

INTERLOCAL COOPERATION AGREEMENT
BETWEEN
AUSTIN TRANSIT PARTNERSHIP
AND
WORKFORCE SOLUTIONS – CAPITAL AREA
FOR THE
DEVELOPMENT OF THE WORKFORCE MOBILITY INDUSTRY PARTNERSHIP

This Interlocal Cooperation Agreement ("**Agreement**") is dated and entered into as of April 1, 2023 (the "**Effective Date**") by and between Austin Transit Partnership Local Government Corporation ("**ATP**"), a public nonprofit joint local government corporation created under Subchapter D, Chapter 431, Texas Transportation Code, Chapter 394, Texas Local Government Code, and Chapter 22, Business Organizations Code, and Workforce Solutions – Capital Area ("**WFS**"), a publicly-funded non-profit organization created under Chapter 2308, Workforce Investment Act, Texas Government Code (ATP and WFS being referred to as the "**Parties**").

ARTICLE I
BACKGROUND

1. ATP was created by CapMetro and the City of Austin (the "**City**") following the approval of a ballot measure by the voters of the City at the November 3, 2020, special election to provide dedicated funding to an independent board to oversee the implementation and financing of the Project Connect System Plan ("**Project Connect**").
2. ATP is the principal entity responsible for the financing, design, engineering, construction, and contracting with CapMetro to operate and maintain assets funded by ATP for Project Connect in a manner independent of the City and CapMetro.
3. The City, CapMetro and ATP have entered into a Joint Powers Agreement, effective December 17, 2021 (the "**Joint Powers Agreement**"), delineating the roles and responsibilities of the three parties and to confirm their commitment and support of Project Connect.
4. The Joint Powers Agreement, Section 4.3, contemplates that ATP will be responsible for "[d]eveloping and implementing a construction careers program which meets the requirements of federal law and regulations and includes City of Austin hiring goals to hire workers from apprenticeship and craft training programs, and which promotes the hiring of local workers so long as possible within the existing workforce."
5. The Parties agree that WFS is an established organization that can help ATP reach its goals related to the implementation of a construction careers program.

NOW, THEREFORE, accordingly, in consideration of the mutual covenants and agreements set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confirmed, ATP hereby enters into this Agreement and do hereby agree as follows:

ARTICLE II SCOPE OF AGREEMENT

2.1 **Public Purpose.** The purpose of this Agreement is to support the creation of the region's first Workforce Mobility Industry Sector Partnership that includes the development and implementation of a construction workforce plan for the construction of Project Connect, which was approved by the voters of the City at the November 3, 2020, special election.

2.2 **Scope of Services.** The services to be performed by WFS are contained in Exhibit A.

ARTICLE III TERM AND TERMINATION

3.1 **Term.** The term of this Agreement shall commence on the Effective Date and shall continue until April 1, 2024, which may be extended up to 6 months upon the mutual consent of both Parties (the "**Term**"). An extension shall not affect the cost of the services, unless mutually agreed in writing, and approved by the ATP Board of Directors.

3.2 **Termination for Convenience.** ATP may terminate this Agreement, in whole or in part, for any reason or no reason at all, upon 30 days' written notice to WSF.

3.3 **Termination for Cause.** Either Party may terminate this Agreement in whole or in part, for cause if the other Party has committed an Event of Default that has not been cured within the required Cure Period. In the event of termination for cause, ATP shall reimburse to WSF compensation for undisputed services rendered and amounts owed.

3.4 **Event of Default.** A Party shall not be in breach or default under the terms of this Agreement for any act, omission, or failure to perform hereunder except as expressly provided in this Section.

3.5 Prior to declaring an Event of Default against another Party hereunder, a Party must first deliver written notice to such other Party's Chief Financial Officer and General Counsel, specifying the events and circumstances regarding such alleged breach and specifying any action which the notifying party desires the receiving Party to take to remedy such alleged breach ("Default Advisory Notice"). The receiving Party shall work in good faith with the notifying Party to resolve the matter within a reasonable amount of time but in any event no less than sixty (60) days.

