

**METROPOLITAN PLANNING ORGANIZATION BOARD  
EXECUTIVE COMMITTEE**

**1:30 p.m., Wednesday, September 10, 2014**  
Cape Coral Public Works Building Room 200  
815 Nicolas Parkway, Cape Coral, FL 33915



**AGENDA**

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**Call to Order**

**Roll Call**

**New Business**

1. Public Comments on New Business Items
2. Review and Approval of the TIGER Construction Engineering Inspection Contract
3. Update on the Status of the TIGER Grant Project
4. Update on the Development of LRTP Revenues
5. Discussion on the Updated Consultant Tasks and Budget
6. Review of the Proposed Joint Lee/Charlotte MPO Letter Regarding Burnt Store Road

**Other Business**

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

**Adjournment**

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\* 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](mailto: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 Lee County MPO Title VI Coordinator Johnny Limbaugh at (293) 330-2242 or by writing him at P.O. Box 150045, Cape Coral, Florida 33915-0045.

## **REVIEW AND APPROVAL OF THE CONSTRUCTION ENGINEERING AND INSPECTION CONTRACT WITH ATKINS**

**RECOMMENDED ACTION:** Review and approval of the Construction Engineering Inspection Contract with Atkins (**attached** minus the attachments) and authorize the Chair to sign the agreement.

The MPO staff has been working with the MPO attorney to develop a contract for the Construction Engineering and Inspection (CEI) services that will be done as part of the TIGER project. In addition, the staff has negotiated a fee of \$1,749,399 (**attached**) based on the current schedule that was included in the grant agreement.

**CONSTRUCTION ENGINEERING AND INSPECTION  
SERVICES AGREEMENT**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between the **LEE COUNTY METROPOLITAN PLANNING ORGANIZATION** (hereinafter "MPO") and Adkins North America Inc. (hereinafter "ENGINEER").

**WHEREAS**, the MPO has a need for professional construction engineering and inspection services related to the Lee County Complete Streets Initiative at various locations in Lee County; and

**WHEREAS**, ENGINEER is willing and able to perform the services for the MPO on the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. SCOPE OF SERVICES**

A. ENGINEER shall provide MPO with services consisting of construction contract administration, engineering, inspection and materials sampling, testing and grant reporting for the construction of various sidewalk, pathway, bike lane, shoulder widening and bus shelter project(s) and associated signage identified in the Lee County Complete Streets Initiative (LCCSI) grant agreement, (hereinafter collectively referred to as "Services") as more fully described in Exhibit "A," which is attached hereto and incorporated herein by reference.

B. ENGINEER shall perform any and all Services in a timely, efficient and cost-effective manner, and in accordance with the generally accepted standards of its profession.

C. This is a non-exclusive Agreement and the MPO does not guarantee, warrant, or represent that ENGINEER will be assigned any particular amount of work. MPO reserves the right to perform any and all required work in-house or by any other means MPO deems to be in its best interest.

**2. TERM**

The term of this Agreement shall be the Period of Time defined in the Project Schedule that is submitted to the MPO by the Design-Build Contractor. Thereafter, the parties shall have the option, and upon mutual agreement, to extend the term of this Agreement for up to two (2) additional six (6) month terms. The foregoing time periods may be exceeded in order to complete a task that is already in progress at the end of the term.

### **3. COMPENSATION**

A. MPO will compensate ENGINEER for the Services as detailed in each of the ENGINEER'S narrative monthly invoices and in accordance with the Schedule of Fees and reimbursable expenses as contained in the fee schedule attached hereto and incorporated herein as Exhibit "B." The rates for all Services shall not exceed the maximum rates detailed in the Fee Schedule and shall remain in effect throughout the duration of this Agreement, including any renewal terms.

B. MPO shall have no obligation to pay any expenses outside the Scope of Services as agreed to by the parties. MPO shall also have no obligation to reimburse ENGINEER for performance or expenses necessary to correct any error or defect, except to the extent that such errors or defects were caused by incomplete, mistaken, or inaccurate data, information, instructions or other specifications or directions provided to ENGINEER by the MPO or its duly authorized representatives, and such errors or defects were not known to, or could not have been reasonably discovered by the ENGINEER.

C. ENGINEER shall not be entitled to any compensation for a Project Office, for any vehicle travel mileage that is incidental to the work, or for any man-hours spent in travel time to and from work or the job site.

D. Payment to ENGINEER for Services rendered hereunder shall be made by MPO within thirty (30) calendar days of its receipt of an ENGINEER'S Invoice, unless within the thirty (30) day period the MPO notified ENGINEER of an objection to the Payment amount and either provides ENGINEER with a determination of the proper Payment amount, or requests further information from ENGINEER so that proper Payment can be determined and agreed upon by the parties.

E. MPO's objection to the Payment amount shall be accompanied by the MPO's remittance of any undisputed portion of the Payment. If the objection is resolved in favor of ENGINEER after the thirty (30) day period, then MPO shall pay ENGINEER the amount so determined.

F. ENGINEER agrees that the making of any willfully false statement in any Invoice submitted to the MPO shall be grounds for the immediate termination for cause of this Agreement, and ENGINEER agrees to reimburse MPO for any amounts overpaid, including interest at one percent (1%) per month, simple interest.

