

**METROPOLITAN PLANNING ORGANIZATION BOARD
EXECUTIVE COMMITTEE**

2:00p.m. September 14, 2016
Cape Coral Public Works Building
815 Nicholas Pkwy E, Cape Coral, FL
Green Room/A200



AGENDA

Call to Order

Roll Call

New Business

1. Public Comments on New Business Items
2. Update on the 2016 Sales Tax Referendums in other Florida Communities and Committee Discussion on Transportation Needs (Don Scott)
3. Review of Sample Performance Data Analysis (Johnny Limbaugh)
4. Review of the Revised Executive Director Employment Agreement (Don Scott)
5. MPO Projects Update (Don Scott)

Other Business

6. Public Comments on Items Not on the Agenda
7. Announcements
8. 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 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.

UPDATE ON THE 2016 SALES TAX REFERENDUMS IN OTHER FLORIDA COMMUNITIES

DISCUSSION ITEM:

Staff will report on the status of the transportation related ballot measures that are currently being discussed/worked on in other communities in Florida. Staff will also provide additional information on these ballot measures at the meeting:

- **Broward County** – There are now two measures that will be on the November ballot, one is for .5 percent sales tax for the County that will be used for transportation projects, enhanced bus service, light rail, traffic signal timing over thirty years. The other is for .5 percent sales tax for the Cities that will be split by population for twenty years that will be used to buy land, City Hall construction, fire trucks, improve drainage and repave roads. The final ten years will be shared with the County receiving forty percent (for a total of 70%) of the revenues with the Cities splitting 20% for the last ten years. This is expected to raise \$12.6 billion over thirty years but both sales tax referendums have to pass or both fail.
- **Duval County** – Extension and repurposing of the current infrastructure sales tax to cover pension costs. The extension proposes .5 percent to pay down a pension deficit of \$2.7 billion which could go through 2060. Current polling indicates that 41% approve of the ballot, 33% oppose the ballot and 26% are currently undecided. There is a current lawsuit against the amendment related to confusing ballot language.
- **Marion County** – Sales tax referendum for public safety equipment and transportation capital and road rehabilitation projects. This ballot measure was approved in March (55% voting for it) and it is projected to raise \$166 million over four years.
- **Hillsborough County** – The County Commission voted 4-3 to reject putting a thirty year .5% sales tax on the ballot for transportation infrastructure this year.
- **Palm Beach** – Working on a ten year 1% sales tax increase to be used on infrastructure split between the School Board, County and the Cities. This is projected to raise \$2.7 billion with 20% of the funding going to the Cities, 30% to the County and 50% to the School Board. The funding will be used for parks, road resurfacing, drainage improvements, bridges, pathways, lighting, buildings and low income housing improvements. The School Board is working on a list of projects and costs after pressure on the media requesting transparency.
- **Highlands County** – A .5 percent sales tax referendum was approved on August 30th election by a vote of 60% to 40%. This referendum was for schools and it will be used for capital projects including school construction and renovations, vehicles, technology etc. The sales tax is for a twenty year period.

In addition, staff would like to discuss how other communities are defining transportation needs for their ballot measures.

REVIEW OF SAMPLE PERFORMANCE DATA ANALYSIS

DISCUSSION ITEM:

Staff will provide sample analysis of some of the commonly used performance measures and discuss how we may want to illustrate our conditions.

EXECUTIVE DIRECTOR EMPLOYMENT AGREEMENT

RECOMMENDED ACTION: Review proposed changes to the employment agreement following discussions last month.

The MPO Attorney and staff have reviewed the items that needed to be revised or further investigated and listed below are the proposed revisions to the agreement (**attached**):

- Change the expiration date to January 30, 2019 to match a two year extension.
- Change the salary to the current salary of \$108,326
- Address the termination due to disability clause to be consistent with FMLA as follows:

Termination Due to Death or Disability. This Agreement shall immediately terminate upon the death of the Employee. In the event that Employee becomes disabled with a serious health condition that prevents the Employee from safely performing the essential functions of the Employee's position, with or without reasonable accommodation, for a total period of ninety (90) days within any three hundred and sixty-five (365) day period, this Agreement may be terminated by the MPO. If this Agreement is terminated due to the death or disability of employee, Employee and/or Employee's estate shall not be entitled to any Severance Pay, but would be entitled to payment for any paid leave that has been accrued but has not been used through the date of termination.

