

**NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD
CORPORATION
D/B/A METRA**

METRA RFP NO. 33896

The Northeast Illinois Regional Commuter Railroad Corporation D/B/A Metra desires to obtain sealed proposals for the following Project.

Public Relations & Media Relations Consulting Services

NOTE:

If you have questions concerning the availability of Proposals, Please contact our Planroom at (312)322-6673.

THERE WILL NOT BE A PREPROPOSAL MEETING

Questions regarding this RFP shall be submitted in writing to Bob Rich, Contracting Agent via e-Mail to rrich@metrarr.com or via FAX at 312-322-6619 by 4:00 P.M. on November 14, 2014.

All proposals must be received at 547 W. Jackson Blvd., Chicago, IL 60661 **NO LATER THAN 11:00 A.M. (LPT) ON November 25, 2014**

To download this Request for Proposal, please visit METRA & BUSINESS at www.metrarail.com.

Contracting Agent: Bob Rich

rrich@metrarr.com
PH: (312) 322-6674
FAX: (312) 322-6919

Request for Proposal

Metra

Public Relations & Media Relations Consulting Services

RFP Number: 33896

Proposal Due Date: November 25, 2014 at 11:00 A.M.

Odwyerpr.com

Northeast Illinois Regional Commuter Railroad Corporation D/B/A Metra
Professional Services/Contracts
11th Floor
547 West Jackson Boulevard
Chicago, IL 60661

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1. Introduction

A. Purpose

The Commuter Rail Division of the Regional Transportation Authority and the Northeastern-Illinois Regional Commuter Railroad Corporation (both d/b/a Metra), both political subdivision of the State of Illinois pursuant to the Regional Transportation Authority Act (70 ILCS 3615/1.01 (et seq) as amended, are seeking to contract for Public Relations and Media Relations Consulting Services to assist Metra's External Communications Team in developing and supporting a comprehensive strategy for Metra's interaction with the media and the community.

B. Metra Background

Metra is recognized as one of the best commuter rail systems in the United States. We currently operate throughout the six counties of Northeastern Illinois. Our mission is to provide safe, reliable, on-time service, to maintain the existing rail assets of the region, to know our customers and promote our service;

Metra Highlights

- Metra has 241 stations in northeastern Illinois - five in downtown Chicago and 236 in the rest of Chicago and the suburbs
- Operate about 703 trains each weekday over 11 lines into a six-county Chicago region
- Those trains provide about 300,000 passenger trips a day or 81.3 million a year
- More than 3,700 square miles
- Metra has 487.7 route miles and 1,155 miles of track
- With 2,000 signals, 1,100 pieces of rolling stock, 821 bridges, 571 grade crossings, 24 rail yards, 15 electrical stations and 12 fuel facilities. Metra also has 90,000 parking spaces.

Under Metra's supervision, commuter rail service is also operated by private carriers under contract to Metra. These contracts are called purchase of service agreements (PSA's). These carriers are:

Union Pacific Railroad (UP)

Burlington Northern Santa Fe Railway (BNSF)

Northern Indiana Commuter Transportation District (NICTD)

- Owner and Operator of the South Shore Line

2. Scope of Services

A. Services Required

Metra will require the selected firm to provide professional support, advice and counsel and have competencies in the following areas:

1. **Communications and Media Relations.** Prepare communications plans for a variety of Metra projects and service related initiatives including but not limited to media and outreach campaigns and special projects to enhance our relationship with current stakeholders, as well as potential customers in general market, minority and ethnic communities. Provide as needed standard media materials including: press release, fact sheet, press advisory, prepare remarks or talking points and assist with branding and messaging.

Pitch stories to print, broadcast and trade publications. Interface with purchase service agreement contract carrier's communications staff when necessary in order to assure consistency in the delivery of Metra messages and communications strategies.

2. **Crisis Communications.** Partner with staff on the management and implementation of crisis communication plans. Provide counsel on crisis plans and strategies, and supporting materials. Assist with arranging media interviews and community meetings as needed. Facilitate training and preparation for implementation of plan.

3. **Graphic Support.** Provide technical and graphic design for media and outreach projects.

4. **Photography.** Provide still photography, videography and editing for presentations or website content.

5. **Special Projects.** Provide professional representation when necessary on a broad range of Metra related issues and tasks such as: testimony preparation, media training, assist in the implementation of the Speakers Bureau. Provide social media support.

6. **Community Outreach.** Implement community outreach strategy for minority and ethnic communities; present Metra as a viable transportation source.

7. **Safety Poster Contest.** Work directly with Metra staff on developing, coordinating and implementing all aspects of public information for Metra's safety campaign and safety poster and essay contest including the administration and maintenance of the contest website, management of the contest entries, updating mailing lists, judging and selection process, the awards ceremony, and contest launch event. Provide advice and counsel on outreach to minority and ethnically diverse youth populations to increase awareness and contest participation in these demographics.

B. Contract

As a result of this Request for Proposal ("RFP"), Metra intends to award one contract for public relations and media relations consulting services. Metra reserves the right to select one (1) firm or none.

C. Reporting Requirements

With all invoice submittals, Metra will require an itemized report from the contractor on all media-related matters pertaining to that specific invoice.

3. Term

Contracts awarded pursuant to this Request for Proposal shall be for a period of three (3) years from the date of award.

4. Proposal Format and Requirements

A. Format

1. Submit proposal in ten (10) copies. One copy marked "**ORIGINAL**";
2. All documents must be in 8.5" X 11" format; and
3. Proposals shall not exceed 30 pages (excluding the Metra required forms in Exhibit 1-A, 1-B, 1-C, and 1-F.)

B. General

Category Identification

1. Proposal name and proposal number;
2. Name of proposer;
3. Address and phone number of proposer; and
4. Proposer's manager or contact person, phone number and e-mail address.

Staff

1. Identification of staff, roles, technical disciplines, and areas of expertise to be assigned to this contract; and
2. Resumes of assigned staff members.

Experience

1. Describe the proposer's experience and expertise in the areas of media relations and public relations;
2. Describe the proposer's experience and expertise in the areas of public transit, railroads, and transportation, specifically;
3. Describe other previous experience that may be applicable to representing Metra in general market, minority and ethnically diverse communities; and
4. Provide verifiable references for the assigned staff members, including contact person and phone number. Provide a minimum of three (3) references and a maximum of five (5) references related to the last ten (10) years of similar types of services for similar size organizations.

Metra Professional Services Agreement attached as Exhibit 1A

Every proposal in response to this RFP must explicitly state, without qualification, that the attached contract is acceptable to the proposer. Requested variations as a condition of a proposal may cause the proposal to be disqualified.

C. Proposals must be submitted to:

Robert Rich
Professional Services/Contracts
Northeast Illinois Regional Commuter Railroad Corporation/Metra -11th Floor
547 West Jackson Blvd.
Chicago, IL 60661.

D. Proposal Questions for both Administrative (including DBE Compliance Requirements) and Technical Aspects must be submitted in writing to:

Robert Rich
Professional Services/Contracts

Northeast Illinois Regional Commuter Railroad Corporation/Metra -11th Floor
547 West Jackson Blvd.
Chicago, IL 60661
Fax: 312-322-6619
e-mail: rrich@metrarr.com

Questions are to be submitted by fax or email and must be received before 4:00 p.m. on November 14, 2014.

E. **Statement of Offer** (IN ORDER TO BE DEEMED RESPONSIVE THE FOLLOWING LISTED ITEMS MUST BE SUBMITTED WITH THE PROPOSAL):

1. Submission of your proposal constitutes its validity for 180 days from the proposal due date. Any supplemental statement to the contrary will cause your proposal to be considered nonresponsive.
2. The proposal must include the name, title, address, and telephone number of the individual authorized to negotiate and contractually bind the Proposer during the period of the proposal evaluation and contract finalization;
3. Exhibit 1-B Affidavits/Certifications must be signed, notarized, and returned with the proposal;
4. The proposal must have a statement that proposer shall comply with all provisions of and execute the Professional Services Agreement attached as Exhibit 1-A by signing the last page of Exhibit 1-A, Sample Professional Services Agreement.
5. Exhibit 1-C DBE Compliance Requirements Form(s) as required and returned with proposal;
6. Submit Exhibit 1-F, Price List, **in a Separate Sealed Envelope** and;
7. The proposal must include a list of all past and current contracts that the proposer has entered into with Metra.

F. **Proposal Due Date**

Proposals must be received in the Metra Materials Management Department by 11:00 a.m. on **November 25, 2014**. Mark the outside of the packaged proposals with the proposal name and proposal number. **Any proposals received after 11:00 a.m. will be returned unopened.**

5. **Evaluation Criteria, and Reservations**

A. Evaluation Criteria

Proposals must be complete and adhere to the required format and instructions to be considered. Proposals will be evaluated on the following criteria and listed in the order of importance:

1. Firm's previous experience in media relations consulting, contacts and resources and demonstrated expertise and ability;
-Your firm's proposal needs to demonstrate by listing previous results your firm has obtained that support your firm's expertise/ability and understanding of Metra as well as the capabilities and competencies of your firm.
2. Qualifications and experience of personnel assigned, and commitment of resources to this contract;
-Your firm's proposal needs to show that the qualifications and experience of your firm's personnel are capable of supporting Metra by detailing how overall team qualifications and experience will provide specific benefits to Metra along with a strong record of results.
3. Experience in developing and implementing public relations and media relations strategies; Strong experience in crisis communication.
-Your firm's proposal needs to provide concepts that are thorough and well thought out demonstrating experience in work scope areas that detail experiences in developing and implementing successful media relations strategies.
4. Familiarity with Metra stakeholders and its diverse population, public transit, transportation, and other issues that may be applicable to representing Metra;
-Your proposal needs to identify experience that identify examples that include programs with clear goals and objectives and successful results.
5. Demonstrates strong relationships, contacts and resources with ethnic and minority communities in the six county area Metra serves.
-Your proposal needs to demonstrate strong relationships, contacts and resources in ethnic and minority communities that can benefit Metra's community reach efforts.
6. Costs associated with the proposal.
-Complete Exhibit 1-F and submit in a **separate sealed envelope**.

7. Oral presentations/interviews from proposers within the competitive range as determined by Metra's evaluation committee. Oral presentations/interviews shall be conducted only if requested by Metra's evaluation committee.

B. Reservations

You must read and understand the solicitation and tailor your proposal to ensure compliance. Metra reserves the right to: (i) amend the solicitation; and (ii) reject any or all proposals submitted. Metra is not responsible for and will not pay any costs associated with the preparation and submission of your proposal. No proposer shall have any rights against Metra arising at any state of the solicitation from any negotiations that take place, or from the fact that Metra does not select a proposer for negotiation, or because Metra chooses another proposer with whom to contract. If your firm is selected, you shall not commence, and will not be paid for any work performed prior to the date all parties execute the contract.

All criteria listed above will be used in the evaluation process to determine the most advantageous proposal. All proposals will be evaluated solely by Metra, which reserves the right to select for award the highest ranking Proposer on the basis of the criteria specified herein. Metra will solely be responsible for determining what is in its best interest and what provides Metra the greatest benefits. Metra reserves the right to:

- Amend the solicitation;
- Reject any or all proposals submitted;
- Accept any proposal as submitted with or without negotiations or interviews, and interview any Proposer Metra deems appropriate;
- Require revisions to, corrections of, other changes to, or additional information for any proposal submitted as a condition to its being given further consideration;
- Negotiate with the highest ranked Proposer or Proposers having a reasonable chance of being selected in any manner it deems fit as long as it is consistent with any applicable federal, state or Metra requirement and the selection criteria specified in this solicitation;
- Issue a revised RFP;
- Waive any informalities or defects in any proposal, whichever is in Metra's best interest as determined solely by Metra;
- Determine, at Metra's sole discretion, what is responsive, material, a minor or clerical irregularity, or mistake;
- Request Best and Final offers when appropriate.

This competitive process may require Proposers to submit additional information. If a Proposer does not comply with requests for information and cooperate, Metra may reject that Proposer's proposal. Metra is not responsible for and will not pay any costs associated with the preparation and submission of any Proposer's proposal. No Proposer shall have any rights against Metra arising at any state of the solicitation from any negotiations that take place, or from the fact that Metra does not select a Proposer for negotiation, or because Metra chooses another Proposer with whom to contract. If selected, the Proposer shall not commence any work prior to the date all parties execute the Notice to Proceed.

C. Metra's Proposal Protest Procedure

Metra will use, if necessary, the applicable provisions of its Bid Protest Procedures (Procedures) for this RFP. References under the procedures to bid, bidders, and the lowest bidder shall mean proposal, proposers, and highest ranked proposal, respectively. The proposer has the right to protest against the RFP. There are important time limits set forth in the Procedures which are summarized here, but this paragraph is not meant to be a substitute for the Procedures. For a complete copy of Metra's Procedures and instructions on the applicable terms and provisions, contact the Contracting Officer. Any discrepancies between this paragraph and the Procedures shall be decided by applying the Procedures, except that deadlines stated below are specifically for the RFP. If you wish to protest this solicitation, the protest must be filed with Metra no later than (5) days before the Due Date. If you wish to protest the proposal evaluation, the protest must be filed with Metra no later than five (5) days after you have been notified that your proposal was rejected as non-responsive. If you wish to protest award of the Contract, the protest must be filed with Metra, in writing, no later than five (5) days after Metra notifies proposers, in writing or orally, of its intent to award the Contract.