3.6 If after delivering a Default Advisory Notice, the alleged breach is not resolved to the reasonable satisfaction of the notifying Party within sixty (60) days, then the notifying Party may declare an Event of Default against the receiving Party by delivering written notice thereof to the defaulting Party (a "Default Notice"); provided, however, that no Party shall be

authorized to deliver a Default Notice unless the governing body of the notifying Party has taken official action declaring the defaulting Party to be in material breach under the terms of this Agreement in an open meeting (an "**Event of Default**") and directing staff to deliver such Default Notice to the defaulting Party. After receiving a Default Notice, the defaulting Party shall have an additional sixty (60) days to cure such Event of Default or such additional amount time as may be reasonably necessary to cure such Event of Default, but only so long as such defaulting Party is diligently seeking to cure such Event of Default the ("**Cure Period**").

ARTICLE IV PAYMENT

- 4.1 **Cost.** ATP will pay to WFS a total of \$300,000 for the services to be performed under this Agreement. Changes to the funding allocation among different line items in the services budget may be made with written approval from the ATP Project Manager. For additional information, please see Exhibit A.
- 4.2 **Payment.** Services to be performed under this Agreement is for a one-year term beginning on the date of approval by the ATP Board of Directors. On a monthly basis WFS will submit an invoice and a supporting memorandum detailing work completed during that month. Payment for the work completed will be dependent on the milestones achieved that will be outlined in the workplan (to still be developed). WFS will have fifteen (15) days from the end of each month to submit both the invoice and progress report memorandum.

ARTICLE V APPROPRIATIONS AND SUBORDINATION

- 5.1 Any payment obligations of ATP under this Agreement are subject to appropriation from year to year in accordance with State law. The Parties further acknowledge and agree, notwithstanding anything else in this Agreement to the contrary, that ATP's obligation with respect to its reimbursement obligations is subject to, and governed by, Article 11, Section 5 of the Texas Constitution and must be paid only out of ATP's current revenues or any other funds lawfully available therefore (and appropriated for such purpose) in accordance with Article 11, Section 5 of the Texas Constitution. WFS shall not be entitled to penalties or damages in the event of a termination of this Agreement for lack of funding.
- 5.2 WFS acknowledges and agrees that notwithstanding any present or future appropriation of funds by ATP to fulfill its payment obligations hereunder, all payment obligations of ATP to WFS under this Agreement shall constitute unsecured contractual obligations of ATP payable from current funds, and shall be expressly subject and subordinate to any present or future pledge by ATP of its revenues securing any lien for the repayment of its public securities, credit or liquidity agreements or other debt obligations of ATP for the financing of all components or any component of Project Connect. In the event of any conflict between this Agreement and any Public Security Authorization, as defined in Section 1201.002(3) of the Texas Government Code, the Public Security Authorization shall prevail.

ARTICLE VI AUDITS AND RECORDS

6.1 ***Audit Rights.*** Upon reasonable prior written notice, ATP shall have the right to review and inspect all data and work relevant to the expenses billed to ATP by WFS and its subcontractors. ATP shall have the right, at its cost and expense, to have the books and records of WFS related to this Agreement:

- (a) reviewed by ATP from time to time during the Term; and
- (b) audited by a nationally or regionally recognized independent certified public accountant, under appropriate confidentiality provisions, for the purpose of verifying the accuracy of all fees and cost calculations under this Agreement; provided, that any such audit shall be conducted no more than once per budget year (a "budget year" being defined as October 1 through September 30) and shall be conducted, in each case, upon at least 30 days' advance written notice; provided further, that no review or audit shall be conducted outside of normal business hours or in a manner that interferes unreasonably with WFS's business.

6.2 ***Records Retention.*** At a minimum, WFS shall maintain records required under the terms of this Agreement in accordance with 49 CFR 18.36(i), which requires project-related documents to be retained for 3 years following project completion.

