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March 14, 2023

Re: Factual Findings & Disciplinary Recommendation—WC 1403 Metra Industries

Dear Honorable Mayor and members of the Board of Estimates,

On behalf of Metra Industries Inc. (“Metra”), I offer this statement of opposition to the memorandum presented by Christopher R. Lundy (“Mr. Lundy”), in his capacity as the Chief of the Minority and Women’s Business Opportunity Office (“MWBOO”) on March 8, 2023, in which he recommends disciplinary actions against Metra. The recommendation of Mr. Lundy, including but not limited to: (1) rescission of WC1403, valued at \$3,000,000, (2) disqualification of Metra’s eligibility to provide services to the city of Baltimore (the “City”) for 2 years, and (3) the payment of liquidated damages, so far exceeds any notion of reasonableness for the purported wrong actions that it hints of some underlying and alternative basis for such recommendation.

The portrayal of Metra presented by Mr. Lundy tells only parts of the story and misrepresents Metra’s history with the City and overall compliance with its MBE requirements. As a starting point, it is important to explain that history. Over the course of the past two decades, Metra has been a trusted prime contractor to the City of Baltimore assisting the City and its agencies with critical infrastructure repairs. When Baltimore’s aging water pipes break late at night, it is Metra and its subcontractors (including W/MBEs) that fix them. When fire hydrants break gushing water into the streets of Baltimore, Metra and its subcontractors fix them. In fact, the contract subject of the current dispute is for Urgent Need Water Rehabilitation and Improvements. In just the past 6 to 8 years, Metra has contracted with the City on projects worth approximately \$152,130,000. The value of these contracts indicates not only how important the City is to Metra’s business, but also how important Metra’s commitment to quality work (often performed on an emergency basis) has been to the City and its residents. Just as noteworthy however is that during that same period, Metra has utilized and subcontracted with MBEs for an approximate value of \$16,616,106.12 and with WBEs for an approximate value of \$7,813,016.12. In fact, EICCI, the only subcontractor actually named in Mr. Lundy’s recommendation, has been utilized by Metra on such contracts for an approximate value of \$3,633,000 over the same period. MBE and WBE participation has long been a cornerstone practice of Metra, which is understood and taken seriously.

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Mr. Lundy's recommendation for the City of Baltimore to suspend doing business with Metra—a long established and important prime contractor handling the critical infrastructure needs of the City—for a dispute that results from late payments owed which in the aggregate equal \$38,483.64, is at best ill-advised and will hurt the residents of Baltimore. While Mr. Lundy goes to great lengths to outline the various communications with Metra, the numbers presented in his memorandum are confusing, and muddy the factual waters. Though there is some discrepancy regarding the amounts actually owed to EICCI, which will be addressed herein, it is important to make clear that the total amount which is the basis of dispute and recommendation for the draconian punishment outlined above, is \$38,483.64 (the total of 5 separate, smaller late payments, as outlined in Mr. Lundy's memorandum). On that same contract, and prior to such payment, EICCI has been paid an amount equal to \$558,247.40. The late payments represent ~7.0% of the amounts that were earned and due to EICCI. While Metra acknowledges the need to pay all of its subcontractors, and accepts responsibility for late payment, it is important to note that the dispute represents a small percentage of the amounts actually paid to EICCI and was not the result of bad faith. Additionally, Metra, has made final payment of all amounts due and owing to EICCI under the contract, and in fact has paid amounts that were not due (to be explained further in this statement of opposition).

Metra overpaid amounts due to EICCI, but such payment has been misinterpreted by Mr. Lundy without the opportunity for explanation. During the reconciliation of its records, as requested by MWBOO, Metra acknowledged that EICCI had done work for which it had not been paid -- such amount, upon careful inspection and addition of the sum parts detailed by Metra equaled only \$38,483.64. However, due to an arithmetical error, Metra accidentally wrote in its email that \$41,974.64 was the amount. This could easily be verified by looking at the 10:41 AM Metra email of December 15, 2022 that states:

"We are paying up EICCI all open invoices we have from them on that job. Those invoices consist of

Invoice 5188 in the amount of \$3,600
Invoice 5192 in the amount of \$15,750
Invoice 5193 in the amount of \$5,328
Invoice 5198 in the amount of \$5,121
One other invoice for 1403 in the amount of \$8,684.64

The above total is \$41,974.64 and is being paid to EICCI immediately"

You will see that the above total is NOT \$41,974.64 but rather, \$38,483.64. In his memorandum, Mr. Lundy incorrectly interprets that the payment by Metra of \$43,430.64

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was indicia of its bad faith, when in fact it was due to Metra's accounting error. After having made the representation of payment of \$41,974.64, Metra's team recognized that it could either pay just the correct sum of \$38,483.64 or, alternatively, it could make an extra payment in addition to the ones listed. With the intention of paying a little more rather than a little less, a \$4,947 payment consisting purely of retainage (which was not and still is not due to EICCI) on an invoice was selected and included in such payment. As such, using this fact as a basis for punishment is misguided.

Metra concedes that it has not always made payment within the 7 day requirement of the City, and agrees to work towards rectifying that practice; however business factors, rather than bad faith were the cause of late payments to EICCI – a reality that Baltimore City, a habitual late payor on contracts should be able to empathize with. Metra acknowledges that subcontractors are entitled to timely payment on work that has been completed, and while it does not excuse its own late payments, prime contractors are similarly entitled to timely pay for work completed for the City. The City's continuous failure to make timely payments impacted Metra's cash flow and availability of capital, and its ability to make timely payment, particular during and on the heels of the Covid pandemic. Notwithstanding this reality Metra continues to be committed to the payment of all of its subcontractors, and to providing opportunities to its MBE and WBE partners.

Metra remains committed to working with MBE and WBE contractors to provide the critical infrastructure work that the City requires. Over the past two decades, Metra has provided jobs to the residents of Baltimore, has paid millions to MBE and WBE subcontractors and has provided service to the citizens of Baltimore by repairing its infrastructure during emergent circumstances. Considering this history, we request that the BOE not follow the recommendations of Mr. Lundy, and instead impose a more fair and reasonable disciplinary action.

Regards,

/s/

Venroy K. July