

**JOINT POWERS AGREEMENT
ESTABLISHING THE
MINNESOTA HIGH SPEED RAIL COMMISSION**

THIS AGREEMENT, is entered into by and between the undersigned Regional Railroad Authorities, Counties, and Cities, all being governmental units of the State of Minnesota, pursuant to the authority contained in the Minn. Statutes §§471.59 and 398A.

WITNESSETH

WHEREAS, the Minnesota High Speed Rail Corridor (Corridor) is defined as a Canadian Pacific railway corridor from La Crescent to the Union Depot in St. Paul, Minnesota traveling along the Mississippi River; and

WHEREAS, the Minnesota High Speed Rail Corridor will connect Minnesota to Chicago, and the greater Midwest Regional Rail System, a 3,000 mile, nine-state high speed rail network advocated for by the Midwest Interstate Passenger Rail Commission (MIPRC), and

WHEREAS, the MIPRC estimated that connecting Minnesota to the Midwest Regional Rail System would generate over 1,500 permanent jobs and \$1.2 billion in user benefit to Minnesota, and

WHEREAS, the identified economic benefits will not be achieved without high speed rail, and

WHEREAS, there are opportunities to build upon these economic benefits via a variety of rail transportation improvements to the Corridor, including passenger rail, high speed rail, and commuter rail, and

WHEREAS, investments in the Corridor provide the opportunity to simultaneously advance other rail projects, and

WHEREAS, the implementation of rail improvements allows for the maximization of public resources, and

WHEREAS, the communities along the Corridor wish to collaboratively plan for the multiple rail transportation improvements and for the related land use and development impacts to maximize the public investment.

NOW, THEREFORE, in consideration of the mutual promises and benefits that each party shall derive herefrom, the parties agree as follows:

Unless the context otherwise requires, the terms defined in this section shall for all purposes of this agreement have the meanings herein stated:

Agreement means this Joint Powers Agreement as it now exists and as it may hereafter be amended.

Commission (Minnesota High Speed Rail Commission) shall mean the joint powers board herein established.

Party shall mean any Regional Railroad Authority, or City identified in Article 6 of this Agreement as eligible to participate in this Agreement and which approves and executes this Agreement.

Financial Party shall mean any financially contributing Regional Railroad Authority identified in Article 6 of this Agreement as eligible to participate in this Agreement and which approves and executes this Agreement.

Minnesota High Speed Rail Corridor shall be defined as the Canadian Pacific Railway corridor from La Crescent to the Union Depot in St. Paul, Minnesota traveling along the Mississippi River.

Passenger Rail shall mean an electric or diesel powered railway that connects multiple regions and the cities in between. Service is focused on moving people between regional centers at speeds not exceeding 90 miles per hour.

High Speed Rail shall mean an electric or diesel powered railway that travels in excess of 90 miles per hour and connects metropolitan regions together.

Commuter Rail shall mean an electric or diesel powered railway operating on existing or abandoned railway corridors connecting commuters to job centers. The service provided will be focused in the 'peak' commuting periods, but could include off-peak and special event service.

Member shall mean an individual appointed to the Commission as provided in Article 4 of this Agreement.

Quorum shall mean a majority of members, provided such majority includes at least a majority of Financial Parties as defined in the Agreement.

Host Railroad shall mean the owner of the railroad track upon which Passenger Rail, Commuter Rail, or High Speed Rail will travel.

ARTICLE 2.**PURPOSE**

The purpose of this Agreement is to form a joint powers board under the provisions of Minnesota Statutes Section 471.59 and 398.A. This Agreement shall enable the Parties to cooperatively advocate for, analyze the feasibility, environmental impacts, engineering, construction, and operation of an integrated rail transportation system in the Minnesota High Speed Rail Corridor that includes passenger, high speed, commuter, and freight rail along with its associated land use and development impacts. These activities may include but not be limited to the acquisition and management of federal, state, and local funding in conjunction with the Minnesota Department of Transportation, Metropolitan Council, La Crosse Area Planning Committee, and the Wisconsin Department of Transportation and the performance of any responsibilities delegated by the Commissioner of Transportation, Chair of the Metropolitan Council, Chair of the La Crosse Area Planning Committee, and/or the Secretary of Transportation subject to the conditions that sufficient funds are received.

