

RESOLUTION NO. 2020-3

A RESOLUTION OF THE BROWARD METROPOLITAN PLANNING ORGANIZATION ADOPTED PURSUANT TO SECTION 164.1052, FLORIDA STATUTES, DECLARING THE INTENT OF THE BOARD OF THE BROWARD METROPOLITAN PLANNING ORGANIZATION (“BMPO”) TO INITIATE THE CONFLICT RESOLUTION PROCEDURES SET FORTH IN CHAPTER 164, FLORIDA STATUTES; FINDING THAT A CONFLICT EXISTS WITH BROWARD COUNTY (“COUNTY”) ARISING FROM THE COUNTY’S INSISTENCE ON INCLUDING CONFLICT OF INTEREST LANGUAGE IN THE PROPOSED INTERLOCAL AGREEMENTS FOR SURTAX-FUNDED MUNICIPAL TRANSPORTATION PROJECTS TO BE ENTERED INTO BETWEEN THE COUNTY AND VARIOUS MUNICIPALITIES IN BROWARD COUNTY (THE “MUNICIPAL ILA’S”); THAT THE COUNTY’S INSISTENCE ON INCLUDING THE CONFLICT OF INTEREST LANGUAGE IN THE MUNICIPAL ILA’S IS A BREACH OF THE PARTIES’ “PLEDGE OF SUPPORT” TO WORK COOPERATIVELY TO ENHANCE THE LOCAL AND REGIONAL TRANSPORTATION SYSTEM WHICH IS INCLUDED IN SECTION VII OF THE INTERLOCAL AGREEMENT FOR TRANSPORTATION SURTAX SERVICES ENTERED INTO BETWEEN THE BMPO AND THE COUNTY (THE “BMPO ILA”); THAT THE COUNTY’S INSISTENCE ON INCLUDING THE CONFLICT OF INTEREST LANGUAGE IN THE MUNICIPAL ILA’S IS A BREACH OF THE PARTIES’ “PLEDGE TO SUPPORT” TO WORK COOPERATIVELY TO ENHANCE THE REGIONAL TRANSPORTATION SYSTEM AS STATED IN SECTION XI OF THE TRANSPORTATION SYSTEM SURTAX INTERLOCAL AGREEMENT (THE “MULTI-PARTY SURTAX ILA”); FINDING THAT THE CONFLICT OF INTEREST LANGUAGE WHICH THE COUNTY IS DEMANDING THE MUNICIPALITIES ACCEPT IN THE MUNICIPAL ILA’S IS CAUSING EXISTING BMPO MUNICIPAL CLIENTS TO TERMINATE EXISTING BMPO TRANSPORTATION SERVICE AGREEMENTS WHICH IS ADVERSELY IMPACTING THE BMPO’S REVENUE STREAM AND ABILITY TO EMPLOY QUALIFIED INDIVIDUALS TO SUPPORT THE TRANSPORTATION SURTAX PROJECT FUNDING PROGRAM; FINDING THAT A CONFLICT EXISTS WITH BROWARD COUNTY CONCERNING THE ACTIONS THAT THE COUNTY HAS TAKEN TO TORTIOUSLY INTERFERE WITH THE AGREEMENTS BETWEEN THE BMPO AND MUNICIPALITIES IN BROWARD COUNTY; FINDING THAT THE COUNTY’S POSITION ON THE CONFLICT OF INTEREST LANGUAGE IS BEING PURSUED IN BAD FAITH; DIRECTING THE BMPO EXECUTIVE DIRECTOR TO PREPARE AND TO FORWARD A CERTIFIED COPY OF THIS RESOLUTION AND THE REQUIRED CERTIFIED LETTER TO BROWARD COUNTY AND TO OTHER GOVERNMENTAL UNITS PURSUANT TO SECTION

164.1052, FLORIDA STATUTES; AUTHORIZING THE APPROPRIATE BMPO OFFICIALS TO TAKE ALL STEPS NECESSARY TO EFFECTUATE THIS RESOLUTION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on June 5, 2018, Broward County enacted Ordinance No. 2018-29, the Broward County Transportation Surtax Ordinance, which is codified in Section 31½ -71, et seq., of the Broward County Code of Ordinances (the “Ordinance”), which levied a one percent (1%) transportation surtax (“Transportation Surtax”) which was approved by the voters on November 6, 2018; and