6.3 ***Ownership of Work Product.*** ATP shall retain an irrevocable, non-exclusive, fully paid, perpetual license in any works created under this Agreement using ATP funds, including, but not limited to the Phase Two Infrastructure Workforce Action Plan. ATP shall have full rights to use, distribute, or reproduce any work product produced as part of the Scope of Services.

ARTICLE VII DISPUTES, GOVERNING LAW, AND VENUE

7.1 ***Resolution of Disputes.*** Upon request of either Party, an informal attempt shall be made to negotiate a resolution of any dispute arising under this Agreement. Such request shall be in writing and shall seek a meeting between representatives of each Party within 14 calendar days after receipt of the request or such later period as agreed by the Parties. Each Party shall provide for the meeting, at a minimum, one senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within 30 calendar days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they shall proceed directly to mediation as described below. Informal negotiation may be waived by a written agreement signed by both Parties, in which event the Parties shall proceed directly to mediation as described below.

- a. The mediation shall take place in Austin, Travis County, Texas. The Parties shall select a mediator within 30 calendar days of the written waiver, or within sixty 60 calendar days of the informal negotiation meeting. The Parties agree to act in good

faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in this Agreement prevents the Parties from relying on the skills of a person who is trained in the subject matter of the dispute. If the time period for selecting the mediator has expired with no agreement on the mediator, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The Parties agree to participate in mediation in good faith for up to 30 calendar days from the date of the first mediation session. The Parties will share the costs of mediation equally.

- b. Nothing in this Article 7 shall limit either Party's right to terminate this Agreement for cause; provided, however, this Article shall survive termination of this Agreement.

7.2 Governing Law and Venue. This Agreement is governed by the laws of the State of Texas and all obligations under this agreement are performable in Travis County, Texas. Venue for any cause of action arising under the terms of this Agreement shall be exclusively in the federal and district courts of Travis County, Texas.

ARTICLE VIII NOTICES

8.1 Notices. Any notice, demand, statement, request or consent made hereunder shall be in writing and may be personally served or sent by mail or courier service and shall be deemed to have been given when delivered by mail or by courier service to the addresses set forth below. Notices delivered by email to the Parties' designated representatives shall also be deemed to have been delivered only if receipt is expressly and personally acknowledged in writing by the recipient.

- a. **ATP Address.** The address of ATP for all purposes under this Agreement and for all notices:

Courtney Chavez (or their successor) (“**ATP Project Manager**”)
SVP, Equity and Community Partnership
203 Colorado Street
Austin, Texas 78701
Email: Courtney.Chavez@atptx.org

With additional copy to:

Brandon Carr (or their successor)
General Counsel, SVP of Legal Affairs
203 Colorado Street
Austin, Texas 78701
Email: Brandon.Carr@atptx.org

- b. **WFS Address.** The address of WFS for all purposes under this Agreement and for all notices:

Tamara Atkinson (or their successor) (“**WFS Project Manager**”)
Chief Executive Officer
9001 N IH 35, Ste 110E
Austin, Texas 78753
Tamara.Atkinson@wfscapitalarea.com

With additional copy to:
Yael Lawson
Chief Operations Officer
9001 N IH 35, Ste 110E
Austin, Texas 78753
Yael.Lawson@wfscapitalarea.com

ARTICLE IX INSURANCE

9.1 **Required Minimums.** The insurance coverages required under this Agreement are required minimums and are not intended to limit the responsibility or liability of WFS. WFS shall have, and shall require all subcontractors of services provided under this Agreement to have and maintain policies that contain the following:

9.1.1 **Business Automobile Liability Insurance.** Coverage for all owned, non-owned, and hired vehicles. The policy shall contain a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage.

9.1.2 **Workers' Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Workers' Compensation Act, Chapter 401 of the Texas Labor Code.

9.1.3 **Commercial General Liability Insurance.** The policy shall contain a combined bodily injury and property damage limit of \$1,000,000 per occurrence.