G. Upon termination of this Agreement, ENGINEER shall prepare a final and complete Invoice for all Services performed since the posting of the last invoice and through the date of termination. ENGINEER also agrees to maintain, and to cause each of its subcontractors or sub-consultants to maintain complete and accurate books and records in accordance with generally accepted accounting principles and standards, in a form acceptable to the MPO, and relating to all Services and related fees, costs and expenditures to the MPO that have been contracted for and paid during the term of this Agreement.

H. MPO shall have the right, at any reasonable time and through any of its designated agents or representatives, to inspect and audit the books and records of ENGINEER for the purpose of verifying the accuracy of any Invoice. If it is established by the audit, or by any other means, that ENGINEER has over-billed or overstated its costs, fees, or reimbursable expenses to the MPO, then the amount of any overcharge shall be refunded to the MPO, together with the MPO's reasonable and provable costs (including auditing expenses) in discovering the overcharge and effecting its repayment. If it is determined that the MPO has overpaid ENGINEER, the ENGINEER shall, within ten (10) calendar days, refund to the MPO the overpayment amount, plus interest at the rate of one percent (1%) per month, simple interest.

I. ENGINEER shall retain all records relating to the Services and make them available to the MPO, as specified above, until the later of (1) five [5] years following final payment; (2) five [5] years following termination of the Agreement; or (3) the conclusion of all litigation (including all appeals) related to this Agreement.

J. When the MPO's Executive Director (hereinafter "Director") or his designee has reasonable grounds to believe that: (1) ENGINEER will be unable to perform the Services; or (2) a pending or meritorious claim exists against ENGINEER or the MPO arising out of ENGINEER's intention misconduct or negligence or ENGINEER's breach of any provision of this Agreement, then the Director may withhold payment otherwise due and payable to ENGINEER, until the Director can confirm such belief. Any payment so withheld may be retained by the MPO for such period as it deems advisable to protect the MPO against any loss the MPO may incur pursuant to this subsection, or as may be determined by any court of competent jurisdiction. This provision is intended solely for the benefit of the MPO, and no person shall have any right against the Director or claim against the MPO by reason of the Director's failure or refusal to withhold a payment. No interest shall be payable by MPO on any amounts withheld under this subsection, and this subsection is not intended to limit or in any way prejudice any other rights the MPO may have.

K. The acceptance by ENGINEER, its successors or assigns, of any final payment due upon termination of this Agreement, shall constitute a full and complete release of the MPO from any and all claims, demands, or causes of action whatsoever that ENGINEER, its successors or assigns may have against the MPO under this Agreement.

#### **4. SCOPE AND FEE ADJUSTMENT**

A. The MPO may, at any time, notify ENGINEER of requested changes to the Scope of Services under this Agreement. The notification shall state the scope modification and the amount of increase or decrease in the cost and fee amount if the Scope of Services is modified.

B. The Director shall have the sole authority to reduce (or eliminate, in whole or in part) the Scope of Services, upon written notice to the ENGINEER specifying the nature and extent of the reduction. In such event, the ENGINEER shall be fully compensated for the Services already performed, including payment of all fee amounts due and payable prior to the effective date stated in the Director's notification of the reduction and for a maximum of five (5) days'

demobilization costs. The ENGINEER shall also be compensated for the Services remaining to be done and not reduced or eliminated.

C. The Director may, at any time and for any reason, direct the ENGINEER to suspend work (in whole or in part) under this Agreement. Such direction shall be in writing, and shall specify the period during which Services shall be stopped. The ENGINEER shall resume its Services upon the date specified by the Director, or upon such other date as the Director may specify in writing. The MPO agrees to compensate the ENGINEER for its reasonable and provable costs and losses (including overhead costs, reimbursables, demobilization, and remobilization) attributable to any delay approved or caused by the actions or inaction of the MPO.

## **5. INDEMNIFICATION AND INSURANCE**

A. ENGINEER's Indemnification of MPO. The ENGINEER shall indemnify and hold harmless the MPO, its employees and officers, from all liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the ENGINEER and other persons employed or utilized by the ENGINEER in the performance of the Agreement. This provision shall survive the expiration or termination of the Agreement.

B. The ENGINEER shall purchase, maintain, and keep in full force and effect, such insurance as is further described below, and any other insurance necessary to fully protect it from claims that may arise out of, or result from, ENGINEER's operations, performance, or Services, or all of these activities, whether resulting from actions of ENGINEER, any of its agents or subcontractors, or anyone for whose acts it may be liable.

C. The insurance required by this Subsection shall comply with the requirements contained in Exhibit "C" which is attached hereto and incorporated herein by reference.

## **6. TERMINATION**

A. This Agreement may be terminated as follows:

- 1) by the MPO, following fifteen (15) days' prior written notice to the ENGINEER, as provided below;
- 2) by the ENGINEER, following fifteen (15) days' prior written notice to the MPO, as provided below; and
- 3) by mutual agreement of the parties.

B. In the event of termination of this Agreement, any liability of one party to the other arising out of any Services rendered, or any act or event occurring prior to the termination, shall not be terminated or released.