WHEREAS, the Ordinance provides for the BMPO to annually review, rank, and prioritize municipal projects based upon each project’s ability to alleviate traffic congestion and enhance connectivity; and

WHEREAS, on August 21, 2018 the County, the BMPO, and the municipalities within Broward County entered into the Transportation System Surtax Interlocal Agreement (the “Multi-Party Surtax ILA”) to provide for the coordination of activities associated with the proposed Broward County Transportation Surtax Levy that was considered by the electorate in November 6, 2018 and authorized by the electors of Broward County on November 6, 2018; and

WHEREAS, pursuant to the Multi-Party Surtax ILA, the County, the BMPO, and the municipalities in Broward County agreed to their Pledge of Support in Section XI, which provides that “To the full extent permissible under applicable law, all parties pledge to support the approval of the Ballot Measure and agree to work cooperatively to enhance the regional transportation system. Nothing stated in this section shall be interpreted to impede the free speech rights of any individual.”

WHEREAS, on or about April 25, 2019, the Broward Metropolitan Planning Organization (“BMPO”) entered into an Interlocal Agreement for Transportation Surtax Services with Broward County (the “County”) providing for the BMPO to annually review, rank, and prioritize municipal projects based upon each project’s ability to alleviate traffic congestion and enhance connectivity (the “Agreement”); and

WHEREAS, Section VII of the Agreement provides that the County and the BMPO pledge to work cooperatively to enhance the local and regional transportation system; and

WHEREAS, as part of the Transportation Surtax Program, the County intends to enter into

Interlocal Agreements with municipalities located within Broward County in order to fund municipal projects through the Transportation Surtax Program; and

WHEREAS, on August 25, 2020, the County Commission approved the form Interlocal Agreement between Broward County and Municipality for Surtax-Funded Municipal Transportation Project (the "Municipal ILA") to be utilized by the County and municipalities in Broward County for funding of approved municipal capital projects; and

WHEREAS, the Municipal ILA is intended to be utilized by the County for all municipal capital projects funded with transportation surtax funds, and includes language that would prohibit the municipality from contracting with the BMPO for any services related to the design, construction, oversight, or management services related to any project funded in whole or in part with Transportation Surtax funds (the "Conflict of Interest Language"); and

WHEREAS, while there is no legal conflict resulting from the BMPO's ranking of projects pursuant to the Agreement and BMPO's services to be provided pursuant to the Ordinance, County staff believes there is a conflict as it is the County staff's belief that the BMPO will give a higher ranking to any municipal projects that are proposed by a municipality which is under contract with the BMPO for other services, and as a result included the Conflict of Interest Language in the Municipal ILA; and

WHEREAS, the practical effect of BMPO's ranking of projects is minimal as BMPO's ranking of projects is only **a recommendation to the County**, which is amended, modified, and altered by County Staff, the Transportation Surtax Oversight Committee, and then finally by the County Commission prior to the County Commission's final approval of the project rankings; and

WHEREAS, the County staff's actions, the actions by the Oversight Committee, and the County Commission, negate any of the BMPO's actions which could create any alleged conflict between the BMPO's obligation under the Agreement, and any agreement the BMPO has with any municipality; leading the BMPO to find that the County's proposed Conflict of Interest Language is a "red herring" with no basis in law or fact; and

WHEREAS, the Conflict of Interest Language will adversely impact the BMPO and its existing agreements with municipalities in Broward County to provide services related to transportation projects, whether funded in whole or in part by Transportation Surtax funds; and

WHEREAS, the BMPO has been notified by one municipality that the municipality's contract with the BMPO will need to be terminated due to the County's insistence of the Conflict

of Interest Language in the Municipal ILA, which will directly cause the BMPO to lose revenue anticipated to be generated as a result of the BMPO providing transportation services pursuant to the agreement with that municipality;

WHEREAS, for several weeks, the BMPO's Executive Director, and General Counsel, consistent with the mutual Pledges to Support included in both the Agreement, and the Multi-Party Surtax ILA, have attempted to work with County staff to modify the Conflict of Interest Language in order to eliminate any adverse impact to the BMPO; however, the County insists on retaining the Conflict of Interest Language in the Municipal ILA, to the detriment of the BMPO; and

