



ITASCA COUNTY REGIONAL RAILROAD AUTHORITY

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



Tuesday, December 14, 2021

2:00 PM

Itasca County Boardroom

FINAL

REGULAR SESSION MINUTES

I. CALL TO ORDER

Chair Ives 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	Present	2:00 PM
Ben DeNucci	District #5	Absent	

II. ADDITIONS/CORRECTIONS TO THE AGENDA

Motion To: Approve the agenda, as presented.

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

III. APPROVE OF MINUTES

Motion To: Approve the minutes of the Tuesday, November 9, 2021 Regional Railroad Authority meeting.

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

IV. DISCUSSION / INFORMATIONAL

1. Northern Plains Railroad Services Car Storage Agreement

Motion To: Approve the revised Rail Car Storage Agreement between ICRRA and All Rail Inc., dba Northern Plains Railroad Services, contingent upon approval by MMB and County Attorney, and authorize the ICRRA Chairperson and Clerk to sign the agreement.

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

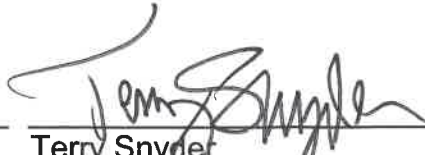
V. ADJOURN

Chair Ives adjourned the meeting at 2:21 PM.

ATTEST



Amanda Schultz
Deputy Clerk of the County Board



Terry Snyder
Chair, Regional Railroad Authority



December 14, 2021

Chair:

PULL: None

ADDITIONS: None

CHANGES: None

INFORMATIONAL:

1. Item #4.1 – Additional and Updated Information

Amanda



ITASCA COUNTY REGIONAL RAILROAD AUTHORITY

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



Tuesday, November 9, 2021

2:00 PM

Itasca County Boardroom

DRAFT

REGULAR SESSION MINUTES

I. CALL TO ORDER

Chair Ives 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	Absent	
Leo Trunt	District #3	Present	2:00 PM
Burl Ives	District #4	Present	2:00 PM
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 Davin Tinquist
SECONDER:	Commissioner Ben DeNucci
AYES:	Davin Tinquist, Leo Trunt, Burl Ives, Ben DeNucci
ABSENT:	Terry Snyder

III. APPROVE OF MINUTES

Motion To: Approve the minutes of the Tuesday, October 12, 2021 Regional Railroad Authority meeting.

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

IV. DISCUSSION / INFORMATIONAL

1. 2022 Schedule of Itasca County Regional Railroad Authority Regular Meetings

Motion To: Adopt the Resolution Re: Establishing the 2022 Regular Meeting Schedule and Special Meeting Notice Procedure of the Itasca County Regional Railroad Authority (ICRRA).

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

V. ADJOURN

Chair Ives adjourned the meeting at 2:02 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, December 14, 2021

REQUEST FOR BOARD ACTION: RBA-2021-1916

DEPARTMENT: Transportation

TIME REQUESTED: < 5 Minutes

PRESENTER: Karin Grandia

AGENDA ITEM:

Northern Plains Railroad Services Car Storage Agreement

BOARD ACTION REQUESTED:

Approve the revised Rail Car Storage Agreement between ICRRA and All Rail Inc. dba Northern Plains Railroad Services, contingent upon approval by MMB and County Attorney, and authorize the ICRRA Chairperson and Clerk to sign the agreement.

BACKGROUND:

The ICRRA previously approved entering into an agreement with Northern Plain Railroad Services to allow for car storage on the ICRRA rail line. Since the railroad was built using bond funds from the State of Minnesota, agreements of this nature require approval from the office of MMB. In the past, those agreements have been approved with no changes required. However, when MMB reviewed this agreement, they required changes. Changes were made to the original agreement and have been submitted to MMB for approval.

