

RESOLUTION

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign a Third Amended Partnership Agreement between the Upper Rio Grande Workforce Development Board, Inc. and Top Chief Elected Officials of the Upper Rio Grande Workforce Development Area to extend the term of the Partnership's Agreement until October 31, 2005. There is no change to the remaining terms and conditions of the Agreement.

APPROVED this 26th day of **October, 2004**.

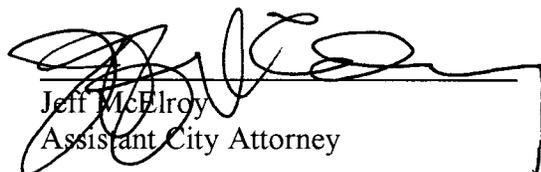
THE CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Jeff McElroy
Assistant City Attorney

**THIRD AMENDED PARTNERSHIP AGREEMENT
BETWEEN
THE UPPER RIO GRANDE WORKFORCE DEVELOPMENT BOARD, INC.
AND
TOP CHIEF ELECTED OFFICIALS OF
THE UPPER RIO GRANDE WORKFORCE DEVELOPMENT AREA**

This Third Amended Partnership Agreement (hereinafter referred to as the "Agreement") is entered into between the Upper Rio Grande Workforce Development Board, Inc. (the "WDB"), and the Chief Elected Officials 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, the WDB was duly certified by the Governor of the State of Texas on October 14, 1997, is recognized as the entity in the Upper Rio Grande Workforce Development Area (the "URGWDA") 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 URGWDA (the "CEOs") and the WDB 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 required to be parties to this agreement, have selected the Honorable Mayor of the City of El Paso 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 the WDB and is the authorized representative to enter into this agreement on the WDB's behalf,

NOW THEREFORE, IN CONSIDERATION OF THE ABOVE PREMISES, BE IT RESOLVED THAT THE PARTIES HERETO AGREE TO SET FORTH RULES, RESPONSIBILITIES, RELATIONSHIPS, AND FUNCTIONS 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 the WDB and the CEOs, and determining the procedures for developing the local URGWDA plan.

II. GENERAL RESPONSIBILITIES OF THE WDB AND CEOs

- (a) The WDB is directly responsible for the strategic and operations planning, oversight, evaluation and administration of all workforce training services of the URGWDA. The WDB 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 an effective workforce program and through the WDB, assure the proper use of federal and state funds for program development, implementation, and oversight.
- (c) The WDB shall be the designated grant recipient/fiscal agent and the administrative entity for the URGWDA.
- (d) The WDB is directly responsible for establishing a local URGWDA plan, as further described herein, in partnership with the CEOs. The WDB shall adopt procedures for the development of the local URGWDA Plan and any annual modifications thereto.
- (e) The WDB is directly responsible for preparing an annual operating budget and obtaining input and direction from the CEOs prior to the WDB's approval of the budget.
- (f) The WDB is directly responsible for negotiating and obtaining approval of the CEOs and the Office of the Governor concerning adopted local performance measures relative to the actions of the WDB and the URGWDA Plan.
- (g) The WDB will seek the input of the CEOs in establishing the criteria for any requests for proposals to be issued by the WDB for one-stop operators and service providers. The WDB is further directly responsible to advise the CEOs of the WDB's intended selection of any one-stop operators or service providers to be designated or certified by the WDB in order to allow the CEOs sufficient time to submit their input and direction, if any, with regard to the selection of the one-stop operator or service provider and any contracts to be executed between the WDB and any one-stop operator or service provider.
- (h) The WDB 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 the WDB, the WDB's contractors and service providers, that are related to the local workforce investment system in the URGWDA, for the purpose of conducting surveys, audits, program evaluations of the local workforce investment system and oversight and/or investigative review of the URGWDA 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) The CEOs and WDB will appoint one representative to work, full- or part-time, at the offices of the WDB or other appropriate location, to assist the CEOs in conducting their duties and fulfilling their responsibilities in connection with the Agreement. The duties and responsibilities of the representative will be negotiated in good faith by the CEOs and WDB prior to the appointment of the on-site representative. The CEOs will make the final decision on who is selected as the representative if a mutual selection cannot be made. The cost of the representative shall be paid for by the WDB in accordance with the Agreement.
- (k) The WDB 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 the WDB's board members.
- (l) The CEOs or their authorized designee may serve as non-voting, ex-officio members of the WDB and may attend any regular, special or committee meeting of the WDB'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.
- (m) The CEOs shall be provided an opportunity to provide their input regarding the hiring of the Executive Officer of the WDB 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 the WDB's approval [according to its bylaws and policies], by majority vote of the CEOs.
- (n) The CEOs shall review and may approve of the WDB's by-laws, vision/mission statement and all planning documents establishing the goals and objectives of the WDB.
- (o) The CEOs shall be provided an advance opportunity to review, analyze and provide their input and direction regarding grant applications, grant agreements, contracts with service providers, and contracts with one-stop operators and training providers in excess of the amount of \$1 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 the WDB. The WDB may expedite the CEOs review process in case of emergencies. In such instances, the WDB will provide the CEOs as much time as practicable to review the application/contract before it is submitted/executed.
- (p) The CEOs may remove any appointed board member for cause based on any of the following nine factors:
 - (1) Impermissible conflict of interests, including but not limited to non-compliance with the adopted Conflict of Interest Policy and failure to comply with the recusal provisions of Chapter 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 the WDB'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 URGWDA;
- (7) Failure to comply with this agreement, the Interlocal Agreement between the CEOs, local workforce development by-laws or decisions, or the grant agreements;
- (8) Any other reason allowed by federal and state statutes, regulations, policies or procedures.

