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VILLAGE OF ESTERO, FLORIDA

RESOLUTION NO. 2015 - 61

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA, APPROVING THE INTERLOCAL AGREEMENT BETWEEN THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION AND THE VILLAGE OF ESTERO FOR THE CREATION OF THE METROPOLITAN PLANNING ORGANIZATION; AUTHORIZING THE VILLAGE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the incorporation of the Village of Estero has created the need to amend the composition of the Lee County Metropolitan Planning Organization to include a representative from the Village of Estero; and

WHEREAS, the State of Florida, Department of Transportation has asked the Village of Estero, the Lee County Board of County Commissioners, City of Cape Coral, City of Fort Myers, City of Sanibel, Town of Fort Myers Beach, and the City of Bonita Springs to approve the State of Florida, Department of Transportation, Interlocal Agreement for the Creation of the Metropolitan Planning Organization; and

WHEREAS, it is in the best interest of the residents of the Village of Estero for the Village to be a member of the Lee County Metropolitan Planning Organization in order to participate in the transportation planning and the funding of transportation projects in Lee County.

NOW, THEREFORE, be it resolved by the Village Council of the Village of Estero, Florida:

Section 1. The Village Council hereby approves the Interlocal Agreement between the Village of Estero and the State of Florida, Department of Transportation, a copy of which is attached hereto and incorporated herein by this reference.

Section 2. The Village Council authorizes the Village Mayor to execute the Interlocal Agreement between the Village of Estero and State of Florida, Department of Transportation for the creation of the Metropolitan Planning Organization.

Section 3. This Resolution shall take effect immediately upon adoption.

44 **ADOPTED BY THE VILLAGE COUNCIL** of the Village of Estero, Florida this
45 16th day of September, 2015.

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48 Attest:

VILLAGE OF ESTERO, FLORIDA

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51 By: Kathy Hall
52 Kathy Hall, MMC, Village Clerk

By: Nicholas Batos
 Nicholas Batos, Mayor

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55 Reviewed for legal sufficiency:

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57 By: Burt L. Saunders
58 Burt Saunders, Esq., Village Attorney



2015 RE-APPORTIONMENT PLAN

Approved by MPO Board April 17, 2015

Lee County Metropolitan Planning Organization
P.O. Box 150045
Cape Coral, Florida 33915-0045
239-330-2241

www.leempo.com

DESCRIPTION

The Lee Metropolitan Planning Organization (MPO) and the area it covers is depicted on the statewide map in **Attachment A**. The map in **Attachment B** shows the MPO boundary, the municipal boundaries and the 2014 population for each of the jurisdictions for a total current Lee County population of 653,485 (Lee County/Bureau of Economic Business Research).

The Lee MPO is going through the apportionment process to add the Village of Estero, the newly incorporated jurisdiction that was approved by the State Legislature and the voters in 2014. As a part of this update, the MPO Board also approved adding one additional City of Cape Coral voting member to the Board. The Lee MPO planning area now includes six (6) municipalities within the metropolitan area. The six (6) incorporated areas are: the City of Cape Coral, the City of Fort Myers, the City of Bonita Springs, the City of Sanibel, Town of Fort Myers Beach and Village of Estero. Of these, the City of Cape Coral is the largest with a 2014 population of 163,599.

BACKGROUND

APPORTIONMENT 2000

At the April 2000 TAC and CAC meetings, the TAC and CAC approved Plan #1, which called for inclusion of Bonita Springs to the MPO membership without disturbing the membership apportionment of the participating jurisdictions. The TAC requested that the actual apportionment of the MPO plan be based upon geography and population and that it should be deferred until after the 2000 census. At the MPO meeting, comments were received from the public in favor of apportioning an additional representative to the City of Cape Coral in addition to the City of Bonita Springs representative.

At the April 2000 MPO meeting, Staff provided seven (7) different reapportionment options to the MPO Board for their review. Plan #1, stated that all jurisdictions would retain their current voting members and the new City of Bonita Springs would receive one (1) voting member.

During the April 2000 MPO meeting, Commissioner Coy made a motion to recommend Plan #2 which included the incorporation of the City of Bonita Springs with an MPO representative and also an additional member to the City of Cape Coral, based on their increase in population. Commissioner St. Cerny seconded the motion and it carried unanimously. The number of MPO members was increased to fifteen (15) members.

APPORTIONMENT 2001 (from the 2000 Census)

In 2001, after the census data was available, the MPO reaffirmed what had changed when the City of Bonita Springs was added and the City of Cape Coral was given an additional representative. The fifteen (15) member MPO Board included the following members by jurisdiction:

- Lee County Board of County Commissioners – 5 members
- City of Cape Coral – 4 members
- City of Fort Myers – 3 members
- City of Bonita Springs – 1 member
- City of Sanibel – 1 member
- Town of Fort Myers Beach – 1 member

The other major transportation systems (airports, transit and the Southwest Florida Expressway Authority) were considered to be covered by members on the Board who also oversee or serve on their Boards. The five Board of County Commissioners on the MPO Board serve as the Board of Port Commissioners which governs the Lee County Port Authority covering the Southwest Florida International Airport and Page Field General Aviation Airport. In addition, Lee Tran, the local transit agency reports to the five County Commissioners. In 2005, the Southwest Florida Expressway Authority was created by the Florida Legislature and two members of the Authority Board were representatives on the MPO Board, one voting (County Commissioner) and one non-voting member (FDOT District Secretary).

APPORTIONMENT 2009

The City of Bonita Springs requested that the apportionment of the MPO members be brought to the MPO Board as a discussion item. At the February 2008 MPO meeting the MPO discussed looking at other MPO areas in Florida to see how they are apportioned and to see if there are any other ways to re-apportion the members. At the meeting the Board directed staff to research how other MPO's in Florida are apportioned, answer some questions regarding the maximum number of members that the MPO could have and determine the process and bring back that information at a future meeting.

