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To: The Board of Directors of Metra  
From: Alex Clifford, Executive Director/Chief Executive Officer  
Re: My employment with Metra and related matters  
Dated: April 3, 2013

#### Introduction and Summary

I am writing in connection with the Board's consideration of my performance as Executive Director/CEO of Metra and possible renewal of my employment agreement, which expires on February 10, 2014. Review of my performance is an agenda item for the Board Employment Practices Committee meeting scheduled for April 5, 2013.

This memo is intended only for Board member review and review by counsel for Metra. It refers to a number of legal issues. I recommend, as noted below, that the Board engage independent counsel to advise it with regard to the matters discussed. My personal counsel, Michael L. Shakman of Miller Shakman & Beem LLP, is separately communicating with counsel for Metra concerning claims I may have against Metra arising from the facts described in this memo.

This memo, however, is not written to advance my legal claims. It is intended to remind the Board of several respects in which I believe two directors, Mr. O'Halloran and Mr. Huggins, have acted improperly -- in evaluating my performance and in actions they have taken with which I have expressed disagreement. I hope the memo will serve to generate a useful discussion of the issues and lead to corrective actions. I provide several specific suggestions for corrective action by the Board.

While these are sensitive and important topics, I want to reassure the Board, and the two board members whose conduct I discuss, that I hope the matters described can be addressed without rancor. I am prepared to continue to work diligently and in good faith for Metra, pursuant to my employment agreement and applicable law, whether or not the Board ultimately decides to renew my employment agreement.

The four principal areas in which I believe corrective action by the Board is called for are these:

1. In the last year I have refused on several occasions to make employment-related decisions based upon political sponsorship or support of an employee or applicant by members of the Illinois legislature. As a result, Mr. O'Halloran and Mr. Huggins have criticized my

conduct. When I discussed one of these incidents with the entire Board in either March or April of 2012, several Board members supported my decision.

2. Mr. O'Halloran has disregarded my authority and duties under the Regional Transportation Authority Act, and under my employment agreement, by directing me to discharge members of Metra staff who are performing their duties properly and who do not warrant discharge, and by otherwise attempting to direct Metra staff and a contractor.

3. Mr. Huggins has disregarded [REDACTED] and my objections by seeking to influence certain aspects of contracting for the Englewood Flyover project. His actions appear to present serious questions under applicable law and regulations. When I objected and refused to recommend the actions he sought, he expressed resentment and on his own either directly or indirectly undertook negotiations with IHC and the community to modify subcontractors and to enter into a Memorandum of Understanding between representatives of the community and IHC, all of which are highly problematic [REDACTED]

4. I have been informed on a confidential basis that Mr. O'Halloran or Mr. Huggins, or both, have pre-selected Alex Wiggins to replace me, and I have documents that confirm this fact.

Based on these circumstances, I fear and expect further retaliation by Mr. O'Halloran and Mr. Huggins in evaluating my performance and the possible renewal of my employment agreement. Indeed, if the information I have received about the pre-selection of Mr. Wiggins is correct, the retaliation has occurred, and purported Board consideration of renewing my employment agreement is a sham. As you know, Mr. Huggins is the chair of the Employment Practices Committee assigned to consider my 2012 performance and Mr. O'Halloran is one of two other Committee members.

I address each of these matters in greater detail and suggest appropriate corrective action for the Board's consideration. By doing so, of course, I respect that the Board is ultimately responsible for addressing each of the areas where I have concerns, and is not limited to my suggestions for corrective action.

#### Four Areas of Concern and Possible Corrective Actions by the Board

1. My Refusal to Undertake Politically-motivated Employment Actions.

In March 2012 Sam Smith of Metra's Governmental Affairs Department and I, along with then Acting Chairman Huggins, met with legislators in Springfield to discuss Metra needs. In a meeting with Representative Luis Arroyo and members of the Latino caucus, Representative Arroyo said he understood that Metra had a deputy position open and asked if I would hire someone for that position recommended by his caucus. I told him that Metra would follow its normal hiring procedures. I later discussed the request with Mr. Huggins, who told me that he agreed with Representative Arroyo's request.

As you know, the Regional Transportation Act expressly states that no term or aspect of employment should be "based on political reasons or factors." In either the March or April 2012 Board Executive Session I described the Arroyo request to the Board. Several members said that I should not give in to that sort of political pressure. Mr. Huggins repeated that he did not have any objection to Representative Arroyo's request.

