the Board of Directors of the WSB from nominations submitted by area public and private agencies and organizations which provide vocational rehabilitation services.

8. A representative of the public employment service will be selected from nominations submitted by the TWC.

9. The required WSB Board of Director member(s) serving as representatives of community-based organizations (“CBOs”) will be selected from nominations submitted by area private non-profit organizations which provide job training services.

10. The required WSB Board of Director member(s) serving as a representative(s) of labor organizations will be selected from nominations submitted by state and local federations of labor organizations or as otherwise allowed by law.

11. At least one representative will serve on the Board of Directors of the WSB will be a representative of public assistance sector, meaning an active board member or employee of a public assistance organization such as the Texas Health and Human Services Commission, local housing authority, Social Security Administration, or Community Action Agency.

12. At least one of the representatives appointed under paragraphs 2 to 11 above must have expertise in child care or early childhood education.

13. At least one of the representatives appointed under paragraphs 2 to 11 above must be a veteran.

14. Representatives of community-based organizations and labor organizations under paragraphs 12 and 13 above must constitute not less than fifteen percent (15%) of the membership of the WSB.

15. At least one-half of the business and industry representatives representing the private sector must be, if possible, representatives of small business, including minority businesses.

16. If a state or local labor federation fails to nominate a sufficient number of individuals to meet the labor representation requirements of Subsection 14 of this section, individual workers may be included on the Board of Directors of WSB to complete the labor representation.

F. Allocation of Resources and Liabilities

To the extent possible and authorized by law and other federal and state restrictions, resources available to the Borderplex-WDA shall be shared on a pro rata basis. Specifically, the number of participants served in each jurisdiction shall approximate the percentage of eligible residents in that jurisdiction.

1. All resource allocations within the Borderplex-WDA shall be allocated to the six counties comprising the Borderplex-WDA using the same formula by which such resources are received from the State. If there is a specific programmatic requirement or practical consideration that would make this allocation infeasible or unreasonable, the CEOs may vote to revise or waive the allocation formula in that specific instance. Resources received on a non-formula basis will be allocated based on related programmatic requirements or practical considerations to ensure equitable distribution. If time or other considerations make it impractical or infeasible to convene a meeting of the CEOs, the designated CEO must give concurrence in the waiver or revision, and must report his concurrence immediately to the other CEOs.

2. The CEOs will require the WSB to establish a sufficient number of career centers within the Borderplex-WDA to effectively carry out the intent of the above resource allocation paragraph.

3. All liabilities and costs, including but not limited to disallowed costs, settlements, attorneys fees and court costs and judgments, which arise from or are related to activities covered by this agreement or by the Partnership Agreement shall be covered in the priority order that follows:

a. Recover funds from the service provider(s) and career center associated with or incurring the liability;

b. Recover funds from the insurance carrier(s) or fidelity bond issuer governing the WSB and its employees, officers, agents, etc.;

c. Fund liabilities from available local workforce development board funds to the extent allowed by law; and

d. As a last resort, to the extent required by law allocate liability to the City and Counties of the Borderplex-WDA. The CEOs shall be immediately notified of any settlement proposal or resolution agreement and shall review and approve any settlement or other resolution agreement which creates liability under this paragraph. Further, the CEOs may retain legal or auditing services to review the cause of any adverse circumstance which might result in liability hereunder. Those costs shall be reimbursed by the WSB in accordance with the Partnership Agreement.

4. If liability arises under Paragraph 3 above, liability shall be apportioned as follows:

a. 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.

b. 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.

c. In the event the liability or disallowance is administrative or otherwise is not attributable in accordance with 4.a or 4.b above, the CEOs shall apportion the costs in proportion to their respective populations as determined by the 2020 Census.

G. Appointment and Removal of Board Members

Appointments of members to the WSB Board of Directors will be for a three-year term. In the event that a board member should resign or be removed, replacements will serve the remainder of the term to which they are appointed. Upon nomination to the WSB, nominees shall provide to the Designated CEO a written declaration of all business interest or relationships they, or their immediate families have with a business or organization that has received, or is likely to receive, funding or other compensation through the WSB, directly or indirectly. Nominees shall also provide the Designated CEO with a written statement delineating any other potential conflict of interest.

1. The chairperson of the Board of Directors of the WSB, who must represent the private sector, shall be selected by the members of the WSB.

2. The WSB is authorized and encouraged to recruit individuals with special expertise to serve as ex-officio, non-voting members. Each of the CEOs may serve as or appoint an ex-officio member of the WSB.

3. The CEOs may remove any appointed WSB member for cause based upon the following factors:

a. Impermissible conflict of interest, including but not limited to noncompliance with the adopted Conflict of Interest policy and failure to comply with the recusal provisions of Section 2308.257 of the Texas Government Code;

b. Conduct in violation of federal, state or local statutes, rules, policies, procedures or grant agreements;

c. Violation of procurement policies or procedures;

d. Poor attendance, as defined in the bylaws of the WSB;

e. A change in employment to the extent that the member does not represent the public or private sector area to which they were appointed to represent;

f. Transfer or a move outside the Borderplex-WDA;

g. Failure to comply with this agreement, the Partnership Agreement, WSB bylaws or decisions, or a grant agreement; and

h. Any other reason allowed by federal and state statutes, regulations, policies and procedures, or as permitted by the Partnership Agreement.