6. Governing Law and Forum

This Request for Proposal and any resulting contract there from shall be governed by the laws of the State of Illinois, and venue for any disputes that may arise shall be either the Circuit Court of Cook County Illinois or the United States District Court for the Northern District of Illinois.

7. Illinois Freedom of Information Act

Metra is subject to the Illinois Freedom of Information Act (5 ILCS 140/1 et seq., "FOIA"), and pursuant to FOIA, your proposal and any subsequent agreement is subject to disclosure. In addition, from time to time, Metra may be required to produce certain "public records" as defined in Section 2 of the FOIA, that are in the possession of or under the control of proposer/operator. Upon Metra's notification to proposer/operator of a request pursuant to the FOIA, proposer/operator will, within two (2) business days of

Metra's notice, either (i) product the public records, (ii) notify Metra, in writing, that additional time is required to product the public records, or (iii) notify Metra, in writing, that the public records do not exist or have been destroyed. In the event that proposer/operator requires additional time to product the public records, the written notification under (ii), above, will provide an explanation for the delay and the date when the public records will be received from proposer/operator by Metra. Proposer/operator agrees that in no event shall a delay to produce records exceed five (5) business days.

If any failure by proposer/operator to timely comply with a request for public records results in any adverse consequences to Metra, including, but not limited to, fines or penalties being impose on Metra, said failure by proposer/operator shall be deemed a material breach of this Agreement, and proposer/operator shall indemnify, defend, and hold harmless Metra for any damages, costs, liabilities, and fees (including attorney's fees) that result from such breach.

8. Evaluation Process & Basis of Award

All properly submitted proposals will be evaluated by Metra. An Evaluation Committee will review the proposals in accordance with the Evaluation Criteria stated above. In order for Metra to determine the highest ranked proposer, Metra may elect to conduct interviews with those Consultants who are determined to be in the competitive range. Once interviews are conducted Metra's Evaluation Committee with conduct a final scoring of those potential Consultants in order to determine the final ranking.

Failure of a Consultant to report for an interview will be cause for removing the Consultant's proposal from further consideration provided that Metra has given adequate notice for the Consultant to prepare for the interview. Such adequate notice shall be determined solely by Metra. Metra reserves the right to award a single contract to the highest ranked Consultant based on the initial proposal submitted and without providing any Consultant the opportunity for interview or negotiations. At Metra's discretion, Metra may seek oral presentations/interviews from the consultants determined to be in the competitive range. In the event, oral presentations/interviews are conducted, Metra will then base its award on the highest ranked Consultant after oral presentations/interviews. Metra's consideration for Qualification of a Professional Service Contract will be made on the basis in Order of Priority as stated above in Section 5.A.

9. Contract Exhibits

The following Exhibits are attached hereto and made part hereof. In addition to this Request for Proposal, the Exhibits shall become a part of the contract resulting from this Request for Proposal:

Exhibits

Exhibit 1A – Sample Professional Services Agreement

Exhibit 1B – Affidavits/Certifications

Exhibit 1C – Metra Disadvantaged Business Compliance Requirements

Exhibit 1D – Civil Rights Requirements

Exhibit 1E – Insurance Requirements

Exhibit 1F – Price List

Exhibit 1G – Vendor's Proposal Submission

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PROFESSIONAL AND CONSULTING SERVICES AGREEMENT

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION
D/B/A METRA
547 WEST JACKSON BOULEVARD
CHICAGO, ILLINOIS 60661

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AGREEMENT

FOR PROFESSIONAL AND CONSULTING SERVICES

This Agreement is entered into this _____ day of _____, _____ in Chicago, Illinois, by and between the Northeast Illinois Regional Commuter Railroad Corporation d/b/a Metra, Metropolitan Rail ("Metra"), a public corporation under Illinois law, and _____ ("Consultant"), having offices located at _____ Consultant and Metra are sometimes collectively referred to as "Parties." In consideration of the promises and agreements set forth, the Parties agree:

1. SCOPE AND DESCRIPTION OF SERVICES.

Consultant will perform the following services ("Work"): _____
_____ as set forth in Exhibit 2, attached hereto.

2. COMPENSATION.

Metra agrees to pay, and Consultant agrees to accept as full payment for the Work, the prices set forth in Proposal attached as Exhibit 2 of this Agreement. Consultant shall be paid only for the actual Work performed at the prescribed rates during the preceding billing period, not to exceed the percentage of the Work completed as of the end of the billing period. The full payment for the Work shall not exceed \$ _____ ("Total Price"). The Total Price also includes the cost of all applicable taxes (where Metra is not exempt), bonds, if required, and other charges of every kind and nature. The Total Price shall not include, and Metra shall not pay, taxes or fees from which Metra is exempt. Metra is exempt from various federal taxes, all state and unit of local government taxes, and registration and license fees. Consultant shall promptly notify Metra, and afford it the opportunity before payment of any taxes, to contest said claims in the manner and to the extent it may elect, and to settle or satisfy such claims. Consultant shall submit all invoices on Metra Form #B100R107, which is incorporated into and made a part of this Agreement, along with all appropriate support documents, for all amounts to be paid by Metra under this Agreement. Invoices must be addressed to the "Accounts Payable Section" for payment and must show Metra Contract No. _____ and Account No. _____. Metra will pay complete and accurate invoices within thirty (30) days of receipt. If Consultant fails to follow the instructions under this paragraph, or any instructions subsequently issued for its invoices, Metra may, at its sole discretion, reject Consultant's invoices for that billing period, and withhold payment of those invoices until such billing period as Consultant has complied with the requirements of this paragraph. An

incomplete or inaccurate invoice will be deemed received only when completed and corrected to Metra's satisfaction. However, if the omission or inaccuracy is, in Metra's sole judgment, minor and inconsequential, Metra will use reasonable efforts to ascertain and pay the complete and accurate portion of the invoice. Payments are subject to audit and inspection as set forth in Section 9.B below.

3. PERFORMANCE OF THE WORK.

The term of this Agreement shall be from the date of execution until _____

A. NOTICE TO PROCEED. Consultant will, within fifteen (15) business days after Metra's issuance of a notice of award letter informing Consultant of its execution of this Agreement ("Notice of Award"), submit to Metra: (1) certificates of insurance from insurance carriers satisfactory to Metra, and in form, substance, and detail satisfactory to Metra; (2) if applicable, the signed subcontracts with DBE subconsultants; (3) a schedule for the project with submittal milestones; and (4) any other document stated elsewhere in this Agreement that is required prior to Metra's notification to Consultant to start the Work ("Notice to Proceed").

B. SCHEDULE .

1. Submission of Schedule. Time is of the essence and delays may have a direct and indirect cost to Metra's operations. As a condition to issuing the Notice to Proceed, Consultant shall submit a schedule, acceptable to Metra, showing submittal milestones for the Work. Consultant must adhere to and complete all Work by the time stated in the schedule approved by Metra. Consultant shall commence the Work promptly after receiving a Notice to Proceed from Metra.

2. Monthly Progress Reports. Consultant's schedule shall be updated and submitted to Metra in writing no less than monthly. Such report shall state whether or not the Work is progressing within schedule. If Consultant determines that the Work and milestones are not progressing within schedule, Consultant shall notify Metra of the reasons for the delay and identify each delayed activity (including duration and interrelationships between activities). In addition to any other remedy afforded to Metra, failure to submit monthly reports will be a default of this Agreement and is grounds for Metra to withhold payments until such reports are submitted.

3. Contents of Reports. Consultant shall not make any changes to the approved schedule, including the milestones, when reporting its progress in the monthly reports. The report information shall include the approved schedule dates and milestones and the following additional information:

- a. Actual start dates;
- b. Actual finish dates;
- c. Activity percent completion;
- d. Remaining duration of activities in progress;
- e. Identified or highlighted critical activities and problem areas;
- f. Summary of Work accomplished during the past update period;
- g. Analysis of time lost/gained during the update period; and
- h. Recommended solutions to current problems.

4. Recovery Schedule. In the event Consultant, in the reasonable judgment of Metra, is failing to meet the approved schedule, including milestones, Consultant shall submit a recovery schedule within seven (7) days of such notice from Metra. The recovery schedule shall set forth a plan to eliminate the schedule slippage. The plan must be specific to show the methods to achieve the recovery of time, i.e. increasing manpower, overtime, weekend work, employing multiple shifts. All costs associated with implementing the recovery schedule shall be borne by the Contractor, unless otherwise agreed to by Metra in writing. Metra will review the recovery schedule within 14 days of receipt. If the recovery schedule is rejected, Consultant must submit a revised schedule within 7 business days of rejection. In the event Consultant fails to submit an acceptable revised schedule, Metra reserves the right to terminate this Agreement for default or convenience.

5. Revised Schedule. Subject to equitable adjustments, Metra may require Consultant to revise the schedule for the following:

- a. Changes in the Work;
- b. Re-phasing of a project or any phase;
- c. A change in the duration of the project, phase, or funding; and

- d. Acceleration of the project or phase.

C. **DELAY.** If Consultant is delayed in the performance of the Work, Consultant must immediately, upon receiving knowledge of such delay, give written notice to Metra and request an extension of time for performance or completion of the Work. Metra shall examine the request and determine if Consultant is entitled to an extension of time because of an excusable delay. Excusable delays include acts of God or a public enemy, acts of Metra or a funding agency not resulting from Consultant's unacceptable services, fire, strikes, flood, and the like. No claim for damages shall be made by either party for excusable delays. Metra shall notify Consultant of Metra's decision in writing and that decision shall be final and binding. Delays that are not beyond Consultant's reasonable control are a material breach of this Agreement. Such delays may also affect Consultant's status as a responsible proposer or Metra's evaluation of Consultant's performance for future work for Metra. In any event, Consultant shall continue to perform the Work to the extent possible under the circumstances, and resume normal performance as soon as possible, whether or not an extension is granted. Metra shall not be obligated to grant extensions, whether or not excused.

D. **RESPONSIBILITY FOR AGENTS AND EMPLOYEES.** Consultant represents that it shall utilize the services of individuals skilled in the profession for which they are performing services for this Agreement. In the event that Metra determines, in its sole discretion, that any individual performing services for Consultant under this Agreement is not providing such skilled services, it shall notify Consultant and Consultant shall promptly replace that individual.

E. **LICENSES AND PERMITS .**

1. Consultant, or its employees who would perform services requiring a license, shall have and maintain any required license. With the prior written consent of Metra, Consultant may meet the license requirement through use of a subconsultant.
2. To the fullest extent possible under applicable law/codes, Consultant shall apply for and obtain all permits for the project being designed. In those instances where the Consultant is prohibited by applicable laws or codes from obtaining such permits, Consultant shall perform all preliminary work for permit applications to assist Metra, its contractor(s), or others (on behalf of Metra) to obtain the permit in the shortest period of time. Consultant shall cooperate with and assist Metra's contractor (awarded to construct the project) in reviewing and submitting permit applications, and obtaining permits.

F. PROFESSIONAL AND PERSONAL SERVICES. This Agreement is for professional and personal services. Metra has relied on representations made by Consultant on who will perform certain work either directly by Consultant or through a named subconsultant. Therefore, any subconsultant, outside associate, personnel, or consultant required by Consultant in connection with the services covered by this Agreement will be limited to those subconsultants, outside associates, personnel, and consultants who were specifically identified and agreed to during negotiations. If Consultant is unable to secure or retain such persons named by Consultant, Consultant shall not be relieved of its obligations to complete performance. Consultant shall obtain Metra's written consent before making any substitution for these or any other subconsultants, outside associates, personnel, or consultants. Consultant shall include this provision in its contracts with its first tier subconsultants to prevent further subcontracting without Metra's written consent.

G. PAYMENT OF SUBCONSULTANTS. Consultant agrees to pay each subconsultant under this Agreement, in proportion to the work completed by each one, no later than 15 days from the receipt of each payment Consultant receives from Metra. Consultant further agrees to return retainage payments to each subconsultant within 15 days after the subconsultant's work is completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval from Metra. Consultant must resolve all payment disputes with its subconsultants expeditiously. If Consultant fails to pay its subconsultants in a timely manner, or fails to expeditiously resolve any payment disputes with its subconsultants, such failure may constitute a material breach of this Agreement.

H. ASSIGNMENT. Assignment or delegation of this Agreement by Consultant without the prior written approval of Metra is a material breach of this Agreement. This Agreement shall be binding on, and inure to the benefit of, the respective successors, assigns, heirs, and personal representatives of Metra and Consultant. Any successor to Consultant under this Agreement must be approved in writing by Metra, which approval Metra may grant or deny in its sole discretion. Any successor must agree to perform all terms, conditions, and requirements of this Agreement as a condition precedent to such succession.