We are working on a clean version of the agreement for review that takes into account these proposed changes and the previous amendment and will provide that at the meeting.

**RENEWAL AND MODIFICATION OF EMPLOYMENT AGREEMENT
BY AND BETWEEN LEE METROPOLITAN PLANNING ORGANIZATION
AND DONALD L. SCOTT**

WHEREAS, the Lee Metropolitan Planning Organization (hereinafter "MPO") and Donald L. Scott (hereinafter "Employee") entered into an Employment Agreement dated February 1, 2012; and

WHEREAS, the parties desire to renew or extend that Agreement and modify or add certain provisions to said Agreement as provided in Section 2 of the original Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

SECTION ONE: Contract Renewal

The Parties agree to renew or extend the employment of Scott for a term of two (2) years, commencing on January 31, 2015 and terminating on January 30, 2017.

SECTION TWO: Additional or Modified Terms

The parties agree to modify or add the following terms to the Employment Agreement (deletions are indicated by strikethrough and additions are indicated by underline):

"Section 2: Term," paragraph "A." is hereby modified as follows:

A. Employee agrees to remain in the exclusive employ of the MPO from the effective date of this Agreement until January 30, ~~2015~~ 2017; and ~~neither to~~ Employee will not accept other employment nor to become employed by another employer until termination of employment pursuant to this Agreement, except as provided in Section 7.

"Section 4: Compensation", paragraph "A." is hereby modified as follows:

A. Employee shall receive the sum of One hundred and ~~one~~ four thousand one hundred ~~fifty six~~ sixty six dollars (~~\$101,150~~) (\$104,166) base pay annually, payable in bi-weekly installments.

"Section 16: Termination" is hereby modified as follows:

...

B. The employee may be removed, on public notice given seven (7) days in advance by a 2/3 majority vote of the members of the members of the MPO. In the event the Employee is terminated under this provision then the MPO shall pay the employee a lump sum cash payment equal to three (3) month's aggregate salary, as Severance Pay, as well as any accrued paid time off up to the limits noted in the MPO's adopted personnel procedure manual. If the Employee is terminated due to violation of the Florida Ethics Code, any state or federal felony, ~~or~~ any federal ethics regulation applicable to federal funds recipients, or if Employee is terminated for "misconduct" as defined in Section

~~443.036(29), Florida Statutes, then, and only in that event, the MPO shall have no obligation to pay the severance sum~~ Employee shall not be entitled to any Severance Pay.

Termination Due to Disability. If Employee is unable to perform his duties for any reason, including, but not limited to sickness, accident, injury, or mental incapacity, for a period of four (4) successive weeks beyond any accrued leave, MPO shall have the option to terminate this Agreement and Employee's employment. Disabled, for purposes of this Agreement, means that Employee, due to illness or injury, is unable to perform the essential functions of his position after reasonable accommodation has been made by the MPO. If Employee is terminated due to disability, he shall not be entitled to severance pay, but would be entitled to payment for any accrued but unpaid annual leave.

"Section 18: Resignation" is hereby modified as follows:

In the event Employee voluntarily resigns his position with the MPO before expiration of his employment, then Employee shall give the MPO forty-five (45) days advance written notice. If the Employee voluntarily resigns, providing MPO with less than forty five (45) days' notice employee shall forfeit any payment for accrued leave otherwise due and owing. If Employee resigns pursuant to this section, Employee shall not be entitled to any Severance Pay, but is entitled to payment for all paid leave that has accrued but not been used through the date of termination.

