



**ITASCA COUNTY
REGIONAL RAILROAD AUTHORITY**

Itasca County Courthouse
123 NE 4th Street
Grand Rapids, MN 55744
(218) 327-2847



Tuesday, September 14, 2021

2:00 PM

Itasca County Boardroom

FINAL

REGULAR SESSION MINUTES

I. CALL TO ORDER

Vice-Chair Snyder called the meeting to order at 2:00 PM.

Attendee Name	Title	Status	Arrived
Davin Tinquist	District #1	Present	2:00 PM
Terry Snyder	District #2	Present	2:00 PM
Leo Trunt	District #3	Present	2:00 PM
Burl Ives	District #4	Absent	
Ben DeNucci	District #5	Present	2:00 PM

II. ADDITIONS/CORRECTIONS TO THE AGENDA

Motion To: Approve the agenda, as presented.

RESULT:	APPROVED (4 TO 0)
MOVER:	Commissioner Leo Trunt
SECONDER:	Commissioner Davin Tinquist
AYES:	Davin Tinquist, Terry Snyder, Leo Trunt, Ben DeNucci
ABSENT:	Burl Ives

III. APPROVE OF MINUTES

Motion To: Approve the minutes of the Tuesday, August 10, 2021 Regional Railroad Authority meeting.

RESULT:	APPROVED (4 TO 0)
MOVER:	Commissioner Ben DeNucci
SECONDER:	Commissioner Davin Tinquist
AYES:	Davin Tinquist, Terry Snyder, Leo Trunt, Ben DeNucci
ABSENT:	Burl Ives

IV. DISCUSSION / INFORMATIONAL

1. Brush Cutting Contract

Motion To: Award a contract for brush cutting on the ICRRRA tracks to the lowest responsible quote, Northern Plains Rail Service, in the amount of \$4,898.44 and authorize the necessary signatures.

RESULT:	APPROVED (4 TO 0)
MOVER:	Commissioner Leo Trunt
SECONDER:	Commissioner Ben DeNucci
AYES:	Davin Tinquist, Terry Snyder, Leo Trunt, Ben DeNucci
ABSENT:	Burl Ives

2. Car Storage Update

County Engineer Karin Grandia and Rail Consultant Dave McKenzie provided a Car Storage Update.

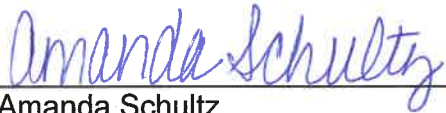
RESULT:**INFORMATIONAL - NO ACTION TAKEN**

3. Project Update

No project update provided.

V. ADJOURN

Vice-Chair Snyder adjourned the meeting at 2:19 PM.

ATTEST

Amanda Schultz
Deputy Clerk of the County Board



Burl Ives
Chair, Regional Railroad Authority



September 14, 2021

Chair:

PULL: None

ADDITIONS: None

CHANGES: None

INFORMATIONAL:

1. Item #4.2 – Additional Information

Amanda



**ITASCA COUNTY
REGIONAL RAILROAD AUTHORITY**

Itasca County Courthouse
123 NE 4th Street
Grand Rapids, MN 55744
(218) 327-2847



Tuesday, August 10, 2021

2:00 PM

Itasca County Boardroom

DRAFT

REGULAR SESSION MINUTES

I. CALL TO ORDER

Chair Ives called the meeting to order at 2:12 PM.

Attendee Name	Title	Status	Arrived
Davin Tinquist	District #1	Present	2:12 PM
Terry Snyder	District #2	Present	2:12 PM
Leo Trunt	District #3	Present	2:12 PM
Burl Ives	District #4	Present	2:12 PM
Ben DeNucci	District #5	Present	2:12 PM

II. ADDITIONS/CORRECTIONS TO THE AGENDA

Motion To: Approve the agenda, as presented.

RESULT:	APPROVED (5 TO 0)
MOVER:	Commissioner Terry Snyder
SECONDER:	Commissioner Leo Trunt
AYES:	Davin Tinquist, Terry Snyder, Leo Trunt, Burl Ives, Ben DeNucci

III. APPROVE OF MINUTES

Motion To: Approve the minutes of the Tuesday, July 13, 2021 Regional Railroad Authority.

RESULT:	APPROVED (5 TO 0)
MOVER:	Commissioner Davin Tinquist
SECONDER:	Commissioner Leo Trunt
AYES:	Davin Tinquist, Terry Snyder, Leo Trunt, Burl Ives, Ben DeNucci

IV. DISCUSSION / INFORMATIONAL

1. Project Update

County Engineer Karin Grandia provided information regarding meetings with Mesabi Metallica and their railroad needs within Itasca County, as well as information regarding current rail car storage needs.

RESULT:	INFORMATIONAL - NO ACTION TAKEN
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V. ADJOURN

Chair Ives adjourned the meeting at 2:19 PM.

ATTEST

Amanda Schultz
Deputy Clerk of the County Board

Burl Ives
Chair, Regional Railroad Authority



**ITASCA COUNTY
REGIONAL RAILROAD AUTHORITY**

Itasca County Courthouse
123 NE 4th Street
Grand Rapids, MN 55744

IV.1.

Tuesday, September 14, 2021

REQUEST FOR BOARD ACTION: RBA-2021-1779

DEPARTMENT: Transportation

TIME REQUESTED: < 5 Minutes

PRESENTER: Karin Grandia

AGENDA ITEM:

Brush Cutting Contract

BOARD ACTION REQUESTED:

Award a contract for brush cutting on the ICRRA tracks to the lowest responsible quote, Northern Plains Rail Service, in the amount of \$4,898.44 and authorize the necessary signatures.

BACKGROUND:

The ICRRA owns 14 miles of track built to serve the new taconite plant in Nashwauk, MN. The track was built in 2010 and has not been operated except for car storage. The road and tracks need to have the brush cut before it grows any larger and the weed sprayed. Quotes were solicited for both services. Two quotes were received for the brush cutting and only one for the weed spraying. The results are attached. The low quote for the brush cutting is reasonable and I recommend approval. At this time, I recommend that no quotes are awarded for the weed spraying since the only quote was too high. We plan to reach out for new weed spraying quotes next spring.

