

A6: Joint Powers Agreement Draft

Revised
DRAFT FOR DISCUSSION

JOINT POWERS AGREEMENT
ESTABLISHING THE MIDWEST REGIONAL RAIL COMMISSION

This AGREEMENT is entered into as of the ___ of ___ 20___, by and among the Parties as designated.

W I T N E S S E T H:

WHEREAS, the States of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin therein possess in common the powers to plan for, maintain, lease, contract for, and operate railroad service and facilities for the purpose of transporting passengers within and outside their respective boundaries; and

WHEREAS, the States of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin therein, by virtue of _____(citings of state statutes), possess in common the authority to make passenger rail service operation and capital improvement expenditures, including construction and maintenance of intermodal transportation facilities; and

WHEREAS, the States of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin by virtue of _____ (citings of state statutes), possess in common the authority to file claims for payment to a railroad corporation and engage in the transportation of persons for operating losses and profits incurred in the transportation of persons within the States of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin and to or from the same; and

WHEREAS, the people residing within the states of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin have an interest in passenger rail transportation within the state, to destinations within and outside their state and the states of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin, and to facilitate the movement of people through their states; and

WHEREAS, the continued growth and extensive transportation development within the states of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin evinces a need to create an independent multi-state agency capable of dealing with rail transportation system planning, operational planning, contracting, construction, operations, and program and service oversight

NOW, THEREFORE, it is mutually agreed as follows:

1. DEFINITIONS

As used herein, the following words have the following meanings:

1.A. "MWRRRI" is an acronym for Midwest Regional Rail Initiative and shall include the states of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin

1.B. "MWRRS" is an acronym for Midwest Regional Rail System

1.C. "Commission" shall mean the Midwest Regional Rail Commission, a multistate joint powers agency, created by this Agreement

1.D. "Auditor-Controller" shall mean the Auditor-Controller for the States and of the Commission

1.E. "State Legislatures" shall mean the respective state General Assemblies of the States who are the Parties

1.F. "Parties" shall mean all of the public agencies who pursuant to governing body authority have executed this Agreement

1.G. "Officials" shall mean any member of the governing body of a Party to this Agreement.

1.H. "Passenger Rail Service" means medium and long distance, intra- and inter-state rail service for the purpose of serving the population of the respective states to the extent such service is authorized by state and federal law.

1.I. "Rail Board" means the Board established pursuant to Section 4 of this Agreement as the governing body of the Commission.

2. STATEMENT OF PURPOSE

The Parties have joined together to establish the Commission for the following reasons:

2.A. The population demographics, air quality designations, and travel demand patterns of the States have established intra- and inter-state regional linkages for transportation, and the continued development and growth in commerce, economic benefit, and recreation.

2.B. Some highways and major arterials within and between these States are currently operating beyond the capacities originally intended and will continue to operate under these conditions in the future, even with all highway and transit planned improvements.

Concurrently, recent environmental and energy conservation legislation discourages the use of single occupant automobiles by limiting highway access during peak traffic periods and encouraging the use of mass transit, regional transit, and other alternative modes of travel.

2.C. The preservation and improvement of the rail infrastructure for passenger and freight rail service accrues regional economic and environmental benefits.

2.D. The State legislatures and State Departments of Transportation, have jointly examined the many issues associated with rail service and have expressed common goals and objectives. Advanced planning studies have evolved into projects and are now focused on timely project management, inter-state coordination, and the implementation of MWRRS Passenger Rail Service.

2.E. Coordinated political and administrative efforts are necessary to resolve issues, to coordinate and advance funding requests, and to keep projects and programs on schedule.

3. ESTABLISHMENT OF THE COMMISSION

3.A. Upon the effective date of this Agreement, the Parties hereby establish the Commission, as a public entity, separate and distinct from its member entities, as the agent to exercise the common powers provided for in this Agreement and to administer or otherwise execute this Agreement.

Space to delineate between medium-term and long-term functions and activities.

4. RAIL BOARD

4.A. The Commission shall be governed by the Rail Board, which shall be comprised of nine voting Commissioners, all of which shall be appointed officials of each state that is a signatory to this Agreement (the number of voting Commissioners may be amended at a future date to include additional members at the discretion of the current state members of the MWRRRI).

4.B. Ex-Officio members may be appointed by the Rail Board.

4.C. The voting members shall reside within the States they represent and shall serve at the pleasure of their respective Governors. In the event a Commissioner vacancy occurs, the Governor of the affected State shall appoint a new Commissioner.

4.D. A quorum for conducting all matters of business shall be a majority of the voting members. The affirmative vote of at least a majority of the quorum present shall be required for the approval of any matters (unless a greater number is required by any resolution, ordinance or statute).

4.E. The Rail Board shall adopt rules of procedures and shall establish a time and place for regular Rail Board meetings.

4.F. The By-laws of the Commission shall be those annexed to this Agreement.

5. POWERS AND FUNCTIONS

5.A. The commission shall function as the Midwest multi-state representative and advocate for passenger rail transportation for the purpose of acting upon any appropriate proposals which may be presented to it for reconsideration and for transmission of proposed recommendations to federal, state, regional, and local agencies.