SUPPORTING DOCUMENTATION:

1. NPRS Agreement - Revised for MMB
2. NPRS Agreement - Final Revision

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

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) ICRRA will accept storage of empty hazardous waste cars under limited conditions listed below

1. Empty cars that have contained hazardous materials shall demand a premium rental rate.
2. The owner of the rail cars or NPRS shall provide proof that an environmental spill insurance policy is in effect and names [Itasca County](#) and ICRRA as an additional insured.
3. The following table describes categories of residue contents in rail cars and identifies whether ICRRA will accept cars within each category. If NPRS identifies other empty cars, ICRRA will evaluate that request separately.

Residue contents in rail cars	Type of rail car	Acceptable
<u>Non hazardous, loaded or empty</u>	<u>Any</u>	<u>Yes</u>
Ethanol	Tank	Yes
Diesel	Tank	Yes
Propane	Tank	Yes
Natural Gas	Tank	Yes
Decanted Oil	Tank	Yes
Asphalt	Tank	Yes
Butane	Tank	Yes
Coal	Hopper	Yes
Ammonia	Tank	No
Chlorine	Tank	No

4. Other residue rail cars require ICRRA approval.
5. All rRail cars listed in this chart, with exception of non-hazardous cars, shall be inspected by NPRS on a monthly basis. Any evidence of spillage shall be immediately reported to ICRRA.

(c) NPRS will market the ICRRA tracks as a location to store ~~empty~~ rail cars to other railroads and private rail car owners.

(d) The rights granted by ICRRA 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 ICRRA 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.

The total fees received by ICRRRA shall not exceed the cost expended by ICRRRA for maintenance and support of the rail line. If fees are projected to exceed this amount, NPRS and ICRRRA shall cooperate in identifying additional track maintenance projects needed to maintain or improve the rail line condition. ICRRRA will not collect fees in excess of yearly expenses.

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) Federal Employer's Liability Act 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
- (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 ICRRA main spur until such time as the main line spur 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. ICRR will reimburse NPRS for the cost of quarterly track inspections. Additional inspections will be at NPRS's cost.

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: _____

ITASCA COUNTY REGIONAL RAILROAD AUTHORITY
CAR STORAGE AGREEMENT

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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:

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Station 241+00 and the use of the portions of the Rail Corridor for access as identified and depicted on Exhibit A.

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1. Empty cars that have contained hazardous materials shall demand a premium rental rate.
2. The owner of the rail cars or NPRS shall provide proof that an environmental spill insurance policy is in effect and names Itasca County and ICRRA as an additional insured.
3. The following table describes categories of residue contents in rail cars and identifies whether ICRRA will accept cars within each category. If NPRS identifies other empty cars, ICRRA will evaluate that request separately.

Residue contents in rail cars	Type of rail car	Acceptable
Non hazardous, loaded or empty	Any	Yes
Ethanol	Tank	Yes
Diesel	Tank	Yes
Propane	Tank	Yes
Natural Gas	Tank	Yes
Decanted Oil	Tank	Yes
Asphalt	Tank	Yes
Butane	Tank	Yes
Coal	Hopper	Yes
Ammonia	Tank	No
Chlorine	Tank	No

4. Other residue rail cars require ICRRA approval.
5. All rail cars listed in this chart, with exception of non-hazardous cars, shall be inspected by NPRS on a monthly basis. Any evidence of spillage shall be immediately reported to ICRRA.

(c) NPRS will market the ICRRA tracks as a location to store rail cars to other railroads and private rail car owners.

(d) The rights granted by ICRRA 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 ICRRA 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.

The total fees received by ICRRRA shall not exceed the cost expended by ICRRRA for maintenance and support of the rail line. If fees are projected to exceed this amount, NPRS and ICRRRA shall cooperate in identifying additional track maintenance projects needed to maintain or improve the rail line condition. ICRRRA will not collect fees in excess of yearly expenses.

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) Federal Employer's Liability Act 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
- (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 ICRRA main spur until such time as the main spur 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. ICRR will reimburse NPRS for the cost of track inspections, up to 6 times per year, based on frequency of need. Additional inspections will be at NPRS's cost.

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: _____