ARTICLE X CONFIDENTIALITY; TEXAS PUBLIC INFORMATION ACT

10.1 **Confidentiality.** WFS shall not and shall use its reasonable efforts to ensure that WFS employees shall not use, divulge or communicate to any person (other than those whose province it is to know the same or with authority from ATP) any trade secrets or information which are for the time being confidential to ATP or any of its subsidiaries and are not in the public domain (“**Confidential Information**”), which the WFS employees may have received or obtained during the Term. This restriction shall continue to apply after the termination of this Agreement for whatever cause without limit in point in time but shall cease to apply to information or knowledge that may come into the public domain otherwise than through the unauthorized disclosure by or the fault of WFS and/or its employees. WFS undertakes and

shall use reasonable efforts to ensure that the WFS employees shall undertake to return to ATP or any of its subsidiaries within a reasonable time upon request from any or all of them, all materials, whether documentary or otherwise, together with copies thereof containing Confidential Information and not to take further copies of any of the above-mentioned documents or materials after termination of this Agreement.

10.2 **Texas Public Information Act.** Notwithstanding anything herein to the contrary, this Agreement is subject to the “Texas Public Information Act,” Texas Gov’t Code, Chapter 552. ATP is subject to the Texas Public Information Act and must release information required to be released under the Act and regulations promulgated thereunder.

ARTICLE XI LIABILITY

11.1 **Liability.** To the extent allowed by Texas law, the Parties agree that each Party is responsible for its own proportionate share of any liability for the negligent or grossly negligent acts or omissions of its employees, agents, contractors, or subcontractors arising out of, connected with, or as a consequence of its performance under this Agreement. Neither Party shall be liable to the other for any indirect, special, incidental, punitive, or consequential damages (including, but not limited to loss of business, revenues, profits, or other economic advantage) however it arises, whether in an action of contract, negligence or gross negligence, tort or other action, arising out of or in connection with this Agreement, even if advised of the possibility thereof.

ARTICLE XII NO JOINT EMPLOYER RELATIONSHIP

12.1 **No Joint Employer Relationship.** Nothing in this Agreement shall operate or be construed as making WFS and/or ATP either partners, joint venturers, principals, joint employers, fiduciaries, agents or employees of the other. The relationship between WFS and ATP will be that of an independent contractor relationship. No employee, agent, affiliate or contractor retained by WFS to perform work on behalf of ATP or its affiliates under this Agreement will be deemed to be an employee, agent, or contractor of ATP or its affiliates, and ATP does not have any right, direct or indirect, to control the work of the WFS employees. Neither Party will have any right, power, or authority, express or implied, to bind the other. WFS is solely responsible for payment of (1) all income, disability, withholding, and other employment taxes as well as (2) all medical benefit premiums, vacation pay, sick pay, or other fringe benefits resulting from WFS’s retention of any of its officers, directors, employees, agents, or independent contractors.

**ARTICLE XIII
ASSIGNMENT; SUBCONTRACTORS**

13.1 **Assignment.** Neither Party shall assign or transfer the whole or any part of this Agreement without the prior written approval of the other Party.

13.2 **Subcontractors.** WFS may subcontract all or a part of the services to be performed under this Agreement, only if advanced notice of the intent to subcontract and name of the subcontractor(s) is provided to ATP. All subcontractors under this Agreement shall be bound to the same terms and conditions of this Agreement.

**ARTICLE XIV
SEVERABILITY**

14.1 **Severability.** If any provision of this Agreement is invalid, illegal or unenforceable, that provision will, to the extent possible, be modified in such manner as to be valid, legal and enforceable but so as to most nearly retain the intent of the parties hereto as expressed herein. If such a modification is not possible, the parties hereto shall negotiate in good faith a modification of such provision that reflects as closely as possible the economic purpose of the invalid, illegal or unenforceable provision. If no agreement with respect to such modification is reached, the invalid, illegal or unenforceable provision will be severed from this Agreement. In any case, the validity, legality and enforceability of the remaining provisions of this Agreement will not in any way be affected or impaired thereby for so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party.