SUPPORTING DOCUMENTATION:

1. Bid Tabulation
2. Northern Plains Service Contract - Brush Cutting

RESULT:	APPROVED (4 TO 0)
MOVER:	Commissioner Leo Trunt
SECONDER:	Commissioner Ben DeNucci
AYES:	Davin Tinquist, Terry Snyder, Leo Trunt, Ben DeNucci
ABSENT:	Burl Ives

2021 Bid Tabulation								
Brush Cutting/Weed Spraying								
Itasca County Regional Railroad Authority								
27-Aug-21								
Item	Unit	Quantity	Engineer's Est		Northern Plains RR		North Shore Track	
			Unit Price	Total	Unit Price	Total	Unit Price	Total
Brush Cutting	Acre	60.40	\$85.00	\$5,134.00	\$81.10	\$4,898.44	\$634.08	\$38,298.43
Weed Spaying	Acre	60.40	\$75.00	\$4,530.00	N/A		\$125.58	\$7,585.03
Hand Weed Spraying	Acre	1.12	\$300.00	\$336.00	N/A		\$411.26	\$460.61
Total				\$10,000.00		\$4,898.44		\$46,344.08

County of Itasca, Minnesota

Service Contract

A.1 DATES AND PARTIES

A.1.1 THIS CONTRACT, made this ____ day of _____, 20____, by and between the County of Itasca, herein called the “County,” and Northern Plains Rail Services, a corporation organized and existing under the laws of the State of Minnesota, herein called the “Vendor.”

B.1 AGREEMENT

B.1.1 NOW, THEREFORE, it is mutually agreed that, in consideration of the payments to be made to said Vendor, subject to the conditions, hereinafter set forth, the County shall purchase services from said Vendor, upon terms and at the agreed price(s), and the Vendor shall perform said services all in accordance with the specifications of County as set forth in the Special Conditions of this Agreement.

C.1 TERM OF CONTRACT

C.1.1 The term of this Contract is from September 15, 2021 to October 15, 2021, inclusive. The Contract may be extended if provided for in the Special Conditions.

D.1 SPECIAL CONDITIONS

D.1.1 This Contract is subject to such special conditions as are set forth in the Special Conditions Supplement attached hereto and made a part hereof and marked Exhibit(s): A.

E.1 CONTRACT AMOUNT

E.1.1 This Agreement when fully completed and fulfilled on the part of said Vendor to the satisfaction of the County or its duly authorized agent, is estimated to be **\$4,989.44** for the current term.

F.1 INCREASE

F.1.1 No increases to the above said Contract amount will be allowed to the Vendor during the term of this Contract unless provided for in the Special Conditions or mutual agreement of the parties.

G.1 PAYMENT

- G.1.1 The County does hereby agree, to pay said Vendor as services are performed to the satisfaction of the County, or its duly authorized agent, Karin Grandia payments monthly, or as indicated in the Special Conditions. Payment terms of this Contract are Net 30.

H.1 GUARANTEE

- H.1.1 The Vendor further agrees to guarantee all materials and parts supplied under this Contract against inferiority as to specifications, such guarantee to be unconditional. Failure or neglect of the County or its designated representative to require compliance with any term or condition of this Contract or the specifications shall not be deemed a waiver of such term or condition.

I.1 BOND

- I.1.1 Minnesota Statute 574.26 requires the vendor to furnish a Performance Bond and a Labor & Materials Payment Bond in the full amount, for any contract over \$75,000, in favor of the County, to protect the County against any breach of contract. The Surety Company providing the bond(s) must be registered to do business in the State of Minnesota and be satisfactory to the County.

J.1 INSURANCE

- J.1.1 The following insurance must be maintained for the duration of this Contract. A Certificate of Insurance for each policy which lists Itasca County as a certificate holder and as an additional insured must be on file with the Itasca County Transportation Department within 10 days of execution of this Contract and prior to commencement of any work under this Contract. Each certificate must include a 30-day notice of cancellation, nonrenewal, or material change to all named and additional insureds.
- J.1.2 The County reserves the right to terminate, suspend or rescind any contract not in compliance with these requirements and retains all rights thereafter to pursue any legal remedies against Contractor. All insurance policies shall be open to inspection by the County, and copies of policies shall be submitted to the County upon written request. All subcontractors shall provide evidence of similar coverage.

J.1.3 Commercial General Liability Insurance or Railroad Liability Insurance

J.1.3.1

	<u>Limit</u>
General Aggregate	\$10,000,000
Products-Completed	
Operations Aggregate	\$10,000,000
Personal and Advertising Injury	\$ 5,000,000
Each Occurrence:	
Combined Bodily Injury and Property Damage	\$ 5,000,000

J.1.3.2 Policy shall specifically note that any 50 foot Contractual Liability Exclusion has been removed from the Commercial General Liability insurance policy. If the Contractual Liability Exclusion has not been removed, then in addition to the above, provide Railroad Protective Liability insurance, providing bodily injury, including death, personal injury and property damage coverage with a limit of not less than \$5,000,000 for each incident and \$10,000,000 in the aggregate is required. This insurance shall contain a Broad Form Liability covering the indemnity provisions in this agreement. If coverage is purchased on a “claims made” basis it shall provide for at least a one year extended reporting or discovery period, which shall be invoked should insurance covering the time period of this Agreement be cancelled, unless replaced with a policy containing the same retroactive date as the policy being replaced.

J.1.3.3 Policy shall include at least premises, operations, completed operations, independent contractors and subcontractors, and contractual liability.

J.1.3.4 Itasca County and Itasca County Regional Rail Authority **must be named as certificate holders and as additional insured.**

J.1.4 Automobile Liability Insurance

J.1.4.1

	<u>Limit</u>
Automobile Liability - Combined single limit each occurrence for bodily injury and property damage covering owned, non-owned and hired automobiles	\$1,500,000

J.1.4.2 Must cover owned, nonowned and hired vehicles.

J.1.5 Workers' Compensation Per Statutory Requirements

J.1.5.1 Vendor must maintain statutory limits. Itasca County reserves the right to rescind any contract not in compliance with these requirements and retains all rights thereafter to pursue any legal remedies against bidder. If the Contractor is based outside the State of Minnesota, coverage must apply to Minnesota laws.