"Section 19: Indemnification" is hereby modified as follows:

~~The MPO shall, as to Employee's good faith performance of his duties under this agreement, defend, save harmless and indemnify the Employee against any tort, professional liability or other claim, demand, judgment or other legal action, including costs and attorneys' fees thereto whether groundless or otherwise, arising out of an alleged negligent act or omission occurring in the performance of Employee's duties as Executive Direct, subject to the limits found in Florida Statutes.~~

Subject to any limitations imposed by Florida Law, the MPO shall defend, hold harmless, and indemnify Employee against any tort, professional liability claim or demand, or other legal action, arising out of any alleged act or omission of Employee while acting within the course and scope of his duties as Director. Employee agrees to promptly notify MPO of any actual or threatened claims arising out of or as a result of his employment with MPO.

"Section 21: General Provisions" is hereby modified as follows:

...

B. If any provision of the agreement, or any part thereof, is held to be unconstitutional, invalid or unenforceable, the remainder shall be deemed severable, shall not be affected and shall remain in full force and effect. If any provision(s) of this Agreement is declared invalid or unenforceable, the other provisions of this Agreement shall remain in full force and effect and shall be construed in a fashion which gives meaning to all of the other terms of this Agreement to permit enforcement to the maximum extent allowed by law.

...
E. This Agreement expressly supersedes all practices, understandings, and agreements, whether written or oral, not specifically set forth in this Agreement. This Agreement constitutes the entire agreement between MPO and Employee.

F. The rights and obligations herein granted are personal in nature and cannot be transferred by Employee except as provided in any of the benefits Employee is entitled to under this Agreement.

SECTION THREE: REMAINDER UNCHANGED

The remaining provisions of the Employment Agreement between Employee and the MPO dated February 1, 2012 shall remain unchanged.

IN WITNESS WHEREOF, the parties below have caused this Renewal and Modification of Employment Agreement to be duly executed on August 22, 2014.

LEE METROPOLITAN PLANNING ORGANIZATION

By: 

Stephen McIntosh, Chair

EMPLOYEE



Donald L. Scott

EMPLOYMENT AGREEMENT BY AND BETWEEN

LEE METROPOLITAN PLANNING ORGANIZATION AND DONALD L. SCOTT

WHEREAS, the Lee Metropolitan Planning Organization (hereinafter "MPO") is a regional planning agency created by interlocal agreement and empowered by law to employ staff by contract; and

WHEREAS, it is the desire of the MPO to provide certain benefits to; establish certain conditions of employment for and set working conditions of the Employee; and

WHEREAS, it is the desire of the MPO to (1) to secure and retain the services of the Employee and to provide inducement for him to remain in such employment; (2) make possible full work productivity by securing the Employee's morale and peace of mind with respect to future security; and (3) provide a just means for terminating the Employee's services; and

WHEREAS, the Employee desires to accept employment as the Executive Director of said MPO.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

Section 1: Duties

The MPO agrees to employ Employee as its Executive Director, and Employee agrees to perform the functions and duties thereof, as may now and in the future be required in Interlocal Agreement, Personnel Policy, Section 339.175, Florida Statutes, and any other applicable laws of Florida, and to perform such other legally permissible and proper duties and functions as the MPO shall from time to time assign. Until so amended, the role and duties of the Executive Director shall include but not be limited to the following:

- A. The Employee shall act as the Chief Administrative Officer of the MPO, directly reporting and responsible to the MPO Board and responsible for the day to day implementation of MPO programs and activities including MPO staff selection and supervision. The Employee shall devote full time efforts to the MPO and its mission. The Employee shall also direct and supervise professional service providers engaged by the MPO.
- B. Formulate and prepare recommendations regarding policies, rules and regulations, directives, programs, agreements, and all other documents which require consideration, action or approval of the MPO.
- C. Prepare annual budgets and the annual reports for approval of the MPO.
- D. The Employee agrees to perform all such functions and duties, faithfully, competently, professionally and promptly to the best of the Employee's ability.
- E. The Employee shall be authorized to secure Florida Department of Transportation approval for amendment of Unified Planning Work Program (UPWP) tasks which change the dollar value by an amount less than or equal to \$25,000, and which do not change the scope of the total approved funds for the UPWP. Any amendment of the UPWP greater than \$25,000 will require the approval of the MPO Board.