**ARTICLE XV
WAIVER**

15.1 **Waiver.** Any claim or right arising out of a breach of the Agreement cannot be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is in writing signed by the aggrieved Party. No waiver by either Party of any one or more events of default by the other Party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Agreement, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

**ARTICLE XVI
NO WAIVER OF SOVERIGN IMMUNITY**

16.1 **No Waiver of Sovereign Immunity.** Neither Party waives or releases its rights and privileges, if any, it may have in any proceeding before any court or tribunal in any jurisdiction to assert the affirmative defense of sovereign immunity based upon their status as a governmental entity with respect to the adjudication of any claim arising or relating to this Agreement, including but limited to any breach of this Agreement.

**ARTICLE XVII
NO THIRD-PARTY BENEFICIARIES**

17.1 *No Third-Party Beneficiaries.* No person or entity (including but not limited to any Employee) shall receive, obtain, or otherwise benefit from any rights, obligations or provisions of this Agreement. By way of example and without limiting the application of this provision, no Employee shall, except as provided above, gain any rights or privileges enforceable by law or by contract on account of any provision in this Agreement.

**ARTICLE XVIII
HEADINGS**

18.1 *Headings.* The headings and captions in this Agreement are for the convenience of the parties hereto in identification of the provisions hereof and shall not constitute a part of this Agreement nor be considered interpretative thereof.

**ARTICLE XIX
ENTIRE AGREEMENT; AMENDMENT**

19.1 *Entire Agreement.* This Agreement represents the final, entire agreement among the Parties and supersedes any and all prior commitments, agreements, representations and understandings, whether written or oral, relating to the subject matter hereof and thereof and may not be contradicted or varied by evidence of prior, contemporaneous or subsequent oral agreements or discussions of the Parties hereto. There are no unwritten oral agreements among the parties hereto.

19.2 *Amendment.* The provisions of this Agreement may be amended or waived only by an instrument in writing signed by the Parties.

**ARTICLE XX
COUNTERPARTS; E-SIGNATURES**

20.1 *Counterparts.* This Agreement may be signed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any Party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the Parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.

20.2 *E-Signatures.* The Parties agree that digital or facsimile signatures shall be given the same legal effect as original signatures, and the Parties hereby agree to accept delivery of digital signatures by e-mail in "pdf" form, or via DocuSign, Adobe Sign, or any similar means of digital delivery.

**ARTICLE XXI
LEGAL AUTHORITY**

21.1 ***Legal Authority.*** The person or persons signing this Agreement on behalf of each Party warrant that they have been duly authorized by their respective entities to sign this Agreement on behalf of the entity and to bind the entity validly and legally to all terms, performances, and provisions in this Agreement. Each Party warrants that the Party possesses the legal authority to enter into this Agreement and to perform the services that Party has obligated itself to perform under this Agreement.

(Signature Page Follows)

DRAFT

IN WITNESS WHEREOF, the undersigned have executed this Agreement the ____ day of ____, 2023 to be effective as of the Effective Date above.

WORKFORCE SOLUTIONS – CAPITAL AREA

By: _____

Chief Executive Officer

AUSTIN TRANSIT PARTNERSHIP

By: _____

Greg Canally
Interim Executive Director

DRAFT

EXHIBIT A
PHASE ONE SCOPE OF SERVICES

WFS is the leadership and governing body for the regional workforce system. WFS is responsible for the planning, oversight, and evaluation of workforce development activities in the Austin/Travis County area.

Through the fostering of partnerships and collaborations, researching and sharing of labor market and economic information, identifying workforce needs of employers and residents, and consulting and advising on public policy, WFS supports and connects local people to local jobs.

