

**METROPOLITAN PLANNING ORGANIZATION BOARD
EXECUTIVE COMMITTEE**

1:30 p.m., Wednesday, March 12, 2014
Cape Coral Public Works Building Room 200
815 Nicolas Parkway, Cape Coral, FL 33915



AGENDA

Call to Order

Roll Call

Approval of Minutes

1. *Approval of the Minutes of the February 12, 2014 Executive Committee

New Business

2. Public Comments on New Business Items
3. Update on the Review of 2040 State and Federal Revenue Sources
4. Review and Provide Direction on the MPO Legal Services Agreement
5. Discussion on the FDOT District One Policy on Maintaining Asphalt Pathways/Sidewalks along State Roads
6. Approve a Revision to the MPO Employee Personnel Policies
7. Update and Discussion on the TIGER Grant

Other Business

8. Public Comments on Items Not on the Agenda
9. Announcements
10. Information and Distribution Items

Adjournment

* Action Items + May Require Action

All meetings of the Lee County Metropolitan Planning Organization (MPO) are open to the public. In accordance with the Americans with Disabilities Act, any person requiring special accommodations to participate in this meeting should contact Mr. Johnny Limbaugh at the Lee MPO 48 hours prior to the meeting by calling (239) 330-2242; if you are hearing or speech impaired call (800) 955-8770 Voice / (800) 955-8771 TDD. Or, e-mail jlimbaugh@leempo.com.

The MPO's planning process is conducted in accordance with Title VI of the Civil Rights Act of 1964 and related statutes. Any person or beneficiary who believes he has been discriminated against because of race, color, religion, sex, age, national origin, disability, or familial status may file a complaint with the Florida Department of Transportation District One Title VI Coordinator Robin Parrish at (863) 519-2675 or by writing her at P.O. Box 1249, Bartow, Florida 33831.

**MINUTES OF THE LEE COUNTY METROPOLITAN PLANNING ORGANIZATION
BOARD'S EXECUTIVE COMMITTEE**

Held on February 12, 2014

The following members were present for the meeting of the Lee County Metropolitan Planning Organization Board's Executive Committee on January 8, 2014 at Cape Coral City Hall, Conference Room 220A, 1015 Cultural Parkway Blvd, Cape Coral, Florida.

Councilman Rick Williams	City of Cape Coral
Councilman Thomas Leonardo	City of Fort Myers
Commissioner Cecil Pendergrass	Lee County Commission
Councilman Joe Kosinski	Town of Fort Myers Beach
Vice-Mayor Stephen McIntosh	City of Bonita Springs

Those also in attendance included: Don Scott and Johnny Limbaugh of Lee County MPO. Darla Letourneau BikeWalk Lee

CALL TO ORDER

The meeting was called to order at 1:35 p.m.

APPROVAL OF MINUTES

Agenda Item #1 – *Approval of the Minutes of the January 8,2014 Executive Committee

MOTION BY COUNCILMAN LEONARDO TO APPROVE THE MINUTES OF THE January 8, 2014 EXECUTIVE COMMITTEE MEETING. SECONDED BY COUNCILMAN WILLIAMS. MOTION CARRIED UNANIMOUSLY.

NEW BUSINESS

Agenda Item #2 – Public Comments on New Business Items

Comments will be addressed at each agenda item.

Agenda Item #3 – Update on the Staff Review of the State and Federal 2040 LRTP Transportation Revenues

Don Scott provided an update to FDOT's revenue forecast and staffs efforts to get clarification on methodology and current funding levels. The committee discussed the need to have realistic estimates. The committee is concerned that the MPO had not received a response to the questions that were asked at the work program presentation in December. Don presented the Local jurisdictions revenue forecast that had been received by staff. The committee questioned the difference in the estimates provided

particularly the Road Impact Fees. The Committee requested additional information on the methodologies used by each jurisdiction. MPO staff was asked to bring the information back to a future meeting.

Agenda Item #4 – Review of the Scope of Services for Local Government Revenue Sources Research Support

Johnny Limbaugh provided a overview of the proposed task order to research existing revenue sources that may be available for the development of the 2040 LRTP. The task will look at historical trends as well as future forecasts, as available and will be used to document the current applications of these local tax revenues in Lee County. the committee discussed the merits of the study and the need for having the information. Darla Letourneau cautioned the committee about moving too quickly with proceeding with a sales tax. MPO staff explained that this is just a fact finding task and the goal is to identify current funding and its limitations when addressing the needs of Lee County. the Committee directed staff to issue the task order.