C. In addition to any other termination provisions that may be provided in this Agreement, MPO may terminate this Agreement if the ENGINEER substantially fails to perform any obligation under this Agreement and does not remedy the failure within fifteen (15) days after receipt by the ENGINEER of written demand from the MPO to do so, unless, however, the nature of the failure is such that it cannot, in the exercise of reasonable diligence, be remedied within fifteen (15) days, in which case the ENGINEER shall have such time as is reasonably necessary to remedy the failure, provided the ENGINEER promptly takes and diligently pursues such actions as are necessary therefor. The ENGINEER may terminate this Agreement if the MPO substantially fails to perform any obligation under this Agreement, and does not remedy the failure within fifteen (15) days after receipt by the MPO of written demand from the ENGINEER to do so, unless, however, the nature of the failure is such that it cannot, in the exercise of reasonable diligence, be remedied within fifteen (15) days, in which case the MPO shall have such time as is reasonably necessary to remedy the failure, provided it promptly takes and diligently pursues such actions as are necessary therefor.

D. The MPO may, without prejudice to any other rights or remedies, terminate this Agreement at any time for its convenience by giving the ENGINEER fifteen (15) days prior written notice. The ENGINEER shall be paid for Services completed prior to receipt of the termination notice and for reasonable termination costs relating to commitments which had become firm prior to the termination. Such payment to the ENGINEER, however, will exclude any and all anticipated supplemental costs, administrative expenses, overhead and profit on uncompleted Services.

E. Upon termination of this Agreement, the MPO shall pay the ENGINEER for those Services actually rendered and contracted for, and those reasonable and provable expenses required and actually incurred by the ENGINEER for Services prior to the effective date of termination. Such payments, however, shall be reduced by an amount equal to any additional costs incurred by the MPO as a result of the termination (if the Agreement is terminated for cause by the MPO), or increased by an amount equal to the reasonable and provable expenses incurred by the ENGINEER (to close out its Services) that are directly attributable to the termination, and for which the ENGINEER is not otherwise compensated (if the Agreement is terminated for the convenience of the MPO, as provided in paragraph 4 above).

## **7. MATERIALS AND DATA**

A. All data, inspector's reports, job files, test reports, contract plans and specifications used to record as-built or other conditions, copies of shop drawings, construction photographs, cost control and scheduling data, computer printouts, contractor's submittals, summaries, CDs and other electronic documents and memoranda, and any and all other documents instruments, information and materials prepared or accumulated by ENGINEER related to the Services rendered hereunder shall be the sole property of the MPO. The MPO may reuse any of these

items at no additional cost and the MPO shall be vested with all rights or whatever kind and however created that may be in existence, provided, however, that ENGINEER shall not be liable or legally responsible to anyone for MPO's additional use of any of the foregoing on another project, without the ENGINEER's prior written approval.

B. In the event this Agreement is terminated prior to ENGINEER's satisfactory completion of all Services hereunder, ENGINEER shall promptly furnish the MPO, at no additional cost, one (1) copy of the following items, any or all of which may have been produced prior to and including the date of termination: data, specifications, calculations, estimates, plans, drawings, construction documents, photographs, summaries, reports, CDs and other electronic documents and memoranda; and any and all other documents, instruments, information, and materials (whether or not completed) prepared or accumulated by ENGINEER, or by any ENGINEER subcontractor, in rendering the Services described herein, and not previously furnished to the MPO by ENGINEER pursuant to this Agreement. The documents shall be the sole property of the MPO, and the MPO shall be vested with all rights provided therein of whatever kind and however created. Engineer shall also require that all such subcontractors agree in writing to be bound by the provisions of this Paragraph.

## **8. ASSIGNMENT AND DELEGATION**

This Agreement shall not be assigned by ENGINEER without prior written consent of MPO. Such consent shall be in the sole discretion of MPO. Any attempt by ENGINEER to assign, transfer or delegate its rights and duties in violation of this section without MPO's consent shall give MPO the right to terminate this Agreement for cause.

## **9. THIRD PARTY BENEFICIARY**

It is specifically understood and agreed that no other person or entity shall be a third party beneficiary to this Agreement and that none of the provisions herein shall be for the benefit of or be enforceable by anyone other than the parties hereto.

## **10. AMENDMENTS**

No alteration, change, amendment or modification of the terms of this Agreement shall be valid unless made in writing and signed by both parties, and approved by the MPO, if applicable.

## **11. WAIVER OF BREACH**

Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement.



## **12. COMPLIANCE WITH APPLICABLE LAWS**

ENGINEER shall comply with all laws, rules, regulations, and health and safety standards of the federal, state, county and MPO that are applicable to the services being provided.

## **13. TAXES**

ENGINEER shall be responsible for all payments of federal, state, and local taxes related to the work, inclusive of sales tax, if applicable.

## **14. INDEPENDENT CONTRACTOR**

ENGINEER is an independent entity under this Agreement and nothing herein shall be construed to create a partnership, joint venture, or agency relationship between the parties.

## **15. LICENSES AND CERTIFICATIONS**

ENGINEER shall possess or secure all necessary business and professional licenses, at its sole expense, prior to execution of this Agreement.

## **16. ENTIRE AGREEMENT; ENFORCEABILITY**

This Agreement constitutes the entire agreement of the parties and supersedes any prior agreement(s), understandings, representations or negotiation, written or oral, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change, amendment or modification of the terms of this Agreement shall be valid unless made in writing and signed by both parties hereto. This Agreement shall be binding upon and inure to the benefit of the MPO and the ENGINEER and to their respective successors and assigns. In the event any provision hereof is determined to be unenforceable or invalid, such unenforceability or invalidity shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect. To that extent, this Agreement shall be severable.