WHEREAS, the BMPO believes that the actions taken by the County, including, but not limited to the County's refusal to eliminate or modify the Conflict of Interest Language tortuously interferes with the BMPO's agreement with the municipalities; and

WHEREAS, the County's insistence on imposing the Conflict of Interest Language in the Municipal ILA's, as approved on August 25, 2020, breaches the County's agreement to work cooperatively to enhance the regional transportation system as provided in both the Multi-Party Surtax ILA and the Agreement, and prevents the BMPO from utilizing its expertise to assist work with and assist the municipalities to enhance the regional transportation system, thereby negatively impacting the regional transportation system; and

WHEREAS, as a direct result of the County's intentional actions, and failure to work in good faith, the BMPO has been financially impacted; and

WHEREAS, Chapter 164, Florida Statutes, entitled the "Florida Governmental Conflicts Resolutions Act," (the "Act") provides that governmental entities in dispute must attempt to negotiate their differences pursuant to the procedures outlined in the Act prior to commencing litigation regarding the conflict; and

WHEREAS, Section 164.0152, Florida Statutes, requires the governing body of the government entity initiating the conflict resolution procedures to adopt a resolution expressing its intent to initiate such procedure; and

WHEREAS, this Resolution seeks to comply with the statutory requirements.

NOW, THEREFORE, BE IT RESOLVED BY THE BROWARD METROPOLITAN PLANNING ORGANIZATION, AS FOLLOWS:

Section 1. The above "WHEREAS" clauses are true and correct and are incorporated herein by reference.

Section 2. The Board of the Broward Metropolitan Planning Organization (“BMPO”) hereby expresses its intent to initiate the conflict resolution procedure pursuant to section 164.1052, Florida Statutes, with Broward County concerning: Broward County’s breach of the Agreement with the BMPO for the Transportation Surtax Services; Broward County’s breach of the Multi-Party Surtax ILA; Broward County’s tortious interference with the BMPO’s Agreements with other municipalities for transportation project services; and Broward County’s failure to deal in good faith regarding Section VII of the Agreement and the Parties’ Pledge to Support each other in providing the transportation services and funding.

Section 3. The Broward Metropolitan Planning Organization Board finds that it has a conflict with Broward County. The issues in conflict include those delineated in Section 2, above.

Section 4. The Board of the Broward Metropolitan Planning Organization hereby directs the Executive Director, through coordination with the General Counsel, to forward a certified copy of this Resolution, as well as the required Conflict Resolution Letter, to the County Administrator for Broward County, within five (5) days, by certified mail, return receipt requested, pursuant to Section 164.1052(1), Florida Statutes. The Conflict Resolution Letter shall include all items required by Section 164.1052(1), Florida Statutes, including without limitation:

- a. Description of the conflict between the Broward Metropolitan Planning Organization and Broward County;
- b. List of governmental entities with which the Broward Metropolitan Planning Organization has a conflict;
- c. The Broward Metropolitan Planning Organization’s justification for initiating the conflict resolution procedures of this Act; and
- d. Suggestions as to which individuals should attend the Conflict Assessment Meeting.

The Executive Director is further directed to send a copy of the letter to any other state, county, or other local governmental entity that may be affected by Broward County’s actions or by a settlement arising out of the Conflict Assessment Meeting, or whose interests may be substantially affected by the resolution of the conflict, or any other governmental entity the Executive Director deems appropriate.

Section 5. The appropriate Broward Metropolitan Planning Organization officials are hereby authorized and directed to take all steps necessary to effectuate the purpose of this Resolution.

Section 6. CONFLICT

All Resolutions or parts of Resolutions in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

Section 7. SEVERABILITY

If any section, sentence, clause or phrase of this Resolution is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Resolution.

Section 8. EFFECTIVE DATE

This Resolution shall become effective upon adoption.

ADOPTED this ____ day of _____, 2020.

BROWARD METROPOLITAN PLANNING ORGANIZATION

By: _____
Frank C. Ortis, Chair

ATTEST:

By: _____
Gregory Stuart, Executive Director