J.1.6 Employer's Liability

	<u>Limit</u>
J.1.6.1 Bodily injury by:	
Accident - Each Accident	\$500,000
Disease - Policy Limit	\$500,000
Disease - Each Employee	\$500,000

J.1.7 Indemnification Clause

J.1.7.1 Except as may be caused by the sole negligence of the County or its employees, Contractor shall indemnify and save harmless Itasca County, its employees, and its agents from all claims, actions, demands, and judgments of any kind arising in whole or in part from any act or omission of Contractor, its subcontractors, and their agents, servants, or employees, incidental to the performance of the Contract and from all expenses in connection with such claims, actions, demands and judgments, and shall assume, without expense to the County, the defense of any such claims, actions, demands and judgments, irrespective of whether it is alleged, claimed, or proved in connection with such act or omission that negligence of the County or its representatives caused or contributed thereto.

J.1.7.2 Contractor agrees, that in order to protect itself and the County under the indemnity provisions set forth above, it will at all times during the term of this Agreement keep in force policies of insurances indicated in paragraph entitled, "INSURANCE."

J.1.7.3 This provision is not intended to create any cause of action in favor of any third party against the Contractor or the County or to enlarge in any way the Contractor's liability, but it is intended solely to provide for indemnification of the County from liability for damages or injuries to third persons or property arising from the Contractor's or the Contractor's agents' performance hereunder.

The above establishes minimum insurance requirements. It is the sole responsibility of Vendor to determine the need for and to procure additional coverage that may be needed in connection with this Agreement.

Vendor further agrees the minimum requirements set forth above shall at all times be in an amount at least equal to the maximum liability of the County under Minn. Stat. 466.04 now or as said statute is hereafter amended or as otherwise required by law, statute or rule.

K.1 UNAVOIDABLE CIRCUMSTANCES

K.1.1 The Vendor shall not be held responsible for damages caused by delay or failure to perform hereunder, when such delay or failure is due to Fires, Strikes, Acts of God, Legal acts of the public authorities, or delays or defaults caused by public carriers, or acts or demands of the Government in time of war or national emergency.

L.1 RIGHT TO TERMINATE

L.1.1 County reserves the right to terminate this Contract immediately, at any time during the contract period for failure of Vendor to perform as specified in the Special Conditions, or to the reasonable satisfaction of County, upon notification to Vendor.

M.1 ASSIGNMENT

M.1.1 Vendor shall not enter into any subcontract for performance of any services contemplated under this Contract, nor assign any part of this Contract, without the prior written approval of the County and subject to such conditions and provisions as the County may deem necessary. The Vendor shall be responsible for the performance of all subcontractors.

N.1 INDEMNIFICATION

N.1.1 Vendor shall indemnify, hold harmless and defend the County, its officers and employees against any and all liability, loss, costs, damages, expenses, claims or actions, including attorney's fees which the County, its officers or employees may hereafter sustain, incur or be required to pay, arising out of or by reason of any act or omission of Vendor, its agents, servants or employees, in the execution, performance, or failure to adequately perform Vendor's obligations pursuant to this Contract.

O.1 COMPLIANCE WITH LAWS

O.1.1 Vendor shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted

pertaining to this Contract or to the facilities, programs and staff for which Vendor is responsible.

P.1 RECORDS AUDITING AND RETENTION

P.1.1 Vendor's books, records, documents, papers, accounting procedures and practices, and other evidences relevant to this Contract are subject to the examination, duplication, transcription and audit by the County and either the legislative or State Auditor, pursuant to Minn. Stat. § 16C.05, subd. 5. Such evidences are also subject to review by the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Contract. Vendor agrees to maintain such evidences for a period of six (6) years from the date services or payment were last provided or made or longer if any audit in progress required a longer retention period.

Q.1 WAIVER

Q.1.1 Any waiver by either party of any provision of this Contract shall not imply a subsequent waiver of that or any other provision.

R.1 MODIFICATIONS/AMENDMENT

R.1.1 Any alterations, variations, modifications, amendments or waivers of the provisions of this Contract shall only be valid when they have been reduced to writing, and signed by authorized representative of the County and Vendor.

S.1 SEVERABILITY

S.1.1 The provision of this Contract shall be deemed severable. If any part of this Contract is rendered void, invalid, or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Contract unless the part or parts which are void, invalid or otherwise unenforceable shall substantially impair the value of the entire Contract with respect to either party.

T.1 FINAL AGREEMENT

T.1.1 This Contract is the final expression of the agreement of the parties and the complete and exclusive statement of the terms agreed upon, and shall supersede all prior negotiations, understandings or agreements. There are no representations, warranties, or stipulations, either oral or written, not herein contained.

U.1 EXECUTION

U.1.1 IN WITNESS WHEREOF, the County has caused this Contract to be signed by its duly authorized officers and the Vendor has hereunto set its hand.

Dated this _____ day of _____, _____.

(Vendor Name)

COUNTY OF ITASCA, MINNESOTA

By: _____
Its _____

By: _____
Its _____

EXHIBIT A

Special Condition Supplement

ICRRA Track and Service Road Brush Cutting

Description of Work:

The Itasca County Regional Railroad Authority (ICRRA) owns 14 miles of track built to serve the new taconite plant in Nashwauk MN. The track was built in 2010 and is has not operated except for car storage for 8 years. The area was brush cut in 2019. The system needs to be brush cut.

The track was built with a service road along one or both sides of the track. The service road extends 25 feet from the centerline of the track. In areas where there is a service road on one side, the roadway extends 12 feet from the centerline of track. The track does not have active train service.

The proposal is to cut the existing brush for a width of 26 feet from the centerline of track where a service road is present and 13 feet where no service road is present plus between all tracks. (One foot beyond the subballast.) The Contractor shall have the option of using on track or off track equipment. Only rubber tired vehicles or hi-rail equipment will be permitted to cross the tracks. Brush shall be cut within 6 inches of the ground.

There is a locked security gate at about Station 244+00 which can be opened when needed for access with 24 hour notice. Access to the tracks inside the security gate and the Upper yard tracks (the plant area) will be available through the main plant security gate on the north side of the plant (Old County Road 58). Access for the west end of the project is available from County Road 7 and the Heavy Haul Road.

ICRRA is currently storing 94 open top gondola cars on the western end of the track (Track 2 in the interchange yard and the main spur in the interchange yard). The cars will remain in place and the Contractor will hand cut near the cars.