In about March of 2012, according to Mr. Smith, Tom Cullen, one of Metra's lobbyists in Springfield, called Mr. Smith and said that House Speaker Michael Madigan would like Patrick Ward, a Metra employee, to receive a pay increase. Mr. Madigan also reportedly requested that another individual receive a job with Metra. I did not implement Mr. Madigan's requests and directed Mr. Smith not to respond to Mr. Cullen or Mr. Madigan with regard to the requests.

Mr. Ward apparently continued to lobby Speaker Madigan, because on September 7, 2012 Mr. Huggins told me that he had heard from Speaker Madigan that Speaker Madigan wanted Patrick Ward to receive a pay increase. I told Mr. Huggins that I could not accede to that request under the law. An argument with Mr. Huggins ensued over my failure to do so.

After this conversation I asked Mr. Ward why I was getting pressure from Speaker Madigan with regard to his salary. Mr. Ward said that his family had supported Mr. Madigan for many years and worked on his political campaigns. He said that he had discussed his Metra employment with Mr. Madigan at a Madigan political event, where he told Mr. Madigan that he felt underpaid. I told Mr. Ward that his conduct in this regard was inappropriate. (A subsequent review of the report of Mr. Ward's political contributions on the website of the Illinois Board of Elections indicates that Mr. Ward made at least 39 political contributions totaling \$17,375, more than half of which were to Mr. Madigan's 13th Ward Democratic Organization or to Mr. Madigan's daughter's campaign funds.<sup>1</sup>) Subsequently, Mr. Ward resigned to work for another governmental entity.

More recently, when I asked Mr. O'Halloran about the status of discussions to consider renewing my employment contract, he told me that he needed to arrange a meeting with Speaker Madigan to assess "what damage I have done" to Metra and its future funding by my refusal to accede to Speaker Madigan's requests.

Corrective Action: Messrs. O'Halloran and Huggins' injection of political favoritism in Metra employment matters, and stated intention to sanction me for not going along, are wrong and contrary to law. My compliance with the law should not prejudice the evaluation of my performance as Executive Director/CEO. The Board should consider giving appropriate direction to the two Board members who disregarded the no-political-consideration rule, and should reaffirm Metra's commitment to non-political employment decisions, as required by law.

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<sup>1</sup> See:

<http://www.elections.il.gov/CampaignDisclosure/ContributionsSearchByAllContributions.aspx>

It appears clear that a principal reason that Mr. O'Halloran and Mr. Huggins have concluded that I must go is that I have not acceded to requests for unlawful politically-motivated employment actions. Further suggestions for corrective action are discussed below.

2. My Opposition to Mr. Halloran's Efforts to Direct the Discharge of Metra Employees

The Regional Transportation Act clearly describes my duties and responsibilities as Executive Director:

The Executive Director shall appoint, retain and employ officers, attorneys, agents, engineers, employees and shall organize the staff, shall allocate their functions and duties, fix compensation and conditions of employment, and consistent with the policies of and direction from the Commuter Rail Board take all actions necessary to achieve its purposes, fulfill its responsibilities and carry out its powers, and shall have such other powers and responsibilities as the Commuter Rail Board shall determine. [70 ILCS 3615/3B.05,]

My employment agreement states that I am employed as Executive Director "to perform the duties specified in Section 3615/3B.05 . . ."

Despite this clear allocation of responsibility for employment decisions to me as Executive Director, Mr. O'Halloran told me on January 11, 2013 that [REDACTED] and [REDACTED] that he wanted a new [REDACTED] and that I should discharge [REDACTED]. I told Mr. O'Halloran that hiring and firing employees is my responsibility and that I disagreed with his conclusions. Mr. Wiggins told me that a few days later Mr. O'Halloran made the same request to him to fire [REDACTED]. To my knowledge, the Board had not made a decision that these two individuals should be terminated, even if that were a matter for the Board to decide.

Mr. O'Halloran has also contacted Robert Carlton, Metra's Chief Marketing and Communications officer, and given him directions related to marketing matters. Mr. O'Halloran has also communicated regularly with Mack Communications, Metra's public relations consultant, to give that firm directions concerning Metra's public relations efforts. As the Board knows from prior discussions, I have no objection to Board members contacting staff to ask for information, but under my employment agreement and the RTA Act, all directions to employees and contractors should come from me, not from individual Board members.