4. DOCUMENTS FORMING THIS AGREEMENT.

All written information which Consultant has furnished to Metra in connection with Metra's request for proposals forms a part of this Agreement and the basis on which Metra has decided to award this Agreement to Consultant. Consultant hereby represents to Metra that all facts, plans, or promises contained therein, other than such as may be contradicted by or expressly superseded by Consultant's offer or last offer, are true, and Consultant acknowledges that Metra is entitled to rely thereon. This Agreement constitutes the entire Agreement between the Parties. All

amendments to this Agreement must be in writing and executed by the authorized officers of each party. The Parties further agree that this Agreement consists of the following:

1. This contract document and each of the following documents attached hereto or incorporated by reference into this Agreement:
2. EXHIBIT 1 -
3. EXHIBIT 2 -
4. EXHIBIT 3 -
5. EXHIBIT 4 -

5. TERMINATION.

Metra may terminate this Agreement at any time, with or without cause, by giving written notice to Consultant at the address specified above. Termination shall be effective upon receipt of such notice by Consultant through actual delivery in person, fax, or regular or certified mail.

A. **CONVENIENCE.** If Metra terminates this Agreement other than for breach by Consultant, Metra agrees to pay Consultant, and Consultant agrees to stop Work as stated in the notice and accept as its sole remedy, Consultant's unpaid costs expended to date of termination. After receipt of a notice of termination and except as otherwise directed by Metra, Consultant shall: (1) stop Work under this Agreement on the date and to the extent specified in the notice of termination; (2) place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the Work under this Agreement as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by such notice; (4) account for any property in its possession belonging to Metra, and dispose or return of such property as directed by Metra; and (5) generally act in such manner as is necessary to mitigate and minimize the amounts payable by Metra hereunder.

B. **BREACH.** Unless Consultant cures defaults within seven (7) calendar days after receipt of written notification of such default, Consultant shall be in total breach of this Agreement. If Metra terminates this Agreement for breach by Consultant, Consultant shall be liable for and reimburse Metra on demand for all damages incurred by Metra, including but not limited to, incidental and consequential damages, and Metra's cost for having the Work completed by another consultant or with Metra's own employees. In addition, Metra expressly reserves all of its rights and remedies under law and equity for Consultant's breach. If, after Metra terminates this Agreement for breach or default, it is determined that Consultant was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Metra under Section 5.A. above.

6. **INSURANCE.**

Consultant shall obtain and continuously maintain the professional liability insurance specified in the insurance exhibit to the Request for Proposals covering all claims whenever made, arising out of this Agreement and/or performance of the Work. Certificates of this insurance and an additional insured endorsement shall be furnished from time to time to Metra upon its request. Metra is not obligated to issue a Notice to Proceed under Section 3.A until Metra has determined that the requirements of this Section have been satisfied.

7. **ETHICS.**

A. **NON-COLLUSION.** Consultant warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of Metra, or to any other consultant, for the purpose of obtaining this Agreement.

B. **PROHIBITED INTERESTS.**

1. No board member, officer, or employee of Metra shall have any interest, direct or indirect, in this Agreement or its proceeds during his/her tenure.
2. No member or delegate to the Illinois General Assembly or the Congress of the United States shall be admitted to any share or part of this Agreement, or to any benefit arising from it.

C. **AFFIDAVIT/CERTIFICATIONS.** Consultant reaffirms the information contained in the Affidavit/Certification exhibit and, to the best of Consultant's knowledge, the exhibit is still accurate. If Consultant becomes aware, at any point throughout the duration of this Agreement, that any statement or information provided by the Affidavit/Certification exhibit is inaccurate or is no longer true, Consultant shall immediately notify Metra and identify the inaccurate or false statement or information.

D. **STATE OF ILLINOIS GIFT BAN ACT.** Consultant shall comply with the applicable provisions of the State of Illinois Gift Ban Act, 5 ILCS 430 (Article 10) et seq., and refrain from providing gifts to Metra's employees in violation of Metra's Gift Ban Policy, which is incorporated herein by reference.

E. **CONFLICTS OF INTEREST.** Consultant agrees that it and its subconsultants are under a continuing obligation to disclose any real, potential, or apparent personal or organizational conflict of interest to Metra. Metra employees are prohibited from participating in the selection, award, or administration of a contract or subcontract supported by Metra, federal, or other grant funds if a real or apparent conflict of interest would be involved. In addition,

unless approved in writing by Metra and/or any applicable Funding Agencies (as defined below), no contract or subcontract for the construction of a project or the acquisition of additional services or products related to this Agreement shall be awarded to any firm that would create, as determined by Metra in its sole discretion, any real, potential, or apparent personal or organizational conflict of interest. An organizational conflict of interest exists when the nature of the work to be performed under a proposed contract or subcontract may, without some restriction, result in an unfair competitive advantage or impair the objectivity of Consultant in performing the contract work. This clause shall survive the termination of this Agreement.

8. EMPLOYMENT AND CIVIL RIGHTS.

A. ILLINOIS EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS.

In the event of Consultant's non-compliance with the provisions of this equal employment opportunity clause, the Illinois Human Rights Act ("Act"), or the rules and regulations of the Illinois Department of Human Rights ("Department"), Consultant may be declared ineligible for future contracts or subcontracts with the State of Illinois, or any of its political subdivisions, or municipal corporations; and this Agreement may be canceled or voided in whole or in part; and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this Agreement, Consultant agrees as follows:

1. That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service, and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate action to rectify such underutilization;

2. That, if it hires additional employees in order to perform this Agreement or any portion thereof, it will determine the availability (in accordance with the Department's rules and regulations) of minorities and women in the area(s) from which it may reasonably recruit, and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized;

3. That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service;

4. That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of Consultant's obligations under the Act and the Department's rules and regulations. If any such labor organization or representative fails or refuses to cooperate with Consultant in its efforts to comply with such Act and rules and regulations, Consultant will promptly so notify the Department and Metra, and will recruit employees from other sources when necessary to fulfill its obligations thereunder;

5. That it will submit reports as required by the Department's rules and regulations, furnish all relevant information as may from time to time be requested by the Department or Metra, and in all respects comply with the Act and the Department's rules and regulations;

6. That it will permit access to all relevant books, records, accounts, and work sites by personnel of Metra and the Department for purposes of investigation to ascertain compliance with the Act and the Department's rules and regulations;

7. That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the contract obligations are undertaken or assumed, so that such provisions will be binding upon such subconsultant in the same manner as with other provisions of this Agreement. Consultant will be liable for compliance with applicable provisions of this clause by such subconsultants, and further it will promptly notify Metra and the Department in the event any subconsultant fails or refuses to comply therewith. In addition, Consultant will not utilize any subconsultant declared by the Department to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations; and

8. That Consultant will have written sexual harassment policies that shall include, at a minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under state law; (iii) a description of sexual harassment, utilizing examples; (iv) Consultant's internal complaint process including penalties; (v) the legal recourse, investigative, and complaint process available through the Department and the Human Rights Commission

("Commission"); (vi) directions on how to contact the Department and Commission; and (vii) protection against retaliation as provided by Section 6-101 of the Act. A copy of the policies shall be provided to the Department upon request.

B. FEDERAL CIVIL RIGHTS REQUIREMENTS. The requirements of this Section flow down to Consultant and it's subconsultants at every tier.

1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

a. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, Consultant agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of the project. Consultant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition,

Consultant agrees to comply with any implementing requirements FTA may issue.

b. Age - In accordance with 29 U.S.C. § § 621 et seq., 42 U.S.C. §§ 6101 et seq., and Federal transit law at 49 U.S.C. § 5332, Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Consultant agrees to comply with any implementing requirements FTA may issue.

c. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Consultant agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, Consultant agrees to comply with any implementing requirements FTA may issue.

3. Consultant agrees to comply with all applicable requirements of any other nondiscrimination statute(s) that may apply to the project, and Consultant also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

C. DISADVANTAGED BUSINESS ENTERPRISE. In connection with the performance of the Work, Consultant will cooperate with Metra in meeting its commitments and goals with regard to the maximum utilization of disadvantaged business enterprises, and will use its best efforts to ensure that disadvantaged business enterprises shall have the maximum practicable opportunity to compete for any subcontract work under this Agreement.

D. INDEPENDENT CONTRACTOR. Consultant shall be an independent contractor. Services performed pursuant to this Agreement are not rendered as an employee of Metra. Amounts paid pursuant to this Agreement do not constitute compensation paid to an employee.

E. REVOLVING DOOR PROHIBITION. Consultant has reviewed the Affidavit/Certification exhibit and has no knowledge of any former employee or board member being involved in this solicitation process in violation of Section 4.05 of Metra's Bidding Regulations. All former Metra board members and certain employees are expressly prohibited,

for a period of one (1) year after leaving Metra's employ, from engaging in any procurement activity with Metra.

F. **CONFIDENTIALITY.** Any documents or information obtained by Consultant from Metra or created by or on behalf of Consultant in connection with this Agreement shall be kept confidential and shall not be provided to any third party unless disclosure is approved in writing by Metra, or is required by court order or court rule. Consultant shall require its subconsultants, if any, to maintain the confidentiality of Metra's information and documents.

9. **RECORDS.**

A. **RETENTION.** Consultant shall maintain records, including those records required under the Compensation Section above, to show its time and costs, and shall submit monthly progress reports describing the portion of the Work already performed and anticipated during the next time period. On 15 days notice from Metra, all time sheets, billings, and other documentation used in preparing said progress reports shall be made available for inspection, copying, and auditing by Metra at any time during normal business hours, at 547 West Jackson Boulevard, Chicago, Illinois 60661. Consultant shall maintain, for a minimum of five (5) years after the completion of this Agreement, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with this Agreement. Failure to maintain the books, records, and supporting documents required by this Section shall establish a presumption in favor of Metra for the recovery of any funds paid by Metra under this Agreement for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

B. **AUDIT AND INSPECTION.**

1. Consultant agrees to permit, and shall contractually require all of its subconsultants at all tiers to permit, the authorized representatives of Metra or the Funding Agencies (as defined below), if applicable, to inspect and audit all work sites, work materials, payrolls, books, accounts, records, supporting documents, and any other documents involving this Agreement.
2. All costs and rates charged by Consultant shall be supported by properly executed payrolls, time records, invoices, vouchers, orders, contracts, or other documents evidencing in detail the nature and propriety of the charges.
3. Costs incurred by Consultant shall be eligible for reimbursement under this Agreement if and to the extent they meet all of the requirements set forth below. They must:
 - a. be in conformity with all laws, regulations, and guidelines prescribed by the Funding Agencies (as defined below);

- b. be made in conformance with the scope and provisions of this Agreement;
 - c. be necessary in order to accomplish the Work;
 - d. be in conformance with the cost principles for allowable direct and indirect costs and rates used by Metra for the professional services specific to this Agreement. Metra may, in its sole discretion, accept and use the cost principles established by any applicable Funding Agency;
 - e. be documented to the satisfaction of Metra; and
 - f. be treated uniformly and consistently under accounting principles and procedures approved or prescribed by Metra.
4. Metra's payment of any costs and rates pursuant to this Agreement shall not constitute a final determination by Metra of the allowability of such costs and rates until an audit under the provisions of this Agreement has been certified as completed or waived by Metra. In addition, such payments made prior to audit or waiver thereof shall not constitute a waiver of the breach of any terms of this Agreement by Consultant.
 5. The close out of this Agreement does not alter in any way the reporting and retention requirements stipulated herein and does not alter Consultant's obligation to return any monies due under this Agreement on the basis of any later audit or other review.
 6. If Metra determines after an audit that Consultant's direct or indirect costs or rates submitted hereunder are expressly unallowable under the express provisions of this Agreement, Consultant shall refund to Metra: (a) the amount of the disallowed costs and rates and (b) simple interest based on the prime rate to be computed on the amount Consultant was paid (whether as a progress or billing payment) in excess of the amount to which Consultant was entitled. Interest will begin to accrue fifteen days from the date Metra notifies Consultant in writing of the excess amount paid. The interest rate will be two points above the prime rate published in the "Money Rates" table of the Wall Street Journal on the day the notice of disallowed costs is sent to Consultant. However, Metra may, in its sole discretion, waive all or part of the interest.

C. **OWNERSHIP.** Metra shall retain ownership of all plans, specifications, related documents, computer disks, software, and all other work product (collectively referred to as "**Work Product**"), including, but not limited to, those mentioned above, prepared by or purchased by Consultant in connection with the Work and this Agreement. Metra and the Funding Agencies (as defined below) shall exercise such rights to the Work Product without

further restriction or limitation and without further compensation to Consultant. Upon request, Consultant shall, at its sole cost, arrange, index, and deliver all Work Product to Metra. However, the ideas, concepts, methodologies, processes, inventions, and tools (including hardware and software where applicable) (collectively referred to as "Tools") that Consultant previously developed and brings to Metra in furtherance of performance of the Work, shall remain the property of Consultant and shall not be defined as Work Product. Consultant, however, grants to Metra a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use (or permit Metra's agents to use on Metra's behalf) such Tools, but solely for the benefit of Metra when using the Work Product.

D. COPYRIGHT AND RIGHTS IN DATA. This Agreement adopts the United States Department of Transportation, Federal Transit Administration ("FTA") policy on Patent Rights and rights in data and copyrights as set forth in Part II of the standard FTA grant agreement enforceable between Metra and the FTA.

