

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 96-26

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA  
AUTHORIZING THE EXECUTION OF THE INTERLOCAL AGREEMENT FOR  
REORGANIZATION OF THE LEE COUNTY METROPOLITAN PLANNING  
ORGANIZATION.

WHEREAS, the Lee County Metropolitan Planning Organization (MPO)  
was created by interlocal agreement in 1976 and amended in 1979;  
and,

WHEREAS, the MPO reapportionment plan to add the Town of Fort  
Myers Beach as a member of the MPO has the Governor's approval;  
and,

WHEREAS, a new interlocal agreement must be executed by each  
member jurisdiction;

NOW, THEREFORE, BE IT RESOLVED BY THE FORT MYERS BEACH TOWN  
COUNCIL THAT:

The Mayor and the Town Manager are authorized and directed to  
execute the Interlocal Agreement made and entered into by and  
between the Florida Department of Transportation an agency of the  
State of Florida, Lee County, the City of Fort Myers, the City of  
Cape Coral, the City of Sanibel, and the Town of Fort Myers Beach.

The foregoing resolution was adopted by the Fort Myers Beach  
Town Council upon being put to a vote, the result was as follows:

Anita T. Cereceda	<u>aye</u>
Ted FitzSimons	<u>aye</u>
William (Rusty) Isler	<u>aye</u>
Garr Reynolds	<u>aye</u>
Ray Murphy	<u>aye</u>

DULY ADOPTED this 30th day of September, 1996.

ATTEST:

By: Marsha Segal-George  
Marsha Segal-George, Town Clerk

TOWN OF FORT MYERS BEACH

By: Anita T. Cereceda  
Anita T. Cereceda, Mayor

Approved as to form by:

Richard V.S. Roosa  
Richard V.S. Roosa, Town Attorney

# INTERLOCAL AGREEMENT FOR REORGANIZATION OF THE LEE COUNTY METROPOLITAN PLANNING ORGANIZATION

This Interlocal Agreement is made and entered into by and between the **Florida Department of Transportation**, an agency of the State of Florida created pursuant to section 20.23, Florida Statutes, whose address is PO Box 1249, Bartow, FL, 33831-1249; **Lee County**, a political subdivision of the State of Florida, whose address is PO Box 398, Fort Myers, FL, 33902, the **City of Fort Myers**, a Florida municipal corporation, whose address is PO Box 2217, Fort Myers, FL 33902, the **City of Cape Coral**, a Florida municipal corporation, whose address is PO Box 150027, Cape Coral, FL 33915-0027, the **City of Sanibel**, a Florida municipal corporation, whose address is 800 Dunlop Road, Sanibel, FL 33957 and the **Town of Fort Myers Beach**, a municipal corporation, whose address is PO Box 3077, Fort Myers Beach, 33932.

## RECITALS

*Whereas*, the federal government, under the authority of 23 USC section 134 and sections 4(a), 5(g)(1), and 8 of the Federal Transit Act [49 USC app. subsections 1603(a), 1604(g)(1), and 1607], requires that each metropolitan area, as a condition to the receipt of federal capital or operating assistance, 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, and stipulates that the state and the metropolitan planning organization shall enter into an agreement clearly identifying the responsibilities for cooperatively carrying out such transportation planning; and

*Whereas*, the parties of 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, rail systems, air transportation and other facilities will be properly located and developed in relation to the overall plan of community development; and

*Whereas*, 23 USC section 134 (a) and (b), as amended by the Intermodal Surface Transportation Efficiency Act of 1991, 49 USC section 1607(a) and (b), 23 CFR section 450.306, and section 339.175, *Florida Statutes*, provide for the creation of metropolitan planning organizations to develop transportation plans and programs for metropolitan areas; and

*Whereas*, pursuant to 23 USC section 134(b), 49 USC app. section 1607(b), 23 CFR section 450.306(a), and section 339.175, *Florida Statutes*, a determination has been made by the Governor and units of general purpose local government representing at least 75% of the affected population in the metropolitan area to designate a metropolitan planning organization; and

“**Department**” shall mean and refer to the Florida Department of Transportation, an agency of the State of Florida created pursuant to section 20.23, *Florida Statutes*.