The Parties will communicate and coordinate the Commission's activities as necessary with Canadian Pacific Railway, Burlington Northern Santa Fe Railway, Union Pacific Railway, Amtrak, state agencies, counties, municipalities, the Federal Railroad Administration, other regulatory, planning, and funding agencies, tribal authorities, and other stakeholders for advancement of the Commission's purposes.

The method of accomplishing the purpose of this Agreement is the establishment of a Joint Powers Board to provide a mechanism whereby the Parties jointly address the need for enhanced rail transportation options along the Corridor.

ARTICLE 3.**TERM**

This Agreement shall be effective (the Effective Date) and the joint powers board established herein may commence exercising the powers authorized in this Agreement on the date that the Agreement has been approved by resolution and duly executed by two (2) Financial Parties by action of their governing boards. This Agreement shall remain in full force and effect until terminated by the Parties pursuant to Article 10 of the Agreement.

ARTICLE 4.**JOINT POWERS BOARD**

- A. There is hereby created a Joint Powers Board as a public entity, to be known as the Minnesota High Speed Rail Commission. The Commission shall be an entity separate from its member Parties and shall not be deemed an agent or partner of the member Parties and the member Parties shall not be liable for the actions of the Commission. The Commission shall have full authority to exercise all powers stated herein.
- B. The Commission shall consist of one Member and one alternate appointed through resolution by a Party for an initial term commencing with the execution of this Agreement until January 15, 2011. Each Member or alternate must be a member of

the governing body, commission, or council which appoints him or her, and must remain so during his or her term.

- C. Thereafter, each Member and alternate shall be appointed for one-year terms, beginning January 15, by resolution of the governing body, commission, or council. In the event that any Member or alternate shall not have been appointed by January 15 in any year, the incumbent Member shall serve until a successor has been appointed. Removal of any Member or alternate during the term for which the Member has been appointed may be done at any time, but shall be done only by resolution of the appointing governing body, commission, or council.

ARTICLE 5.

VOTING

Board voting shall be as follows: Each Financial Party receives three (3) votes and each Party that is a non-Financial Party receives one (1) vote.

- A. In the event that the appointed Member is not present at a meeting, their alternate may cast all of their Party's allocated votes.
- B. All actions of the Commission require both a simple majority vote of the Parties present and a simple majority vote of the Financial Parties present. However, for all actions involving the expenditure of funds and adoption of the budget, a simple majority of the whole Commission plus a super majority vote of all Financial Parties is required. A super majority vote is defined as at least 2/3 of the Financial Parties.

ARTICLE 6.

PARTIES

The government units that are eligible for participation in this Commission upon adoption of this agreement by their respective governmental units on or before December 31, 2009 include:

- A. Financial Parties:
 - a. Dakota County Regional Railroad Authority
 - b. Goodhue County Regional Railroad Authority
 - c. Houston County Regional Railroad Authority
 - d. Olmsted County Regional Railroad Authority
 - e. Ramsey County Regional Railroad Authority
 - f. Wabasha County Regional Railroad Authority
 - g. Washington County Regional Railroad Authority
 - h. Winona County Regional Railroad Authority
- B. Non-Financial Parties:
 - a. City of Cottage Grove
 - b. City of Dakota
 - c. City of Dover
 - d. City of Eyota

- e. City of Goodview
- f. City of Hastings
- g. City of Kellogg
- h. City of La Crescent
- i. City of Lake City
- j. City of Lewiston
- k. City of Minneiska
- l. City of Minnesota City
- m. City of Newport
- n. City of Red Wing
- o. City of Rochester
- p. City of St. Charles
- q. City of St. Paul
- r. City of St. Paul Park
- s. City of Stockton
- t. City of Utica
- u. City of Wabasha
- v. City of Winona

- C. If an entity identified in this Article 6 does not elect to become a Party by December 31, 2009, it may thereafter do so only by amendment to this Agreement pursuant to Article 11 hereof.
- D. Following the initial term, Commission Members terms shall commence on January 15 of a calendar year and end on January 14 of the next succeeding year, or until a successor is appointed.