Section 2: Term

A. Employee agrees to remain in the exclusive employ of the MPO from the effective date of this Agreement until January 30, 2015; and neither to accept other employment nor to become employed by any other employer until termination of employment pursuant to this Agreement, except as provided in Section 7.

B. Neither party, on their own, has any right to renew or extend this Agreement. However, on or before July 1st of the year immediately preceding the then ending year of this Agreement, including any applicable extensions, the term of this Agreement may be extended for a period of two (2) years by the mutual written agreement of the MPO and the Employee. Although both parties retain the right not to extend this Agreement with or without reason or cause, it is contemplated that the MPO will base its decision on the question of whether or not to grant the extension of the term of this Agreement on (1) the Employee's performance and (2) the Employee's ability to successfully achieve goals mutually developed and agreed to by the Employee and the MPO.

C. Elements of this Agreement may be changed at any time when mutually agreed upon in writing by the MPO and the Employee.

Section 3: Expiration, Extension and Modification

The Parties agree that this Agreement shall expire of its own accord at the end of the initial term set forth in Section 2. However, the Parties may extend same for additional terms upon negotiations and agreement of levels of compensations. Such extension(s) shall be reflected by from action of the MPO, reflecting in its record the compensation awarded. Notwithstanding the foregoing, the Parties may negotiate revisions or amendments to this Agreement at any time.

Section 4: Compensation

The MPO shall compensate the Employee for his services as follows:

A. Employee shall receive the sum of One hundred and one thousand one hundred fifty dollars (\$101,150) base pay annually, payable in bi-weekly installments.

B. The MPO and Employee shall negotiate in good faith to establish, within one hundred and twenty (120) days after execution of this Agreement, a performance-based merit plan through which the Employee may be eligible for a merit adjustment upon the successful completion of measurable goals and objectives to be completed or attained by the Employee during each fiscal year of this Agreement. The percentage of any annual performance-based merit adjustment to the Employee's base pay or such one-time lump sum amount shall be set by the MPO Board Executive Committee.

C. On the date that general wage adjustments (i.e., cost of living adjustments) are granted generally to MPO employees, the Employee's base salary shall likewise be modified to reflect such general wage adjustments.

Section 5: Performance Evaluation

The MPO shall review and evaluate the performance of the Employee in accordance with the performance based merit plan as provided in Section 4. Written evaluations based on said performance plan will be provided by each voting MPO Board member to Employee prior to September 1st, 2012, and prior to each September 1st thereafter for the term of this Agreement. A summary of all evaluations will be prepared by the MPO Board Chair and Employee including any recommended merit wage adjustment consistent with the procedure stated in Section 4 and presented to the MPO Board Executive Committee. If the MPO Board Executive Committee approves a merit wage adjustment, it will become effective upon the date the MPO Board approves the merit wage adjustment and will be processed with the Employee's next regular scheduled paycheck. An updated performance merit plan for Employee will be developed in good faith between the MPO and Employee and adopted by the MPO prior to December 1st of each year of the Agreement, following the first year of the Agreement

Section 6: Hours of Work

It is recognized that the Employee must devote a great deal of time outside normal office hours (Monday through Friday from 8:00am to 5:00pm) to the business of the MPO an

d, in recognition of that fact, the Employee's hours will be flexible within reasonable bounds. Except as otherwise directed by the MPO, the manner and means of performance of the duties herein shall be determined by the Employee. All acts performed by the Employee, explicitly or implicitly, on behalf of the MPO, within the scope of this employment, shall be deemed authorized by the MPO as its agent, except that any act which constitutes willful misconduct or which may be unlawful shall be deemed to be an individual act of the Employee without authority of the MPO.

Section 7: Outside Activities

The employee agrees to remain in exclusive employ of the MPO while in its employ, unless the MPO authorizes limited outside employment not in conflict with the Employee's duty with the MPO.