“**Long range transportation plan**” is at a minimum a 20-year plan which: identifies transportation facilities; includes 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 enhancement activities; and in ozone/carbon monoxide nonattainment areas is coordinated with the State Implementation Plan, all as required by 23 USC section 134(g), 23 CFR section 450.322, and section 339.175(6), *Florida Statutes*.

“**Metropolitan area**” means and refers to the planning area, as delineated by the MPO, for the urbanized area, containing a population of at least 50,000, as described in 23 USC section 134(b)(1) and section 339.175, *Florida Statutes*, which shall be subject to the MPO.

“**MPO**” means and refers to the metropolitan planning organization formed pursuant to this agreement.

“**Transportation Improvement Program (TIP)**” is the transportation document which includes the following components: a priority list of projects and project phases; a list of projects proposed for funding; a financial plan demonstrating how the TIP can be implemented; a grouping of projects by staging periods; an indication as to whether the projects and project phases are consistent with applicable local government comprehensive plans adopted pursuant to section 163.3161 et seq., *Florida Statutes*; and an indication of how improvements are consistent, to the maximum extent feasible, with affected seaport and airport master plans and with public transit development plans of the units of local government located within the boundaries of the MPO, all as required by 23 USC section 134(h), 23 CFR section 450.324 and section 339.175(7), *Florida Statutes*.

“**Unified Planning Work Program (UPWP)**” is the annual plan, developed in cooperation with the Department and public transportation providers, that lists all planning tasks to be undertaken during a program year, together with a complete description thereof and an estimated budget, all as required by 23 CFR section 450.314, section 339.175(8), *Florida Statutes*.

## ARTICLE 2 PURPOSE

**Section 2.01 General Purpose** The purpose of this agreement is to establish the MPO:

(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 the Fort Myers-Cape Coral, Florida Metropolitan Area and minimize, to the maximum extent feasible, transportation-related fuel consumption and air pollution;

Department's role in transportation. Section 334.044, *Florida Statutes*, states the legislative intent 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, *Florida Statutes*, 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, *Florida Statutes*, specifies the authority and responsibility of the MPO and the Department in the management of 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, *Florida Statutes*, the Department and all parties to this agreement acknowledge that the provisions of the Local Government Comprehensive Planning and Land Development Regulation Act, sections 163.3161-3215, *Florida Statutes*, are applicable to this agreement. The parties to this agreement shall take particular care that the planning processes and planning integrity of local governments as set forth in aforementioned law shall not be infringed upon.

### **ARTICLE 3 MPO REORGANIZATION**

**Section 3.01 Establishment, reorganization, and name of the MPO** The MPO for the Fort Myers-Cape Coral, Florida Metropolitan Area, established on December 13, 1976 under a preceding interlocal agreement, which is hereby superseded and canceled, is hereby reorganized pursuant to this agreement and the membership apportionment plan approved by the Governor on August 2, 1996 to carry out the purposes and functions set forth in Articles 2 and 5. The legal name of this metropolitan planning organization shall continue to be the "Lee County Metropolitan Planning Organization."

**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 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 agreement shall be the policy-making body of the MPO, responsible for cooperative decision-making on actions taken by the MPO. The governing board is the policy-making body that is the forum for cooperative decision-making, and which will be taking the required approval actions as the MPO.

**Section 3.04 Submission of proceedings, contracts, and other documents** Subject to requirements of confidentiality of public records under Florida law and the right to claim an exemption from the Florida Public Records Law, Chapter 119, *Florida Statutes*, the MPO shall

**Non-Voting Members:**

**FLORIDA DEPARTMENT OF TRANSPORTATION**

District Secretary or his designee . . . . . 1

**(b)** All voting representatives shall be elected officials of general purpose local governments, except to the extent that the MPO includes, 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)** In no event shall the county commission representatives constitute less than one-third of the total number of representatives on the MPO.

**(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 (60) days after notification by the Governor of its duty to appoint a representative, that appointment shall 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 (4) 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 (4) year terms.

**ARTICLE 5**

**AUTHORITIES, POWERS, DUTIES, AND RESPONSIBILITIES**

**Section 5.01 General authority of MPO** 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 sections 339.175(4) and (5), *Florida Statutes*.