Payment will be made on a unit price basis as outlined on the attached quote from Northern Plains Rail Service.

**2021 Brush Cutting/Weed Spraying Project
Itasca County Regional Railroad Authority
Nashwauk MN**

August 2021

BID FORM

Item	U/M	Quantity	Unit Price	Total
Brush Cutting	ACRE	60.40	\$81.10	\$4,898.44
Weed Spraying	ACRE	60.40	N/A	N/A
Hand Weed Spraying	ACRE	1.12	N/A	N/A
Total				\$4,898.44

Quantities are estimated and payment will be made on actual areas completed.

Schedule: 3 Days End of September

Proposed Chemicals: N/A

Contractor: Complete Track Works, Inc.
dba Northern Plains Rail Services

By: 
Jerry Hegstrom

Title: Director Track Construction and Maintenance Services

Date: 08/27/2021



**ITASCA COUNTY
REGIONAL RAILROAD AUTHORITY**

Itasca County Courthouse
123 NE 4th Street
Grand Rapids, MN 55744

IV.2.

Tuesday, September 14, 2021

REQUEST FOR BOARD ACTION: RBA-2021-1781

DEPARTMENT: Transportation

TIME REQUESTED: 5 Minutes

PRESENTER: Karin Grandia, Dave McKenzie

AGENDA ITEM:

Car Storage Update

BOARD ACTION REQUESTED:

Informational

BACKGROUND:

The ICRRA owns 14 miles of track built to serve the new taconite plant in Nashwauk, MN. The track was built in 2010 and has not operated except for car storage, which has been taking place since July of 2018. There have been as many as 406 train cars stored here, generating revenue for the rail authority to offset insurance and maintenance costs on the rail. Progress Rail is currently storing 94 cars on the site. They have indicated that those cars, or a portion of those cars, may be moved shortly.

Northern Plains Rail Service has worked with the Rail Authority in the past. They have done our track inspections and minor track maintenance work over the last few years. An informational sheet on Northern Plains Rail Service is attached outlining the services they provide. They have a current office in Hibbing and have 12 employees working from that location. They have indicated interest in storing some cars at the site and a draft agreement has been developed for review. This agreement still needs some edits and has not been reviewed by the County Attorney's office. It is based off of the current agreement with Progress Rail and has been edited to meet the proposed use.

Items for the Rail Authority to consider are types of cars allowed to be stored and rates to be charged.

SUPPORTING DOCUMENTATION:

1. NP General Summary E brochure
2. RAA Car Storage - Draft Agreement

RESULT:

INFORMATIONAL - NO ACTION TAKEN

NORTHERN PLAINS RAIL SERVICES

“STRONG RAILROADERS – VIBRANT CUSTOMERS”

Whether your company requires track construction, maintenance, or inspection services; or are in need of locomotives or rail car repairs – Northern Plains Rail Services can help. We also perform industrial switching, can operate short line railroads and trans-loading sites, and can provide general consulting services. We are your one stop shop for third-party rail services. We're passionate about railroading and our customers. We look forward to putting our commitment to safety, service, and quality to work for you.

Track Design, Maintenance and Construction Services

At Northern Plains Rail Services we offer unparalleled service in every step of track construction and maintenance.

New Construction:

- Subgrade, Drainage, Roadways
- Industrial Sidings and Trackage
- Main Line Trackage and sidings
- Switches and Turnouts | Diamonds
- Public Crossings

Track Inspection, Maintenance and Repair:

- Regular Track Inspection Services
- Emergency or Routine Repair and Maintenance
- Rail Change Outs, Broken Rail Repair
- Repairs to Switch Components
- Cross-tie Installation and Surface Replacement

Track Rehabilitation:

- Reconstruction and Removal of Track
- Thermite Welding and Profile-rail Grinding
- Reconditioning Turnouts, Switch Points and Welding Switch Frogs

Rail Car and Locomotive Repair Facilities

We understand that a railroad only runs as smoothly as the cars it deploys. Whether your rail car fleet or locomotives need repairs, maintenance, cleaning, or sandblasting and painting, our AAR-certified repair facilities provide quality workmanship and timely service.

North Dakota Facilities:

- Fordville – Mobile Car Repair Center and Locomotive Repair Shop
- Lansford – Locomotive and Mobile Rail Car Repair Center
- Grand Plains Rail Center, Grand Forks – Under development, full car repair services, transload, rail car storage, switching

Minnesota Facilities:

- Erskine – Full Service Rail Car Repair Facility
- Randolph – Car Repair Track and Mobile Service Truck

Alberta Facilities:

- Camrose – Mobile Rail Car and Locomotive Repair Service Headquarters
- Lamont – Car Repair Track, access via CN

Manitoba Facilities:

- Manitou – Car Repair Track and Mobile Rail Car Repair

Need a Locomotive?

NPRS can source locomotives for industrial and short line customers, and qualify for service. We are committed to safety, quality, and ensuring the right locomotive for the right use. We also provide short term locomotive and rail car mover leasing.

Industrial Switching

We offer high quality contract in-plant switching services, standing by our commitment to safety in all that we do. We collaborate and communicate daily to meet the specific logistic needs of our valued customers. We offer a turn-key service that includes supervision, qualified personnel, equipment, insurance and administration necessary to meet production, safety and regulatory needs. Our services are available throughout the US Midwest and western Canada.

Training Services and Safety Management Consulting

NPRS offers rail safety, operating rules, and technical training for short line and industrial rail operations.

In Canada, Canadian Heartland Training Railway Services offers customized rail training packages, e-learning options, and practical training on live railway trackage. CHTRS also offers safety auditing and safety management systems development and consulting. See www.chtr.ca or call 403.466.3359 for further information.

Rail Car Storage

Northern Plains can offer strategic and competitively priced rail car storage solutions on its lines in North Dakota and Minnesota, and together with its alliance partners, Alberta Midland Railway Terminal, Alberta Prairie Railway, and Boundary Trail Railway.