The Commission shall have the common power of the Parties hereto to plan, establish, and contract for operation of passenger rail service within and between the States; purchase commonly-shared rolling stock including cars and locomotives; negotiate, contract for and manage the construction of rail improvement projects in conjunction with the States and the railroad owner; acquire railroad sites and stations in conjunction with the States, city or cities benefited or affected thereby; contract with vendors for station concessions and on-board services; promote station development and joint development; operate rail stations; define and monitor service and performance standards and establish rewards or penalties for achieving or failing to achieve such standards; and carry out all other activities necessary to provide passenger rail service for the benefit of the people of the States, and in the exercise of that power, the Commission is authorized in its own name to:

5.A.1. Employ an Executive Director as the chief administrative officer of the Commission;

5.A.2. Employ agencies and staff and contract for professional services;

5.A.3. Make and enter into contracts;

5.A.4. Acquire, hold and convey real and personal property

5.A.5. Serve as a coordinative body in the review of capital grant requests made to the federal government, or other institution with the charter to provide like funds, by the States to ensure adherence to agreed-upon principles phased in during implementation of the MWRRS.

5.A.6. Incur debts, obligations and liabilities in own name or in the states behalf;

5.A.7. Accept contributions, grants or loans from any public or private agency or individual, or the United States, the States, or any department, instrumentality, or agency thereof, for the purpose of financing its activities;

5.A.8. Manage funds not needed for immediate necessities, as the Rail Board determines advisable.

5.A.9. Have appointed members and ex-officio members of the Rail Board serve without compensation from the Commission, except that members of the Rail Board may be reimbursed for all reasonable expenses and costs relating to attendance at Commission meetings or other Commission business;

5.A.10. Perform all other acts reasonable and necessary to fulfill the obligations, purposes and functions of the Commission;

5.A.11. Sue and be sued, in its own name only, but not in the name or stead of any Party; and

5.A.12. To exercise any and all other powers as may be provided by the State Codes common to all Parties.

5.B. The powers to be exercised by the Commission are subject to such restrictions upon the manner of exercising such powers as are imposed upon the States in the exercise of similar powers. The commission shall be held strictly accountable for all funds received, held and disbursed.

6. EXECUTIVE DIRECTOR

The Rail Board may select an Executive Director. If an Executive Director is chosen, he or she shall serve at the pleasure of and upon the terms prescribed by the Rail Board, and his or her powers and duties shall include the following:

6.A. Serving as Secretary to the Commission;

6.B. Advocating support and funding for the MWRRS at the federal, state, and local levels of government and to the private sector;

6.C. Keeping accurate and sufficient records of all proceedings of the Commission;

6.D. Receiving and transmitting all Commission correspondence;

6.E. Keeping a record and ascertaining the qualifications of each duly authorized representative;

6.F. Maintaining files for all reports;

6.G. Directing and coordinating the work of the Commission;

6.H. Preparing and administering the Commission's annual budget and Work Program;

6.I. Maintaining a record of all financial transactions;

6.J. Making an annual report covering the business of the Commission during the preceding year;

6.K. Transmitting to his/her successor all books and records of the Commission in his/her possession;

6.L. Employing, supervising, and terminating employees subject to policies and procedures adopted by the Commission; and

6.M. Other duties incidental to the office of Executive Director.

7. FINANCING

7.A. The Commission's fiscal year shall be July 1 through June 30.

7.B. Annually, the Commission shall prepare a budget for the ensuing fiscal year to commence on July 1. When adopted by the Rail Board, the budget shall serve as the approved budget for the fiscal year in carrying out the tasks within the approved work program for the year. Any use of amendments of the budget shall be at the sole discretion of the Commission.

7.C. A Party in the exercise of the reasonable discretion of its governing body, may provide support for the Commission, its staff, and its professional consultants, including providing quarters, janitorial services and maintenance, supplies, printing and duplication, postage, telephone services, transportation services, and the professional and technical assistance as may be necessary to enable the Commission to perform its responsibilities. All assistance shall be provided on an at-cost basis.

7.D. The Commission shall assist the States to apply for available state, federal, regional, and local support funds, and shall make new and additional applications from time to time as appropriate.

8. TREASURER

8.A. The Treasurer of the Commission shall be selected by the Rail Board and shall be a financial officer of a State member.

8.B. The Treasurer shall:

8.B.1. Receive and disperse all monies of the Commission and place it in an appropriate account or investment vehicle (e.g., mutual fund) as approved by the Rail Board.

8.B.2. Be responsible upon the Treasurer's official bond for the safekeeping and disbursement of all Commission money held by the Treasurer.

8.B.3. Pay any sums due from the Commission, from the Commission's funds held by the Treasurer or any portion thereof, upon warrants of the Auditor-Controller designated herein.

8.B.4. Verify and report in writing as soon as possible after the first day of July, October, January and April of each year to the Commission the amounts of monies received and disbursed since the Treasurer's last report, and any interest accrued to those funds.