E. FOIA REQUIREMENTS. Metra is subject to the Illinois Freedom of Information Act (5 ILCS 140/1 et seq., "FOIA"), and pursuant to the FOIA, this Agreement is subject to disclosure. In addition, from time to time, Metra may be required to produce certain "public records," as defined in Section 2 of the FOIA, that are in the possession of or under the control of [Company]. Upon Metra's notification to [Company] of a request pursuant to the FOIA, [Company] will, within two (2) business days of Metra's notice, either (i) produce the public records, (ii) notify Metra, in writing, that additional time is required to produce the public records, or (iii) notify Metra, in writing, that the public records do not exist or have been destroyed. In the event that [Company] requires additional time to produce the public records, the written notification under (ii), above, will provide an explanation for the delay and the date when the public records will be received from [Company] by Metra. [Company] agrees that in no event shall a delay to produce public records exceed five (5) business days.

If any failure by [Company] to timely comply with a request for public records results in any adverse consequences to Metra, including, but not limited to, fines or penalties being imposed on Metra, said failure by [Company] shall be deemed a material breach of this Agreement.

10. INDEMNIFICATION AND WAIVER.

A. To the fullest extent permitted by law, Consultant agrees to indemnify, defend, and save harmless Metra, the Commuter Rail Division of the Regional Transportation Authority, and their respective directors, officers, agents, and employees (cumulatively referred to as the "Indemnified Parties") from and against all loss, claims, liability, cost, and expense (including attorney's fees and other reasonable expenses of litigation or arbitration) which any of them may incur, sustain, or be subject to on account of: (i) all claims, including claims for injury to person or death or damage to property, suffered by any of them which result from or arise out of Consultant's performance of this Agreement or Consultant's failure to perform under this Agreement; and (ii) where applicable to the scope and description of services performed by

Consultant, injury to any person or death or property damage arising out of: (a) any defect or alleged defect of design, regardless of whether the relevant work or design was made by Consultant or a subconsultant, and regardless of the extent to which Metra may have approved or participated in any design work; or (b) any negligence in Consultant's oversight or contract administration. Consultant, however, shall not assume the risk of injury to person (including death) and damage to property and shall not indemnify and save harmless the Indemnified Parties from and against any loss, liability, cost, and expense (including costs of litigation and attorney's fees) to the extent such injury (including death), damage, loss, liability, cost, or expense is caused by the gross negligence or willful misconduct of the Indemnified Parties.

B. Consultant hereby binds itself, its successors, and assigns, to indemnify, defend, and hold harmless the Indemnified Parties from all claims, loss, damages, or expenses (including attorney's fees) for alleged infringement of patent, trademark, or copyright laws and rights, arising from any material or design specified in, or supplied pursuant to, this Agreement.

C. Consultant agrees that the above indemnification includes the Illinois Department of Transportation ("IDOT"), FTA, and the Regional Transportation Authority ("RTA") (collectively, "Funding Agency" or "Funding Agencies") if those Funding Agencies participate in the funding of this Agreement.

D. To the fullest extent permitted by law and except to the extent caused by the Indemnified Parties' gross negligence or willful misconduct, Consultant waives all claims for damage to property or person (including death) sustained by Consultant as a result of Consultant's performance of the Work. The obligations, rights, and remedies of this Section 10 shall survive the termination of this Agreement and the completion of the Work.

E. In the event any dispute or claim, related to this Agreement, should arise between the parties, each party agrees to exercise good faith efforts to resolve the matter fairly, amicably, and in a timely manner.

F. Nothing in this Section 10 is intended to violate the provisions of the Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01 et seq., and this section is not intended to be an indemnification of Metra's or its employees' own negligence to the extent such indemnification would be in violation of such provisions.

11. ACCURACY OF WORK.

A. REVISIONS REQUIRED. Metra will be relying upon Consultant's expertise to provide accurate work. Thus, Consultant shall be responsible for the accuracy and conformity of the Work with applicable state, federal, and local laws, codes, and permit requirements. Consultant shall promptly make necessary revisions or corrections resulting from its errors, omissions, or negligent acts, and shall do so without additional compensation. Consultant shall

be governed by that degree of care, skill, and diligence that the other reputable members of his or her profession would ordinarily exercise under similar circumstances within the State of Illinois. In addition to any other rights and remedies Metra may have, Consultant shall be responsible for any damages incurred as a result of errors, omissions, and/or negligent acts, and for any losses or cost of repair or remedy arising out of such errors, omissions, and/or negligent acts caused by Consultant, its employees, agents, and subconsultants. Neither Metra's review, approval, payment, nor acceptance of the Work required under this Agreement shall constitute or operate as a waiver relieving Consultant of the professional responsibility for subsequent correction of errors and omissions and/or of any rights under this Agreement. Consultant shall be liable for all damages to Metra caused by Consultant's negligent performance of any services and for subsequent correction of any such errors or omissions, or for clarification of any ambiguities. The obligations, rights, and remedies of this Section 11 shall survive the termination of this Agreement and the completion of the Work.

B. NOTIFICATION OF ERROR. Metra will notify Consultant of any error or omission believed by Metra to be caused by the negligence of Consultant as soon as practicable after discovery. Notification may be given by the most practical means deemed suitable by Metra. Consultant will designate and keep current the name of an individual with proper address and telephone number for purposes of notification hereunder. The notification will advise Consultant of the nature of the matter, the action sought from Consultant, and the time constraints required for response. In the event it is later determined that Consultant was not negligent, Consultant will be compensated for additional services performed in accordance with the compensation provisions of this Agreement.

C. PROJECT MANAGEMENT PLAN/QUALITY MANAGEMENT PLAN. If applicable, Consultant shall conduct all Work according to Metra's latest Project Management Plan and Quality Management Plan.

12. FUNDING.

A. SUBJECT TO APPROPRIATIONS. If this Agreement is for a period of longer than one year, it is subject to the appropriation of funds by Metra's Board of Directors for each year beyond the first year of this Agreement.

B. SUBJECT TO FINANCIAL ASSISTANCE. Payments to Consultant under this Agreement might be funded in part by financial assistance from one or more of the Funding Agencies. If any Funding Agency fails to approve this Agreement or to provide financial assistance in the amounts required to fully fund payments to Consultant, Metra reserves the right to terminate this Agreement. This Agreement is subject to the provisions of the financial assistance agreements between Metra and the Funding Agencies, and in the event of conflict between such Funding Agency agreements and this Agreement, the Funding Agency agreements shall control.

Consultant acknowledges that it has had the opportunity to review and copy the Funding Agency agreements before executing this Agreement. Pursuant to the applicable provisions of Metra's Master Agreement with the FTA, Metra gives notice to Consultant that Federal requirements may change, and the changed requirements will apply to this Agreement as required.

C. **NO LIABILITY.** The Funding Agencies shall not be subject to any obligations or liabilities to Consultant or its subconsultants or any other person not a party to this Agreement.

D. **DESIGN WITHIN FUNDING LIMITS .**

1. If this Agreement is for design services, Consultant shall accomplish the design services required under this Agreement so as to permit the award of a contract, using standard Metra procurement procedures for the acquisition, construction, or manufacture of any real or personal property designed at a price that does not exceed the estimated construction or manufacturing contract price as set forth by Metra. The contract estimate for the procurement or construction contract shall be established as part of the Notice to Proceed or communicated to Consultant in writing at a later date. When bids or proposals for the construction or procurement contract are received that exceed the estimated price, Consultant shall perform such redesign and other services as are necessary to permit contract award within the established construction or procurement contract price. These additional services shall be performed at no increase in the price of this Agreement. However, Consultant shall not be required to perform at no increase in the price of this Agreement if Metra determines that the unfavorable bids or proposals are the result of one of the following: (a) events beyond Consultant's reasonable control; (b) an increase in material cost which could not have been anticipated by reasonable consultants within the industry; or (c) an undue delay by Metra in issuing the construction or procurement solicitation.
2. Consultant will promptly advise the Contracting Officer if Consultant finds, at any time during the Work, that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design the real or personal property within these limitations. Upon receipt of such information, Metra will review Consultant's revised estimate of construction cost. If Metra determines that Metra's estimated construction or procurement contract price is so low that award of a construction or procurement contract (not in excess of such estimate) is improbable, Metra may either: a) authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated

construction or procurement contract price, or b) adjust its estimated contract price. Consultant's continued performance shall mean acceptance of the above changes or adjustments by Metra. If Metra determines Consultant's cost estimates are reasonable, but does not accept them, Metra may either terminate this Agreement for convenience or release Consultant from the requirements of this Section.

13. **CONTRACT CHANGES.** Any change, modification, change order, or amendment (hereinafter "Contract Change") to this Agreement must be in writing and approved and signed by Metra's Executive Director or his designee, where authorized. Contract Changes can include, but are not limited to, changes to scope, time extensions, cost, contract terms, or any combination thereof. Consultant shall be liable for satisfactorily correcting, and/or all costs resulting from, any change not ordered in writing and signed by the Executive Director or his authorized designee. Disagreements that cannot be resolved with negotiations shall be resolved in accordance with the Disputes clause.

A. **CHANGE ORDERS.** By written order, at any time, and without notice to the surety, the Executive Director may, subject to all appropriate adjustments, make changes to the general scope of this Agreement ("Change Order").

B. **CHANGE ORDER PROCEDURES.**

1. Either Metra or Consultant may initiate a Change Order.
2. Metra shall prepare and when appropriate, issue the written Change Order in conformance with Metra's applicable administrative procedures for Change Orders. Consultant shall supply all requested information, proposals, and any supporting back-up documentation.
3. **Consultant Initiated Change Orders**
 - a. Within fifteen (15) days of when Consultant knows or should have known a cause for a Change Order, Consultant shall send Metra a notification that it intends to submit a Change Order request ("Change Order Notification" or "NCO").
 - b. The NCO shall provide Metra with sufficient explanation to understand:
 1. the nature of the prospective Change Order request; and
 2. the rational or cause.
 - c. The purpose of the NCO is not to approve or disapprove a Change Order, but to provide Metra with additional time to research the issues and thus expedite the Change Order process.

- d. Within seven (7) business days of receipt of the NCO, Metra shall inform Consultant whether it believes the potential Change Order request merits further discussion.
 - e. Metra's response to the NCO shall not be relied upon as approval of a yet to be submitted Change Order, including any terms, scope, prices, or negotiated hours.
 - f. Unless waived by Metra in writing, a Change Order request will not be processed without the prerequisite NCO submittal.
4. After receiving a NCO response from Metra Consultant shall send, if appropriate, the Change Order request complete with all pertinent drawings, prospectus, schedule breakdown, and cost data to Metra's project manager.

C. INELIGIBLE CHANGE ORDER COSTS.

1. The parties acknowledge that costs incurred by Consultant in response to Metra's comments or changes to NCO submitted for Metra's review are not eligible for a Change Order, and such costs are already incorporated into Consultant's fees.
2. Notwithstanding the above, Consultant must submit a NCO within five (5) business days if it believes that Metra's comments or changes are beyond the work bargained for by the parties and eligible for a Change Order. Prior to incorporating any Metra comments or changes that Consultant believes are entitled to a Change Order, Consultant must wait for Metra's response to the NCO.

D. CONSULTANT TO CONTINUE WORK.

Notwithstanding the above, Metra may require Consultant to proceed with any Contract Change. Accordingly, pursuant to the Disputes Clause requiring continued performance of the Work, Consultant shall perform work as set forth in Metra's Contract Change. Failure of the parties to agree to an adjustment in price or time shall not excuse Consultant from proceeding with the Work as changed. By proceeding with the work as directed by Metra, Consultant shall not be deemed to have prejudiced any claim for additional compensation or an extension of time for completion.

E. CONTRACT CHANGE EFFECTIVE DATE.

Consultant will first analyze any proposed Contract Change request to determine the latest calendar date wherein the change incorporation must commence to minimize (preferably eliminate) any

contract time extension. Consultant will immediately notify Metra of this "Effective Date" and the prospective schedule impact to permit timely review by Metra staff of overall impact.

14. **DISPUTES.**

A. **DISPUTE RESOLUTION.** All claims, disputes and other matters in question between Consultant, Metra, and subconsultants arising out of, or relating to, this Agreement or the breach thereof, shall be decided by arbitration in accordance with the Arbitration Rules of the American Arbitration Association then existing, as modified herein, unless the parties mutually agree otherwise.

B. **JOINDER.** Metra, Consultant (or any other architect, engineer, or construction manager), subconsultants, contractors, surety, subcontractors, or any material suppliers who have an interest in the dispute shall be joined as parties to the arbitration. Metra will endeavor to require any appropriate third party to be subject to joinder. Consultant's contracts with its subcontractors shall also require such joinder.

C. **AUTHORITY OF THE ARBITRATOR.** The arbitrator(s) shall have authority to decide all issues between the parties including, but not limited to, claims for extras, delay and liquidated damages, matters involving defects in the Work, rights to payment, and whether the necessary procedures for arbitration have been followed. The parties expressly agree that the arbitrator(s)' authority is limited to interpretation and application of the specific terms of the Agreement between the parties and the applicable laws of the State of Illinois and to deviate from same constitutes a manifest disregard of the law. The arbitrator(s) shall have no authority to add to, take from, or modify any of the provisions of the contract between the parties.

