



BERTHA W. HENRY, County Administrator

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May 1, 2020

Mr. Gregory Stuart, Executive Director
Broward Metropolitan Planning Organization, Trade Center South
100 West Cypress Creek Road, Suite 650
Fort Lauderdale, FL 33309

Via email to: stuartg@browardmpo.org

**RE: April 7, 2020 Correspondence - Conflict of Interest Language
Draft Municipal Interlocal Agreement for Surtax Funding**

Mr. Stuart:

Please allow this letter to respond to your April 7th letter, which asserts language included in the Draft Municipal Interlocal Agreements for surtax funding is a “substantial impediment to the Broward MPO and our shared municipal members moving forward”: specifically, the phrase in paragraph 6.7 prohibiting municipalities from contracting “. . . transportation planning services to a third-party that has any role or responsibility in the review, approval, or ranking of Surtax-Funded Projects.”

The County appreciates the MPO’s role in transportation planning and understands its significance to our community. However, planning services that extend beyond the MPO’s federally mandated role must not create a perceived or apparent conflict of interest with its County contractual obligations to objectively and fairly prioritize municipal projects for transportation surtax funding. This obligation consists of developing an evaluation methodology, a review and ranking process, prioritizing, and making funding recommendations related to municipal capital projects.

Thank you for making available the MPO’s municipal transportation service agreements, which were helpful in adding clarity to this issue. Upon review, the agreements with Coconut Creek (2/2018), Tamarac (10/2018), North Lauderdale (12/2018), Miramar (3/2019), Lauderdale Lakes (5/2019), and Wilton Manors (1/2020) appear materially different from the MPO’s Interlocal Agreement with the City of (“Fort Lauderdale ILA”) in a number of significant ways. First, four of the six agreements have effective dates prior to the adoption of the County Surtax Agreement with the MPO. Moreover, the recitals, services offered, payment terms, and scope of services in all six agreements are almost identical, offering various “transportation planning” services from either an MPO staff person or one of the same four consultant firms. Various services (e.g., graphic/web design, economist, traffic counts, engineer, project manager, senior planner, etc.) range in cost and are acquired via work authorization(s). If consultant services are used, MPO

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staff receive compensation to manage the firm's work on behalf of the municipality. Use of the services by a participating municipality is *optional*.

Consequently, work authorizations purchased under one of these six agreements can be limited to those that have: (a) not been funded with surtax proceeds provided to a municipality for a capital project recommended for funding by the MPO; (b) not been purchased *using any revenue source* for services related to municipal capital projects seeking surtax funds; or (c) *no relationship* to accessing or managing municipal capital projects funded with surtax revenues. In other words, under these agreements, potential and actual conflicts can be avoided. It is important to note that the "independent Interlocal Agreements that were previously approved" and referenced in your letter were not the subject of the Auditor's concern, nor mine.

Of concern to me and, independently, the Auditor, is that the Fort Lauderdale ILA contains "Initial" and "Core Services" that are not optional. The agreement defines Project Management, Transportation Priority Plan, and Grants activities and deliverables that are required. Staff hired using the City's funding become MPO employees, but are expected under the contract's terms to represent the City before its Commission, neighborhood associations, County, etc., and to put on the record that the MPO staff member is acting in his or her capacity as a City of Fort Lauderdale representative. Nothing like this exists in the other municipal transportation planning services agreements we reviewed. Work authorizations are not used to acquire services under the ILA. Instead, the City funds the MPO in advance, in an amount not-to-exceed \$550,000 payable on October 15th of each year, escalated annually. The City also advanced one-time start-up costs of \$225,000 to complete "Initial Services" identified in Exhibit A (Scope of Services). Further, the ILA with the City obligates the MPO to recommend project priorities (master-planning), as well as take steps to "pursue surtax funds". Required services then obligate the City-funded MPO staff to pursue "federal, state, county and other funds" for priority projects.

Developing grant applications (a Core Service) on behalf of the City for solicitation processes managed or controlled by the MPO creates, at a minimum, the appearance of a conflict of interest. Project monitoring and reporting on surtax-funded municipal capital projects the MPO recommended (or may recommend) --*recognizing most are phased projects requiring annual funding applications through the MPO's solicitation processes*—also creates, at a minimum, the appearance of a conflict.

Nevertheless, I am mindful of your concern about the MPO being able to fulfill its statutory roles and responsibilities with respect to transportation planning. So, while I cannot speak for the Auditor's position on this matter, the County through its legal counsel is willing to work with the MPO's legal counsel to amend the Conflict of Interest language so it in no way impedes the MPO's ability to fulfill those roles and responsibilities. I know Mr. Gabriel has spoken and written to Mr. Meyers regarding this issue, and that Mr. Meyers has communicated this to him.

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We hope we are able to work collaboratively with you to resolve this current issue. If we are unable to do so, we can discuss the MPO's request to terminate the Interlocal Agreement for Municipal Prioritization Services.

Sincerely,



Bertha Henry
County Administrator

cc: Board of County Commissioners
Andrew J. Meyers, County Attorney
Bob Melton, County Auditor
Gretchen Cassini, Transportation Surtax Administrator