

BOARD OF COMMISSIONERS

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“In cooperation with our citizens, we improve the quality of life for individuals families and communities by fostering a healthy economy and environment.”

“Looking forward with purpose”

**COUNTY BOARD – CPUi TAX SOFTWARE JPA
THURSDAY, JULY 12, 2018, 4:30 P.M.
BOARD ROOM, GOVERNMENT CENTER
315 TENTH STREET, WORTHINGTON, MN**

- 1.0** *Call to Order (4:30 p.m.)*
- 2.0** *Pledge of Allegiance*
- 3.0** *Approval of Agenda (Action)*
- 4.0** *CPUi Tax Software Joint Powers Agreement*
 - 4.1** *Counties Providing Technology Joint Powers Agreement*
- 5.0** *Adjournment*

FIRST DISTRICT
Justin Ahlers

SECOND DISTRICT
Gene Metz

THIRD DISTRICT
Matt Widboom

FOURTH DISTRICT
Robert S. Demuth Jr.

FIFTH DISTRICT
Donald Linssen



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COMMISSIONER BRIEFING

July 12, 2018

*Tax Software JPA Special Meeting
Assessor, Auditor-Treasurer, Administrator
Valerie Ruesch, Beth Van Hove, Tom Johnson
30 min.*

Issue:

CPUi, our tax software vendor will be selling his business.

Discussion:

Several counties joined together to lead the process of attempting to make an offer to 'buy-out' the company. We have been asked if we want to join a joint powers board to be the owner of the software and manage the business. Each county that chooses to join shall have one vote on all future decisions related to the operation.

The cost to join and 'buy-out' the company will be between \$150,000 and \$400,000 per county depending on how many counties choose to join. The group that began the process recommends each county that chooses to buy in to the joint powers pay an equal amount for the initial purchase. We will need to use reserves to fund joining and it is expected the funds will be determined and required in August of this year. There is an expected payback for these funds over the next few years.

A delegate and alternate should be included as we will get one vote if we approve.

Options:

- 1) Join the joint powers organization and be an owner*
- 2) Choose not to join and pay whatever service fee is set by the joint powers board*
- 3) Find an alternative software*

Recommendation:

Staff recommends the County Board become a joint powers member and become an 'owner' of the critical software and using reserves to fund the purchase and Gene Metz as the delegate with Bob Demuth as the alternate to the JPB.

**COUNTIES PROVIDING TECHNOLOGY
JOINT POWERS AGREEMENT**

June 2018

COUNTIES PROVIDING TECHNOLOGY JOINT POWERS AGREEMENT

THIS AGREEMENT is made by and between Governmental Units as defined in subdivision 1, Section 471.59, hereafter collectively referred to as “Members” and individually as “Member,” which are signatories to this “Agreement.”

ARTICLE I

ENABLING AUTHORITY AND PURPOSE

- 1.1 Minnesota Statutes section 471.59 provides that two or more governmental units may by agreement jointly exercise any power common to the contracting parties.
- 1.2 The general purpose of this Agreement is to provide for a Joint Powers Organization (JPO) through which the parties may jointly and cooperatively provide for the development, operation and maintenance of technology applications and systems, and the support and management of such systems for the use and benefit of the parties and other governmental units.
- 1.3 Counties Providing Technology is established as a governmental unit under the above-referenced authority and requirements of Minnesota law to jointly exercise the powers common to the signatories for the general purposes described herein.

ARTICLE II

DEFINITION OF TERMS

For the purposes of this Agreement, the terms defined in this article shall have the meanings given them.

- 2.1 “Counties Providing Technology” or “CPT” means the Joint Powers Organization created pursuant to this Agreement, hereafter referred to as CPT.
- 2.2 “Organization” or “JPO” refers to CPT, unless specifically qualified to refer to another organization.
- 2.3 “Member” means a governmental unit that is a signatory to this Agreement and has not given notice to withdraw pursuant to Article VIII.