D. **FINAL BINDING DECISION.** The foregoing agreement to arbitrate and any other agreement to arbitrate with an additional person or persons duly consented to by the parties to this Agreement, shall be specifically enforceable under the prevailing arbitration law. Subject to a Funding Agency's consent required below, the award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

E. **DEMAND FOR ARBITRATION.** The written demand for arbitration shall be served upon the other party to the arbitration and with the American Arbitration Association ("AAA") within ten (10) business days after receiving written notice of Metra's final decision with which it disagrees. If the parties mutually agree, they may extend the time to file a written demand for arbitration in order to engage in additional negotiations.

F. **WORK SHALL CONTINUE.** Unless otherwise agreed in writing by Metra, all parties shall diligently and in good faith carry on the work and timely perform their duties during any

negotiation or arbitration proceedings, and Metra shall continue to make payments of any uncontested invoices as required by the Agreement.

G. JURISDICTIONAL CHALLENGE. If any proceeding is brought to contest the right to arbitrate and it is determined that such right exists, the losing party shall pay all costs and attorneys' fees incurred by the prevailing party.

H. ADDITIONAL RULES. In addition to the Construction Industry Arbitration Rules of the American Arbitration Association applicable to any arbitration hereunder, the following shall apply:

1. **Pleading.** Promptly upon the filing of the arbitration, each party shall be required to set forth in writing and to serve upon each other party a detailed statement of its contentions of fact and law.

2. **Discovery.** All parties to the arbitration shall be entitled to the discovery procedures and to the scope of discovery applicable to civil actions under Illinois law, including the provisions of the Code of Civil Procedure and Illinois Supreme Court rules applicable to discovery. Such discovery shall be noticed, sought, and governed by those provisions of Illinois law.

3. The arbitration shall be commenced and conducted as expeditiously as possible consistent with affording reasonable discovery as provided herein.

4. These additional rules shall be implemented and applied by the arbitrator(s).

I. FEES AND EXPENSES. The fees and expenses of the arbitration proceedings, i.e. judge's fees, reporter fees, and other AAA's fees, shall be divided equally between Metra and each party to the arbitration. Each party shall pay its own personally incurred fees and expenses, including its own attorney and witness fees.

J. CONSENT BY FUNDING AGENCIES. The parties agree that upon the submittal of a claim for arbitration, Metra shall promptly notify the appropriate Funding Agency, if any. If in the event the agreement between the Funding Agency and Metra prohibits the use of arbitration as a dispute resolution process, Metra shall promptly notify the parties, and all arbitration activities shall cease. Pursuant to Funding Agency grant conditions, any settlement or decision must be reviewed and approved by the Funding Agency before it is binding on Metra. The parties may then pursue any claim in a court of law.

15. SAFETY REQUIREMENTS

A. **COMPLIANCE.** Before entering Metra property or property owned by other railroads that is relevant to this Agreement, Consultant and its subcontractors at any tier who meet the definition of a Roadway Worker below shall cause their employees to comply with Metra's Safety Rules and General Procedures (or the applicable safety rules of the railroad where the Work is being conducted). If Consultant or its subcontractors perform Work on Metra trackage or trackage of another railroad as part of this Agreement (or within 25 feet of Union Pacific & BNSF trackage), Consultant, subcontractors at any tier, and their respective employees must complete Metra's Contractors Orientation Safety Program located at "contractororientation.com" or the safety orientation of the railroad where Work is being conducted. The web-master will charge an \$11.00 fee for each of Consultant's and its subcontractors' employees, and will furnish a contractor orientation course completion card which must be carried at all times by the employee while on railroad trackage where Work is being conducted.

B. **DEFINITION.** A Roadway Worker is defined as: Any employee of the railroad, or of a contractor to the railroad, whose duties include and who is engaged in the inspection, construction, maintenance, or repair of railroad track, bridges, roadway, signal and communication systems, roadway facilities, or electric traction systems, or in the operation of roadway maintenance machinery on or near track, with the potential of fouling a track.

C. **NOTICE.** Consultant and its subcontractor are not permitted to work on or near Metra trackage (or within 25 feet of Union Pacific & BNSF trackage) until the Metra employee- in- charge or the other appropriate railroad's employee is present at the job site and the extended job briefing has been conducted.

D. **EMERGENCY.** CALL METRA POLICE (312) 322-2800

16. **MISCELLANEOUS.**

A. **COMPLIANCE WITH LAWS.** Consultant hereby agrees to comply with all applicable statutes, ordinances, building codes, and regulations of the United States, the State of Illinois, Metra, and units of local government. Any contract executed in violation of the terms and conditions of law may be null and void as to Metra.

B. **GOVERNING LAWS.** To the extent not preempted by federal law, this Agreement is made in and shall be interpreted under the laws of the State of Illinois, and Consultant agrees and consents that only the courts of Cook County, State of Illinois, the United States District Court for the Northern District of Illinois, and 7th Circuit shall have jurisdiction over controversies arising out of this Agreement. The parties to this Agreement irrevocably consent to jurisdiction of such courts and waive any objection based on venue or forum nonconveniens.

C. **NOTICES.** All notices, demands, elections, and other instruments required or permitted to be given or made by either party upon the other under the terms of this Agreement or any

statute shall be in writing. Such communications shall be deemed to have been sufficiently served if sent by certified or registered mail with proper postage prepaid, hand delivered, or sent by facsimile transmission, with proof of successful transmission sent by regular mail as either party may from time to time furnish to the other in writing. All notices to Metra shall be sent to the Director of Professional Services.

D. **HEADINGS.** The section headings of this Agreement are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Agreement.

E. **SET-OFF RIGHTS.** Metra may, but shall not be obligated to, withhold from and set-off against any payment otherwise due and payable by Metra under this Agreement, any amount payable by Consultant to Metra under or in connection with this Agreement.

F. **SEVERABILITY.** If any provision of this Agreement, or any paragraph, sentence, clause, phrase, or word or the application thereof is held invalid, the remainder of this Agreement shall be construed as if such invalid part were never included and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law provided that the Agreement, in its entirety as so reconstituted, does not represent a material change to the rights or obligations of the Parties.

G. **WAIVER.** No waiver of any right of a party under this Agreement shall be effective unless made in writing by the party whose rights are thereby waived, stating explicitly that a waiver of a right under this Agreement is intended, and executed by an officer who has authority generally to execute contracts for the waiving party.

H. **CONSTRUCTION.** Consultant is represented by legal counsel of its choice and is fully aware of the terms of this Agreement. Consultant agrees that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement.

I. **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS.** The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F (or the most recent Circular), are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Metra requests which would cause Metra to be in violation of the FTA terms and conditions.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DATES RECITED BELOW:

NORTHEAST ILLINOIS REGIONAL
COMMUTER RAILROAD
CORPORATION D/B/A METRA

CONSULTANT

BY _____

BY _____

PRINT NAME

PRINT NAME

TITLE EXECUTIVE DIRECTOR

TITLE

Odwyerpr.com

AFFIDAVITS /CERTIFICATIONS FOR CONSULTANTS

FILL IN THE BLANKS AND SUBMIT THIS FORM WITH PROPOSAL.
HAVE APPLICABLE SIGNATURES NOTARIZED ON LAST PAGE.

STATE OF _____

COUNTY OF _____

The Undersigned represents that s/he is _____ (“Undersigned”) the
(Print Name)

_____ of _____
(Print President or Other Proper Title) (Print name of Entity)

(“Company” or “Undersigned”) and is authorized to attest on behalf of himself/herself and
_____, and states as follows:
(Print Name of Company)

A. PROHIBITED INTERESTS AND CONFLICTS OF INTEREST.

1. PUBLIC OFFICER PROHIBITED ACTIVITIES ACT AFFIDAVIT

The Company is the proposer submitting this proposal and that the proposer is in compliance with provisions set forth in the Public Officer Prohibited Activities Act, 50 ILCS 105/0.01, et seq., and to the best of its knowledge and belief, no person holding office, either by election or appointment under the laws or constitution of this State, is in any manner interested, either directly or indirectly, in his/her own name or in the name of any other person, association, trust, or corporation, in this contract or the performance of any work/services under this contract which such officer has been or may be called upon to act or vote.

2. METRA'S CONFLICTS OF INTEREST ORDINANCE

Pursuant to 4.03 of Metra's Bidding Regulations:

Members of the Board, officers, and employees of Metra, their spouses, their children, their parents, their brothers and sisters and their children, are prohibited from having or acquiring any contract or any direct pecuniary interest in any contract which will be wholly or partially performed by the payment of funds or the transfer of property of the Metra. Any firm, partnership, association, or corporation from which any member of the Board, officer, or employee of the Metra is entitled to receive more than seven and one half percent (7-1/2%) of the total distributable income, is prohibited from having or acquiring any contract or direct pecuniary interest in any contract which will be performed in whole or in part by payment of funds or the transfer of property of Metra.

Any firm, partnership, association, or corporation from which members of the Board, officers, employees of Metra, their spouses, their children, their parents, their brothers and sisters and their children, are entitled to receive in the aggregate more than fifteen percent (15%) of the total distributable income, is prohibited from having or acquiring any contract or direct pecuniary interest in any contract which will be performed in whole or in part by the payment of funds or the transfer of property of Metra.

Board members and employees are prohibited from participating in the selection, award, or administration of a contract supported by Metra funds, federal funds, or any other grant funds if a real conflict of interest or to his or her knowledge, an apparent conflict of interest would be involved. A real or apparent conflict of interest would arise when any of the following has an interest in the entity selected for award: (a) an employee, officer, board member, or agent; (b) any member of his or her immediate family (as listed above in the first paragraph); (c) his or her business partner; or (d) an organization that employs; or intends to employ, any of the above. "Apparent" is defined under this paragraph as being one in which a person is an officer or director of an entity, or has an interest in the ownership or profits of an entity, and such interest appears substantial to a reasonable person. "Interest" is defined under this paragraph as a direct or indirect entitlement to receive any of the entity's profits.

In addition, Undersigned states that no officer of Metra has represented, either as an agent or otherwise, the proposer with respect to this application or bid for contract. Finally, Undersigned states that to best of its knowledge and belief, no officer of Metra has received or been offered from any person on behalf of the proposer, either directly or indirectly, any money or other thing of value as a gift, bribe, or means of influencing any vote or action in any official's capacity. Furthermore, Undersigned certifies that, to the best of its knowledge, it is in compliance with Metra's Bidding Regulations and is unaware of any of the foregoing persons having an interest prohibited by Section 4.03 of the Bidding Regulations.

B. NON-COLLUSION AFFIDAVIT

The Company is the proposer submitting this proposal and that such proposal was not made in the interest of or on behalf of any undisclosed person, partnership, company, organization or corporation; that such proposal is genuine and not collusive or a sham and that said proposer has not been a party to any agreement or collusion among bidders/proposers or prospective bidders/proposers in restraint of freedom of competition by agreement to bid a fixed price or other-wise, or to refrain from proposing, and has not, directly or indirectly, by agreement, communication, or conference with anyone, attempted to induce action prejudicial to the interest of Metra, or of any proposer or anyone else interested in the proposed contract.

C. CERTIFICATE FOR PROPOSAL

As a part of its offer to contract for services to Metra, the Undersigned hereby certifies that neither the Company nor any of its principals are barred from proposing on the aforementioned contract as a result of a violation of either Section 33E-3 or 33E-4 of 720 ILCS 5/33E.

D. CERTIFICATE OF DEBARMENT

As the potential contractor for a primary contractor subcontractor to a primary contractor for subcontracts over \$25,000.00, the Undersigned certifies to the best of its knowledge and belief, the Company and its principals:

1. Are not included on the U.S. Comptroller General's Consolidated List of Persons or Firms Debarred from federal contracts for violations of various public contracts incorporating labor standard provisions;
2. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal, state, or local government entity;
3. (a) have not been convicted under the laws of Illinois or any other state of bribery or attempting to bribe any government officer or employee or have made an admission of guilt of that conduct that is a matter of record but has not been prosecuted for that conduct. No business shall be barred from contracting with Metra as a result of a conviction under this Section of any employee or agent of the business if the employee or agent is no longer employed by the business and: i) the business has been finally adjudicated not guilty; or ii) the business demonstrates to Metra, and Metra finds that the commission of the offense was not authorized, requested, commanded, or performed by a director, officer, or high managerial agent on behalf of the business as provided in paragraph (2) of subsection (a) of Section 5-4 of the Criminal Code of 1961. For purposes of this Subsection (a), when an official, agent, or employee of a business committed the bribery or attempted bribery on behalf of the business and in accordance with the direction or authorization of a responsible official of the business, the business shall be chargeable with the conduct. Contractor hereby certifies that the contractor and its subcontractors are not barred from being awarded a contract or subcontract under this Section.

(b) are not convicted of a felony. No person or business shall do business with Metra from the date of conviction until 5 years after the date of completion of the sentence for that felony, unless no person held responsible by a prosecutorial office for the facts upon which the conviction was based continues to have any involvement with the business. Contractor hereby certifies the Contractor is not barred from being awarded a contract under this Section.
4. Are not presently indicted for, or otherwise criminally or civilly charged by a government entity (federal, state or local) for any reason; or
5. Have not, within a three-year period preceding this proposal, had one or more public transactions (federal, state or local) terminated for cause or default.

(If the Undersigned is unable to certify to any of the statements in this certification, the Undersigned shall attach an explanation).

THE UNDERSIGNED CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF THE FEDERAL FALSE CLAIMS ACT ARE APPLICABLE THERETO.