9. AUDITOR-CONTROLLER

- 9.A. The Auditor-Controller of the Commission shall be selected by the Rail Board and shall be a financial officer of a State.
- 9.B. The Auditor-Controller shall draw warrants to pay demands against the Commission when the demands have been approved by the Rail Board and/or the Rail Board Executive Director. The Controller shall be responsible on the Controller's official bond for the Controller's approval of disbursements of the Commission money.
- 9.C. The Controller shall keep and maintain records and bonds of account on the basis of generally accepted accounting practices. The books of account shall include records of assets, liabilities, and contributions made by each Party to this Agreement.
- 9.D. The Controller shall make available all the financial records of the Commission to a certified public accountant or public accountant contracted by the Commission to make an annual audit of the accounts and records of the Commission. The minimum requirements of the audit shall conform to generally accepted accounting principles (GAAP).

10. BOND REQUIREMENTS

The Executive Director and such other persons employed by the Commission as may be designated by the Rail Board, shall file with the Rail Board an official fidelity bond in a penal sum determined by the Rail Board as security for the safekeeping of the Commission's property entrusted to the employee. However, if the Executive Director or other such persons designated are already bonded by another agency, no additional bonding shall be required by this section. Premiums for any bonds required under this section shall be paid by the Commission.

11. PARTIES' LIABILITY

The debts, liabilities and obligations of the Commission shall not be debts, liabilities or obligations of the Parties either singly or collectively.

12. ASSIGNABILITY

With the approval of, and upon the terms agreed upon by, the governing body of each Party to this Agreement, all or any of the rights and property subject to this agreement may be assigned to

further the purposes of this Agreement. Provided, however, no right or property of the Commission shall be assigned without compliance with all conditions imposed by any state or federal entity from whom Commission has received financial assistance.

13. WITHDRAWAL OF A PARTY

A Party to this Agreement may, at any time, withdraw from the Commission, following 90 days notice to the Commission and all other members of the Commission, by resolution of intent to withdraw adopted by the Governor of the State of the withdrawing Party. Unless the withdrawing Party and the Rail Board specifically mutually agree to the contrary, a withdrawing Party shall have no right to, or interest in, any of the assets of the Commission.

14. TERMINATION AND DISSOLUTION

- 14.A. This Agreement shall continue in force without specific term, except as otherwise provided herein.
- 14.B. If, at any time, the States represent less than one-third of the nine member States, the Commission shall be deemed dissolved and this Agreement shall cease to be operative except for the purpose of payment of any obligations theretofore incurred.
- 14.C. If this Agreement is terminated, all real and personal property owned by the Commission shall be distributed to the federal, state or local funding agency or Party to this Agreement that supplied the property or whose funding provided for the acquisition of the property unless another distribution method is designated by law. Should the origin of any real or personal property be undeterminable, that property shall be disbursed to the Parties to this Agreement in proportion to the passenger miles generated by each state.
- 14.D. In the event of termination if there are not sufficient unencumbered funds which are a part of the assets of the Commission available to pay for the costs of dissolution, the Parties to this Agreement shall fund the costs in proportion to the passenger miles generated by each State on the MWRRS service.
- 14.E. This Agreement shall not terminate until all property has been distributed in accordance with this section.

15. RETURN OF SURPLUS FUNDS

Upon termination of this Agreement, any surplus money on hand shall be returned to the federal, state or local agency or the Party to this Agreement that provided the funds. Should the origin of any funds be undeterminable, the funds shall be disbursed to the Parties to this Agreement in proportion to the passenger miles generated by each State on the MWRRS service.

16. ADDITIONAL MEMBERS

In addition to those powers specified in this Agreement, the Commission upon a majority vote of the Rail Board shall have the power to amend the Agreement and By-laws to add one or more public agencies or states, to enter into a joint exercise of powers agreement as a voting or non-voting Member to the Agreement, including the power to change this Agreement and the By-laws to adjust the composition of the Rail Board's membership.

16.A. Each newly added member public agency shall:

- 16.A.1. Be a public agency
- 16.A.2. Be a public agency whose powers include the ability to utilize, regulate, construct and facilitate the use of rail transportation;
- 16.A.3. Have full rights and responsibilities as a member of the Commission;
- 16.A.4. Pay fees, if any, as prescribed by the Rail Board, to be charged for the public agency's participation in financing the Commission.

17. SUCCESSORS

This Agreement shall be binding upon and shall inure to the benefit of any successors to or assigns of the Parties.

18. RECORDS

The Treasurer and the Auditor-Controller shall have charge of, handle and have access to all accounts, funds and money of the Commission and all records of the Commission relating thereto; and the Secretary shall have charge of, handle and have access to all other records of the Commission.

19. SEVERABILITY

Should any part, term, portion or provision of this Agreement be finally decided to be in conflict with any law of the United States or the States, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed savable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the Agreement which the Parties intended to enter into in the first instance.

20. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when executed will be deemed to be an original and all of which, when taken together, will be deemed to be one and the same instrument.

21. EFFECTIVE DATE OF AGREEMENT

This Agreement shall become effective when a majority of the States comprising the MWRRS sign this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective officers as of:

By: _____
State of

By: _____
State of

Date: _____

Date: _____

ATTEST: _____
Title: _____

ATTEST: _____
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By: _____
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