H. Terms of Office

WSB members shall be appointed to serve fixed, staggered terms of office of three years. The termination dates for each of appointments to the Board of Directors of the WSB shall be determined by the current board composition, in order to continue the structure for staggered terms as set forth below:

- One third of the members shall be assigned termination dates of the current year;
- One third of the members shall be assigned termination dates of one year following the current year; and
- The remainder of the members shall be assigned termination dates of two years from the current year.

Appointments made to fill vacancies created by the above schedule of termination dates shall be for a period of three (3) years.

Board members may be reappointed or continue to serve until successors are appointed. Reappointments shall be made in the same manner as original appointments, except the term of office shall be for three (3) years.

I. Allocation of Board Members

Each of the six (6) CEOs representing a rural area (defined as the Counties excluding El Paso County) and the Mayor of the City of El Paso shall have the power to appoint one board member to represent their jurisdiction. Recognizing the greater difficulty that rural jurisdiction may have in nominating appropriate board members, rural entities may nominate a person for any available board position representing the nomination categories discussed in Section E above. The Designated CEO shall make the remaining appointments to the WSB Board of Directors. The CEOs may designate a clearing house to receive nominations for the available board positions from interested parties or individuals.

Appointments to the WSB shall be made by the Designated CEO, and forwarded to the TWC and Governor for approval and certification.

J. Specific Responsibilities and Requirements

The undersigned CEOs hereby acknowledge that the following are responsibilities and requirements pursuant to the formation of local workforce development board:

1. The local workforce development board will assume the responsibilities for the following committees and councils that will be replaced by the board unless otherwise provided in art. 2308, Government Code, V.T.C.A., as amended.

- private industry council,
- quality work force planning committee,
- job service employer committee, and
- local general vocational program advisory committee.

2. At least one career development center must be established within 180 days of the board certification;

3. The WSB must have its own independent staff and not be a provider of workforce services, unless the board secures a waiver of these provisions;

4. The CEOs must enter into and maintain a written Partnership Agreement [documented as Article II herein] with the WSB to designate a grant recipient to receive and be accountable for block grant funds, and to be liable for any misuse of funds;

5. The Partnership Agreement, contained in Article II herein, must also specify the entity that will administer the programs, which may be separate from the entity that receives the funds from the state;

6. The Partnership Agreement must define the process through which the WSB and CEOs will develop the strategic and operational plans, including the training plan required under the Workforce Innovation and Opportunity Act (“WIOA”); and

7. The local plan must be reviewed by both the TWC and the Council on Workforce and Economic Competitiveness, and approved by the Governor before block grants will be available to the local area.

K. Accommodating Change

Article I of this Agreement – the Interlocal portion of this Agreement - will be reviewed for possible changes or termination, if so requested in writing by one or more of the CEOs. Article I of the Agreement may be amended or terminated by a three-fourths vote of CEOs, provided the three-fourths vote includes an affirmative vote of the Mayor of El Paso. Any signatory to this Agreement may withdraw from this Agreement within 180 days written notice provided to the CEOs of the area.

II. Terms of the Partnership Agreement between the CEOs and WSB

Sub-Recitals for Article II – The Partnership Agreement

Whereas, this Article II is the Partnership Agreement portion of the Agreement, entered into by and between the WSB and the CEOs;

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-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 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 Designated CEO, above, 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:

A. Purpose and Term

1. 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.

2. This Agreement is effective from date of signing through September 30, 2022. It may terminate, however, prior to that date if either WSB or CEOs provides 180 days written 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.

B. General Responsibilities of the WSB and CEOs

Where a matter must be reported to, brought to the attention of, or notice be provided to the CEOs, the WSB shall report the matter to the Designated CEO, who is appointed as the agent for notice on behalf of the CEOs in all regards for purposes of this Agreement. In addition, when the CEOs have the right or obligation to take an action under this Agreement, such action shall be taken only by the Designated CEO on behalf and for the benefit of all of the CEOs.

1. WSB, as the designated administrative and fiscal entity for workforce development in the region, 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.

2. 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.

3. WSB shall be the designated grant recipient/fiscal agent and the administrative entity for the Borderplex-WDA.

4. 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.

5. 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.

6. 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.

7. 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

8. WSB shall be directly responsible for delivering to the CEOs the following documents on not less than a quarterly basis:

- a. Quarterly written reports summarizing administrative, operational, one-stop career center, monitoring, evaluation, and financial activities;
- b. Copies of all annual audit reports and special or periodic reports required by the TWC or higher authority;
- c. Briefings and/or special reports as may be requested by CEOs;

9. Upon at least ten (10) 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.

10. 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.