ARTICLE 7. POWERS OF COMMISSION

The Commission has such authority as is necessary and proper to make all decisions to carry out its purpose as described in Article 2. Such powers shall be subject to the provisions of Minn. Stat. § 471.59 and 398.A and will include, but not be limited to, any or all of the following powers to the extent provided by law or not otherwise limited by this Agreement.

- A. Adopt an annual budget, together with a statement of the sources of funding and an estimated amount required of each Financial Party.
- B. Enter into transactions, including contracts or leases, required in furtherance of this Agreement and statutory mandate, and enforce such transactions to the extent available in equity or at law. The contracting and purchasing requirements of the Commission’s designated fiscal agent as identified in Article 9 D shall apply hereto. The Commission may approve any contract relating to this Agreement up to the amount approved in the annual budget, and may authorize the Chair of the Commission to execute those contracts.

- C. The Commission shall have the power to adopt such by-laws that it may deem necessary or desirable for the conduct of its business. Such by-laws shall be consistent with this Agreement and any applicable laws or regulations. The by-laws may provide for the appointment by the Commission of ex-officio, non-voting members to the Board, including but not limited to the appointment of representatives from the Prairie Island Indian Community to serve as ex-officio non-voting members, and may establish such conditions as it deems appropriate for such appointment. Approval of the by-laws shall be in accordance with Article 5 of this Agreement.
- D. Apply for and accept gifts, grants, and loans of money, other property, or assistance from the United States government, the State of Minnesota and its political subdivisions, the State of Wisconsin and its political subdivisions, the Prairie Island Indian Community, or any person, corporation, partnership, association, or agency, public or private for any of its purposes; enter into any agreement in connection therewith, to hold, use and dispose of such money, other property, and assistance in accordance with the terms of the gifts, grants, or loans relating thereto.
- E. Acquire and hold such real and personal property as may be required to accomplish the purposes of this Agreement and, upon termination of this Agreement, make distribution of such property as is provided for in this Agreement.
- F. Employ agents and employees, and to fix the compensation and all other terms and conditions of employment thereof.
- G. Incur debts, liabilities, or obligations which do not constitute a debt of any of the parties. The Joint Powers Board does not have authority to incur debts, liabilities, or obligations which constitute a debt of any of the parties.
- H. Enter into agreements and non-binding memoranda of understanding between the Commission and the Prairie Island Indian Community, Host Railroads including Canadian Pacific Railway, Burlington Northern Santa Fe Railway, Union Pacific Railway, and Amtrak in accordance with applicable law.
- I. Sue and be sued in its own name.
- J. Purchase such insurance in its own name as the Commission deems necessary
- K. The Commission agrees to indemnify and defend any Party against any and all liability, costs, damages, and expenses sustained or incurred by the Party pursuant to this agreement. Furthermore, pursuant to Minnesota Statute 471.59 subd 1a., the Parties and each one of them hereby affirmatively declare that they will not be responsible for the acts or omissions of any other Party under this agreement.

All powers granted herein shall be exercised by the Commission in accordance with the legal requirements applicable to the regional railroad authorities.

ARTICLE 8. **OFFICERS, EMPLOYEES, AND SERVICES**

A. Chair and Vice-Chair

The Commission shall elect a Chair and Vice-Chair from its membership at its first regular meeting each year. The Chair and Vice Chair shall consist of at least one Financial Party member. The Chair and Vice-Chair shall be elected by the Commission for a term of one (1) year. The Chair shall preside at all meetings of the Commission, may establish such committees as may be needed from time to time and shall perform other duties and functions as may be determined by the Commission. The Vice-Chair shall assume the duties of the Chair during the absence of the Chair and perform such other duties as may be determined by the Commission. If both the Chair and Vice-Chair are absent, the Commission may elect a temporary Chair to conduct its business, provided a quorum is present. Notwithstanding any other provision of this Agreement, election of a temporary chair shall be by a simple majority vote of the quorum.