At the May 2008 MPO meeting, the Board discussed the follow up items and gave direction to bring back a draft apportionment plan that added one member for the City of Bonita Springs. This change kept the population per member fairly consistent among the participating jurisdictions.

At the June 20, 2008 MPO meeting, the MPO Board discussed the draft apportionment plan which included adding the one (1) additional MPO

representative for the City of Bonita Springs, and it was approved by a 9 to 4 vote. The Board then gave direction to staff to seek a resolution of support from each of the jurisdictions that would then be attached to this document for submittal to FDOT and the Governor for approval. The addition of one member for the City of Bonita Springs was approved by FDOT in 2009, making the Board membership sixteen (16) members as it is today and apportioned as listed below:

- Lee County Board of County Commissioners – 5 members
- City of Cape Coral – 4 members
- City of Fort Myers – 3 members
- City of Bonita Springs – 2 members
- City of Sanibel – 1 member
- Town of Fort Myers Beach – 1 member

APPORTIONMENT 2013 (from the 2010 Census)

Following the 2010 census, the Lee MPO reconfirmed the existing MPO Board membership based on the 2010 census population for each of the jurisdictions. No changes were made at this time as there was little that changed from the apportionment change that was done in 2009. The apportionment of the MPO Board was approved by the Governor in the fall of 2013 (**Attachment C** includes the current apportionment).

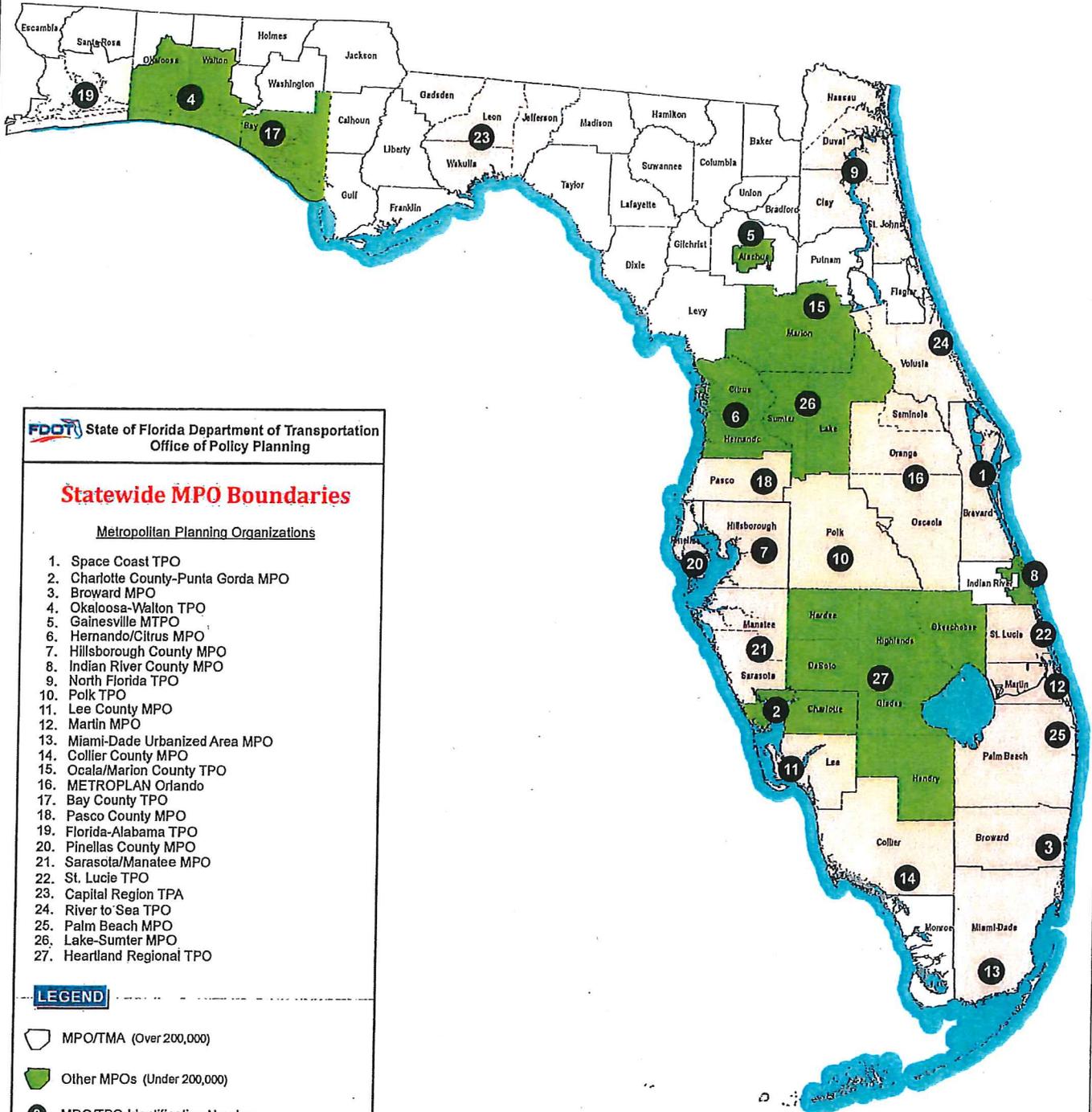
RE-APPORTIONMENT 2015 (addition of the Village of Estero member and one additional member for the City of Cape Coral)

The addition of representatives to the MPO Board for the Village of Estero and one additional member for the City of Cape Coral is governed by FS 339.175. The proposed re-apportionment plan change is required to be approved by the jurisdictions representing seventy five percent of the population of the MPO planning area and approval by the largest incorporated jurisdiction (City of Cape Coral). **Attachment D** includes the results of the proposed re-apportionment with the addition of one member representing the Village of Estero and one additional member representing the City of Cape Coral. The MPO representative per population for each jurisdiction is fairly consistent among the jurisdictions and with this proposed change the MPO Board will increase to eighteen (18) members. The MPO Board approved the addition of the two members by a vote of 8-2 at their April 17, 2015 MPO Board meeting. The proposed re-apportionment is listed below:

- Lee County Board of County Commissioners – 5 members
- City of Cape Coral – 5 members
- City of Fort Myers – 3 members
- City of Bonita Springs – 2 members
- City of Sanibel – 1 member
- Town of Fort Myers Beach – 1 member
- Village of Estero – 1 member

Metropolitan Planning Organizations and Designated Transportation Management Areas

(As of December 8, 2014)



FDOT State of Florida Department of Transportation
Office of Policy Planning

Statewide MPO Boundaries

Metropolitan Planning Organizations

1. Space Coast TPO
2. Charlotte County-Punta Gorda MPO
3. Broward MPO
4. Okaloosa-Walton TPO
5. Gainesville MPO
6. Hernando/Citrus MPO
7. Hillsborough County MPO
8. Indian River County MPO
9. North Florida TPO
10. Polk TPO
11. Lee County MPO
12. Martin MPO
13. Miami-Dade Urbanized Area MPO
14. Collier County MPO
15. Ocala/Marion County TPO
16. METROPLAN Orlando
17. Bay County TPO
18. Pasco County MPO
19. Florida-Alabama TPO
20. Pinellas County MPO
21. Sarasota/Manatee MPO
22. St. Lucie TPO
23. Capital Region TPA
24. River to Sea TPO
25. Palm Beach MPO
26. Lake-Sumter MPO
27. Heartland Regional TPO

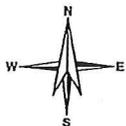
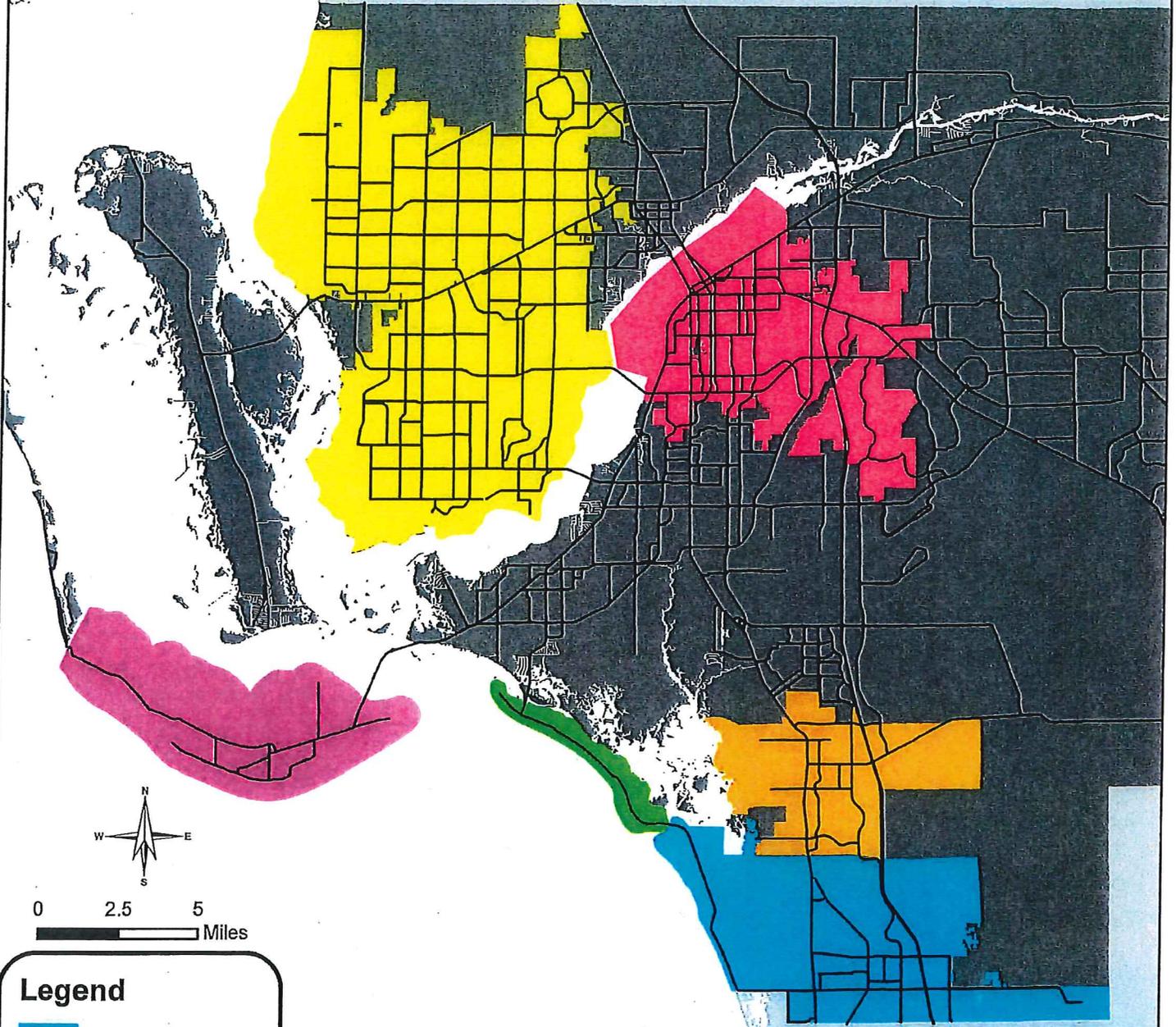
LEGEND

- MPO/TMA (Over 200,000)
- Other MPOs (Under 200,000)
- MPO/TPO Identification Number