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

**(a)** As provided in section 339.175(5)(g), *Florida Statutes*, the MPO may employ personnel and/or may enter into contracts with local or state agencies and private planning or engineering firms to utilize their staff resources;

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) Prepare the long-range transportation plan;
- (h) In cooperation with the Department, prepare the Transportation Improvement Program;
- (i) In cooperation with the Department, prepare and annually update the Unified Planning Work Program;
- (j) Implement a congestion management system for the metropolitan area;
- (k) Assist the Department in mapping transportation planning boundaries required by state or federal law;
- (l) Assist the Department in performing its duties relating to access management, functional classification of roads, and data collection;
- (m) Perform such other tasks presently or hereafter required by state or federal law;
- (n) Execute certifications and agreements necessary to comply with state or federal law; and
- (o) Adopt operating rules and procedures.

#### **Section 5.04 Responsibilities of signatory local governments**

**(a) Local government responsibilities** Each local government that is a party to this agreement hereby agrees to:

**(1)** Participate with the staff agency to jointly assist the MPO in carrying out the continuing, cooperative, and comprehensive transportation planning process for the Fort Myers-Cape Coral Urbanized Area, including the programming of transportation improvements for such area, as required by 23 CFR chapter 1, part 450;

**(2)** Be responsible for undertaking those tasks allocated to it in the Unified Planning Work Program adopted by the MPO, and any other activities relating to urban transportation planning, as determined by the MPO's staff agency, to assist in carrying out the urban transportation planning process for the urbanized area;

**(3)** Document and report to the MPO staff agency, either monthly or quarterly as requested by the MPO staff agency, the amount and value of in-kind services performed by its staff agencies on tasks assigned to them by the MPO in the adopted Unified Planning Work Program, for use in

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

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

**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 agreement. This shall be done in accordance with the requirements of 23 CFR part 420, subpart A; 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 18d, subpart C; 49 CFR section 18.42; and chapter 119, *Florida Statutes*.

**ARTICLE 7  
MISCELLANEOUS PROVISION**

**Section 7.01 Constitutional or statutory duties and responsibilities of parties** This agreement shall not be construed to authorize the delegation of the constitutional or statutory duties of any of the parties. In addition, this agreement does not relieve any of the parties of any 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 agreement or any legal or administrative entity created or authorized by this agreement, in which case this performance may be offered in satisfaction of the obligation or responsibility.

**Section 7.02 Amendment of agreement** Amendments or modifications of this agreement may only be made by written agreement signed by all parties hereto with the same formalities as the original 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 agreement shall remain in effect until terminated by the parties to this agreement; provided, however, that by no later than August 2, 2001 and at least every five (5) years thereafter, the Governor shall examine the composition of the MPO membership and reapportion it as necessary to comply with section 339.175(2), *Florida Statutes*, as appropriate. During examination of the MPO apportionment every five (5) years by the Governor, this agreement shall be reviewed by the MPO and the Department to confirm the validity of the contents and to recommend amendments, if any, that are required.

## **Section 7.05 Interpretation**

**(a) Drafters of 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 agreement and in choice of wording. Consequently, no provision hereof should be more strongly construed against any party as drafter of this agreement.

**(b) Severability** Invalidation of any one of the provisions of this agreement or any part, clause or word hereof, 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 agreement, the following rules of construction shall apply unless the context indicates otherwise:

- (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 agreement by any party hereto, each party shall bear its own attorney's fees in connection with such proceeding.

**Section 7.07 Agreement execution; use of counterpart signature pages** This 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**

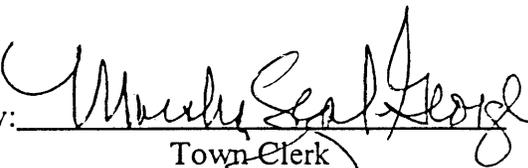
**(a) Effective date** This agreement shall become effective upon its filing in the Office of the Clerk of the Circuit Court for Lee County. Any amendment hereto shall become effective only upon its filing in the Office of the Clerk of the Circuit Court for Lee County.

**(b) Recordation** Lee County hereby agrees to pay for any costs of recordation or filing of this agreement in the Office of the Circuit Court for Lee County. The recorded or filed original hereof, or any amendment, shall be returned to the MPO for filing in its records.

Signed, sealed and delivered this 30th day of September, 1996.

Attest

TOWN OF FORT MYERS BEACH

By:   
Town Clerk

By:   
Anita Cereceda, Mayor

Approved as to form and legal sufficiency

By:   
Town Attorney