B. Executive Committee

The Commission may establish an Executive Committee of the Commission consisting of one (1) representative of each Financial Party. The Executive Committee shall develop and make recommendations to the Commission regarding the ongoing responsibilities of the Commission, and shall have such other duties as set forth in the Commission's by-laws.

C. Staff

Each Party may provide staff support to the Commission, subject to the approval of the Commission.

D. Vacancies

If an appointment of any Member or alternate is vacated before the end of his or her term, the vacancy shall be filled by appointment by the appropriate Party pursuant to Articles 4 and 6 of this Agreement. Vacancies shall be filled within thirty (30) days of their occurrence. A vacancy shall be deemed to have occurred when any of the conditions specified in Minn. Stat. § 351.02 exist.

E. Meetings

The Commission shall meet at regular intervals at such times and places as the Commission shall establish in its by-laws. Special meetings may be held on reasonable notice by the Chair or any two members upon terms and conditions as the Commission may determine and that conform to the Minnesota Open Meeting Law, Minn. Stat. § 13D.

F. Committees

The Commission may establish standing committees of the Commission by providing for such committees by resolution. The Chair may establish ad hoc committees of the Commission.

ARTICLE 9.

FUNDING

It is understood by the Parties that the activities and duties of the Commission are to be funded primarily by grant monies from the United States Government, the State of Minnesota or any other association or agency. Nevertheless, the Financial Parties identified in this Agreement agree to contribute funding, if necessary, to cooperatively analyze the feasibility, environmental impacts, engineering, construction, and operation of an integrated rail transportation system in the Minnesota High Speed Rail Corridor including passenger, high speed, commuter, and freight rail along with the associated land use and development impacts and administrative expenses of the Commission (to the extent not covered by grant funds) and other items deemed necessary to facilitate development of the Corridor. The Financial Parties agree that they will proportionately contribute funds, if necessary, to carry out the purposes and duties of the Commission

A. Funding Allocation

Funding responsibility shall be allocated among the Financial Parties for the purpose of analyzing the feasibility, environmental impacts, and engineering of an integrated rail transportation system in the Minnesota High Speed Rail Corridor as follows:

1. 50% of the annual operating budget of the Commission and any other funding requirements shall be allocated among the Financial Parties on the basis of each Financial Party's proportionate share of the total population of all Financial Parties.
2. 10% of the annual operating budget of the Commission and any other funding requirements shall be allocated among the Financial Parties on the basis of each Financial Party's proportionate share of Corridor Mileage for all Financial Parties.
3. 31% of the annual operating budget of the Commission and any other funding requirements shall be allocated for high speed rail or commuter stations planned to be located with a Financial Party's jurisdiction as follows:
 - A. Ramsey County Regional Railroad Authority
 - a. High Speed Rail
 - i. Union Depot 8%
 - b. Commuter Rail
 - i. Lower Afton Road 3.5%

- B. Washington County Regional Railroad Authority
 - a. High Speed Rail
 - i. None 0%
 - b. Commuter Rail
 - i. Newport 3.5%
 - ii. Cottage Grove 3.5%

- C. Dakota County Regional Railroad Authority
 - a. High Speed Rail
 - i. None 0%
 - b. Commuter Rail
 - i. Hastings 3.5%

- D. Goodhue County Regional Railroad Authority
 - a. High Speed Rail
 - i. Red Wing 3.5%
 - b. Commuter Rail
 - i. None 0%

- E. Wabasha County Regional Railroad Authority
 - a. High Speed Rail
 - i. None 0%
 - b. Commuter Rail
 - i. None 0%

- F. Winona County Regional Railroad Authority
 - a. High Speed Rail
 - i. Winona 3.5%
 - b. Commuter Rail
 - i. None 0%

- G. Houston County Regional Railroad Authority
 - a. High Speed Rail
 - i. None 0%
 - b. Commuter Rail
 - i. None 0%

- H. Olmsted County Regional Railroad Authority
 - a. High Speed Rail
 - i. Rochester 3.5%
 - b. Commuter Rail
 - i. None 0%