Section 8: Automobile

In lieu of mileage reimbursement for use of Employee's personal vehicle for MPO business with Charlotte, Collier, Hendry & Lee counties, the MPO shall provide to the Employee a motor vehicle allowance of \$250.00 per month. Employee will also be entitled to reimbursement at the approved State of Florida mileage rate for travel outside Charlotte, Collier, Hendry & Lee counties. Employee shall be responsible for any employee payroll taxes imposed upon this vehicle allowance benefit in accordance with applicable law.

Section 9: Travel and Travel Expenses

All overnight travel by the Employee shall be approved by the MPO Chair or Vice-Chair. Travel expenses will be paid or reimbursed in accordance with applicable Florida Statutes and the policies of the MPO. All travel reimbursement requests will utilize the approved FDOT travel form.

Section 10: Communication Equipment

It is recognized by the Parties that the Employee will frequently travel during the execution of his duties and that the ability to maintain communications with staff and other officials at all times is important to the operation of the MPO, but that carrying two cellular phones can be burdensome. Therefore, the MPO agrees to provide Employee a monthly stipend of \$45.00 toward the use of his personal cellular telephone for MPO business. The Employee shall select a phone with modern capabilities such as text messaging and internet access capability, to effectively engage in remote communications.

Section 11: Dues and Subscriptions

To the extent permitted by Florida and Federal laws and policies, the MPO agrees to pay the dues and subscriptions of the Executive Director necessary for full participation in national, regional, state and local government and professional associations and organizations necessary and desirable for the good of the MPO, subject to its approved annual budget.

Section 12: Professional Development

A. The MPO agrees to pay the registration, travel and subsistence expenses of the Executive Director, to the extent permitted by Florida and Federal laws and policies, for professional and official travel, meetings and occasions, adequate to continue the professional development of the Executive Director, and to adequately pursue necessary official and other functions, subject to its approved annual budget.

B. The MPO agrees to pay for the registration, travel and related expenses of the Executive Director, to the extent permitted by Florida and Federal laws and policies, for short courses, institutes and seminars that are necessary for his professional development and for the good of the MPO.

Section 13: Comprehensive Benefit Package

A. Employee is a salaried full time employee qualified under the laws relating to the Florida Retirement System and, except as modified herein, shall be entitled to all benefits and prerogatives of other MPO employees, as set forth in the MPO Personnel Policy, except as may be supplemented or modified in this agreement.

B. The Employee shall be eligible for participation in the Senior Management Service Class for the purpose of retirement benefits in the Florida Retirement System

C. The MPO shall fix any such other terms and conditions of employment as it may determine from time to time relating to the performance of the Employee, provided such terms and condition are not inconsistent with or in conflict with the provisions of this agreement or Florida and Federal laws.

D. All provisions of law and regulations and rules of the MPO's Personnel Policy relating to personal time off, holidays and other fringe benefits as they now exist or as they may hereafter be amended, also shall apply to the Employee as they would to other employees of the MPO, in addition to said benefits enumerated herein specifically for the benefit of the Employee.

E. Employee shall not use more than one week at a time of paid time off without prior approval of the MPO Chair or Vice-Chair.

F. This agreement shall be administered so that the Employee shall not experience any gap in salary payments or other benefits.

Section 14: Rule of Conduct

The Employee shall be governed by the rules of conduct, policies and directives from time to time adopted by the MPO on the same basis as other MPO employees.

Section 15: Suspension

The MPO Board may suspend the Employee with full pay and benefits at any time during the term of this Agreement, but only if:

A. A majority of the MPO and Employee agree, or

B. After a public hearing, a majority of the MPO votes to suspend Employee for just cause; provided, however, that Employee shall have been given written notice setting forth any charges at least ten (10) days prior to such hearing by the MPO's members bringing such charges. Just cause shall include only willful misconduct or willful failure or disregard of employee's duties under this Employment Agreement.