Agenda Item #5 – Discussion on the Analysis of Projects for the 2040 LRTP

Don Scott presented one of the best practices that came out of the MPO Board presentations last year was the process that Nashville uses to analyze projects that are being considered during the development of the Long Range Transportation Plan (LRTP). The Nashville MPO developed project sheets that included many different data items, consistent with their goals, which were used to help determine why the project should be included in the LRTP. One of the important factors in this process was not just the identification of the evaluation criteria to show the need for the project but going through the process of having to request the project (instead of assuming it is included because it was in the previously adopted plan) and showing how the proposed project solves the issue that is being identified. Don explained similar process could provide a good opportunity for the person/agency/staff asking for the project to describe why they want it. The project evaluation criteria items that were used in Nashville were provided in the packet. The committee agreed that there should be a process for the continued review of projects to ensure they remain relevant and cost effective. The committee ask staff to develop a process and bring it back to the committee for further review and comment.

Agenda Item #6- Update and Discussion on the TIGER Grant

Don Scott gave a update on current activities.

Other Business

Agenda Item #9 – Public Comments on Items Not on the Agenda

There were no comments made under this item.

Agenda Item #10 – Announcements

There were no announcements made under this item.

Agenda Item #11 – Information and Distribution Items

None

ADJOURNMENT

Meeting adjourned at 2:37 p.m.

UPDATE ON THE REVIEW OF STATE AND FEDERAL 2040 LRTP TRANSPORTATION REVENUES

RECOMMENDED ACTION: Provide an update on the analysis of the 2040 Local and State Revenues.

The MPO staff is currently working with Tindale-Oliver and Associates on the review of the existing projected transportation revenue projections with the first part of the analysis focusing on the level of funding that would be expected to be generated over the LRTP time period. In addition, the MPO staff will be meeting with FDOT Work Program and District staff later next week to go over the comments that we previously made during the FDOT Tentative Work Program review. These comments included questions on the amount of funding that is projected to be received in Lee County over the five years and how that compares with what we are projected to get over the following twenty years of the Long Range Transportation Plan (and as we discussed last month how does it compare with what we projected we were going to receive in the first five years of the 2035 LRTP back in 2009).

REVIEW AND PROVIDE DIRECTION ON THE MPO LEGAL SERVICES AGREEMENT

RECOMMENDED ACTION: Review and provide direction on which of the Legal Services Agreement options (**attached**) that the Executive Committee would like to proceed forward with.

At the January MPO Executive Committee, the firm Fowler White Boggs was selected to provide MPO legal services. At the meeting the Executive Committee and staff had a discussion on whether to go with a monthly retainer or to charge by the hour. The two legal services agreements that are attached include one agreement where the services are charged hourly and another version where it is charged by a monthly retainer (staff has also attached the listing of legal tasks that are referenced in the agreement). The format and structure of the agreements were put together from reviewing similar legal agreements with other MPO's in the state. Staff is recommending that MPO go with the retainer version based on discussions with other MPO's that have outside legal services. Staff is seeking Executive Committee input and direction on this item.

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into this ____ of _____ 2014, by and between the Lee County Metropolitan Planning Organization (hereinafter called the "MPO"), and the law firm of Fowler White Boggs, P.A. (hereinafter called the "Fowler White").

WITNESSETH

WHEREAS, the MPO is a metropolitan planning organization designated pursuant to Section 339.175, Florida Statutes; and

WHEREAS, the MPO is a legally independent governmental entity distinct from the state, the constituent local government bodies represented on the governing board of the MPO, or any entity that is a signatory to an establishing Interlocal government, and has such powers and privileges that are provided under Sections 163.01 and 339.175, Florida Statutes, including the authority to contract for the provision of legal services; and

WHEREAS, the MPO recognizes that from time to time the need arises for legal advice and representation; and

WHEREAS, the Fowler White was selected pursuant to Request for Proposal No. MPO 2013-0L1 ("RFP"), attached hereto and incorporated herein as Attachment 1; and

WHEREAS, Fowler White wishes to render services to the MPO as set forth below in the Scope of Services.

NOW, THEREFORE, it is declared to be the purpose of this Agreement is to define the services to be provided to the MPO Fowler White and to provide compensation to the Fowler White for such services and the parties hereby agree as follows:

1. Recitals. The recitals above are true and are hereby incorporated into this Agreement.

2. Scope of Services. Fowler White agrees to provide legal services to the MPO consistent with Exhibit A of the RFP further subject to the terms of the Agreement. Such services do not include advice or representation of MPO staff, governing or advisory board members in their individual capacities unless otherwise requested to do so by the MPO Governing Board.