E. CERTIFICATION OF RESTRICTIONS ON LOBBYING

This certification is required to be completed with the solicitation if the proposal exceeds \$100,000.00. Failure to return this certification with the solicitation may result in a determination that the offer is non-responsive or non-responsible.

The Undersigned certifies to the best of its knowledge or belief that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of an federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of federal contract, grant, loan, or cooperative agreement, the Undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
3. The Undersigned shall require that the language of this certification be included in the award document for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements), and that all subrecipients shall certify and disclose accordingly.

F. REVOLVING DOOR PROHIBITION

The Undersigned has reviewed its list of employees (and subcontractors) involved in this procurement and it has no knowledge of any former Metra employee being involved in the solicitation process in violation of Section 4.05 of Metra's Bidding Regulations.

Section 4.05 states that all Metra Board members and non-contract personnel in specified positions are expressly prohibited, for a period of one (1) year after terminating employment with Metra, from engaging in any procurement activity with Metra. A "specified position" is one that is non-contract, is held for a period of six (6) months preceding such termination, is at a Grade P12 or above (including M Grades), and is not merely clerical or ministerial in nature. The prohibition includes, but is not limited to: lobbying the procurement process; specifying; bidding; or proposing bid, proposal, or contract documents on the part of the former employee or Board member, or in association with the former employee or Board member by or on behalf of any firm, partnership, association, or corporation affiliated with the former employee or Board member. The Undersigned certifies that the award and/or execution of a contract would not cause any violation of Section 4.05.

G. CONTINUING OBLIGATION TO INFORM METRA

If Company acquires information after executing this certification that there may be an actual or apparent violation of any of the above Company shall promptly bring such information to the attention of Metra's Procurement Officer. Company shall thereafter cooperate with Metra's review and investigation of such information, and comply with any instruction it receives from Metra in regard to remedying the situation.

H. PENALTIES

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into the Contract pursuant to Metra's regulations and 31 U.S.C. 1352. A Company who makes a false statement, materials to the certification, is subject to termination for cause. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Company understands and agrees that the provisions of 31 U.S.C. 3801, et seq., apply to this certification and disclosure.

(Print) Name of Company

By: _____ Date: _____
Signature of Person Making Affidavit (Undersigned listed above)

(Print) Title of Person Making Affidavit

NOTARIZE HERE
Subscribed and sworn to before me
This _____ day of _____ 20__.

Notary Public

CERTAIN SUBCONTRACTOR SIGNATURES REQUIRED ON NEXT PAGE

SUBCONTRACTOR
DEBARMENT CERTIFICATION

NOTE: PRIMARY CONTRACTOR IS RESPONSIBLE FOR THIS FORM BEING SUBMITTED PRIOR TO AWARD. SUBCONTRACTOR(S) WITH SUBCONTRACTS OVER \$25,000.00 MUST ALSO COMPLETE AND SIGN THE FOLLOWING:

STATE OF _____

COUNTY OF _____

The Undersigned represents that s/he is _____ (“Undersigned Subcontractor”) the _____ (Print Name)

_____ of _____ (Print “President” or Other Proper Title) (Print name of Subcontractor Entity)

(“Subcontractor” or “Undersigned Subcontractor”) and is authorized to attest on behalf of himself/herself and

Subcontractor Entity by stating as follows:

1. As a subcontractor to a primary contractor for subcontracts over \$25,000.00, the undersigned Subcontractor certified to the best of its knowledge and belief that the debarment statements in Section D above are truthful and accurate.
2. If Undersigned Subcontractor acquires information after executing this certification that there may be an actual or apparent violation of any of the above, Subcontractor shall promptly bring such information to the attention of Metra’s Procurement Officer.
3. The provisions of Section 1 above are applicable.

(Print) Name of Subcontractor Entity

By: _____ Date: _____
Signature of Person Making Affidavit (Undersigned listed above)

(Print) Title of Person Making Affidavit

NOTARIZE HERE
Subscribed and sworn to before me
This _____ day of _____ 20__.

Notary Public

**METRA
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
COMPLIANCE REQUIREMENTS**

The Northeast Illinois Regional Commuter Railroad Corporation, d/b/a Metra, is required to take all necessary and reasonable steps to ensure non-discrimination in the award and administration of contracts. Therefore, the federal regulatory provisions of 49 C.F.R. Part 26 apply to this Contract.

I. CONTRACT GOAL

Metra has established a contract DBE goal of 15 %.

NOTE:

For bid/proposal responsiveness purposes only, DBE credit toward the contract DBE goal is measured solely against the base bid, initial proposal, bid total or grand total, not on allowance, alternative bid amounts or master purchase agreement total dollar limitation.

II. BID/PROPOSAL RESPONSIVENESS REQUIREMENTS

In order to be responsive, a bidder/proposer must make good faith efforts to meet the contract goal for Disadvantaged Business Enterprise (DBE) participation in this contract. A bidder can accomplish this in either of two ways:

- A. First, the bidder/proposer can commit to meet the goal with enough participation by DBEs that are certified, at the time of bid, by the Illinois Unified Certification Program (IL UCP), providing properly completed and signed Schedules of this Exhibit -- Schedule A or Schedule D (if a joint venture) as well as Schedule C(s), written confirmation from the DBE(s) participating in the contract as provided in Schedule A. Schedule A or D must list the name, description of DBE work scope, and dollar amount of participation of each, and only each, DBE that will participate in this Contract. (If the bidder/proposer is itself a DBE, the DBE bidder/proposer must indicate on Schedule A what scope of work its forces will actually perform outside of the work of any subcontractor, and the dollar amount of that work. If this amount does not satisfy the DBE goal, the DBE bidder/proposer must list the additional DBE subcontractor(s) that will satisfy the DBE goal, along with their work scope and agreed price); or
- B. Second, if the bidder/proposer cannot meet the goal with enough participation by DBEs, the bidder/proposer must provide properly completed and signed Schedule A or D and Schedule C(s) to the extent it will utilize DBE participation, and submit detailed and corroborating documentation evidencing its good faith efforts to achieve the contract goal.

The bidder/proposer must comply with section A or B of Article II, and submit all

documentation prior to or with submittal of the bid/proposal. If the bidder/proposer fails to do so, its bid/proposal will be deemed non-responsive. **Any DBE(s) listed on Schedule A and/or D must be certified by the IL UCP at the time of the bid/proposal due date.**

III. GOOD FAITH EFFORTS

Metra's DBE Senior Director is responsible for determining whether a bidder/proposer met the DBE Responsiveness Requirements. Metra's DBE Senior Director determines whether a bidder/proposer has properly committed to meet the contract goal and whether a bidder/proposer who has not committed to meeting the goal has documented good faith efforts in order to be responsive. Metra must be satisfied that all information is complete and accurate, and adequately documents the bidder's/proposer's good faith efforts before Metra commits to the performance of the contract by the successful bidder/proposer.

A bidder's/proposer's documented good faith efforts to meet the contract goal must demonstrate that the bidder/proposer took *all necessary and reasonable steps* which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if the bidder/proposer was not fully successful. Metra will make a fair and reasonable judgment whether a bidder/proposer that did not meet the goal made adequate good faith efforts. Metra will consider the quality, quantity, and intensity of the different kinds of efforts that the bidder/proposer made. The efforts employed by the bidder/proposer should be those that one would reasonably expect a bidder/proposer to take if the bidder/proposer were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. *Mere pro forma* efforts are not good faith efforts to meet the DBE contract requirements.

Metra will also take into account the performance of other bidders/proposers in meeting the contract goal. For example, when the apparent successful bidder/proposer fails to commit to the contract goal, but others commit to the goal, Metra will raise the question of whether, with additional reasonable efforts, the apparent successful bidder/proposer could have committed to the goal. If the apparent successful bidder/proposer fails to commit to the goal, but meets or exceeds the average DBE participation obtained by other bidders/proposers, Metra may view this, in conjunction with other factors, as evidence that the apparent successful bidder/proposer made good faith efforts.

The following is a list of types of actions that Metra will consider as part of the evaluation of the bidder's/proposer's good faith efforts to obtain DBE participation. It is not intended to be a mandatory check list, or to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases:

- A. Soliciting through all reasonable and available means (e.g., attendance at pre-bid/pre-proposal meetings, if applicable, advertising, and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder/proposer must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder/proposer must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

- B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the bidder/proposer might otherwise prefer to perform these work items with its own forces.
- C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- D. 1. Negotiating in good faith with interested DBEs. It is the bidder's/proposer's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
 - 2. A bidder/proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take into consideration a firm's price and capabilities, as well as contract goals. The fact that there may be some additional costs involved in finding and using DBEs, however, is not in itself sufficient reason for a bidder's/proposer's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a bidder/proposer to perform the work of a contract with its own organization does not relieve the bidder/proposer of the responsibility to make good faith efforts. Bidders/Proposers are not, however, required to accept high quotes from DBEs if the price difference is excessive or unreasonable.
- E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The bidder's/proposer's standing within the industry, membership in specific groups, organizations, or associations and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids/proposals in the bidder's/proposer's efforts to meet the project goal.
- F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by Metra or the bidder/proposer.
- G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

LOCATING DBEs

The IL UCP DBE Directory can be viewed via Metra's Web site, www.MetraRail.com. Or, a directory can be provided upon request by calling Metra's DBE Director at (312) 322-6323.

NOTE: The IL UCP DBE Directory is regularly updated, so please ensure that you are viewing the most recent prior to bid/proposal due date.

Additional assistance in locating DBE firms can be obtained from:

African American Contractors Association (AACA)
7445 S. South Chicago Avenue
Chicago, IL 60614
(312) 915-5960 x14

Association of Asian Construction Enterprises
333 North Ogden
Chicago, Illinois 60607-1177
(312) 563-0746

Black Contractors United (BCU)
11906 S. Michigan Avenue
Chicago, Illinois 60628
(773) 483-4000

Chicago Minority Supplier Development Council (CMSDC)
105 W. Adams 2300
Chicago, Illinois 60603
(312) 755-8880

Chicago Urban League
4510 S. Michigan
Chicago, Illinois 60653
(773) 285-5800

Cosmopolitan Chamber of Commerce
30 E. Adams St. Ste.1050
Chicago, Illinois 60603
(312) 499-0611

Federation of Women Contractors
5650 S. Archer Avenue
Chicago, Illinois 60638
(312) 360-1122

Hispanic American Contractors Industry Association (HACIA)
650 W. Lake Street, Suite 415
Chicago, Illinois 60661
(312) 575-0389

The Illinois Hispanic Chamber of Commerce
855 W. Adams St.
Chicago, IL 60607
(312) 425-9500

Latin American Chamber of Commerce
3512 West Fullerton Avenue
Chicago, Illinois 60647-2418
(773) 252-5211

Women's Business Development Center
8 South Michigan Avenue
Suite 400, Chicago, Illinois 60603
(312) 853-3477

IV. COUNTING DBE PARTICIPATION

Schedules A or D and C are reviewed to evaluate and determine DBE credit for proposed DBE participation. The Schedules must be completely filled out and the Description of Work clearly defined, in detail to establish that the identified DBE participant(s) would be providing a commercially useful function as per USDOT Regulation 49 CFR 26.55 (c). Description(s) of Work and associated Amount(s) provided on Schedules A or D and C must be in agreement.

Metra will only count credit for:

- Participation by DBEs Certified by the Illinois Unified Certification Program (IL UCP) at the time of the bid/proposal due date;
- Participation by DBEs directly related to this procurement.

As per 49 C.F.R. Part 26, Metra counts DBE participation toward overall and contract goals as follows:

- A. When a DBE participates in a contract, Metra counts only the value of the work actually performed by the DBE toward the DBE goal. Participation will only be credited in the DBE's area of specialization. Credit for work in other areas requires additional support documentation for each of those areas.
- B. Metra counts the entire amount of that portion of a contract that is performed by the DBE's own forces. This includes the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
- C. Metra counts the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided Metra determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- D. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
- E. When a DBE performs as a participant in a joint venture, Metra counts a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
- F. Metra counts expenditures to a DBE toward DBE goals only if the DBE is performing a commercially useful function on this Contract.
 1. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing,

managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, Metra must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of work, and other relevant factors.

2. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, Metra must examine similar transactions, particularly those in which DBEs do not participate.
3. If a DBE firm acting as a prime contractor and/or as a subcontractor under this Contract does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, Metra must presume that it is not performing a commercially useful function.
4. Metra uses the following factors in determining whether a DBE trucking company is performing a commercially useful function:
 - a. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals;
 - b. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract;
 - c. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs;
 - d. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract;
 - e. The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate Department Operating Administration.

Example to paragraph (d)(5): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and

Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

- f. For purposes of this subparagraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE; and
- g. If DBE credit is to be counted for this contract, the contractor must submit on a monthly basis to Metra's DBE Senior Director an accounting of trucks used on the project that are owned and/or leased by the DBE participant as described above.