Subject to the terms and upon the conditions of this Agreement, WFS shall provide the following services:

	SOW Description	Outcome
1	Create the region's first Workforce Mobility Industry Sector Partnership	Coordinate with ATP, CapMetro, the City of Austin, the Community Advisory Committee, and other mobility/transit entities and public/private sector employers and employee groups, local education agencies, labor union trades people, school districts, and community-based organizations from around the region. Create a neutral, shared table for identification of talent and talent development opportunities, allowing the community to understand how, where, and why mobility and infrastructure job training is important.
2	Analyze the mobility and infrastructure workforce ecosystem	<p>Conduct comprehensive construction, skilled worker, and related occupations supply and demand study for the Central Texas region, including assessment of current worker availability, job training capacity, and the gaps therein. Identify processes to analyze academic readiness of job seekers and training sequencing so job seekers receive what they need and when and can build upon their skills. Map skills to enhance existing training program curricula and recommend opportunities to scale workforce training to align with industry needs.</p> <p>The analysis will also draw out unintended consequences of competing hiring demands, such as displacing workers from other skilled trades and construction projects, and opportunities for working together on shared needs instead of fragmenting the system.</p>
3	Educate leaders on critical nature of infrastructure workforce	Workforce Solutions will communicate and educate leaders (including ATP Board of Directors, WFS board of directors, elected officials, and other relevant decision makers) regarding the mobility and infrastructure talent and talent development ecosystem. This will

	training and value of training local workers	include recognizing needs of job seekers and the need for various entry points that allow for job seekers to build upon their skills and create a pathway for upskilling. Part of the work will entail best practices benchmarking visits to 1-2 communities which are using infrastructure and mobility funds to also build stronger, more resilient communities.
4	Identify and recommend available resources for workforce development	The Workforce Mobility Industry Sector Partnership will recommend opportunities for additional infrastructure funding and cross-industry coordination to optimize workforce development collaboration, enabling efficient productive means to align workforce development resources through mobility, transit, and infrastructure projects. Recommendations should include processes to reach underinvested communities, as well as wrap around service opportunities, such as case management and support. Multiple entry points should be identified and mapped based upon analysis of academic and skill readiness. This should include pathways and upskilling opportunities.
5	Create a Workforce Infrastructure Action Plan	WFS will create a Phase Two Infrastructure Workforce Action Plan and implementation budget to execute recommendations from the Workforce Mobility Industry Sector Partnership, and the Mobility and Infrastructure Research. WFS will create a scorecard for outcomes to measure the collective progress in Phase One, including short-term deliverables and outcomes.

The following is the proposed budget for Phase One services:

Budget for Phase One		
Budget Category	Description	Cost
Consultants and Personnel	Key internal WFS and outsourced project management team, including CEO, COO, and CFO (portion of time).	\$50,000
Industry Sector Research	Mobility and construction industry research. *Funds will be matched by other participating entities. Funds will also be used by research individual/firm to support ATP and WFS in turning recommendations from the report into actionable plans. This	\$100,000

	implementation support may include oversight of specific activities, as approved by WFS.	
Joint Communications Support*	<p>On-going communications support to promote the activities, learnings, and outcomes of the initiative. Activities include, but are not limited to:</p> <ul style="list-style-type: none"> -A monthly press update about the partnership, the scope of work and early wins -Scripted speaking opportunities at Workforce Solutions' Hire Local events -Outreach to national media, including those visiting Austin for SXSW, to secure meetings/interviews about Austin's unique approach to building its workforce as it builds its infrastructure -Draft and place thought leadership articles from ATP/City of Austin/Cap Metro/WFS and elected leaders about the region's transportation infrastructure needs and this group's approach to meeting those needs -Secure and/or create speaking opportunities, including possibly at the U.S. Conference of Mayors Annual Conference in Columbus, OH in June -Produce a video and digital graphics to visually demonstrate findings of the supply/demand study and distribute to media with a press release following a press conference with all participating organizations 	\$95,000
Best Practices Visits (1-2)	Research and then visit communities working innovatively on meeting mobility and infrastructure workforce needs.	\$25,000
WFS Administration		\$30,000

	Total: \$300,000
--	------------------

Note 1: Subsequent to the release of the Industry Sector Research, outlining talent supply and demand needs compared to available regional capacity, WFS will request Phase Two funding to support training investments (program start-ups and/or expansions).

DRAFT