Contact

For further information on our services please contact:

Ted Jakubiak

Cell: 847-971-8071

ted_jakubiak@nprail.com



NORTHERN PLAINS RAIL COMPANIES
P.O. Box 38, Fordville, North Dakota
Toll Free: 1.855.5.NPRAIL

WWW.NPRAIL.COM

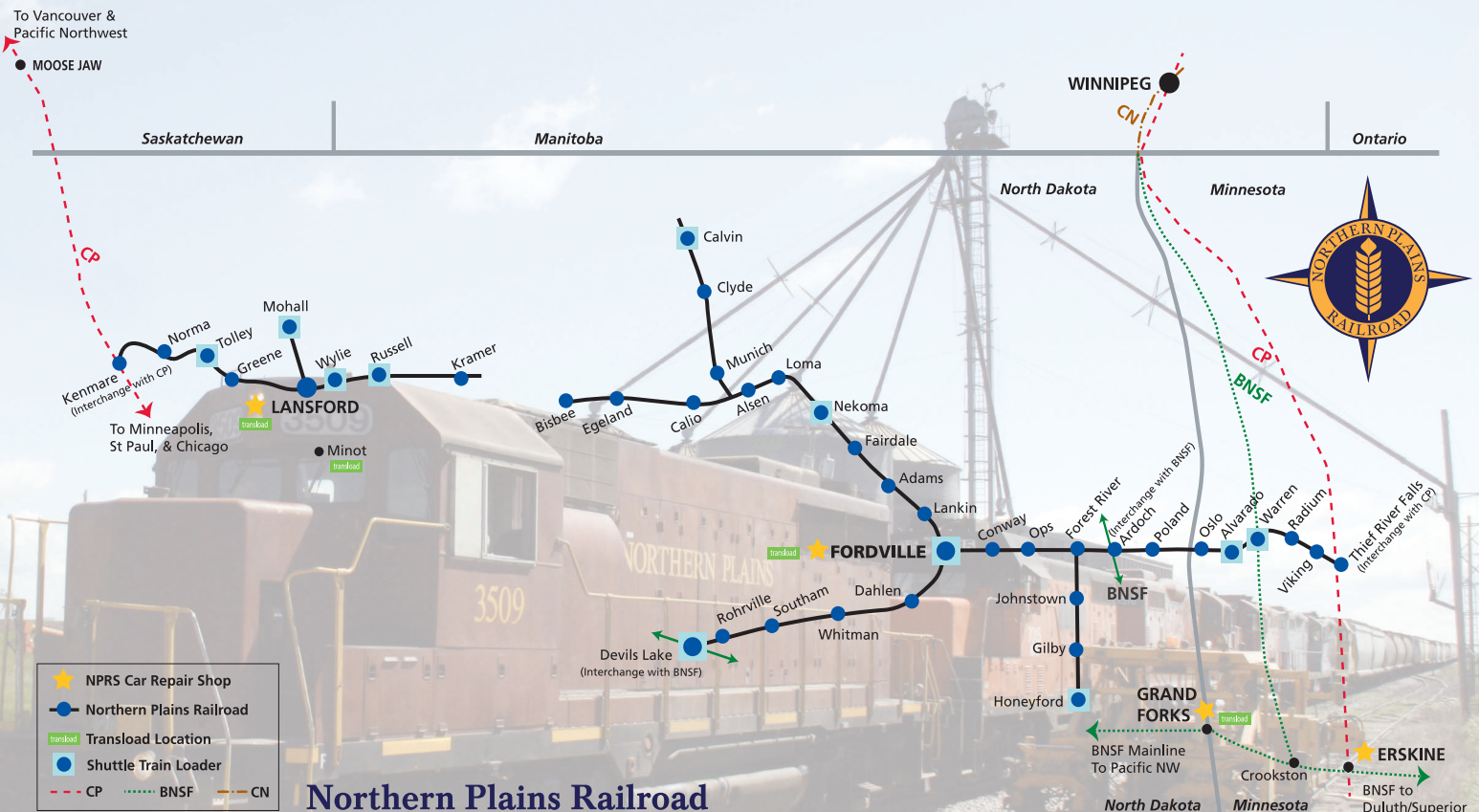
NORTHERN PLAINS RAILROAD

"A LEGEND ON TRACK"

Formed in 1997, Northern Plains Railroad (NPR) operates a service-focused 350 mile regional railroad in western Minnesota and North Dakota. Grain, frac sand, and general merchandise freight are our primary commodities handled. NPR interchanges traffic with the Canadian Pacific Railway at Kenmare, ND and Thief River Falls, MN, giving shippers on NPR access to the continental rail network and world class ports in both Canada and the US.

We have transload facilities that provide strategic access to the broader road transportation network at Fordville, Devils Lake, and Lansford, ND.

Today, NPR serves eleven modern grain elevator facilities capable of loading 100 car grain trains, in addition to smaller local shippers. We are focused on safety, providing high-quality service, and growing business together with Canadian Pacific and our customers.



Northern Plains Railroad



...A LEGEND ON TRACK

NORTHERN PLAINS RAIL COMPANIES
P.O. Box 38, Fordville, North Dakota
Toll Free: 1.855.5.NPRAIL

WWW.NPRAIL.COM

ITASCA COUNTY REGIONAL RAILROAD AUTHORITY
CAR STORAGE AGREEMENT

This AGREEMENT, entered into as of the ____ day of _____, 2021, between **ITASCA COUNTY REGIONAL RAILROAD AUTHORITY**, a public agency organized and established under the laws of the State of Minnesota (hereinafter referred to as “**ICRRA**”), and All Rail Inc. dba Northern Plains Railroad Services, (hereinafter referred to as “**NPRS**”). ICRRA and NPRS are sometimes referred to herein individually as a “Party” or collectively as “Parties”.