3. Direction of Services. Fowler White shall report to and take direction from the MPO Governing Board, its Chair, and MPO Executive Director.

4. Compensation. In consideration for provided legal services MPO agrees to pay a monthly retainer of \$850 per month for the first year and \$1000 for the following two years, such retainer shall cover all items listed in Scope of Services except those listed exceptions below which shall be billed at the hourly rate of \$225 per hour measured in

six minute increments. Invoices will be submitted monthly detailing both retainer and hourly services of the previous month. Limitations:

- a) Items (e), (i), (j), (m), (n), (o), (p), and (r) contained in Section A.2. Scope of Work of the RFP shall be billed as hourly items outside the retainer.
- b) It is understood by Fowler White that because the term of this Agreement extends beyond the fiscal year, the MPO's obligations contained herein are contingent upon sufficient budget allocations approved by the Governing Board, as well as relevant federal and state agencies.

5. Additional Costs. All expenses relating to the representation shall be covered as follows:

- a) Routine expenses such as office overhead, photocopying, legal research, postage, and phone/fax charges shall be borne by Fowler White.
- b) Litigation or real estate related costs such as filing and recording fees, court reporting, couriers, and related expenses will be invoiced to the MPO for payment.
- c) Routine travel shall be covered under the retainer, however significant out-of-area travel undertaken on behalf of the MPO will be reimbursed in accordance with MPO travel policies.

6. Insurance. Fowler White shall maintain adequate insurance coverage as detailed in Section B.5 of the RFP. Certificates of coverage are attached hereto as Attachment 2 of this Agreement.

7. Duration and Termination. The effective date, duration, and termination of this Agreement shall be governed as follows:

- a) This Agreement shall be effective on the date upon which the last party here to signs and shall remain in effect for three years thereafter.
- b) The Agreement shall terminate upon its third anniversary, however the MPO may renew for successive one year terms by providing written notice to Fowler White at any time prior to initial or subsequent expiration.
- c) Either party may terminate this Agreement at any time and for any reason upon forty-five (45) days written notice to the other.

8. Records. Fowler White shall maintain a file, available for inspection by the MPO, containing all documentation created, received, or maintained as part of its representation of the MPO in accordance with Florida public records law. Upon termination of this Agreement all records held by Fowler White shall be remitted to the MPO.

9. Conflict. Fowler White does and has represented a number of constituent local governments of the MPO and the State of Florida, the MPO agrees that Fowler White may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not substantially related or adverse to our work for the MPO. In the event that the potential for a conflict arises, Fowler White will immediately inform and consult with the MPO.

10. Complete Agreement. This instrument, including all attachments, embodies the entire Agreement of the parties. This Agreement supersedes all verbal or other written communications of the parties. The RFP and our response (Attachment 3) are both incorporated into this Agreement, the terms of which shall be binding on the parties unless superseded by the language of this Agreement.

11. Amendment. This Agreement may, upon initiation of either party, be amended to cure any ambiguity, defect, or omission, adjust rates or to grant any additional duties which are consistent with the intent and purpose of this Agreement through enactment of an instrument of equal formality. Any changes must be mutually agreed upon and shall be incorporated as written amendments to this Agreement.

12. Governing Law and Severability. This Agreement is governed by the Laws of the State of Florida. Should any section, paragraph, sentence or clause of this Agreement be deemed unlawful by a court of competent jurisdiction, no other provision hereof shall be affected and all other provisions of this Agreement shall continue in full force and effect to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have affixed their signatures, agreed to on the date state above.

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3. Direction of Services. Fowler White shall report to and take direction from the MPO Governing Board, its Chair, and MPO Executive Director.

4. Compensation. In consideration for provided legal services MPO agrees to pay Fowler White at the hourly rate of \$225 to cover all items listed in Scope of Services Invoices will be submitted monthly detailing services of the previous month. It is understood by Fowler White that because the term of this Agreement extends beyond

the fiscal year, the MPO's obligations contained herein are contingent upon sufficient budget allocations approved by the Governing Board, as well as relevant federal and state agencies.

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IN WITNESS WHEREOF, the parties have affixed their signatures, agreed to on the date state above.