2015 LEE COUNTY APPORTIONMENT PLAN

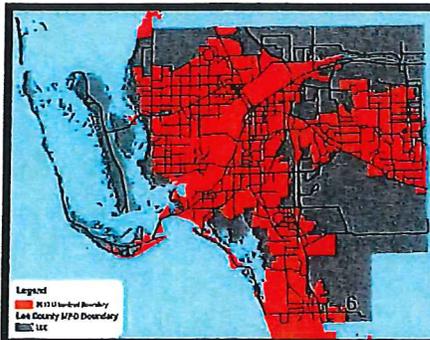
Attachment B



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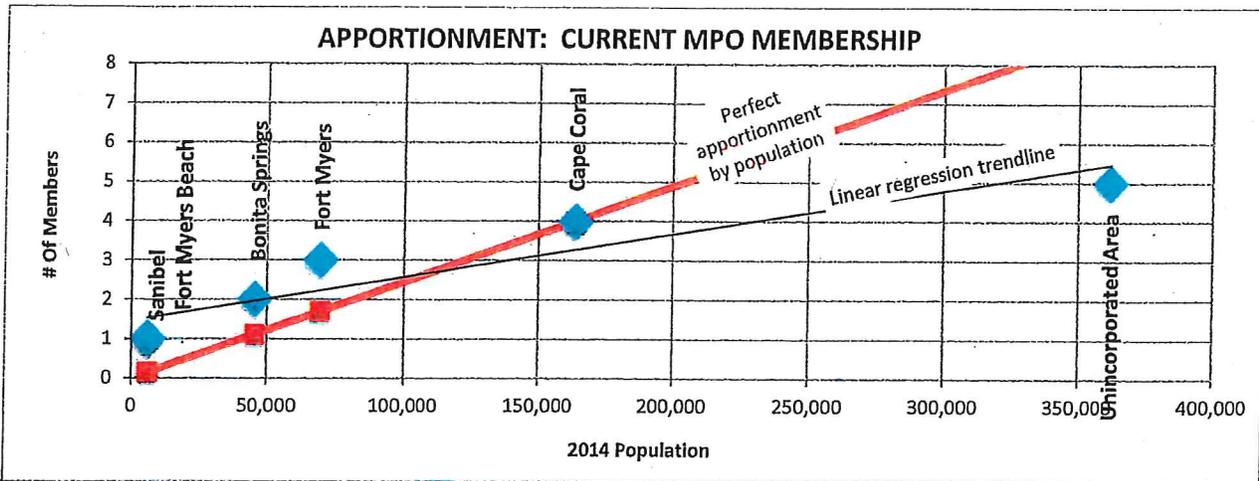
Legend

- Bonita Springs
- Cape Coral
- Estero
- Fort Myers
- Fort Myers Beach
- Sanibel
- Major Roads

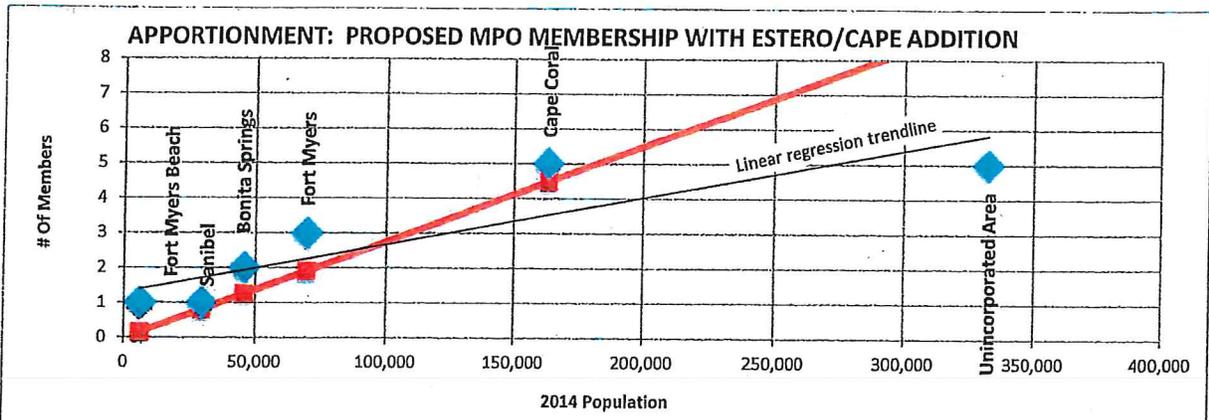


2014 Population	
Bonita Springs	45,819
Cape Coral	163,599
Estero	29,632
Fort Myers	69,437
Fort Myers Beach	6,250
Sanibel	6,490
Unincorporated	332,258
Total	653,485

LEE COUNTY
MPO
 METROPOLITAN PLANNING ORGANIZATION
 Brian V. Raimondo
 Senior Planner - GIS/Spec
 4.28.15
 Pop. Data: BEBR



Participating Agency	Unincorporated Area	Bonita Springs	Cape Coral	Fort Myers	Fort Myers Beach	Sanibel	Countywide Total	Pearson's Coefficient	Correlation Coefficient	Percent RMS Error
2014 BEBR Population	361,890	45,819	163,599	69,437	6,250	6,490	653,485	0.96	0.93	73%
Current Membership	5	2	4	3	1	1	16			
Apportioned by Population	8.86	1.12	4.01	1.70	0.15	0.16	16.00			
Population per Member	72,378	22,910	40,900	23,146	6,250	6,490	40,843	M:\MPO Apportionment\2015		



Participating Agency	Unincorporated Area	Bonita Springs	Cape Coral	Fort Myers	Estero	Fort Myers Beach	Sanibel	Countywide Total	Pearson's Coefficient	Correlation Coefficient	Percent RMS Error
2014 BEBR Population	332,258	45,819	163,599	69,437	29,632	6,250	6,490	653,485	0.96	0.89	68%
Current Membership	5	2	5	3	1	1	1	18			
Apportioned by Population	9.15	1.26	4.51	1.91	0.82	0.17	0.18	18.00			
Population per Member	66,452	22,910	32,720	23,146	29,632	6,250	6,490	36,305	MWMPO Apportionment 2015		

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
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THIS INTERLOCAL AGREEMENT for the formation of a Metropolitan Planning Organization is made and entered into on this _____ day of _____, by and between the FLORIDA DEPARTMENT OF TRANSPORTATION; LEE COUNTY; the CITIES OF CAPE CORAL, FORT MYERS, BONITA SPRINGS, SANIBEL, TOWN OF FORT MYERS BEACH and the VILLAGE OF ESTERO, collectively known as "the parties."