Corrective Action: The provision of the Regional Transportation Act quoted above entrusts employment decisions to the Executive Director and states that the decisions should be "consistent with the policies of and direction from the Commuter Rail Board . . ." Under that provision, the Board may wish to consider establishing policies for when and in what manner Board members will be involved in reviewing the performance of employees who report to the Executive Director. The Board may also wish to formulate directions for how I should respond to such evaluations.

But in the absence of action by the Board that meets the standards of the Act, it is wrong for Mr. O'Halloran or others to attempt to override the authority vested in me by the Act and by my employment Agreement.

I should not be adversely affected in the evaluation of my performance as Executive Director because I have not acceded to Mr. O'Halloran's views concerning these two employees, where such matters are entrusted to me and not to him. Further suggestions for corrective action are discussed below.

3. My Opposition To Inappropriate  
Metra Contracting Practices

As noted above, Mr. Huggins has disregarded [REDACTED] and my objections by seeking to influence certain aspects of contracting for the Englewood Flyover project. His actions appear to present serious questions under applicable law and federal regulations. When I objected and refused to recommend the actions he sought, he expressed resentment and proceeded on his own to undertake negotiations to modify the subcontractor arrangements worked out by the low bidder for the Englewood Flyover project, IHC. Mr. Huggins told me that he would not allow the Metra Board to award the contract until the African American sub-contractor content comes up to at least \$10 million.

As the Board knows, the Englewood Flyover project involves construction of a rail bridge that will carry the Metra Rock Island tracks over a set of tracks used by Amtrak and freight trains at 63rd and State. Metra is the lead for managing the construction of this federal-state-railroad project and for letting a contract for over \$90 million in work.

In order to encourage maximum disadvantaged business participation in this project, a goal I personally support, under my direction Metra has worked with the Englewood community, local elected officials, IDOT and the Federal Railroad Administration to encourage such participation. We held seven DBE outreach events in Englewood to provide details on the project to potential DBE firms and to seek to qualify them to be ready to work with the potential prime contractors that could bid on the project. Metra hired a consultant to coordinate our outreach efforts. Combined with the outreach efforts done by CREATE's design consultant, nearly \$300,000 was spent on outreach to the Englewood community. We also worked with IDOT to include an apprenticeship program that could provide additional job opportunities for Englewood residents, as well as other job-seekers, as apprentices on the project.

Despite these efforts, when bids were received, the lowest bidder, IHC (at \$93 million) had more than 25% DBE participating, but only \$112,000 in subcontracts to one African-American contractor. This angered Mr. Huggins, who asked me to terminate the contract or put pressure on the low bidder to change DBE subcontracts to involve more African American firms.

[REDACTED]

Although the IHC contract was ready to go to the Board for award in May 2012, Mr. Huggins would not allow it to go on agenda. In June and July 2012, in advance of the regular Board meetings, I urged Mr. Huggins to allow me to place the award on the agenda. Mr. Huggins refused. Finally, he organized a special Board meeting for July 16, 2012 to approve the award. Nothing substantial in staff's report or the DBE goals or DBE content changed between May and July. But in the interval, Mr. Huggins and community representatives were successful in putting enough pressure on IHC that it finally agreed to an Memorandum of Understanding with "the community" that IHC would add a significant number of additional African American sub-contractors.

After the contract was awarded to IHC Mr. Huggins apparently undertook his own additional efforts to generate a subcontract for more African American participation in the project via some sort of project oversight contract. He told me that he had been in touch with Congressman Bobby Rush and that he had arranged with Congressman Rush or his staff for Metra to pay a third party \$50,000 for services related to the Englewood Flyover.

I told Mr. Huggins that I would not support authorizing the expenditure without Board approval, including a statement of the scope of work and other information. I asked our staff to write a report to the Board about the proposed arrangement that Mr. Huggins had negotiated. That report was sent to Mr. Huggins to confirm that it accurately reflected the deal he had negotiated. He wanted the report recast so that references to his role were deleted and the contract would appear to be the result of my efforts. I refused. Ultimately, the contract for the proposed arrangement was apparently abandoned.