4. 9% of the annual operating budget of the Commission and any other funding requirements shall be allocated among the Financial Parties equally.
5. If a prospective Financial Party fails to join the Commission, or a Financial Party withdraws from the Commission, such Financial Party's share of the funding obligations in this Article 9 shall be reallocated proportionately among the remaining Financial Parties. If the Financial Party that fails to join the Commission, or withdraws from the Commission has an allocation as described in Article 9 (3) the resulting percentage from this allocation shall be added to the percentage in Article 9 (4).
6. All percentages shall be rounded to the nearest .25%. If this rounding results in a total combined percentage from Article 9 (1), (2), (3), and (4) that is over 100% the overage shall be credited to one or more Financial Parties at the discretion of a majority vote of the Financial Parties.
7. Allocation of the share identified in Article 9 (1) shall, from the effective date of this agreement until December 31, 2011 (Initial Period) shall be based upon the 2001 population estimates by the Minnesota State Demographer. Beginning with the budget allocation for the year 2012 and every four years thereafter, the Commission shall update the population estimates and reallocate the financial share of each Financial Party. Each Financial Party shall pay its contributions to the Regional Railroad Authority acting as the fiscal agent of the Commission within 30 days of the Commission's approving a budget.

Prior to the completion of engineering work the Financial Parties shall reevaluate the funding responsibility allocation for the purpose of construction and operation of an integrated rail transportation system in the Minnesota High Speed Rail Corridor.

B. Annual Budget

For the calendar year next following the calendar year in which the Effective Date occurs and all subsequent years, the Commission shall establish and approve a budget. Each Financial Party shall be assessed for its proportionate share of the budget according to the schedule above. The Commission shall establish its first budget within 60 days of the commencement of the Commission.

C. Financial Parties Budget Approval

Adoption of the budget shall be in accordance with Article 5 of this Agreement.

D. Contribution Date

Except for any initial contribution required by this Agreement, assessments made under the provisions of this article shall be paid by each Financial Parties by January 15th of each year. The initial contribution shall be made within sixty (60) days of the adoption of the budget pursuant to Article 7 (A) hereof.

E. Budgeting, Accounting, Fiscal Agent, and Other Service

The Commission may contract with any Financial Party to provide contract management, legal review, and budgeting and accounting services necessary or convenient for the Commission and otherwise act as the Commission's fiscal agent. Such services shall include, but not be limited to, management of all funds, including contributions and grant monies, payment for contracted services, and relevant bookkeeping and record keeping. The contracting and purchasing requirements of the member so selected shall apply to transactions of the Commission. Such member shall identify the staff person to work as a liaison with the Commission.

F. Accountability for Funds

All funds shall be accounted for according to generally acceptable accounting principles. A report on all receipts and disbursements shall be forwarded to the Commission on an annual basis. The Parties have the authority to request reports pertaining to any and all budgeting and accounting services. All interest earned from established Commission funds shall be credited back to that same fund.

A. Withdrawal

Any Party may withdraw from this Agreement upon 90-days prior written notice evidenced by resolution of the party's governing body to the Commission. In the event of withdrawal by any member Party, this Agreement shall remain in full force and effect as to all remaining Parties.

B. Effect of Withdrawal, Disposition of Property, Funds, and Obligations

A Party withdrawing from this Agreement shall, prior to such withdrawal, pay the full amount of any unpaid assessments to the Commission as defined in Article 8. A member Party withdrawing from this Agreement shall not receive a distribution of property or funds until such time as this Agreement is terminated by all Parties pursuant to this Article 10. Such disposition of property shall be in accordance with the provisions of Section D of this Article 10.

Any Party withdrawing shall be liable for any assessment in the year in which the withdrawal becomes final only for the period in such year that the member Party remains a Party. The Party's assessment shall not exceed the sum of one-twelfth (1/12th) the full assessment multiplied by the number of months or fractions thereof in the year during which the Party remains a Party to this Agreement.

C. Termination

This Agreement shall terminate upon the occurrence of any one of the following events:

- a. When necessitated by operation of law or as a result of a decision by a court of competent jurisdiction; or
- b. When all the Financial Parties agree, by resolution adopted by the respective governing bodies, to terminate this Agreement and all obligations of the Commission shall have been paid or otherwise defeased in full.