RECITALS

WHEREAS, the federal government, under the authority of Title 23 United States Code (USC) §134 and Title 49 USC §5303, requires each metropolitan area, as a condition for the receipt of federal capital or operating assistance, to have a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs consistent with the comprehensively planned development of the metropolitan area;

WHEREAS, the parties to this Interlocal Agreement desire to participate cooperatively in the performance, on a continuing basis, of a coordinated, comprehensive transportation planning process to assure that highway facilities, mass transit systems, bicycle and pedestrian facilities, rail systems, air transportation and other facilities will be properly located and developed in relation to the overall plan of community development;

WHEREAS, Title 23 USC §134 and Title 49 USC §§5303-5305, as amended by the Moving Ahead for Progress in the 21st Century Act (MAP-21) and Section 339.175, Florida Statutes (F.S.), provide for the creation of Metropolitan Planning Organizations to develop transportation plans and programs for urbanized areas;

WHEREAS, pursuant to Titles 23 USC §134(d), 49 USC §5303, 23 CFR §450.310(b), and Section 339.175(2), F.S., a determination has been made by the Governor and units of general purpose local government representing at least 75 percent of the affected population (including the largest incorporated city, based on population as named by the Bureau of Census) in the urbanized area to designate a Metropolitan Planning Organization;

WHEREAS, pursuant to this Interlocal Agreement, the parties wish to collectively participate in the metropolitan planning process as the Lee County Metropolitan Planning Organization for the Cape Coral, Florida urbanized area, herein after referred to as "the Metropolitan Planning Organization" or "the MPO". Further, the parties approved by majority vote an apportionment and boundary plan for presentation to the Governor on the 17th day of April 2015;

WHEREAS, pursuant to Section 339.175(4), F.S., the Governor approved the apportionment and boundary plan submitted by the MPO;

WHEREAS, pursuant to Title 23 CFR §450.314(a), and Section 339.175(10), F.S., an agreement must be entered into by the Department, the MPO, and the governmental entities and public transportation operators to identify the responsibility of each party for cooperatively carrying out a comprehensive transportation planning process;

WHEREAS, this Interlocal Agreement is required to create the Metropolitan Planning Organization and delineate the provisions for operation of the MPO;

WHEREAS, the undersigned parties have determined that this Interlocal Agreement is consistent with Section 339.175(10), F.S.;

WHEREAS, the undersigned parties have determined that this Interlocal Agreement is consistent with statutory requirements set forth in Section 163.01, F.S., relating to Interlocal Agreements; and

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representation herein, the parties desiring to be legally bound, do agree as follows:

**ARTICLE 1
RECITALS; DEFINITIONS**

Section 1.01. Recitals. Each and all of the foregoing recitals are incorporated herein and acknowledged to be true and correct to the best of the parties' knowledge. Failure of any of the foregoing recitals to be true and correct shall not operate to invalidate this Interlocal Agreement.

Section 1.02. Definitions. The following words when used in this Interlocal Agreement (unless the context shall clearly indicate the contrary) shall have the following meanings:

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Interlocal Agreement means and refers to this instrument, as may be amended from time to time.

Department means and refers to the Florida Department of Transportation, an agency of the State of Florida created pursuant to Section 20.23, F.S.

FHWA means and refers to the Federal Highway Administration.

FTA means and refers to the Federal Transit Administration.

Long Range Transportation Plan (LRTP) is the 20-year transportation planning horizon which includes transportation facilities; identifies a financial plan that demonstrates how the plan can be implemented and assesses capital improvements necessary to preserve the existing metropolitan transportation system and make efficient use of existing transportation facilities; indicates proposed transportation activities; and in ozone/carbon monoxide nonattainment areas is coordinated with the State Implementation Plan, all as required by Title 23 USC §134(c), Title 49 USC §5303, Title 23 CFR §450.322, and Section 339.175(7), F.S.

Metropolitan Planning Area means and refers to the planning area determined by agreement between the MPO and the Governor for the urbanized area containing at least a population of 50,000 as described in Title 23 USC §134(b)(1), Title 49 USC §5303, and Section 339.175(2)(c) and (d), F.S., and including the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period, which shall be subject to the Metropolitan Planning Organization's planning authority.

MPO means and refers to the Metropolitan Planning Organization formed pursuant to this Interlocal Agreement as described in 23 USC §134(b)(2), 49 USC §5303, and Section 339.175(1), F.S.

Transportation Improvement Program (TIP) is the staged multi-year program of transportation improvement projects developed by a Metropolitan Planning Organization consistent with the Long Range Transportation Plan, developed pursuant to 23 USC §134(j), 49 USC §5303, 23 CFR §450.324 and Section 339.175(8), F.S.

Unified Planning Work Program (UPWP) is the biennial program developed in cooperation with the Department and public transportation providers, that identifies the planning priorities and activities to be carried out within a metropolitan planning area to be undertaken during a 2-year period, together with a complete description thereof and an estimated budget, all as required by 23 CFR §450.308, and Section 339.175(9), F.S.

**ARTICLE 2
PURPOSE**

Section 2.01. General Purpose. The purpose of this Interlocal Agreement is to establish the MPO and recognize the boundary and apportionment approved by the Governor. This Interlocal Agreement shall serve:

- (a) To assist in the development of transportation systems embracing various modes of transportation in a manner that will maximize the mobility of people and goods within and through this metropolitan planning area and minimize, to the maximum extent feasible for transportation-related fuel consumption and air pollution;
- (b) To develop transportation plans and programs, in cooperation with the Department, which plans and programs provide for the development of transportation facilities that will function as a multi-modal and intermodal transportation system for the metropolitan planning area;
- (c) To implement and ensure a continuing, cooperative, and comprehensive transportation planning process that results in coordinated plans and programs consistent with the comprehensively planned development of this affected metropolitan planning area in cooperation with the Department;
- (d) To assure eligibility for the receipt of federal capital and operating assistance pursuant to Title 23 USC §134 and Title 49 USC §§5303, 5304, 5305, 5307, 5309, 5310, 5311, 5314, 5326, 5337 and 5339, 5340; and
- (e) To carry out the metropolitan transportation planning process, in cooperation with the Department, as required by federal, state and local laws.