Exhibit A
Lee County Metropolitan Planning Organization (MPO)
Scope of Work for General Legal Services to the MPO

A.1 ORGANIZATION OVERVIEW

The MPO is a not for profit independent entity formed by Interlocal agreement made up of the following local jurisdictions: Lee County, City of Fort Myers, Bonita Springs, Sanibel, Cape Coral and the Town of Fort Myers Beach. It is one of 26 such entities in the state of Florida established under Section 339.175 of Florida Statutes to provide a comprehensive, cooperative, and continuous transportation planning process for urbanized areas with a population of 50,000 or greater. The MPO is federally funded through grant[s] from the Federal Highway Administration and Federal Transit Administration (FTA), U.S. Department of Transportation, under the State Planning and Research Program, Section 505 [or Metropolitan Planning Program, Section 104(f)] of Title 23, U.S. Code (USC).

A.2 OBJECTIVE OF RFP AND SCOPE OF WORK

The MPO is seeking a qualified attorney or law firm to provide professional general legal services to the MPO. Tasks will include the following:

- (a) Provide general legal advice to MPO staff on routine matters. This could be provided over the phone or through email.
- (b) Respond to individual MPO Board member enquiries by providing legal advice.
- (c) Attend MPO Board, MPO Board Executive Committee, advisory committee and staff meetings as needed.
- (d) Review, consult and approve complicated and controversial MPO Board executive summary reports

SCOPE OF WORK (continued)

- (e) Representing the MPO in the administration of all claims and litigation filed by or against it; provided, however, that special counsel may be retained to defend or prosecute actions requiring special expertise; further provided that outside counsel shall be retained in the event of a conflict of interest which disqualifies the attorney(s) from such representation.
- (f) Monitoring activities of any special counsel retained by the MPO.
- (g) Perform legal research and develop legal opinions upon request by MPO staff, or MPO Board. Legal opinions shall be prepared in a summarized written format suitable for presentation to the MPO Board, and incorporating in MPO agenda packets.
- (h) Review, consult and approve for legal sufficiency continuing and proposed MPO contracts, bylaws and service agreements (including inter-local agreements. Grant agreements, etc.).
- (i) Assist the MPO in federal and state grant process when needed.
- (j) Advise and assist staff in responding to claims and complaints regarding violations of civil rights, both federal and state.
- (k) Monitor the annual session of the Legislature to identify, analyze, and track the passage of bills of interest to the MPO upon request.
- (l) Provide legal advice and counsel to MPO Board and staff to ensure compliance with Federal, State and local statutes, rules, and regulations. This may lead to presentations by the Legal Counsel to the MPO Board if and when needed.
- (m) Prepare and file pleadings, motions or briefs which may be required;
- (n) Initiate and conduct discovery including depositions on behalf of the MPO and represent the MPO in discovery initiated by opposing parties;
- (o) Represent the MPO before any Boards, Commissions, Courts, or Tribunals, when necessary;
- (p) Prepare draft bills that may be recommended by the MPO Board and ensure their distribution to local legislative delegation and appropriate committees, or sub committees

- (q) Act as an intermediary between the MPO and counsel for other agencies or legal entities; and
- (r) Perform other legal services as may on occasion be specifically requested

A.3 MINIMUM QUALIFICATIONS

To be considered for award of this RFP, the Law Firm or Sole Practitioner must meet the following minimum qualifications, or they will not be scored:

1. Member in good standing of the Florida Bar.
2. Proposer has demonstrated at least five years of experience in transactional law. Such experience must include representation of a not-for-profit corporation; local government; or Political Subdivision that administers federal grant funds.
3. Proposer has demonstrated direct experience in working with volunteer, not-for-profit Boards, Florida Sunshine Law; Federal OMB Circulars covering government or not-for-profit entities; and Federal/State Grant Programs.
4. If a multi-person firm responds, the person assigned to the MPO should meet the above requirements. Proposer should list the name of the person assigned, in its response to the RFP.

A.4 SPECIAL NOTES

Note to Minority/Women Business Enterprises: Sole Practitioners and Law Firms that qualify as minority-owned or women-owned enterprises under a federal, state or local government or public authority certification process (M/WBE) are encouraged to submit proposals and to identify themselves as M/WBE respondent must provide evidence of certified M/WBE status (such as a copy of the certification letter, etc.).

Note Regarding Legal Fees: While Lee County MPO hopes to attract proposals from a wide array of Sole Practitioners and Law Firms, the MPO does not anticipate the position will command high hourly rates or extensive hours. The Lee MPO expects that costs for providing legal services to the MPO Staff and the MPO Board will not exceed \$7,000 per year.