WITNESSETH:

WHEREAS, ICRRA is duly organized under Minnesota Statutes Chapter 398A to own, construct and operate a rail line; and

WHEREAS, the federal Surface Transportation Board (“STB”) in STB Finance Docket No. 34992 granted ICRRA the authority to construct a Line of railroad in Itasca County, MN between Nashwauk, MN, and Taconite, MN (hereafter the “Rail Line”), said Rail Line as further described in Exhibit A hereto; and

WHEREAS, ICRRA is a common carrier by railroad by reason of the construction authority granted in STB Finance Docket No. 34992; and has constructed the Rail Line as described above; and

WHEREAS, ICRRA possesses fee ownership, long term leases or easements for the railroad corridor for a term equal to or greater than 125% of the useful life of the structures within the rail corridor (facility); and

WHEREAS, The Agreement is entered into for the purposes of promoting economic development in the area through the use of public infrastructure pursuant to Laws of 2008, Ch. 179, Section 21, Subdivision 9; and

WHEREAS, NPRS desires to use the Rail Line for the purposes stated in Section 1 of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, obligations and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Use of Rail Line and Rail Corridor

- (a) During the Term of this Agreement (as set forth in Section 8 hereof), NPRS shall be authorized to use the hereinafter described Rail Line and Rail Corridor for the following purpose(s):

To store one or more empty rail cars within the ICRRA’s Storage (Lower) Yard at approximately Station 110+00 of the ICRRA Rail Line. NPRS will have non-exclusive access to the east wye track, west wye track, track 1, track 2 and the main line spur up to Station 241+00 and the use of the portions of the Rail Corridor for access as identified and depicted on Exhibit A.

- (b) NPRS will market the ICRRRA tracks as a location to store empty rail cars to other railroads and private rail car owners.
- (c) The rights granted by ICRRRA to NPRS in this Agreement shall not be treated as a lease, easement or other interest in real property. NPRS shall not have the right to sell or lease or encumber the Rail Line or Rail Corridor. This Agreement does not grant NPRS the right to occupy or operate on any properties of ICRRRA other than portions of the Rail Line and Rail Corridor as identified and depicted in Exhibit A. Notwithstanding any provision of this Agreement to the contrary, NPRS shall have no obligation to store any railcars.

2. Fees

- (a) For the Term of this Agreement, NPRS agrees to pay the following fee for use of the Rail Line,

A per empty car fee of \$2.00 will be charged for each empty car stored per calendar day of part thereof as fee to cover ICRRRA operation and maintenance costs for the Rail Line and Rail Corridor. The fee will cover the use of the track, service roads and storage area as specified in Section 1 (a) of the Agreement, effective the date of the agreement. . NPRS will be responsible for identifying and negotiating all car lease agreements.

NPRS will be responsible for any costs or charges that a third party Railroad(s) may charge in their operations to deliver, switch or otherwise transport NPRS railcars and other owners railcars to or from the storage site provided that ICRRRA will reasonably assist NPRS in connection with any third party movement or switching services associated with the railcars.

ICRRRA recognizes that railcar storage is a competitive market and if NPRS identifies a potential client with unique needs, ICRRRA will review a request to adjust the base rental rate.

If NPRS is successful in negotiating rental rates in excess of \$3.00 per car per calendar day, the ICRRRA fee will be the base rate plus 50% of the rate over \$3.00 per car per calendar day.

NPRS will submit payment, to ICRRRA by the 20th day of the month for the storage fees incurred during the preceding month. Failure to pay within 30 days of the 20th of each month shall result in a 2% per month penalty on any outstanding balance.

The fees provided in this section shall be the total and sole compensation for the storage and other services received by NPRS and ICRRRA shall not receive any other compensation, reimbursement or remuneration whatsoever from NPRS or any third party in connection therewith. **3. ICRRRA's Representations and Warranties**

ICRRRA represents and warrants as of the date hereof:

- (a) It is a regional rail authority organized and existing as a political subdivision and local government unit under the laws of the State of Minnesota.

- (b) It has full power and authority to enter into this Agreement and to carry out the obligations of ICRRA hereunder.
- (c) This Agreement has been duly authorized, executed and delivered by ICRRA and is the legal, valid and binding agreement of ICRRA.
- (d) ICRRA has an existing agreement with the BNSF Railway to allow them to enter ICRRA tracks for the purpose of delivering railcars to the site. The Canadian National (CN) Railroad has trackage rights on the BNSF mainline but do not currently have access rights to the ICRRA tracks. A CN agreement could be obtained upon NPRS request and a 60 day notice.

4. NPRS Representations and Warranties

NPRS represents and warrants that, as of the date hereof:

- (a) It is a corporation duly organized, validly existing and in good standing under the laws of the State of North Dakota.
- (b) It has full power and authority to enter into this Agreement to carry out the obligations of NPRS hereunder.
- (c) This Agreement has been duly authorized, executed and delivered by NPRS and is the legal, valid and binding agreement of NPRS.

5. Requirements of Law

Each party shall comply with all federal, state and local laws and regulations applicable to such party's activities under this Agreement (collectively, "Laws"), including, but not limited to, applicable Environmental Laws (as defined below). For purposes of this Agreement, the term "Environmental Laws" shall mean Laws addressing pollution and protection of the environment and/or relating to the storage, transport, release, or disposal of Hazardous Materials (as defined below). For purposes of this Agreement, the term Hazardous Materials shall mean any material or substance that is defined or classified as a "hazardous substance," "hazardous waste," "pollutant," "contaminant" or any other substance or material regulated under the Comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended, the Federal Water Pollution Control Act, as amended, the Resource Conservation and Recovery Act of 1976, as amended, the Clean Air Act, as amended, the Hazardous Materials Transportation Uniform Safety Act of 1990, as amended, or the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, or analogous state or local laws.

6. Indemnification

NPRS shall indemnify, defend and hold harmless ICRRA against any and all claims, demands, and causes of action, including reasonable attorney's fees, court costs and disbursements, for or related to injury to or death of persons, for or related to damage to or destruction of property, or for or related to the hiring, retention or termination of employment of NPRS personnel all to the extent resulting from the negligent acts or omissions or intentional misconduct of NPRS or its employees, agents or representatives. ICRRA shall, subject to MN Statute 466.04, to the extent applicable, indemnify, defend and hold harmless NPRS against any and all claims, demands, and causes of actions, including reasonable attorney's fees, court costs and disbursements, for or related to injury to or death of persons, for or related to damage to or destruction of property, or for or related to the hiring, retention or termination of employment of ICRRA personnel to the extent resulting from the negligent acts or omissions or intentional misconduct of ICRRA or its employees, agents or independent contractors. Neither party shall

be responsible to the other for nor held liable to the other for indirect, special or consequential damages, including but not limited to loss of profit, loss of investment, loss of product, or business interruption, howsoever caused.