The WDB and CEOs roles, functions, and responsibilities as established by the most recently approved URGWDA 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 URGWDA and the terms and conditions of this Agreement, precedence shall be given to the laws and regulations.)

III. FUNCTION OF THE WDB

The WDB shall:

- (a) provide travel and training funds for the CEOs of the URGWDA, or their authorized representatives, as may be necessary;
- (b) set aside discretionary administrative funds 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), II(j), 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 URGWDA;
- (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 local area;
- (f) be directly responsible to TWC for the administration of programs operated in the URGWDA under the Job Training Partnership Act (29 U.S.C. Section 1501 et seq.) and, as JTPA is phased out, with the El Paso Pro Active Re-Employment Project (El Paso PREP), and any NRA grants as determined by the state and federal regulations (Workforce Investment Act of 1998 [WIA] 29 U.S.C. Section 2801 et seq.);

- (g) serve as a single point of contact for local businesses to communicate their skill needs and influence the direction of all workforce development programs in the URGWDA;
- (h) develop a local plan for addressing the workforce development needs of the URGWDA that:
 - (1) is responsible to the goals, objectives, and performance standards established by the governor;
 - (2) targets services to meet local 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 businesses.
- (i) create local career development centers as established in Article 5 of S.B. 642;
- (j) create and oversee a Youth Advisory Council, in partnership with the CEOs;
- (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 local 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 exceeding the amount of \$75,000.00 brought against the WDB or any other circumstance which could potentially create a financial liability on the part of the URGWDA 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 the WDB, 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 the WDB by obtaining increased insurance coverage hereunder.

IV. DEVELOPMENT OF THE URGWDA PLAN

The WDB shall develop a single plan that includes the components specified below:

- (a) A strategy component that:
 - (1) assesses the labor market needs of the URGWDA;
 - (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 URGWDA consistent with, statewide goals, objectives, and performance standards.

- (b) An operation component that specifies how all of the resources available in the URGWDA be used to achieve the goals and objectives of the plan for the URGWDA. 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 the WDB 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 the WDB, describe the schedule for the eventual assumption of the programs by the WDB.
 - (1) Job Training Partnership Act
 - (2) Workforce Investment Act
 - (3) Welfare-to-Work
 - (4) Employment services
 - (5) Temporary Assistance to Needy Families (TANF)
 - (6) Child Care
 - (7) Food Stamps Employment and Training
 - (8) Career Centers

V. DESIGNATED GRANT RECIPIENT/FISCAL AGENT

The WDB is currently serving as grant recipient/fiscal agent to receive and disburse workforce development funds.

VI. DESIGNATED ADMINISTRATIVE ENTITY

The WDB is currently serving as administrative entity to provide management of workforce training activities. The WDB, 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 URGWDA by the WDB 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: the WDB 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: the WDB will seek to recover funds from the insurance carriers or fidelity bond issuer governing the URGWDB and its employees, officers, agents, etc.;
- (c) third: the WDB will seek to recover funds from available local workforce development funds, to the extent allowed by law; and;
- (d) fourth: the WDB 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. The WDB 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 the WDB 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 2000 Census.

IX. DISPUTE RESOLUTION

In any case of dispute or disagreement between the WDB 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, the WDB and the CEO's shall attempt to resolve the dispute through an expedited dispute resolution process between the parties. Any and all reasonable costs, including but not limited to attorneys' fees, associated with dispute resolution shall be paid for by the WDB. To the extent that a disputed issue may not be resolved through the dispute resolution process, before the CEOs issue a final decision, the WDB 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 the WDB waive their sovereign immunity 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

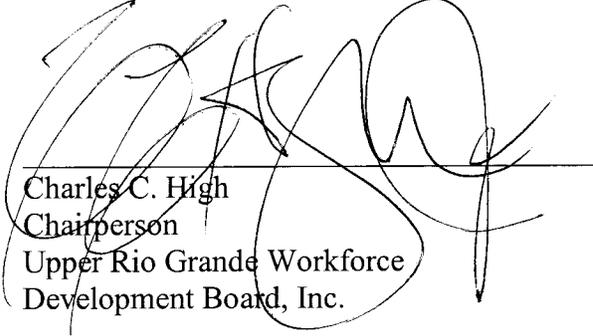
This Agreement is effective from date of signing through October 31, 2005. It may terminate, however, prior to that date if either the WDB or CEOs provides 90 days notice of intention to terminate. This Agreement may be terminated by the CEOs, with 30 days advance notice if the CEOs determine that there is a substantial failure to comply with applicable state law, rules or regulations governing the workforce development programs in the URGWDA.

IX. CONFLICT AMONG AGREEMENTS

The terms of this Agreement, and the responsibilities, duties and functions of the WDB and CEOs delineated herein, shall prevail to the extent of any conflict between the responsibilities, duties and functions of the WDB and CEOs set forth in the October 29, 2002, Upper Rio Grande Workforce Development Area Interlocal Agreement executed among the CEOs.

APPROVED this 26th day of **October, 2004**.

Joe Wardy
Mayor of the City of El Paso
Lead CEO, Upper Rio Grande
Workforce Development Area

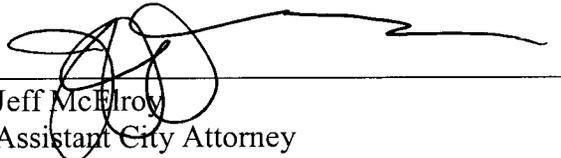


Charles C. High
Chairperson
Upper Rio Grande Workforce
Development Board, Inc.

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Jeff McElroy
Assistant City Attorney