**DISCUSSION ON THE FDOT DISTRICT ONE POLICY
ON MAINTAINING ASPHALT PATHWAYS AND
SIDEWALKS ALONG STATE ROADS**

RECOMMENDED ACTION: Staff is seeking the Executive Committee input and direction on how the MPO should respond to this new policy.

The Florida Department of Transportation District One staff has been discussing with the MPO staff that they will no longer be maintaining future constructed asphalt sidewalks and pathways within FDOT right-of-way along State roads. This first came up in regards to various pathway projects where the MPO had submitted applications for SU box funding to get pathways/sidewalks built along various state road segments (two examples are: SR 80 from Orange River to Buckingham Road and Colonial Boulevard from Metro Parkway to Veronica Shoemaker).

The MPO's understanding is that FDOT will maintain a concrete sidewalk that is built within the right-of-way but not asphalt. Our understanding is that it is due to the long term maintenance of the facility but we have asked to get this policy in writing, along with the rationale, so we can pass this on to the local jurisdictions (to date we have not received this). We have asked the local jurisdictions, where the planned facilities are going to be built, if they would take on the maintenance responsibility of the new asphalt facilities along the State roads and they have indicated the answer is no (due to a several different issues including liability). Staff will provide further discussion of this issue at the meeting but at this point we are seeking Executive Committee direction on how we should proceed with this issue.

**APPROVE A REVISION TO THE MPO
EMPLOYEE PERSONNEL POLICIES**

RECOMMENDED ACTION: Approval of a revision to the Employee Personnel Policies.

Through a request for clarification of employee life insurance benefits, staff has learned that the maximum benefit allowed through the MPO's policy is \$50,000. As a result, staff is updating the procedures to match this requirement.



Lee County Metropolitan Planning Organization's

Personnel Manual

Updated: March 12, 2014

815 Nicholas Parkway E
P.O. Box 150045
Cape Coral, Florida 33915-0045
239-244-2220
Fax: 239-790-2695

New Year's Day

Martin Luther King Day

Presidents Day

Memorial Day

Independence Day

Labor Day

Veterans Day

Thanksgiving Day

Day After Thanksgiving

Christmas Eve Day (half day; holiday will commence at 1:00 p.m.)

Christmas Day

If one of the above holidays falls on a Saturday, it shall be observed on the preceding Friday. If one of the above holidays falls on a Sunday, it shall be observed on the following Monday. If Christmas Eve Day falls on a Friday, it shall be observed on that day and the corresponding Christmas Day holiday shall be observed on the following Monday.

4.2 Medical Insurance

The MPO will pay 100% of coverage for the employee and 70% coverage towards dependent coverage. The percentage paid by the MPO is evaluated annually and is subject to change.

4.3 Disability Insurance

The MPO will provide to each MPO employee, at the MPO's expense, long-term disability insurance in an amount equal to the MPO employee's salary, to the extent permitted by law, during any disability which the Employee may incur. Where a waiting period is provided within a policy, the MPO employee may use accrued Paid Time Off (see section 5.1) during the waiting period.

4.4 Life Insurance

The MPO will provide to each MPO employee, at the MPO's expense, Group term life insurance of \$50,000. ~~Additional life insurance coverage is available at the employees expense.~~ Included in the Group life Insurance is an Accidental Death and Dismemberment policy. The Lee County MPO pays the total cost of this benefit.

4.5 Continuation of Group Health Insurance Coverage

UPDATE AND DISCUSSION ON THE TIGER GRANT

DISCUSSION ITEM:

The Lee MPO was recently awarded a TIGER V grant of \$10.5 million by US DOT to implement the Lee County Complete Streets Initiative project. The project scope includes the construction of shared use paths, bike lanes, sidewalks, sidewalk connections, way-finding signs, bicycle parking, bus shelters and ADA compliant infrastructure. These improvements and enhancements are proposed along the Lee Tour De Parks Loop and the University Loop identified in the MPO Bicycle Pedestrian Master Plan, and along LeeTran's LINC and 60 bus routes.

The MPO staff has been holding weekly to bi-weekly meetings with the Federal Highway Administration to keep the project moving towards a successful implementation. The design build criteria package is currently being developed along with the Construction Engineering Inspection package that will be advertised in a few weeks. Staff is also working with a separate consultant on the Environmental work that needs to be done before the agreement can be signed. In addition, staff is responding to grant comments for resubmittal of the grant agreement.