SAMPLE REPORT

NOT FOR BID/PROPOSAL SUBMITTAL

DBE Trucking Credit Summary for Insert Name of DBE Firm					
Payment Application Period	Value of Transportation Services	# of DBE Owned Trucks	# of DBE Leased Trucks*	# of Non-DBE Leased Trucks*	Fees and Commission (See Article IV(F)(4)(e))

*Copy of Lease on File with Metra

- 5. If a DBE is presumed not to be performing a commercially useful function as provided in these requirements, the DBE may present evidence to rebut this presumption. Metra may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
- 6. Metra's decisions on commercially useful function matters are subject to review by the Federal Transit Administration, but are not administratively appealable to United States Department of Transportation.
- 7. **Metra counts expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:**
 - a. If the materials or supplies are obtained from a DBE **manufacturer**, Metra counts one hundred percent (100%) of the cost of the materials or supplies toward DBE goals.
 - b. For purposes of these requirements, a manufacturer is a **firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.**
 - c. If materials or supplies are purchased from a DBE **regular dealer**, Metra counts sixty percent (60%) of the cost of the materials or supplies toward DBE goals.

d. For purposes of these requirements, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

- (1) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
- (2) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
- (3) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph.
- (4) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, Metra counts the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided Metra determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar service. Metra will not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

8. Metra will not count toward its overall goal the dollar value of work performed under a contract by a firm after it has ceased to be certified.
9. Metra will not count the participation of a DBE subcontractor toward the prime contractor's DBE achievements or Metra's overall goal until the amount being counted toward the goal has been paid to the DBE.

V. RECONSIDERATION

If Metra determines that a bidder/proposer is not responsive because it has not committed to meeting the contract goal or documented sufficient good faith efforts, the bidder/proposer has five (5) days to request administrative reconsideration. The bidder/proposer must make this request in writing to:

Executive Director/CEO
Metra
547 West Jackson Boulevard
Chicago, Illinois 60661-5717
(312) 322-6979

The Reconsideration Official, or designee, will not have played any role in the original determination that the bidder/proposer did not document sufficient good faith efforts.

As part of this Reconsideration, the bidder/proposer will have the opportunity to provide written documentation or argument concerning the issue of whether it committed to meeting the contract goal or made adequate good faith efforts to do so. The bidder/proposer will have the opportunity to meet in person with Metra's Reconsideration Official, or designee, to discuss these issues. Metra will send the bidder/proposer a written decision after its reconsideration, explaining Metra's basis for finding that the bidder/proposer did or did not meet the goal or made adequate good faith efforts to do so. The result of this reconsideration process is not administratively appealable to the United States Department of Transportation.

VI. RESPONSIBILITY REQUIREMENTS

A. Joint Ventures

If the bidder/proposer is a DBE joint venture, a two-party signed joint venture agreement must be submitted to Metra for Metra's approval within five (5) calendar days after the bid/proposal due date. This agreement must address the administrative, financial, and field responsibilities of each partner. The DBE participation must meet the criteria as set forth in the following definition per 49 C.F.R. 29.5:

Joint Venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

B. Substitutions

A bidder/proposer cannot substitute any DBEs listed on Schedule A or D without prior written approval from Metra's DBE Director. See Article VII F.

VII. CONTRACT PERFORMANCE

- A. Upon award of a Metra contract, a Contractor's good faith efforts to achieve the contract DBE goal and DBE credit are monitored, evaluated and measured against the entire awarded contract value, including alternates, allowance work, amendments change orders, and options.

1. *If the award includes an alternate bid*, Metra expects any DBE listed on the Schedule A or D to perform the same or similar subcontractor work contained in the alternate bid. Revised Schedules A or D and C will be required to document additional DBE commitment.
2. *If the award is a negotiated amount*, Metra expects any DBE listed on the Schedule A or D to perform the same or similar subcontractor work contained in the initial bid or proposal. Revised Schedules A or D and C will be required to document the negotiated amount DBE commitment.
3. In addition, Metra expects any DBE listed on the Schedule A or D to perform the same or similar subcontractor *work authorized under the allowance or under release by a master purchase agreement* as necessary to meet the established contract DBE goal.
4. The Contractor is required to notify Metra's DBE Senior Director immediately to address a revised "Commitment to DBE Participation" in a situation where the DBE's work scope has changed as a result of actions taken by Metra.

B. Subcontracts (Prior to Notice to Proceed)

1. A Metra Notice to Proceed will not be issued to the prime Contractor until signed DBE Subcontracts are provided to the Metra's DBE Senior Director. **Within thirty (30) calendar days after the Notice of Award** of the contract, the Prime Contractor must provide copies of **Signed contracts** between the prime Contractor and the DBEs to Metra's DBE Senior Director.
2. **Failure to provide the DBE subcontracts to Metra's DBE Senior Director within the time required shall constitute a breach of this Contract**, and upon such breach, Metra may terminate this Contract and/or exercise other sanctions, penalties, or remedies as allowed by law or equity, and as Metra deems appropriate.

C. Contract Invoices/Payments

The Contractor must submit to Metra's Senior Director of the Office of Business Diversity & Civil Rights:

1. Two (2) copies of contract invoices, including support documentation, at the same time the originals are submitted to Metra's Accounts Payable; and concurrently
2. Copies proof of subcontractor/supplier payment(s) in the form of canceled checks (both sides) or other proof of payment.

D. Prompt Payment

The Contractor agrees to pay each subcontractor for satisfactory performance of its subcontract no later than fifteen (15) calendar days from the receipt of such payment

1. *If the award includes an alternate bid*, Metra expects any DBE listed on the Schedule A or D to perform the same or similar subcontractor work contained in the alternate bid. Revised Schedules A or D and C will be required to document additional DBE commitment.
2. *If the award is a negotiated amount*, Metra expects any DBE listed on the Schedule A or D to perform the same or similar subcontractor work contained in the initial bid or proposal. Revised Schedules A or D and C will be required to document the negotiated amount DBE commitment.
3. In addition, Metra expects any DBE listed on the Schedule A or D to perform the same or similar subcontractor *work authorized under the allowance or under release by a master purchase agreement* as necessary to meet the established contract DBE goal.
4. The Contractor is required to notify Metra's DBE Senior Director immediately to address a revised "Commitment to DBE Participation" in a situation where the DBE's work scope has changed as a result of actions taken by Metra.

B. Subcontracts (Prior to Notice to Proceed)

1. A Metra Notice to Proceed will not be issued to the prime Contractor until signed DBE Subcontracts are provided to the Metra's DBE Senior Director. **Within thirty (30) calendar days after the Notice of Award** of the contract, the Prime Contractor must provide copies of **Signed contracts** between the prime Contractor and the DBEs to Metra's DBE Senior Director.
2. **Failure to provide the DBE subcontracts to Metra's DBE Senior Director within the time required shall constitute a breach of this Contract**, and upon such breach, Metra may terminate this Contract and/or exercise other sanctions, penalties, or remedies as allowed by law or equity, and as Metra deems appropriate.

C. Contract Invoices/Payments

The Contractor must submit to Metra's Senior Director of the Office of Business Diversity & Civil Rights:

1. Two (2) copies of contract invoices, including support documentation, at the same time the originals are submitted to Metra's Accounts Payable; and concurrently
2. Copies proof of subcontractor/supplier payment(s) in the form of canceled checks (both sides) or other proof of payment.

D. Prompt Payment

The Contractor agrees to pay each subcontractor for satisfactory performance of its subcontract no later than fifteen (15) calendar days from the receipt of such payment

that the Contractor receives from Metra. The Contractor agrees further to return funds it has retained to each subcontractor within fifteen (15) calendar days after the subcontractors work is satisfactorily completed.

The Contractor agrees to complete the prompt payment log, included in the payment application form (or provided by Metra's DBE Senior Director), documenting dates and amounts of payments made to subcontractors.

Any failure to comply with this Section will be in material breach of this Contract, and Metra reserves all its rights in law and equity for such breach. In addition, such breach will be taken into consideration for the Contractor's responsibility status for future contracts with Metra. This clause applies to both DBE and non-DBE prime contractors and subcontractors.

E. DBE Participation

Metra's office of the DBE Senior Director may make on-site visits from time to time during the course of this Contract to ensure compliance with the requirements set forth herein, and may require verification of any commitment represented to us in connection with the Contractor's use of DBE businesses in the performance of this Contract.

Further, if problems should arise with respect to the Contractor's subcontract with any DBEs, please contact Metra's DBE Senior Director immediately so that Metra may be apprised and lend whatever assistance Metra can in solving the problem.

F. Substitution of DBE Firms

The Contractor must obtain prior written approval from Metra in order to substitute any DBE, which Metra has approved for participation in this Contract.

The Contractor cannot terminate for convenience any DBE listed on Schedule A (or an approved substitute DBE firm), and then perform the work of the terminated subcontract with its own forces or those of an affiliate or substitute firm, without Metra's prior written consent.

The Contractor is required to notify Metra's DBE Senior Director immediately and provide reasonable documentation of any DBE's inability or unwillingness to perform its subcontract.

Before transmitting to Metra a request to terminate and/or substitute any DBE, the Contractor must give notice in writing to the DBE, with a copy to Metra, of its intent to request to terminate and/or substitute, and the reason for the request.

The Contractor must give the DBE five days to respond to the Contractor's notice and advise Metra and the contractor of the reasons, if any, why it objects to the proposed

1. *If the award includes an alternate bid*, Metra expects any DBE listed on the Schedule A or D to perform the same or similar subcontractor work contained in the alternate bid. Revised Schedules A or D and C will be required to document additional DBE commitment.
2. *If the award is a negotiated amount*, Metra expects any DBE listed on the Schedule A or D to perform the same or similar subcontractor work contained in the initial bid or proposal. Revised Schedules A or D and C will be required to document the negotiated amount DBE commitment.
3. In addition, Metra expects any DBE listed on the Schedule A or D to perform the same or similar subcontractor *work authorized under the allowance or under release by a master purchase agreement* as necessary to meet the established contract DBE goal.
4. The Contractor is required to notify Metra's DBE Senior Director immediately to address a revised "Commitment to DBE Participation" in a situation where the DBE's work scope has changed as a result of actions taken by Metra.

B. Subcontracts (Prior to Notice to Proceed)

1. A Metra Notice to Proceed will not be issued to the prime Contractor until signed DBE Subcontracts are provided to the Metra's DBE Senior Director. **Within thirty (30) calendar days after the Notice of Award** of the contract, the Prime Contractor must provide copies of **Signed contracts** between the prime Contractor and the DBEs to Metra's DBE Senior Director.
2. **Failure to provide the DBE subcontracts to Metra's DBE Senior Director within the time required shall constitute a breach of this Contract**, and upon such breach, Metra may terminate this Contract and/or exercise other sanctions, penalties, or remedies as allowed by law or equity, and as Metra deems appropriate.

C. Contract Invoices/Payments

The Contractor must submit to Metra's Senior Director of the Office of Business Diversity & Civil Rights:

1. Two (2) copies of contract invoices, including support documentation, at the same time the originals are submitted to Metra's Accounts Payable; and concurrently
2. Copies proof of subcontractor/supplier payment(s) in the form of canceled checks (both sides) or other proof of payment.

D. Prompt Payment

The Contractor agrees to pay each subcontractor for satisfactory performance of its subcontract no later than fifteen (15) calendar days from the receipt of such payment

termination of its subcontract and why you should not approve the Contractor's action.

The Contractor is required to make good faith efforts to replace any DBE that is terminated, or whose work scope has changed, or has otherwise failed to complete its work on this Contract with another certified DBE, to the extent needed to meet the Contract goal.

The Contractor must provide a copy of the new subcontract with the substitute DBE, or documentation of good faith efforts to substitute the initial DBE with another DBE.

The Contractor is required to notify Metra's DBE Senior Director immediately to address a revised "Commitment to DBE Participation" in a situation where the DBE's work scope has changed as a result of actions taken by Metra.

G. Records

A record of all activities to demonstrate good faith efforts must be kept by the Contractor and made available to Metra upon request.

H. Contract Assurance

The Contractor makes the following assurance and agrees to include the assurance in each subcontract that the Contractor signs with a subcontractor:

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of federally assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or other such remedy, as Metra deems appropriate.

I. Breach of Contract

Failure to abide by any of the DBE participation requirements in this Contract or any requirements set forth in 49 CFR Part 26 shall constitute a breach of this Contract, and upon such breach, Metra may terminate this Contract and/or exercise other sanctions, penalties, or remedies as allowed by law or equity and as Metra deems appropriate.

VIII. REFERENCES

All references to Metra's DBE Senior Director or office of DBE Director mean:

Janice R. Thomas, Senior Director
Metra Office of Business Diversity and Civil Rights
547 West Jackson Boulevard
Chicago, Illinois 60661-5717

SCHEDULE A
BIDDER/PROPOSER/CONTRACTOR COMMITMENT TO DBE SUBCONTRACT PARTICIPATION

NAME OF BIDDER/PROPOSER OR METRA IFB/RFP/CONTRACT (TASK) NO.: RFP 33896

CONTRACTOR: NAME OF PROJECT: Public Relations & Media Relations Consulting Services

NOTE:

- Bidder/Proposer/Contractor Must COMPLETE, SIGN AND RETURN THIS FORM along with Completed, Signed Schedule Cs from Each listed DBE.
- If the BIDDER/PROPOSER/CONTRACTOR is itself a DBE, the DBE BIDDER/PROPOSER/CONTRACTOR must indicate the scope of work it will perform with its own forces (independent of the work of any subcontractor) and the dollar amount of that work.
- Any DBE listed on this Schedule A must be certified by the IL UCP at the time of Bid/Proposal submittal (view IL UCP DBE Directory @ www.MetraRail.com).