11. The CEOs shall appoint the members of the WSB's board of directors, consistent with applicable federal and state law and the Interlocal Agreement amongst the CEOs regarding the WSB (Attachment A), with such appointments subject to the approval of the TWC.

12. The CEOs will take an active role promoting a coordinated and effective workforce development program for the benefit of the region and its workforce and employers.

13. 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.

14. 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.

15. 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.

16. The CEOs may remove any appointed board member for cause based on any of the following eight factors:

- a. 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;
- b. Conduct in violation of federal, state or local statutes, rules, policies, procedures or grant agreements;
- c. Violation of procurement policies or procedures;
- d. Poor attendance, as defined by WSB's bylaws;
- e. Change in employment to the extent they do not represent the public or private area, which they were appointed;
- f. Transfer or a move outside the Borderplex-WDA;
- g. Failure to comply with this agreement, the Interlocal Agreement between the CEOs, WDB by-laws or decisions, or the grant agreements; and
- h. 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.)

C. Functions of the WSB

WSB shall:

1. Perform such functions required of a local workforce development board by federal and state law;
2. 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;
3. 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 B(9) or H(4) of this Agreement;
4. 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;
5. Ensure effective outcomes consistent with statewide goals, objectives, and performance standards approved by the Governor of Texas;
6. Be directly responsible to TWC for the operation, planning, and administration of all workforce training and services funded through TWC to the region;
7. 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*”) [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.
8. 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;
 9. Develop a local and regional plan for addressing the workforce development needs of the Borderplex-WDA that:
 - a. Is responsible to the goals, objectives, and performance standards established by the governor;
 - b. 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
 - c. Ensures that workforce development systems, including the education system, have the flexibility to meet the needs of local and regional businesses.
 10. Ensure the operation of workforce and career development centers as established in the WIOA and applicable state laws and regulations;
 11. 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;
 12. 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;
 13. 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;
 14. 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;

15. Provide cooperation and coordination among public organizations, community organizations, and private businesses providing workforce development services; and

16. Ensure that employment services are provided for persons seeking employment in the local workforce development area;

17. Provide to the CEOs, within 30 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 \$250,000.00 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

18. 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.

D. Development of the Regional Plan

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

1. A strategy component that:
 - a. Assesses the labor market needs of the Borderplex-WDA;
 - b. Identifies existing workforce development programs;
 - c. Evaluates the effectiveness of existing programs and services; and
 - d. Sets board goals and objectives for all workforce development programs in the Borderplex-WDA consistent with, statewide goals, objectives, and performance standards.

2. 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:

- a. The goals, objectives, and performance measures to be used in overseeing and evaluating the operation of all workforce training and services;

- b. The segments of the population targeted for various services;
- c. The mix of services to be provided and how they are to be provided; and
- d. The structure of the local service delivery system.

3. 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.

- Workforce Innovation and Opportunity Act;
- Basic and Individualized Career Services;
- Employment Services;
- Temporary Assistance to Needy Families (TANF)/Choices;
- Child Care;
- SNAP E&T;
- Non-custodial Parent;
- Trade Adjustment Assistance Act;
- Rapid Response; and
- Business Services

4. 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.

E. 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.

F. 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.

G. 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.

H. 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:

1. 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;

2. Second: WSB will seek to recover funds from the insurance carriers or fidelity bond issuer governing WSB and its employees, officers, agents, etc.;

3. Third: WSB will seek to recover funds from available local workforce development funds, including any available discretionary funds, to the extent allowed by law;

4. 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 C(3).

5. If liability arises under Paragraph 4 above, liability shall be apportioned as follows:

a. 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.

b. 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.

c. In the event the liability or disallowance is administrative or otherwise is not attributable in accordance with 5(a) or 5(b) above, the CEOs shall apportion the costs in proportion to their respective populations as determined by the 2010 Census.

I. 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.

J. 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.

K. 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.

L. 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.

[Signatures on following page]

In Witness hereof, signed this 21st day of August, 2020, to be effective October 1, 2020 by and between the parties to the foregoing Agreement.

By: Chief Elected Officials – Borderplex Workforce Area

<p>_____</p> <p>Hon. Eleazar Cano County Judge, Brewster County, Texas Designated CEO</p>	
<p>_____</p> <p>Hon. Ricardo Samaniego County Judge, El Paso County, Texas</p>	<p>_____</p> <p>Hon. Dee Margo Mayor, City of El Paso, Texas</p>
<p>_____</p> <p>Hon. Tom Neely County Judge, Hudspeth County, Texas</p>	<p>_____</p> <p>Hon. Carlos Urias County Judge, Culberson County, Texas</p>
<p>_____</p> <p>Hon. _____ County Judge, Jeff Davis County, Texas</p>	<p>_____</p> <p>Hon. Cinderela Guevara County Judge, Presidio County</p>

By: Workforce Solutions Borderplex

<p>_____</p> <p>Grace Munoz Chairperson, Board of Directors Workforce Solutions Borderplex</p>	<p>_____</p> <p>Leila Melendez Chief Executive Officer Workforce Solutions Borderplex</p>
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