## **17. HEADINGS**

The Headings of the Sections, Exhibits, or Attachments herein are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such Sections, Exhibits, or Attachments.

**18. WAIVER OF JURY TRIAL**

MPO and ENGINEER knowingly, irrevocably, voluntarily and intentionally waive any right either of them may have to a trial by jury in State or Federal Court proceedings with respect to any action, proceeding, lawsuit or counterclaim arising out of this Agreement, or the performance of the work hereunder.

**19. ATTORNEY'S FEES**

In any litigation between the parties arising out of or relating in any way to this Agreement or its breach, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees, including appellate attorney's fees.

**20. NON-WAIVER OF SOVEREIGN IMMUNITY**

Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement nor any statement, act or omission of An MPO officer, employee or agent shall be construed to be a waiver of the MPO's right to the protection of sovereign immunity.

**21. NON-DISCRIMINATION**

No action shall be taken by the ENGINEER which would discriminate against any person on the basis of race, creed, color, marital status, national origin, religion, age, sex, ethnicity, or disability.

**22. GOVERNING LAW**

This Agreement and the performance of services hereunder shall be governed by the laws of the State of Florida, with exclusive venue for the resolution of any dispute being a court of competent jurisdiction in Lee County, Florida.

**23. TIME OF ESSENCE**

Time shall be of the essence with respect to all actions to be taken under this Agreement and no extension of time shall be granted unless agreed to in writing and executed by both parties.

**24. FORCE MAJEURE**

Neither party shall be in default for the failure to perform its obligations under this Agreement when due to acts of God, civil unrest, strikes, labor disputes, or governmental demands or requirements that could not be reasonably anticipated and the effects avoided or mitigated. Either party shall notify the other of any such "force majeure" within ten (10) days of the occurrence. Neither party shall hold the other responsible for damages or for delays in performance caused by force majeure which may include weather conditions affecting performance, floods, epidemics, war, riots, strikes, lockouts, or other industrial disturbances, or protest demonstrations. Should such acts or circumstances occur, the parties shall use their best efforts to overcome the difficulties and to resume the work as soon as practicable.

**25. NOTICES**

Any notices, reports or other written communications from either party shall be considered delivered when received by the other party or its authorized representative. Whenever notice shall be required or permitted herein, it shall be delivered in such a manner that there is written proof of delivery (including electronic, digital or other similar record that is capable of being produced), including but not limited to certified mail with a return receipt, hand delivery, e-mail, facsimile transmission or other type of transmission that provides a record of transmission and receipt. Certified mail shall be sent with return receipt requested and shall be deemed delivered on the date shown on the postal delivery confirmation, or the date shown as the date same was refused or unclaimed. Hand delivery to the MPO shall not be sufficient notice for any purpose unless a copy of the Notice is produced with a MPO date and time stamp appearing on it. Notices shall be delivered to the following individuals or entities at the addresses (including e-mail) or facsimile transmission numbers set forth below:

As to MPO: Lee County Metropolitan Planning Organization  
Donald Scott Executive Director

Physical Location  
815 Nicholas Parkway East  
Cape Coral, FL 33990

Mailing Address  
P.O. Box 150045  
Cape Coral, FL 33915

As to ENGINEER: Adkins North America, Inc.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**26. ADDITIONAL CONTRACT DOCUMENTS (EXHIBIT “D”)**

The following forms/documents shall be considered to be part of this Agreement:

- A. Drug Free Workplace Form
- B. Federal E-Verify Compliance Certification
- C. Sworn Statement Under Section 287.133(3)(a) on Public Entity Crimes
- D. Conflict of Interest Disclosure Form
- E. Truth In Negotiation Certification (FDOT Form 375-030-30)
- F. Disadvantaged Business Enterprises forms (FDOT Forms 375-040-62 and 375-030-62)
- G. Disclosure of Lobbying Activities Form (FDOT Form 375-030-33)
- H. Certification Regarding Debarment, suspension, Ineligibility and voluntary Exclusion from Federal Aid Contracts (FDOT Form 375-303-32)

**27. EFFECTIVE DATE**

This Agreement shall become effective and binding when it has been executed by both parties and the effective date shall be the date of its execution by the last party to do so.

**IN WITNESS WHEREOF**, this Agreement has been fully executed on behalf of the parties hereto by its duly authorized representatives on the dates indicated below.

Lee County Metropolitan Planning Organization

By: \_\_\_\_\_  
Stephen McIntosh, MPO Chairman

Date: \_\_\_\_\_

ENGINEER

By: \_\_\_\_\_  
Title

Date: \_\_\_\_\_

**EXHIBIT "A"**  
**SCOPE OF SERVICES**  
**TIGER GRANT AGREEMENT**

**EXHIBIT "B"**  
**SCHEDULE OF FEES**

**EXHIBIT "C"**  
**INSURANCE REQUIREMENTS**

(1) Without limiting its liability, the ENGINEER shall be required to procure and maintain at its own expense during the life of the Agreement, insurance of the types and in the minimum amounts stated below as will protect the ENGINEER from claims which may arise out of or result from the Agreement or the performance of the Agreement with the MPO, whether such claim is against the ENGINEER or any subcontractor, or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.