NAME and ADDRESS OF DBE FIRM	DBE SCOPE OF WORK (Within IL UCP DBE Certified Area of Speciality) TO BE PERFORMED FOR THIS PROJECT*	AGREED AMOUNT
		\$
		\$
		\$
		\$
*If space is not sufficient provide detail on attached page.		\$
TOTAL DBE COMMITMENT		\$

For bid/proposal responsiveness purposes only, DBE credit for Total DBE Commitment is measured solely against the base bid, initial proposal, bid total, or grand total, not on allowance, alternative bid amounts or master purchase agreement total dollar limitation. However, in the event Metra awards a contract, Metra expects any DBE listed on the Schedule A to perform the same or similar subcontractor work under the allowance. If the award includes an alternate, Metra expects any DBE listed on the Schedule A to perform the same or similar subcontractor work contained in the alternate. If the award is a negotiated amount, Metra expects any DBE listed on the Schedule A to perform the same or similar subcontractor work contained in the initial bid or proposal. In addition, Metra expects any DBE listed on the Schedule A to perform the same or similar subcontractor work authorized under the allowance or under release by a master purchase agreement as necessary to meet the established contract DBE goal.

Bidder/Proposer/Contractor cannot substitute any DBE without prior approval of the DBE Director. Bidder/Proposer/Contractor cannot terminate for convenience any DBE listed and then perform the work with its own forces without prior approval of the DBE Director.

I hereby certify that arrangements have been made for the foregoing work with the listed DBE subcontractor(s). I further understand that any willful falsification, fraudulent statement, or misrepresentation will result in appropriate sanctions, which may include debarment and/or prosecution under applicable State and Federal Laws.

Printed Name and Title of Bidder/Proposer/Contractor Authorized Signee _____ Signature of Bidder/Proposer/Contractor Authorized Signee _____ Date _____

**SCHEDULE C
CONFIRMATION OF DBE COMMITMENT**

NAME OF BIDDER/PROPOSER OR

METRA IFB/RFP/CONTRACT (TASK) NO.: RFP 33896

CONTRACTOR:

NAME OF PROJECT: Public Relations & Media Relation Consulting Services

NOTE:

- Bidder/Proposer/Contractor Must SUBMIT THIS FORM from each listed DBE at the time of Bid/Proposal Along With its Schedule A.
- If the BIDDER/PROPOSER/CONTRACTOR is itself a DBE, the DBE BIDDER/PROPOSER/CONTRACTOR must indicate the scope of work it will perform with its own forces (independent of the work of any subcontractor) and the dollar amount of that work.
- Any DBE listed on Schedule A and/or D must be certified by the IL UCP at the time of Bid/Proposal submittal (view IL UCP DBE Directory @ www.MetraRail.com).

NAME OF DBE FIRM: _____

ADDRESS OF DBE FIRM: _____

hereby certifies that it is participating in the referenced Metra project in the agreed amount of \$ _____ performing _____

and as shown on Schedule A of _____

_____ 's bid/proposal/contract.

Name of Prime Bidder/Proposer/Contractor

PLEASE COMPLETE THE FOLLOWING (Trucking Firms Complete Both Columns):

TRUCKING FIRMS ONLY

The above DBE work will be further subcontracted:

Check One Yes No

If Yes, indicate the % of the Schedule A and C Agreed Amount that is to be further subcontracted to a DBE and/or Non-DBE firm. Provide additional Schedule C(s) if further subcontracted to a DBE.

If No, enter "0%" on both lines below.

_____ % of DBE's work will be further subcontracted to another DBE.

_____ % of DBE's work will be further subcontracted to a Non-DBE.

The above DBE work will be supplemented with leased trucks:

Check One Yes No

If Yes, indicate the % of the Schedule A and C Agreed Amount that will be expended for the lease of another DBE and/or Non-DBE firm's trucks. Provide additional Schedule C(s) if leased from a DBE.

If No, enter "0%" on both lines below.

_____ % of DBE's work will be supplemented with leased trucks from another DBE.

_____ % of DBE's work will be supplemented with leased trucks from a Non-DBE.

I further understand that any willful falsification, fraudulent statement, or misrepresentation will result in appropriate sanctions, which may include debarment and/or prosecution under applicable State and Federal Laws.

Printed Name and Title of DBE Firm Authorized Signee _____

Signature of DBE Firm Authorized Signee _____

Date _____

**SCHEDULE D
COMMITMENT TO DBE JOINT VENTURE**

NAME OF BIDDER/PROPOSER OR CONTRACTOR: _____ METRA IFB/RFP/CONTRACT (TASK) NO.: RFP 33896
 NAME OF PROJECT: Public Relations & Media Relations Consulting Services

NOTE:

- A FORMAL JOINT VENTURE AGREEMENT MUST BE SUBMITTED WITHIN FIVE (5) WORKING DAYS AFTER SUBMITTAL OF SCHEDULES A AND C.
- When a DBE performs as a participant in a joint venture, Metra counts a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
- Any DBE listed on Schedule A and/or D must be certified by the IL UCP at the time of Bid/Proposal (view IL UCP DBE Directory @ www.MetraRail.com).

NAME and ADDRESS OF DBE FIRM	DBE SCOPE OF WORK (Within IL UCP DBE Certified Area of Specialty) TO BE PERFORMED FOR THIS PROJECT*	AGREED AMOUNT
		\$
		\$
		\$
		\$
TOTAL DBE COMMITMENT		\$

*If space is not sufficient provide detail on attached page.
For bid/proposal responsiveness purposes only, DBE credit for Total DBE Commitment is measured solely against the base bid, initial proposal, bid total or grand total, not on allowance, alternative bid amounts or master purchase agreement total dollar limitation. However, in the event Metra awards a contract, Metra expects any DBE listed on the Schedule A to perform the same or similar subcontractor work under the allowance. *If the award includes an alternate, Metra expects any DBE listed on the Schedule A to perform the same or similar subcontractor work contained in the alternate. If the award is a negotiated amount, Metra expects any DBE listed on the Schedule A to perform the same or similar subcontractor work contained in the initial bid or proposal.* In addition, Metra expects any DBE listed on the Schedule A to perform the same or similar subcontractor work authorized under the allowance or under release by a master purchase agreement as necessary to meet the established contract DBE goal.
 Bidder/Proposer/Contractor cannot substitute any DBE without prior approval of the DBE Director. Bidder/Proposer/Contractor cannot terminate for convenience any DBE listed and then perform the work with its own forces without prior approval of the DBE Director.

I hereby certify that arrangements have been made for the foregoing work with the listed DBE subcontractor(s). I further understand that any willful falsification, fraudulent statement, or misrepresentation will result in appropriate sanctions, which may include debarment and/or prosecution under applicable State and Federal Laws.

Printed Name and Title of Joint Venture Authorized Signee	Signature of Joint Venture Authorized Signee
Printed Name and Title of Joint Venture Authorized Signee	Signature of Joint Venture Authorized Signee
Date	Date

CIVIL RIGHTS REQUIREMENTS (TITLE VI ASSURANCE):

The Contractor agrees to comply with and assures compliance by its sub-contractors at any tier with the following Civil Rights Requirements. The Contractor agrees to insure these requirements must be included within all contracts to its sub-contractors at any tier. Failure to implement or follow the provisions set forth in this Exhibit may result in the Contractor being placed in breach of the Contract terms and may result in Contract termination.

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit Law 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equipment Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity" as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.



CONSULTANT INSURANCE REQUIREMENTS

MJS 10/7/2014

Media Relations
Consulting
Services

REQUISITION NUMBER R33896

EVENT _____

Effective concurrently with the commencement of the work, the contractor/vendor shall obtain and maintain throughout the life of the work, the insurance coverage as noted below. Coverage must meet the requirements that on the following pages of this Exhibit. With the exception of Professional Liability, all coverage needs to be written on an occurrence form and with an insurer carrying an AM Best rating of at least A-VII or better.

TYPE OF COVERAGE	AMOUNT REQUIRED
1. WORKERS' COMPENSATION: Coverage A - Statutory Coverage B - \$ <u>1,000,000</u>	\$ <u>1,000,000</u> Limits of Liability
2. COMPREHENSIVE GENERAL LIABILITY (BROAD FORM): Bodily Injury Liability & Property Damage Liability (combined)	\$ <u>1,000,000</u> Each Occurrence \$ <u>2,000,000</u> Aggregate
3. UMBRELLA/EXCESS LIABILITY-EXCESS OF PRIMARY LIMITS (1), (2) and (4) Bodily Injury Liability & Property Damage Liability (combined)	\$ <u>1,000,000</u> Each Occurrence \$ <u>2,000,000</u> Aggregate
4. AUTOMOBILE LIABILITY: Bodily Injury Liability & Property Damage Liability (combined)	\$ <u>1,000,000</u> Combined Single Limit
5. PROFESSIONAL LIABILITY:	\$ <u>1,000,000</u> Each Occurrence \$ <u>2,000,000</u> Aggregate

Additional Insureds shall be as follows: The Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation, and its affiliated separate public corporation known as the Northeast Illinois Regional Commuter Railroad Corporation, both operating under the service mark Metra as now exists or may hereafter be constituted or acquired, and the Regional Transportation Authority, an Illinois municipal corporation and all other railroads operating on Metra's property.

METRA'S INSURANCE REQUIREMENTS APPLICABLE TO ALL POLICIES:

-Include a waiver of subrogation, thereby waiving your rights of subrogation against Metra and any additional insureds.

-Include the Additional Insured Endorsement for all coverages including products and completed operations.

-Be primary and non-contributory on all coverages.

-All deductibles applicable to the insurance coverage shall be borne by the contractor/vendor. The certificate of insurance shall clearly state how defense costs (also known as "allocated loss adjustment expenses") shall apply in terms of the deductible and the insurance limits. (SIR programs are prohibited, unless approved by Metra's Risk Management Department.)

-All subcontractors retained or hired for the work shall be required to maintain limits and term equivalent to those required of the prime contractor.

-All insurance policies must specify that they are not subject to cancellation, non-renewal, material change or reduction in coverage unless a minimum of thirty (30) days prior notification is given by the insurer, except for non-payment of premium wherein a ten (10) day notice will apply. Contractor/Vendor will immediately notify Metra of the cancellation, non-renewal, material change or reduction in coverage of any required insurance policy. Such notice shall be sent certified mail to Metra, care of Director of Risk Management, 547 W. Jackson, Suite 1500, Chicago, IL 60661.

-In no event, shall the failure by Metra to receive certificates of insurance required hereunder, or to receive them by the date(s) required hereunder, be construed as a waiver of the contractor/vendor's obligation to obtain the required insurance coverages. Failure by Metra to demand any certificate of insurance or other evidence of full compliance with the insurance requirements set forth herein, or failure by Metra to identify a deficiency in the evidence provided, shall not be construed as a waiver of the obligation to procure or maintain the insurance required hereunder. The acceptance of delivery by Metra of any certificate of insurance does not constitute approval or agreement that the insurance requirements have been met or that the insurance policies identified in the certificates of insurance are in compliance with such requirements.

METRA'S INSURANCE REQUIREMENTS – SPECIFIC CONDITIONS

Commercial General Liability Insurance

The coverage is to be no less restrictive than the latest filed Insurance Services Office (ISO) occurrence form.

The CGL policy shall include the following coverage limits when limits are indicated:

\$1,000,000 for completed operations & products liability
\$2,000,000 per occurrence for personal injury and advertising injury
\$1,000,000 per occurrence damage to rented premises

Automobile Liability Insurance

The Automobile policy shall include the following additional coverage limits:

Include "any" auto (i.e. all autos owned by the contractor/vendor as well as hired and non-owned autos used by the contractor/vendor and autos used by the contractor/vendors' employees while on Metra property).

\$25,000 for Medical Payments
\$1,000,000 for Property Damage (if not combined in single limit)

Workers Compensation and Employers Liability Insurance

Workers Compensation Insurance coverage should be at statutory limits and include:

- Other States Insurance
- USL&H Insurance
- Voluntary Compensation Insurance

As a minimum, the Employers Liability policy shall include coverage limits of:

\$1,000,000 for bodily injury by accident
\$1,000,000 for bodily injury by disease, each employee
\$1,000,000 aggregate liability

Exhibit 1-FPrice List – Media Relations and Public Relations Consulting Service

<u>Item</u>	<u>Description</u>	<u>Quan.</u>	<u>Unit Price</u>	<u>Exten.</u>
1.	Flat Hourly Rate for General Media Relations and Public Relations Support and Crisis Communications Management	3,300 hrs.	\$	\$

Proposers must submit their cost in the form of the above Flat Hourly Rate as per the above Description. The Flat Hourly Rate must incorporate all expenses your firm has including but not limited to retainer fees and other costs and overheads of any kind. No additional costs will be allowed outside of the above Flat Hourly Rate.

Failure to submit your cost as the above Flat Hourly Rate will deem your proposal as non-responsive to this solicitation.

Actual monthly hours may vary according to projects and time required to execute projects/tasks.

Above Quantity is an estimate of the number of hours to be used in a three year period.