7. Insurance

NPRS shall, at its sole cost and expense, procure and keep in place at all times during the term of this Agreement the following insurance coverage, to be further documented in a Certificate of Liability Insurance to be provided to ICRRA providing additional insured status to the ICRRA and Itasca County prior to access and/or use of the Rail Line:

- (a) Commercial General Liability insurance or Railroad Liability insurance, providing bodily injury, personal injury and property damage coverage, with limits \$5,000,000 per occurrence and \$10,000,000 in the aggregate, and specifically noting that any 50-foot Contractual Liability Exclusion has been removed from the Commercial General Liability insurance policy. If the Contractual Liability Exclusion has not been removed, then in addition to the above, Railroad Protective Liability insurance, providing bodily injury, including death, personal injury and property damage coverage with a limit of \$5,000,000 for each incident and \$10,000,000 in aggregate is required. This insurance shall contain Broad Form Liability covering the indemnity provisions contained in this Agreement. If coverage is purchased on a "claims made" basis it shall provide for at least a one year extended reporting or discovery period, which shall be invoked should insurance covering the time period of this Agreement be cancelled, unless replaced with a policy containing the same retroactive date as the policy being replaced.
- (b) Workers Compensation and Occupational Disease insurance meeting the statutory requirements of the State of Minnesota, and Coverage B, Employer's Liability insurance, with the following minimum limits:
 - \$1,000,000 – Bodily Injury by Accident
 - \$1,000,000 – Bodily Injury by Disease per employee
 - \$1,000,000 – Bodily Injury by Disease policy limit **FELA section**
- (c) Commercial Automobile Liability insurance, with coverage including onsite and offsite operations, and owned, non-owned, or hired vehicles, in an amount not less than \$1,500,000 combined single limits.
- (d) If the Commercial General Liability or Railroad Liability insurance policy contains an absolute pollution liability exclusion and does not provide coverage for sudden and accidental pollution incidents, a separate Pollution Liability policy in an amount not less than \$5,000,000 is required.
- (e) Each policy (except Workers Compensation) shall be endorsed to include ICRRA and Itasca County as additional insureds on a primary and non-contributory basis with respect to liabilities arising out of NPRS obligations to ICRRA and Itasca County in this Agreement. A waiver of subrogation against ICRRA and Itasca County must be included on all policies.
- (f) The insurance policy(ies) shall be written by a reputable insurance company with a current Best's Insurance Guide Rating of A- or better. Each insurance company shall be authorized to transact business in the State of Minnesota.

- (g) If any portion of the activities to be conducted under this agreement is subcontracted, subcontractors must meet all applicable provisions of this Section 7.
- (h) The procurement and maintenance of insurance as required by the section shall not limit or expand the other liabilities and obligations of either party under this Agreement.

8. Term of Agreement

- (a) The Term of this Agreement shall commence on the date as entered above, and shall continue in effect until June 30, 2023, provided that, this Agreement may be terminated by either Party, without cause at its sole discretion at any time, upon Sixty (60) days written notice to the other Party. This agreement shall terminate automatically and immediately upon a termination of the governmental program or change in the governmental program that no longer allows ICRRA to continue to own or operate the railroad for the governmental program, provided that ICRRA shall provide NPRS with reasonable advance written notice of such termination.. Neither party shall be required to renew this agreement.
- (b) Termination of this Agreement shall not relieve either Party from any liability that may have attached or accrued prior to or at the Termination Date or deprive either Party of its rights to enforce any such liability.

9. Special Conditions

The following special conditions shall be part of this Agreement:

- (a) During the term of this agreement, NPRS will be allowed to use the main spur until such time as the mainline is necessary to provide rail service to Mesabi Metallics.
- (b) NPRS shall inform ICRRA 72 hours in advance before a rail car movement will be scheduled. Additionally, NPRS shall inform ICRRA of the car numbers which have been removed or returned to the site. ICRRA shall not prevent or interfere with the removal of any railcar from storage further provided that NPRS is not in default of any provision of this Agreement and is current in its payment of all fees it is required to pay under this Agreement.
- (c) NPRS will be responsible to remove any snow accumulations, to the extent required to remove NPRS's railcars from storage at no cost to ICRRA.
- (d) This Agreement does provide NPRS roadway access to the Rail Line or Rail Corridor.
- (e) NPRS shall not store rail cars within 250 feet of either side of the Mesabi Trail crossings located at Station 23+65 of the west wye and 12+15 of the east wye. NPRS, its agents and subcontractors, shall treat these crossings as public grade crossings for train operation purposes.
- (f) NPRS shall not store rail cars within 250 feet of either side of the crossing at Station 61+24 commonly referred to as the Marble Road. This crossing may be blocked for reasonable periods during active loading operations.

- (g) ICRRA shall not be liable, and hereby disclaims any liability, to NPRS with respect to railcar inspections or repair costs for defects, except only to the extent damage to a railcar is directly caused by ICRRA.
- (h) If any NPRS subcontractors or other NPRS authorized entities, agents, or persons are on the storage property, they are required to comply with this agreement and provide the necessary insurance certificates with ICRRA and Itasca County named as additional insured. NPRS shall notify ICRRA of any NPRS subcontractors and provide copies of the subcontract and insurance certificates before they are allowed to work on the site.
- (i) This agreement may be terminated by the ICRRA in the event that the ICRRA is not able to reach an access and use agreement with a Class 1 rail carrier. Notice of termination shall be provided and effective as set forth in Section 15, provided that in any event NPRS shall be permitted to remove its cars from the storage track.
- (j) All provisions of this Agreement relating to liability, financial responsibility, indemnification requirements and compliance with laws, statutes, rules and regulations shall survive the expiration, termination or cancellation of this Agreement.
- (k) NPRS will coordinate their storage with ICRRA if there are rail access needs to accommodate other rail shippers.
- (l) NPRS shall be responsible for internal switching cars and coordinating with the BNSF for pickup and delivery of cars.
- (m) NPRS will be responsible to provide regular FRA track inspections and file with ICRRA a written report. The frequency will be determined by railcar storage activity. Track inspections shall include switch adjustments, oiling of switches, minor brush removal and road crossing flangeway cleanout. Track repairs beyond this shall be reported to ICRRA and ICRRA will authorize necessary repairs at their expense.

10. Assignment

No Party shall have the right to assign this Agreement without the prior, written consent of the other Party (which consent shall not be unreasonably withheld or delayed).