(2) No insurance required by the MPO shall be issued or written by a surplus lines carrier unless authorized in writing by the MPO and such authorization shall be at the MPO's sole and absolute discretion. The ENGINEER shall purchase insurance from and shall maintain the insurance with a company or companies lawfully authorized to sell insurance in the State of Florida, on forms approved by the State of Florida, as will protect the ENGINEER, at a minimum, from all claims as set forth below which may arise out of or result from the ENGINEER's operations under the Agreement and for which the ENGINEER may be legally liable, whether such operations be by the ENGINEER or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable: (a) claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the work to be performed; (b) claims for damages because of bodily injury, occupational sickness or disease, or death of the ENGINEER's employees; (c) claims for damages because of bodily injury, sickness or disease, or death of any person other than the ENGINEER's employees; (d) claims for damages insured by usual personal injury liability coverage; (e) claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting there from; (f) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; (g) claims for bodily injury or property damage arising out of completed operations; and (h) claims involving contractual liability insurance applicable to the ENGINEER's obligations under the Agreement.

(3) ENGINEER's Insurance Generally

The ENGINEER shall provide and maintain in force and effect until all the work to be performed under this Agreement has been completed and approved by MPO (or for such duration as is otherwise specified hereinafter), the insurance coverage written on Florida approved forms and as set forth below:

(a) Professional Liability Insurance on a Florida approved form in the amount of \$1,000,000 with deductible per claim if any, not to exceed 5% of the limit of liability, providing for all sums which the ENGINEER shall become legally obligated to pay as damages for claims arising out of the services or work performed by the ENGINEER its agents, representatives, Subcontractors or assigns, or by any person employed or retained by it in connection with this Agreement.

(b) Workers' Compensation Insurance at the statutory amount as to all employees in

compliance with the "Workers' Compensation Law" of the State of Florida including Chapter 440, Florida Statutes, as presently written or hereafter amended, and all applicable federal laws.

(c) Commercial Comprehensive General Liability insurance with broad form endorsement, as well as automobile liability, completed operations and products liability, contractual liability, severability of interest with cross liability provision, and personal injury and property damage liability with limits of \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate, including:

- Personal Injury: \$1,000,000;
- Medical Insurance: \$5,000 per person;
- Property Damage: \$500,000 each occurrence;
- Automobile Liability: \$1,000,000 each accident/occurrence.
- Umbrella: \$1,000,000 per claim

(d) Umbrella Comprehensive General Liability insurance shall be written on a Florida approved form with the same coverage as the primary insurance policy but in the amount of \$1,000,000 per claim and \$2,000,000 Annual Aggregate. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

- Premises and Operation
- Independent Contractors
- Products and/or Completed Operations Hazard
- Explosion, Collapse and Underground Hazard Coverage
- Broad Form Property Damage
- Broad Form Contractual Coverage applicable to this specific Contract, including any hold harmless and/or indemnification agreement.
- Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

(e) Business Automobile Liability with minimum limits of One Million Dollars (\$1,000,000.00) plus an additional Two Million Dollar (\$2,000,000.00) umbrella per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Umbrella coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by with the state of Florida, and must include:

Owned Vehicles.  
Hired and Non-Owned Vehicles  
Employers' Non-Ownership

(f) Subcontracts:



The ENGINEER agrees that if any part of the Work under the Agreement is sublet, the subcontract shall contain the same insurance provision as set forth in section 5.1 above and 5.4 below and substituting the word SUBCONTRACTOR for the word ENGINEER and substituting the word ENGINEER for MPO where applicable.

(4) Miscellaneous:

(a) If any notice of cancellation of insurance or change in coverage is issued by the insurance company or should any insurance have an expiration date that will occur during the period of this Agreement, the ENGINEER shall be responsible for securing other acceptable insurance prior to such cancellation, change, or expiration so as to provide continuous coverage as specified in this section and so as to maintain coverage during the life of this Agreement. The MPO shall have the option, but not the duty, to pay any unpaid premium and the right to terminate or cancel the policy thereafter without notice to ENGINEER or liability on the part of the MPO to the ENGINEER for such cancellation.

(b) All deductibles must be declared by the ENGINEER and must be approved by the MPO. At the option of the MPO, either the ENGINEER shall eliminate or reduce such deductible or the ENGINEER shall procure a Bond, in a form satisfactory to the MPO covering the same.

(c) The policies shall contain waiver of subrogation against MPO where applicable, shall expressly provide that such policy or policies are primary over any other collectible insurance that MPO may have. The MPO reserves the right at any time to request a copy of the required policies for review. All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment of the MPO.

(d) Upon execution of the Agreement, the ENGINEER shall deliver to the MPO certificates of such insurance, acceptable to the MPO, as well as the insurance binder, if one is issued; the insurance policy, including the declaration page and all applicable endorsements; and provide the name, address and telephone number of the insurance agent or broker through whom the policy was obtained. The insurer shall be rated A.VII or better per A.M. Best's Key Rating Guide, latest edition and authorized to issue insurance in the State of Florida. All insurance policies must be written on forms approved by the State of Florida and they must remain in full force and effect for the duration of the Agreement. The ENGINEER must provide a "certified copy" of the Policy (as defined in Article I of this document) which shall include the declaration page and all required endorsements. In addition, the ENGINEER shall deliver, at the time of delivery of the insurance certificate, the following endorsements:

an endorsement to the policy stating:

"The Lee County Metropolitan Planning Organization, Florida is an additional named insured with the right, but not the obligation, to pay any unpaid premium and providing that the MPO does not have any duty or obligation to provide first notice of claim for any liability it incurs and that arises out of the acts, omissions or

operations of the named insured. The insurer will pay all sums that the MPO becomes legally obligated to pay as damages because of 'bodily injury', 'property damage' , or "personal and advertising injury" and it will provide to the MPO all of the coverage that is typically provided under the standard Florida approved forms for commercial general liability coverage A and coverage B";

and an endorsement that states:

"This policy shall not be cancelled (including cancellation for non-payment of premium), terminated or materially modified without first giving the MPO thirty (30) days advance written notice of the intent to materially modify the policy or to cancel or terminate the policy for any reason. The notification shall be delivered to the MPO by certified mail, with proof of delivery to the MPO."