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Section 2.02. Major MPO Responsibilities. The MPO is intended to be a forum for cooperative decision making by officials of the governmental entities which are parties to this Interlocal Agreement in the development of transportation-related plans and programs, including but not limited to:

- (a) The LRTP;
- (b) The TIP;
- (c) The UPWP;
- (d) Incorporating performance goals, measures, and targets into the process of identifying and selecting needed transportation improvements and projects;
- (e) A congestion management process for the metropolitan area and coordinated development of all other transportation management systems required by state or federal law;
- (f) Assisting the Department in mapping transportation planning boundaries required by state or federal law;
- (g) Supporting the Department in performing its duties relating to access management, functional classification of roads, and data collection; and
- (h) Performing such other tasks required by state or federal law.

Section 2.03. Coordination with the Department and Consistency with Comprehensive Plans. Chapter 334, F.S., grants broad authority for the Department's role in transportation. Section 334.044, F.S., includes the legislative intent declaring that the Department shall be responsible for coordinating the planning of a safe, viable, and balanced state transportation system serving all regions of the State. Section 339.155, F.S., requires the Department to develop a statewide transportation plan, which considers, to the maximum extent feasible, strategic regional policy plans, MPO plans, and approved local government comprehensive plans. Section 339.175(5), F.S., specifies the authority and responsibility of the MPO and the Department to manage a continuing, cooperative, and comprehensive transportation planning process for the metropolitan area.

In fulfillment of this purpose and in the exercise of the various powers granted by Chapters 334 and 339, F.S., the parties to this Interlocal Agreement acknowledge that decisions made by the MPO will be coordinated with the Department. All parties to this Interlocal Agreement acknowledge that actions taken pursuant to this Interlocal Agreement will be consistent with local government comprehensive plans.

**ARTICLE 3
MPO ORGANIZATION AND CREATION**

Section 3.01. Establishment of MPO. The MPO for the metropolitan planning area as described in the membership apportionment plan approved by the Governor is hereby created and established pursuant to this Interlocal Agreement to carry out the purposes and functions set forth in Articles 2 and 5. The legal name of this Metropolitan Planning Organization shall be the MPO.

Section 3.02. MPO to operate pursuant to law. In the event that any election, referendum, approval, permit, notice, other proceeding or authorization is required under applicable law to undertake any power, duty, or responsibility hereunder, or to observe, assume, or carry out any of the provisions of this Interlocal Agreement, the MPO will, to the extent of its legal capacity, comply with all applicable laws and requirements.

Section 3.03. Governing board to act as policy-making body of MPO. The governing board established pursuant to Section 4.01 of this Interlocal Agreement shall act as the policy-making body for the MPO, and will be responsible for coordinating the cooperative decision-making process of the MPO's actions, and will take required actions as the MPO.

Section 3.04. Data, reports, records, and other documents. Subject to the right to claim an exemption from the Florida Public Records Law, Chapter 119, F.S., the parties shall provide to each other such data, reports, records, contracts, and other documents in its possession relating to the MPO as is requested. Charges are to be in accordance with Chapter 119, F.S.

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Section 3.05. Rights of review. All parties to this Interlocal Agreement and the affected federal funding agencies (e.g., FHWA, FTA, and FAA) shall have the rights of technical review and comment on MPO's projects.

**ARTICLE 4
COMPOSITION; MEMBERSHIP; TERMS OF OFFICE**

Section 4.01. Composition and membership of governing board.

- (a) The membership of the MPO shall consist of 18 (eighteen) voting members and 1 (one) non-voting advisor. The names of the member local governmental entities and the voting apportionment of the governing board as approved by the Governor shall be as follows:

Lee County	five voting members
City of Cape Coral	five voting members
City of Fort Myers	three voting members
City of Bonita Springs	two voting members
City of Sanibel	one voting member
Town of Fort Myers Beach	one voting member
Village of Estero	one voting member
Florida Department of Transportation	non-voting advisor

- (b) All voting representatives shall be elected officials of general purpose local governments, one of whom may represent a group of general-purpose local governments through an entity created by the MPO for that purpose. The MPO may include, as part of its apportioned voting membership, a member of a statutorily authorized planning board or an official of an agency that operates or administers a major mode of transportation. All individuals acting as a representative of the governing board of the county, the city, or authority shall first be selected by said governing board.
- (c) The voting membership of an M.P.O. shall consist of at least 5 but not more than 25 apportioned members, with the exact number determined on an equitable geographic-population ratio basis, based on an agreement among the affected units of general-purpose local government and the Governor, as required by federal regulations and shall be in compliance with 339.175(3) F.S.
- (d) In the event that a governmental entity that is a member of the MPO fails to fill an assigned appointment to the MPO within sixty days after notification by the Governor of its duty to appoint a representative, the appointment shall then be made by the Governor from the eligible individuals of that governmental entity.

Section 4.02. Terms. The term of office of members of the MPO shall be four years. The membership of a member who is a public official automatically terminates upon said official leaving the elective or appointive office for any reason, or may be terminated by a majority vote of the total membership of the governmental entity represented by the member. A vacancy shall be filled by the original appointing entity. A member may be appointed for one or more additional four year terms.

**ARTICLE 5
AUTHORITIES, POWERS, DUTIES AND RESPONSIBILITIES**

Section 5.01. General authority. The MPO shall have all authorities, powers and duties, enjoy all rights, privileges, and immunities, exercise all responsibilities and perform all obligations necessary or appropriate to managing a continuing, cooperative, and comprehensive transportation planning process as specified in Section 339.175(5) and (6), F.S.