D. Disposition of Property and Funds

At such time as this Agreement is terminated, any property interest remaining in the Commission, following discharge of all obligations owed by the Commission, shall be disposed of and the proceeds of the property shall be returned to the member Parties in proportion to their contribution over the life of the agreement.

E. Effect of Withdrawal of Financial Party on Budget

In the event a Financial Party withdraws, the unpaid assessment allocable to such Party in the year of withdrawal and subsequent years shall be reallocated to the remaining Financial Parties in proportion that the assessment allocations under Article 9(A) hereof bear to each other. Any reallocated assessments to the remaining Financial Parties due to the withdrawal of a Financial Party(ies) are due within sixty (60) days of the reallocation.

F. Effect of an Eligible Financial Party not joining on Budget

In the event a Financial Party chooses not to join the Agreement, the financial allocation allocable to such Financial Party in the year of their choosing not to join and subsequent years shall be reallocated to the remaining Financial Parties in proportion that the assessment allocations under Article 9(A) hereof bear to each other. Any reallocated assessments to the remaining Financial Parties due to the withdrawal of a Financial Party(ies) are due within sixty (60) days of the reallocation.

ARTICLE 11.

MISCELLANEOUS

A. Amendments

This Agreement may be amended by unanimous agreement of the member Parties as evidenced by resolutions adopted by the respective governing bodies.

B. Records, Accounts, and Reports

The Commission shall establish and maintain such funds and accounts as may be required by good accounting practices. The books and records of the Commission shall be subject to the provisions of Minn. Stat. Ch. 13, the Minnesota Government Data Practices Act, and Minn. Stat. § 16C.05, subd. 5. The Commission, within one hundred twenty (120) days after the close of each fiscal year, which shall be January 1 to December 31, shall give a complete written report of all financial activities for such fiscal year to the Parties.

C. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

D. Severability

The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of the Agreement is for any reason held to be contrary to law, or contrary to any rule or regulation having the force and effect of law, such decision shall not affect the remaining portions of this Agreement.

E. Entire Agreement

This Agreement constitutes the entire agreement between the member Parties and supersedes all prior written or oral agreements relating to the Commission.

F. Alternate Dispute Resolution

In the event of a dispute arising under this Agreement, the member Parties and the Commission agree to attempt to resolve their dispute by following the process described below:

1. A member Party or Parties shall provide written notice to the Commission describing perceived conflict, positions, and underlying reasons.
2. The Commission shall provide written response to notice within seven (7) days of receipt of notice.
3. The Parties and Commission shall meet within 14 days of receipt of response with a neutral facilitator. The neutral facilitator will be a representative from the Minnesota Office of Dispute Resolution. Costs of such facilitator shall be shared equally by all parties to the dispute.
4. At the first meeting, the neutral facilitator will assist the parties to the dispute in identifying the appropriate Parties and participants in the dispute resolution process, their concerns, a meeting agenda and design for any subsequent meetings. The Parties shall agree on a process for resolving the problem that would involve additional negotiations, mediation, or arbitration.
5. In developing the process, the parties will be guided by the following principles:
 - i. the Parties will attempt in good faith to reach a negotiated settlement;
 - ii. the Parties agree that there must be fair representation of the parties directly involved in the dispute;
 - iii. the Parties will use legal proceedings as a last resort; and
 - iv. in the event the Parties are unable to resolve the dispute, each party retains all rights, remedies, or defenses it had prior to entering the process.
6. The Parties will report to the Commission within 60-days of their first meeting on the resolution of the dispute or a recommendation to commence legal proceedings.

G. Minnesota Laws Govern

The Laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the Parties and their performance. The appropriate venue and jurisdiction for any litigation shall be in State district court located within the County of Ramsey, State of Minnesota. Litigation, however, in the federal courts involving the Parties will be in the appropriate federal court within the State of Minnesota. If any provision of this agreement is invalid, illegal, or unenforceable the remaining provisions will not be affected.

IN WITNESS WHEREOF, the parties to this Agreement have hereunto set their hands on the date written below.