**EXHIBIT "D"**  
**ADDITIONAL CONTRACT DOCUMENTS**

**EXHIBIT "E"**  
**FEDERAL PROVISIONS**

Lee County MPO  
LCCSI - Staffing Estimate

Position	Name	Total Cost	Hourly Rate	Manhours	Months	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24		
						Oct-14	Nov-14	Dec-14	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16	Jul-16	Aug-16	Sep-16		
SPE	M. Ryan	\$134,640.00	\$ 170.00	792	4.800	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	
PA	P. McGrath	\$370,260.00	\$ 110.00	3,366	20.400	0.200	0.200	0.500	0.500	0.500	0.500	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	
CSS/RCS	T. Moeller	\$318,780.00	\$ 92.00	3,465	21.000	0.500	0.500	0.500	0.500	0.500	0.500	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	
TIGER Liason	J. Cerreta	\$69,300.00	\$ 175.00	396	2.400	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	
Sr Insp	Kevin Greenan / Chris McGrath	\$371,250.00	\$ 90.00	4,125	25.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	1.000	1.000	1.000	2.000	2.000	2.000	2.000	2.000	2.000	2.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	
Inspector	M. Thomas	\$128,700.00	\$ 65.00	1,980	12.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	0.000	0.000	
PIO	M. Venegas	\$84,150.00	\$ 100.00	842	5.100	0.100	0.100	0.100	0.300	0.300	0.300	0.300	0.250	0.250	0.250	0.250	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	
PIO Support	J. Duhamel	\$16,236.00	\$ 82.00	198	1.200	0.050	0.050	0.050	0.050	0.050	0.050	0.050	0.050	0.050	0.050	0.050	0.050	0.050	0.050	0.050	0.050	0.050	0.050	0.050	0.050	0.050	0.050	0.050	0.050	0.050	
Clerical	S. Kirkpatrick	\$59,400.00	\$ 60.00	990	6.000	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.300	0.300	0.300	0.300	0.300	0.300	0.300	0.300	0.300	0.300	0.300	0.300	0.300	0.300	0.200	0.200	0.200	0.200
Scheduler	J. Suarez	\$9,982.50	\$ 110.00	91	0.550	0.000	0.000	0.000	0.050	0.025	0.025	0.025	0.025	0.025	0.025	0.025	0.025	0.025	0.025	0.025	0.025	0.025	0.025	0.025	0.025	0.025	0.025	0.025	0.025	0.025	0.025
Asphalt Plant	HighSpans	\$69,993.00	\$ 70.70	990	6.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	
Inspection Support	HighSpans	\$0.00	\$ 69.13	-	0.000	0.000																									
Surveyor	EF Gaines	\$11,137.50	\$ 135.00	83	0.500	0.000	0.500																								
3 person survey crew	EF Gaines	\$25,575.00	\$ 155.00	165	1.000	0.000	1.000																								

subtotal \$1,669,404.00

Material Testing \$30,000.00

Overtime \$49,995.00

**Total \$1,749,399.00**

Notes:

Hourly Rate covers the expense for vehicle, fuel, computer, phone, camera, and consumable field supplies.

1 man-month is estimated to be 165 manhours

Allocation of time is based on the assumption that each project will be part-time. Actual time will be adjusted (up or down) based on project needs.

Position	Name	Hourly Rate	O/T Rate
SPE	M. Ryan	\$ 170.08	N/A
PA	P. McGrath	\$ 116.93	N/A
CSS/RCS	T. Moeller	\$ 97.44	N/A
TIGER Liason	J. Cerreta	\$ 181.09	N/A
Sr Insp	Kevin Greenan / Chris McGrath	\$ 91.62	\$ 106.51
Inspector	M. Thomas	\$ 65.96	\$ 76.68
PIO	M. Venegas	\$ 100.00	N/A
PIO Support	J. Duhamel	\$ 82.00	N/A
Clerical	S. Kirkpatrick	\$ 62.39	N/A
Scheduler	J. Suarez	\$ 115.64	N/A
Asphalt Plant	HighSpans	\$ 70.70	\$ 81.95
Inspector	HighSpans	\$ 69.13	\$ 80.13
Surveyor	E.F. Gaines Surveying	\$ 135.00	N/A
3 person Survey crew	E.F. Gaines Surveying	\$ 155.00	N/A

## **UPDATE ON THE STATUS OF THE TIGER GRANT PROJECT**

### **DISCUSSION ITEM:**

The MPO staff will give an update on the TIGER project. Listed below is the schedule of activities for the Design Build RFP that was advertised on August 27<sup>th</sup>:

#### **Date Event**

- Sept 5, 2014: Deadline for submission of written questions prior to the pre-Proposal meeting. 5:00 p.m. local time.
- Sept 17, 2014: Pre-Proposal meeting at 9:00 a.m. local time in City of Cape Coral Council Chambers 1015 Cultural Parkway Blvd., Cape Coral, FL.
- Oct. 1, 2014: Deadline for submittal of questions, for which a response is assured, prior to the submission of the Technical Proposal. All questions shall be submitted to Don Scott, Executive Director, Lee County MPO.
- Oct 1, 2014: Final deadline for submission of Design Exceptions or Variances 5:00 p.m. local time.
- Oct. 10, 2014: Deadline for the Local Agency to respond post responses to the questions submitted by the Design-Build Firms prior to the submittal of the Technical and Price Proposal.
- Oct. 27, 2014: Technical Proposals and Price Proposals due in Local Agency Office by 4:00 p.m. local time.
- Nov 13, 2014: Public Meeting of Selection Committee to review and confirm Technical Proposal Scores at 1:30 p.m. local time. City of Cape Coral Public Works Conference Room 200, 815 Nicholas Parkway E., Cape Coral FL.
- Nov 14, 2014: Public announcing of Technical Scores and opening of Price Proposals at 11:00 a.m. local time in City of Cape Coral Public Works Conference Room 200, 815 Nicholas Parkway E., Cape Coral FL.
- Nov 21, 2014: Public Meeting of Lee County MPO to determine intended Award. 9:00 a.m. local time in City of Cape Coral Council Chambers 1015 Cultural Parkway Blvd., Cape Coral, FL.
- Nov 21, 2014: Posting of the Local Agency intended decision to Award (will remain posted for 72 hours).
- Nov 26, 2014: FHWA concurrence of Award.
- Nov 26, 2014: Anticipated Award Date
- Dec 10, 2014: Anticipated Execution Date

## **UPDATE ON THE DEVELOPMENT OF 2040 LRTP REVENUES**

**RECOMMENDED ACTION:** Provide input on the projected impact fee revenue projections.

The MPO staff has been reviewing the impact fee collections that have been received over the past ten to twenty years and is seeking input on estimating the proposed projections out through 2040. Attached is the road impact fee collections for the City of Cape Coral over the last ten years and Lee County over the last twenty three years.

**Cape Coral**

<b>FY</b>	<b>Collection</b>
2003	\$ 5,426,170.00
2004	\$ 8,831,909.00
2005	\$ 13,557,182.00
2006	\$ 15,589,841.00
2007	\$ 7,912,601.00
2008	\$ 3,217,755.00
2009	\$ 977,474.00
2010	\$ 749,673.00
2011	\$ 1,111,618.00
2012	\$ 935,581.00
	\$ 58,309,804.00
Ave:	\$ 5,830,980.40

**Lee County**

<b>FY</b>	<b>Collection</b>
1991	\$ 7,250,000.00
1992	\$ 4,550,000.00
1993	\$ 8,112,000.00
1994	\$ 14,772,000.00
1995	\$ 8,370,000.00
1996	\$ 6,091,000.00
1997	\$ 8,212,000.00
1998	\$ 6,613,000.00
1999	\$ 7,434,000.00
2000	\$ 13,976,000.00
2001	\$ 14,251,000.00
2002	\$ 16,112,000.00
2003	\$ 19,048,000.00
2004	\$ 31,613,000.00
2005	\$ 49,131,000.00
2006	\$ 44,874,000.00
2007	\$ 35,592,000.00
2008	\$ 15,026,000.00
2009	\$ 6,270,000.00
2010	\$ 2,386,000.00
2011	\$ 1,152,000.00
2012	\$ 2,310,000.00
2013	\$ 2,150,000.00
	\$ 325,295,000.00
Ave:	\$ 14,143,260.87



## **DISCUSSION ON THE UPDATED CONSULTANT TASKS AND BUDGET**

**RECOMMENDED ACTION:** Provide input on the updated consultant tasks and budget based on the input from last month.

The consultant tasks and estimated budget for each item is **attached** for discussion by the Executive Committee. From the input received last month, staff has added notes providing some additional description on whether the task is re-occurring, ending this year or over multiple years.

**Consultant Tasks (PL/5305 Funding):**

Year/Type of Funding	2014/2015 PL Dollars	2015/2016 PL Dollars	2014/2015 5305 Funds	2015/2016 5305 Funds
Beginning Balance	\$ 454,671	\$ 286,671	\$ 42,500	\$ 42,500
<b>Project Task</b>				
Legal Services (1)	\$ 12,000	\$ 12,000		
Year End Audit (1)	\$ 25,000	\$ 25,000		
Bike Ped Safety Action Plan Implementation (1)	\$ 30,000	\$ 30,000		
Freight Goods - Rail Task (2)	\$ 30,000			
Land Use Study - Model Data (3)	\$ 10,000			
FDOT Regional Model (4)	\$ 50,000	\$ -		
Traffic Modeling (1)	\$ 10,000	\$ 10,000		
Performance Measure Data Collection/Analysis (5)	\$ 25,000	\$ -		
TIGER Data Collection (6)	\$ 50,000			
TIP Reporter Tool (1)	\$ 9,800	\$ 9,800		
Update website (7)	\$ 12,000			
L RTP - Public Inv., Documentation, Perf Analysis (8)	\$ 80,000	\$ 120,000		
L RTP - Transit Element (8)			\$ 28,000	\$ 42,000
L RTP - Update Bike Ped Element (8)	\$ 25,000	\$ 30,000		
L RTP - Update Goods and Freight Element (8)	\$ 20,000	\$ 30,000		
L RTP - Update CMS Element (8)	\$ 15,000	\$ 15,000		
Total Amount of Project Tasks (9)	\$ 403,800	\$ 281,800	\$ 28,000	\$ 42,000
Amount Remaining	\$ 50,871	\$ 4,871	\$ 14,500	\$ 500