11. State Law

This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Minnesota, without giving effect to any choice or conflict of laws provision or rule (whether of the State of Minnesota or any other jurisdiction) that would cause the application of laws of any jurisdiction other than the State of Minnesota.

12. Amendment

This Agreement represents the entire and integrated agreement between NPRS and ICRRA and supersedes all prior negotiations, representations or agreements, either written or oral, regarding the subject matter hereof. No modification, addition or amendment is reduced to a writing executed by

authorized officers or agents of each Party, and agreed to, in writing, by the Commissioner of Minnesota Management and Budget.

13. No Third-Party Beneficiaries

Except to the extent expressly set forth in Section 7, this Agreement is not intended and shall not be deemed to confer upon or give any person except the Parties and their respective successors and permitted assigns any remedy, claim, liability, reimbursement, cause of action or other right under or by reason of this Agreement.

14. Execution Via Facsimile

Each Party may execute this document in counterpart and deliver such counterpart to the other Party via facsimile transmission. By executing and exchanging said counterparts in this manner, the Parties intend to be bound by the terms of the Agreement. Each Party agrees to exchange executed original documents with the other Party promptly upon the request of the other Party.

15. Notice

All notices and other communications required or permitted to be given under this Agreement (a "Notice") shall be in writing and shall be deemed to have been duly given if delivered personally, by mail (certified or registered mail, return receipt requested), by national overnight delivery service or by facsimile transmission (receipt of which is confirmed by transaction report or equivalent thereof):

(a) If to ICRRA, to:

Itasca County Regional Railroad Authority
123 4th Street NE
Grand Rapids, MN 55744
Attention: Karin Grandia – Itasca County Engineer

(b) If to NPRS, to:

All Rail Inc. dba Northern Plains Railroad Services

C/o Northern Plains Railroad
P. O. Box 38
Fordville ND 58231
Attention: Daniel Watson, Superintendent – Contract Services

or to such other person or address as the appropriate Party shall specify by written notice to the other Party. All Notices shall be deemed to have been received on the date on which so hand-delivered, on the third business day following the date on which so mailed, on the first business day following the date on which sent by national overnight delivery service and on the date on which faxed and confirmed, except for a notice of change of address, which shall be effective only upon actual receipt thereof

16. Waiver

No waiver of any provision of this Agreement, or of any breach of a provision of this Agreement, shall extend to or effect in any way any other provision of this Agreement or any prior or subsequent breach of a provision of this Agreement. Any agreement on the part of a Party hereto to any such waiver shall be valid only if set forth in a written instrument signed on behalf of the waiving Party.

17. Headings

The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

18. Severability

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, unpaired or invalidated, unless to do so would deprive a party hereto substantially of the benefit of the bargain negotiated by such party.

19. Consent to Jurisdiction

The Parties hereto irrevocably submit to the jurisdiction of the courts of the State of Minnesota and the federal courts of the United States of America located in the State of Minnesota (an "Minnesota Court"), and appropriate appellate courts therefrom, over any dispute or proceeding arising out of or relating to this Agreement, and each party hereto irrevocably agrees that all claims with respect to such dispute or proceeding may be heard and determined in such courts. The Parties hereto irrevocably waive, to the fullest extent permitted by applicable law, any objection that they may now or hereafter have to the laying of venue of any dispute or proceeding arising out of or relating to this Agreement or any of the transactions contemplated hereby brought in such courts, any defense of inconvenient forum for the maintenance of such dispute or proceeding; provided, that each Party may move to remove the dispute or proceeding to a different Minnesota Court. Each Party hereto agrees that a judgment in any such dispute or proceeding may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law. This consent to jurisdiction is being given solely for purposes of this Agreement and is not intended to, and shall not, confer consent to jurisdiction with respect to any other dispute or proceeding in which a party hereto is or may become involved. Each party hereto hereby consents to process being served by the other parties to any dispute or proceeding of the nature specified in this Section 18 by sending a copy thereof in a manner set forth in Section 14.

20. Strict Construction

The language used in this Agreement should be deemed the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party hereto.

21. Data Practices

All of the data created, collected, received, stored, used, maintained, or disseminated by the parties under this agreement is subject to the requirements of Minn. Stat. Ch. 13 to the extent applicable.

22. Independent Contractor/Agency

Each Party shall be the sole employer and/or contractor of all persons and entities employed or engaged to perform each Parties respective responsibilities and obligations under or in connections with this Agreement, and such persons and entities shall be and remain the employees and/or contractors, of the respective Party as applicable, it being the intention of the parties that each shall be an independent contractor with respect to the other, and nothing contained herein shall be construed to be inconsistent with that relationship or status. Each Party exercises no direct control or supervision over the employees or contractors of the other Party and, in fact, disavows any right to do so, and neither Party in no way directs, controls or supervises the operations of the other Party, including without limitation the operation of the storage track, or the manner of its performance. Neither party shall be, nor shall such party hold

itself out as, an agent or other representative of the other party and neither party shall have any authority to bind the other party in any manner whatsoever.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

ITASCA COUNTY REGIONAL RAILROAD AUTHORITY

By: _____

Name: Burl Ives

Title: ICRRA Chairperson

ITASCA COUNTY REGIONAL RAILROAD AUTHORITY

By: _____

Name: _____

Title: ICRRA Clerk

ALL RAILS INC, dba NORTHERN PLAINS RAILROAD SERVICES

By: _____

Name: _____

Title: _____

Approved by STATE OF MINNESOTA

By: _____

Name: _____

Title: _____



**ITASCA COUNTY
REGIONAL RAILROAD AUTHORITY**

Itasca County Courthouse
123 NE 4th Street
Grand Rapids, MN 55744

IV.3.

Tuesday, September 14, 2021

REQUEST FOR BOARD ACTION: RBA-2021-1750

DEPARTMENT: Administrative Services

TIME REQUESTED: 5 Minutes

PRESENTER: Brett Skyles, Matti Adam

AGENDA ITEM:

Project Update

BOARD ACTION REQUESTED:

None anticipated.

Informational update on any/all current issues involving projects.

BACKGROUND:

SUPPORTING DOCUMENTATION: None

RESULT:	INFORMATIONAL - NO ACTION TAKEN
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