Section 5.02. Specific authority and powers. The MPO shall have the following powers and authority:

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- (a) As provided in Section 339.175(6)(g), F.S., the MPO may employ personnel and/or may enter into contracts with local or state agencies and private planning or engineering firms to utilize the staff resources of local and/or state agencies;
- (b) As provided in Section 163.01(14), F.S., the MPO may enter into contracts for the performance of service functions of public agencies;
- (c) As provided in Section 163.01(5)(j), F.S., the MPO may acquire, own, operate, maintain, sell, or lease real and personal property;
- (d) As provided in Section 163.01(5)(m), F.S., the MPO may accept funds, grants, assistance, gifts or bequests from local, state, and federal resources;
- (e) The MPO may promulgate rules to effectuate its powers, responsibilities, and obligations enumerated herein; provided, that said rules do not supersede or conflict with applicable local and state laws, rules and regulations; and
- (f) The MPO shall have such powers and authority as specifically provided in Section 163.01 and Section 339.175(5) and (6), F.S., and as may otherwise be provided by federal or state law.

Section 5.03. Duties and responsibilities. In addition to those duties and responsibilities set forth in Article 2, the MPO shall have the following duties and responsibilities:

- (a) As provided in Section 339.175(6)(d), F.S., the MPO shall create and appoint a technical advisory committee;
- (b) As provided in Section 339.175(6)(e), F.S., the MPO shall create and appoint a citizens' advisory committee;
- (c) As provided in Section 163.01(5)(o), F.S., the MPO membership shall be jointly and severally liable for liabilities, and the MPO may respond to such liabilities through the purchase of insurance or bonds, the retention of legal counsel, and, as appropriate, the approval of settlements of claims by its governing board, or in any manner agreed upon by the MPO. Nothing contained herein shall constitute a waiver by any party of its sovereign immunity or the provisions of section 768.28, F.S.
- (d) As provided in Section 339.175(9), F.S., the MPO shall establish an estimated budget which shall operate on a fiscal year basis consistent with any requirements of the UPWP;
- (e) The MPO, in cooperation with the Department, shall carry out the metropolitan transportation planning process as required by Title 23 CFR Parts 420 and 450, and Title 49 CFR Part 613, Subpart A, and consistent with Chapter 339, F.S., and other applicable state and local laws;
- (f) As provided in Section 339.175(10)(a), F.S., the MPO shall enter into agreements with the Department, operators of public transportation systems and the metropolitan and regional intergovernmental coordination and review agencies serving the metropolitan area. These agreements will prescribe the cooperative manner in which the transportation planning process will be coordinated and included in the comprehensively planned development of the area;
- (g) Perform such other tasks presently or hereafter required by state or federal law;
- (h) Execute certifications and agreements necessary to comply with state or federal law; and
- (i) Adopt operating rules and procedures.

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**ARTICLE 6
FUNDING; INVENTORY REPORT; RECORD-KEEPING**

Section 6.01. Funding. The Department shall allocate to the MPO for performance of its transportation planning and programming duties, an appropriate amount of federal transportation planning funds consistent with the approved planning funds formula.

Section 6.02. Inventory report. The MPO agrees to inventory, to maintain records of and to insure proper use, control, and disposal of all nonexpendable tangible property acquired pursuant to funding under this Interlocal Agreement. This shall be done in accordance with the requirements of Title 23 CFR Part 420, Subpart A, Title 49 CFR Part 18, Subpart C, and all other applicable federal regulations.

Section 6.03. Record-keeping and document retention. The Department and the MPO shall prepare and retain all records in accordance with federal and state requirements, including but not limited to 23 CFR Part 420, Subpart A, 49 CFR Part 18, Subpart C, 49 CFR §18.42, and Chapter 119, F.S.

Section 6.04 Compliance with laws. All parties shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the parties in conjunction with this Agreement. Specifically, if a party is acting on behalf of a public agency the party shall:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by the Department in order to perform the services being performed by the party.
- (b) Provide the public with access to public records on the same terms and conditions that the Department would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (d) Meet all requirements for retaining public records and transfer, at no cost, to the Department all public records in possession of the party upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Department in a format that is compatible with the information technology systems of the Department.

**ARTICLE 7
MISCELLANEOUS PROVISIONS**

Section 7.01. Constitutional or statutory duties and responsibilities of parties. This Interlocal Agreement shall not be construed to authorize the delegation of the constitutional or statutory duties of any of the parties. In addition, this Interlocal Agreement does not relieve any of the parties of an obligation or responsibility imposed upon them by law, except to the extent of actual and timely performance thereof by one or more of the parties to this Interlocal Agreement or any legal or administrative entity created or authorized by this Interlocal Agreement, in which case this performance may be offered in satisfaction of the obligation or responsibility.

Section 7.02. Amendment of Interlocal Agreement. Amendments or modifications of this Interlocal Agreement may only be made by written agreement signed by all parties here to with the same formalities as the original Interlocal Agreement. No amendment may alter the apportionment or jurisdictional boundaries of the MPO without approval by the Governor.

Section 7.03. Duration; withdrawal procedure.

- (a) Duration. This Interlocal Agreement shall remain in effect until terminated by the parties to this Interlocal Agreement. The Interlocal Agreement shall be reviewed by the parties at least every five years, concurrent with the decennial census, and/or concurrent with a new Federal Reauthorization bill, and updated as necessary.

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- (b) Withdrawal procedure. Any party, except Lee County and the United States Bureau of the Census designated largest incorporated city, may withdraw from this Interlocal Agreement after presenting in written form a notice of intent to withdraw to the other parties to this Interlocal Agreement and the MPO, at least 90 days prior to the intended date of withdrawal. Upon receipt of the intended notice of withdrawal:

(1) The withdrawing member and the MPO shall execute a memorandum reflecting the withdrawal of the member and alteration of the list of member governments that are signatories to this Interlocal Agreement. The memorandum shall be filed in the Office of the Clerk of the Circuit Court of each county in which a party hereto is located; and

(2) The MPO shall contact The Office of the Governor and the Governor, with the agreement of the remaining members of the MPO, shall determine whether any reapportionment of the membership is appropriate. The Governor and the MPO shall review the previous MPO designation, applicable federal, state and local law, and MPO rules for appropriate revision. In the event that another entity is to be afforded membership in the place of the member withdrawing from the MPO, the parties acknowledge that pursuant to Title 23 CFR §450.310(I)(2), adding membership to the MPO does not automatically require redesignation of the MPO. In the event that a party who is not a signatory to this Interlocal Agreement is afforded membership in the MPO, membership shall not become effective until this Interlocal Agreement is amended to reflect that the new member has joined the MPO.