Corrective Action: It is not appropriate for individual Board members, however well intentioned they may be, to undertake direct negotiations with bidders to change the subcontracting makeup to promote more African American participation, [REDACTED]

It also seems inadvisable to have an individual Board member negotiate with a Congressman or his staff over specific vendor arrangements for Metra to purchase third-party services. Metra's contracting procedures are subject to many legal requirements. Informal efforts of the sort Mr. Huggins undertook, even if in good faith, risk non-compliance with those requirements. There is also nothing of which I am aware to suggest that the Board allocated such authority to any individual Board member.

My efforts to comply with the legal requirements that apply to contracting for the Englewood Flyover, and my resistance to Mr. Huggins efforts to respond to the unfortunately low level of African American sub-contractor participation, caused him to view me as an obstructionist. My duties as Executive Director, however, required that I take the positions that I did, [REDACTED]. I should not be prejudiced in terms of the evaluation of my performance and possible renewal of my employment agreement because of these actions. Please see my additional suggestions for corrective action below.

4. Mr. Huggins and Mr. O'Halloran have decided to replace me, and have apparently made decisions on that subject that are the responsibility of the full Board.

I have been told on a confidential basis that Mr. O'Halloran and Mr. Huggins have told Mr. Wiggins that he will replace me as Executive Director of Metra when my employment terminates and I have documents that confirm this fact. As noted above, I am informed that Mr. O'Halloran and Mr. Huggins have also said that I must go for not complying with Speaker Madigan's requests for politically-motivated employment actions, which Mr. O'Halloran and Mr. Huggins may believe will result in Metra losing future funding. (In a conversation with Mr. Wiggins, he has denied any knowledge of a plan for him to replace me. In view of all the circumstances, I have decided to suspend my scheduled review of his performance so as to avoid any suggestion, should I have negative comments, that they are personally motivated.)

In 2012, the evaluation of my employment was conducted by the full Board. This year, the Board established a committee to conduct the evaluation. The committee consists of Chairman O'Halloran, Mr. Huggins and Vice-Chairman Partelow. The actions by Messrs. O'Halloran and Huggins described above reflect a bias on their part that makes it inappropriate for them to be involved in my evaluation or in voting on renewal of my employment agreement.

I welcome a fair performance evaluation. But I am concerned that an "evaluation" controlled by Mr. O'Halloran and Mr. Huggins will lead to unfair assessment designed to provide a pretext not to renew my employment contract.

Corrective actions:

(a) I ask that, however the Board decides to conduct its initial evaluation of my performance, whether by a committee or the full Board, the evaluation be conducted by independent, unbiased Board members, and not include Messrs. O'Halloran and Huggins. I also recommend that the evaluation be conducted by the full Board, as it was last year.

(b) I ask that Mr. O'Halloran and Mr. Huggins recuse themselves from voting upon renewal of my employment agreement, and if they decline to do so that the full Board address whether they should participate in light of the positions that they have taken on issues discussed in this letter and my opposition to their actions.

(c) Because all of the matters discussed above that have generated disagreement between me, on the one hand, and Messrs. O'Halloran and Huggins, on the other, relate to my efforts to implement Metra policy and programs in accordance with legal requirements, I suggest that the Board retain independent, outside counsel to advise it with regard to Messrs. O'Halloran's and Huggins' conduct, if they contend it was not unlawful, and in any case to advise on the process to be used to evaluate my performance and to determine whether to renew my employment agreement.

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I submit this memo in the hope that it will permit the Board to address the issues discussed in a way that takes account of Metra's needs and legal obligations and that is also fair to me. I am willing to cooperate with the Board in any way consistent with the best interests of Metra, with my employment agreement and with applicable law.

It would be very unfortunate if someone who was hired to run Metra in accordance with the law after a major scandal were to be terminated because he did not play ball with politicians seeking political hiring, or go along with manipulating Metra contracts contrary to legal requirements.

I respectfully ask that the Board support me in my decisions over the past two years to resist political patronage practices and to follow the law applicable to contracting. We have come a long way together to put the crisis of 2010 behind us. As you know, we still have much to do. Let's continue to work together to overcome the challenges ahead.

cc: Theresa Barnett  
Iain Johnston  
Andrew Greene