Consultant SU Funded

Year/Type of Funding	14/15	15/16
<b>Project</b>		
Transit Bus Queue Study	\$ 55,000	
Transit Bus Pull-out Study	\$ 124,000	
Cape Coral Bike Ped	\$ 152,000	
Round-a-bout Study	\$ 400,000	
Fort Myers Beach Bike Ped Master Plan		\$ 91,000
Total	\$ 731,000	\$ 91,000

Other Grant Funding

Year/Type of Funding	14/15	15/16
<b>Project</b>		
TIGER Project	\$ 10,473,900	
Total	\$ 10,473,900	\$ -

Consultant Budget Notes:

- (1) Yearly re-occurring item
- (2) Rail task is to address rail corridor in Comprehensive Plans
- (3) This is the remaining amount to complete the Land Use study
- (4) One time payment for the modeling of the 2040 L RTP update
- (5) Funding for performance measure analysis coming out of MAP-21 requirements
- (6) TIGER data collection for base line performance report
- (7) One time website update to transition to more user friendly input and to provide content that we currently are unable to do
- (8) These are 2040 Long Range Transportation Plan tasks that will be completed over the next two years
- (9) Funds remaining from FY 14/15, \$125,481, should roll over to be available for FY 15/16

**REVIEW AND COMMENT ON THE PROPOSED JOINT LEE AND  
CHARLOTTE MPO BURNT STORE ROAD LETTER**

**RECOMMENDED ACTION:** Review and comment on the proposed Joint Lee and Charlotte MPO Burnt Store Road letter.

At the last Charlotte MPO Board meeting, the members had a discussion about writing a letter to State Senator Lizbeth Benacquisto stating how important improving the Burnt Store Road corridor is and seeking assistance in getting funds to complete the planned projects. The Board discussion included asking the Lee County MPO Board to send a letter as well which is now proposed as a joint letter that was drafted by the Charlotte MPO staff. The proposed joint letter is **attached** for the Executive Committee's review.



*Senator Lizbeth Benacquisto  
1926 Victoria Avenue  
2nd Floor  
Ft. Myers, FL 33901*

Dear Senator Benacquisto,

We are writing to seek your support for an important transportation improvement along a corridor that serves the City of Cape Coral and South Charlotte County in your District. Burnt Store Road is a north/south two-lane undivided rural roadway that runs from Pine Island Road in Lee County to US 41 in Charlotte County. The corridor is identified as a critical evacuation route for both Charlotte County and the City of Cape Coral. Capacity improvements to the roadway are recommended in the Burnt Store Road-Veterans Parkway-Colonial Boulevard Bi-County Corridor Study that was completed in 2005. The study calls for widening Burnt Store Road from two to four lanes from Pine Island Road (SR 78) to the I-75 interchange in Charlotte County by the year 2015.

The Charlotte County–Punta Gorda and the Lee County Metropolitan Planning Organizations (MPO) are the duly designated and constituted agencies responsible for carrying out the metropolitan transportation planning and programming processes for the Cape Coral-Fort Myers and North Port - Punta Gorda Urbanized Areas. The elected and appointed officials comprising the policy boards of these two agencies recognize it is to the best interest of Charlotte County and Lee County to coordinate transportation planning and policy activities in this bi-county region to promote regional transportation solutions and enhance the overall regional transportation system.

At the April 12, 2012 Joint Lee/Charlotte County-Punta Gorda MPO meeting it was agreed that the Burnt Store Road corridor is a regional road that is critical to evacuation efforts for Lee and Charlotte Counties. However, funds have not been

identified to fully complete the needed roadway expansion to serve growth in the corridor. The MPO Boards have agreed to make completion of the needed improvements their top project priority to be submitted annually to FDOT until completion of all segments of the roadway improvement are funded and completed.

The various segments of the Burnt Store Road project are identified as being financially feasible in the Lee County MPO 2035 Long Range Transportation Plan (LRTP) for construction in the Year of Expenditure (YOE) 2026-2030. The Charlotte County-Punta Gorda MPO's 2035 LRTP calls for four-laning Burnt Store Road from the Lee County line to US 41 in Charlotte County, and continuing along the corridor on Jones Loop Rd. past I-75 to Piper Road.

As was stated earlier in this correspondence, the Governing Boards of both the Charlotte County–Punta Gorda and the Lee County Metropolitan Planning Organizations have recognized the dire need for this important transportation improvement but have been faced with the lack of funding to complete needed changes. We are therefore seeking your assistance and support in acquiring the much needed funds to accomplish this major transportation improvement. Any assistance you can provide would be greatly appreciated.

Please let us know if you have any questions.

Sincerely,

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Christopher Constance, Chair  
Charlotte County-Punta Gorda MPO

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Stephen McIntosh, Chair  
Lee County MPO