Section 7.04. Notices. All notices, demands and correspondence required or provided for under this Interlocal Agreement shall be in writing and delivered in person or dispatched by certified mail, postage prepaid, return receipt requested. Notice required to be given shall be addressed as follows:

FLORIDA DEPARTMENT OF TRANSPORTATION, District Secretary, P.O. Box 1249, Bartow, FL 33831-1249

LEE COUNTY, County Administrator, with copy to the County Attorney, P.O. Box 398, Fort Myers, FL 33902-0398

CITY OF CAPE CORAL, Mayor, P.O. Box 150027, Cape Coral, FL 33915-0027

CITY OF FORT MYERS, Mayor, with copies to the City Clerk and City Planner, P.O. Box 2217, Fort Myers, FL 33902

CITY OF BONITA SPRINGS, City Manager, 9101 Bonita Beach Road, Bonita Springs, FL 34135-4223

CITY OF SANIBEL, City Manager, 800 Dunlop Road, Sanibel, FL 33957;

TOWN OF FORT MYERS BEACH, Mayor, 2523 Estero Blvd, Fort Myers Beach, FL 33931

VILLAGE OF ESTERO, Mayor, with copies to Village Manager, 21500 Three Oaks Parkway, Estero, FL 33928

A party may unilaterally change its address or addressee by giving notice in writing to the other parties as provided in this section. Thereafter, notices, demands and other pertinent correspondence shall be addressed and transmitted to the new address.

Section 7.05. Interpretation.

- (a) Drafters of the Interlocal Agreement. The Department and the members of the MPO were each represented by or afforded the opportunity for representation by legal counsel and participated in the drafting of this Interlocal Agreement and in choice of wording. Consequently, no provision should be more strongly construed against any party as drafter of this Interlocal Agreement.
- (b) Severability. Invalidation of any one of the provisions of this Interlocal Agreement or any part, clause or word, or the application thereof in specific circumstances, by judgment, court order, or administrative hearing or order shall not affect any other provisions or applications in other circumstances, all of which shall remain in full force and effect; provided, that such remainder would then continue to conform to the terms and requirements of applicable law.
- (c) Rules of construction. In interpreting this Interlocal Agreement, the following rules of construction shall apply unless the context indicates otherwise:

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- (1) The singular of any word or term includes the plural;
- (2) The masculine gender includes the feminine gender; and
- (3) The word "shall" is mandatory, and "may" is permissive.

Section 7.06. Enforcement by parties hereto. In the event of any judicial or administrative action to enforce or interpret this Interlocal Agreement by any party hereto, each party shall bear its own costs and attorney's fees in connection with such proceeding.

Section 7.07. Interlocal Agreement execution; Use of counterpart signature pages. This Interlocal Agreement, and any amendments hereto, may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

Section 7.08. Effective date; Cost of recordation.

- (a) Effective date. This Interlocal Agreement shall become effective upon its filing in the Office of the Clerk of the Circuit Court of each county in which a party hereto is located. Any amendment hereto shall become effective only upon its filing in the Office of the Clerk of the Circuit Court for each county in which a party hereto is located.
- (b) Recordation. The MPO hereby agrees to pay for any costs of recordation or filing of this Interlocal Agreement in the Office of the Circuit Court for each county in which a party is hereto located. The recorded or filed original, or any amendment, shall be returned to the MPO for filing in its records.

IN WITNESS WHEREOF, the undersigned parties have executed this Interlocal Agreement on behalf of the referenced legal entities and hereby establish the above designated MPO.

Signed, Sealed and Delivered in the presence of:

[Every member of the MPO shall sign this Interlocal Agreement with the appropriate witnesses]

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Signed, Sealed and Delivered this _____ day of _____, 2015

Attested By:

LEE COUNTY, Board of County Commissioners

Clerk of Circuit Court

Brian Hamman, Chairman

Approved as to form and legal sufficiency:

County Attorney

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Signed, Sealed and Delivered this _____ day of _____, 2015

Attested By:

CITY OF CAPE CORAL

City Clerk

Marni Sawicki, Mayor

Approved as to form and legal sufficiency:

City Attorney

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Signed, Sealed and Delivered this _____ day of _____, 2015

Attested By:

CITY OF FORT MYERS

City Clerk

Randall P. Henderson Jr., Mayor

Approved as to form and legal sufficiency:

City Attorney

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Signed, Sealed and Delivered this _____ day of _____, 2015

Attested By:

CITY OF BONITA SPRINGS

City Clerk

Ben L. Nelson Jr., Mayor

Approved as to form and legal sufficiency:

City Attorney

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Signed, Sealed and Delivered this _____ day of _____, 2015

Attested By:

CITY OF SANIBEL

City Clerk

Kevin Ruane, Mayor

Approved as to form and legal sufficiency:

City Attorney

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Signed, Sealed and Delivered this _____ day of _____, 2015

Attested By:

TOWN OF FORT MYERS BEACH

City Clerk

Anita T Cereceda, Mayor

Approved as to form and legal sufficiency:

Town Attorney

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Signed, Sealed and Delivered this 16th day of September, 2015

Attested By:

VILLAGE OF ESTERO

Kathy Wall
City Clerk

Nick Batos
Nick Batos, Mayor



Approved as to form and legal sufficiency:

Paul H. Randle
Village Attorney

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Signed, Sealed and Delivered this _____ day of _____, 2015

Attested By:

Florida Department of Transportation

Executive Secretary

Billy Hattaway, District One Secretary

Approved as to form and legal sufficiency:

Legal Counsel