Section 16: Termination

Employee shall serve at the will and pleasure of the MPO governing board and may be terminated at any time for any or no reason, subject to the termination procedure and pay provisions outlined herein. This Agreement may be terminated as follows:

A. At any time by mutual agreement of the Parties thereafter.

B. The Employee may be removed, on public notice given seven (7) days in advance by a 2/3 majority vote of the members of the MPO. In the event the Employee is terminated under this provision then the MPO shall pay the Employee a lump sum cash payment equal to three (3) month's aggregate salary as well as any accrued paid time off up to the limits noted in the MPO's adopted personnel procedure manual. If the Employee is terminated due to violation of the Florida Ethics Code, any state or federal felony, or any federal ethics regulation applicable to federal funds recipients, then, and only in that event, the MPO shall have no obligation to pay the severance sum.

C. In the event that Employee's employment with the MPO terminates as a result of the expiration of the term of the Agreement, Employee shall not be entitled to receive Severance Pay; however, Employee shall be entitled to payment for accrued Paid Time Off "PTO" in accordance with MPO policies which are applicable to non-bargaining unit employees at that time.

D. Severance Pay and/or pay for accrued PTO shall be paid within 30 working days of termination.

Section 17: Disability

If the Employee is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of four (4) successive weeks beyond any accrued leave, the MPO shall have the option to terminate this Agreement, subject to the severance pay requirements of Section 16, together with payment of all other accrued benefits he may be entitled to under the Florida Retirement System and Personnel Policy as adopted by the MPO.

Section 18: Resignation

In the event Employee voluntarily resigns his position with the MPO before expiration of his employment, then Employee shall give the MPO forty-five (45) days advance written notice. If Employee voluntarily resigns, providing MPO with less than forty-five (45) days notice, Employee shall forfeit any payment for accrued leave otherwise due and owing. If the MPO Board opts to relieve the Employee of duties following the Employee written notice, the provisions of Section 16B shall apply.

Section 19: Indemnification

The MPO shall, as to Employee's good faith performance of his duties under this agreement, defend, save harmless and indemnify the Employee against any tort, professional liability or other claim, demand, judgment or other legal action, including costs and attorneys' fees thereto whether groundless or otherwise, arising out of an alleged negligent act or omission occurring in the performance of Employee's duties as Executive Direct, subject to the limits found in Florida Statutes.

Section 20: Notices

Notices pursuant to this Agreement shall be in writing, transmitted by personal service or by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

(1) AUTHORITY: Lee MPO
815 Nicholas Parkway
Cape Coral, Florida 33991

(2) EMPLOYEE: Donald L. Scott
2201 41st Terrace SW
Naples, Florida 34116

Notices shall be deemed effective upon delivery or receipt.

Section 21: General Provisions

A. This agreement is made to the benefit of the Parties thereto and is not and shall not be construed to have been entered into for the benefit of any other third party.

B. If any provision of this agreement, or any part thereof, is held to be unconstitutional, invalid or unenforceable, the remainder shall be deemed severable, shall not be affected and shall remain in full force and effect.

C. This Agreement shall be deemed to have been made in Lee County, and shall be governed by and construed under the laws of the State of Florida. The parties shall attempt in good faith to resolve any dispute concerning this Agreement through negotiation between authorized representatives. If these efforts are not successful, either party may then file an action in the Circuit Court of Lee County, which shall be the exclusive venue with respect to any disputes arising out of this Agreement.

D. Employee understands and agrees that as a Florida government agency without taxing authority and funded instead by certain tax dollars appropriated to it by the state and federal government, the MPO does not have the authority to expend funds not available to it, and that its obligation to pay the compensation and benefits contained in this Agreement shall be limited to the availability of such funds. The MPO understands and agrees that should it cease to have funds available to it which could be used to pay Employee the compensation and benefits contained in this Agreement, Employee shall be excused from any required performance under this Agreement until such funds become available and Employee resumes being compensated. If funds do not become available within a 45 day time period, either party may terminate this agreement.


**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE TO FOLLOW**

IN WITNESS WHEREOF, the parties below have caused this Agreement to be duly executed on February 1, 2012.

LEE MPO

EMPLOYEE

BY: 
Bob Raymond, Chair


Donald L. Scott

MPO PROJECTS UPDATE

DISCUSSION ITEM:

The MPO staff will give an update on the current projects that include the TIGER project, the Cape Coral Bicycle Pedestrian Master Plan study and the Round-a-bout study.