- 2.4. “Associate Participant” means a governmental unit that is not a signatory to this agreement and does not have voting privileges, which receives services from CPT pursuant to a separate agreement.
- 2.8. “Director” means the primary representative designated by the governing body of the Member of CPT. Alternate means the secondary representative designated by the governing body of the Member of CPT to represent and act in the absence of the Director.
- 2.9. “Board” means the governing body of CPT, consisting of one Director from each Member.
- 2.10. “Governmental Unit” is defined by Subdivision 1, Section 471.59 of Minnesota Statutes, as amended.
- 2.11. Day or days shall refer to calendar days. Fiscal Year shall be the calendar year.

ARTICLE III

JOINT POWERS BOARD

- 3.1 The Joint Powers Board (“Board”) shall take such action as it deems necessary and proper to accomplish the purposes of CPT and any other action necessary and incidental to the implementation of said purpose or action. The Board is hereby authorized to exercise such authority and powers common to the Members as are necessary and proper to fulfill its purposes and perform its duties. Such authority shall include the specific powers enumerated in this Agreement and/or in the Bylaws.
- 3.2 Members, by executing this Agreement, recognize the Board as the governing authority of CPT.
- 3.3 The Board shall be made up of one Director (or alternate) appointed by the governing board of each Member Governmental Unit. The Director shall be a board member of the governing body of the Member. Any Director or Alternate shall be subject to removal by the appointing governing board at any time, with or without cause. A vacancy of a Director or Alternate shall be filled by the governing body of the Member who appointed the Director or Alternate.
- 3.4 Directors and Alternates shall serve without compensation from CPT, but this shall not prevent a Member from providing compensation for its Director or Alternates, if such compensation is authorized by such Governmental Unit and by law.

ARTICLE IV

POWERS AND DUTIES OF THE BOARD

- 4.1 The Board shall take such action as it deems necessary and appropriate to accomplish the general purposes of CPT including the establishment of data processing and information systems, engaging in the development and implementation of necessary programs, purchasing any necessary supplies, equipment and machinery, employing any necessary personnel and operating and maintaining any systems for the handling of data processing and management information for the Members and for others. Any of the foregoing activities, or any other activities authorized by this Agreement, may be accomplished by entering into contracts, leases or other agreements with others, whenever the Board shall deem this to be advisable.
- 4.2 The Board shall have the power to make contracts as it deems necessary to make effective any power to be exercised by CPT pursuant to this Agreement; to provide for the prosecution and defense or other participation in actions or proceedings at law in which it may have an interest; to employ such persons as it deems necessary to accomplish its duties and powers on a full-time, part-time or consulting basis; to conduct such research and investigation as it deems necessary on any matter related to or affecting the general purposes of CPT; to acquire, hold and dispose of property both real and personal as the Board deems necessary; and to contract for space, materials, supplies and personnel either with a Member or with a number of Members or elsewhere.
- 4.3 The Board may establish and collect fees for its services to Members and to others.
- 4.4 The Board may accept gifts, apply for and use grants or loans of money or other property from the state, or any other governmental units or organizations and may enter into agreements required in connection therewith and may hold, use and dispose of such monies or property in accordance with the terms of the gift, grant, loan or agreement relating thereto.
- 4.5 The Board shall cause a regular, periodic independent audit of the books to be made and shall make a regular, periodic financial accounting and report in writing to the Members. Its books and records shall be available for and open to examination by its Members at all reasonable times.
- 4.6 The Board shall establish the annual budget for CPT as provided in this Agreement.

- 4.7 The Board shall adopt and follow such bylaws as may be appropriate and consistent with this agreement and law. Bylaws shall be adopted by and amended by a two-thirds (2/3) majority of the Board.
- 4.8 The Board shall create an Executive Committee, and a Software Administration Committee as standing committees, and may delegate authority to other appointed committees, between Board meetings as the Board shall see fit.
 - 4.8.1 The Executive Committee shall be comprised of the Chair, Vice Chair, and CPT Executive Director.
 - 4.8.2 The Software Administration Committee shall be comprised of the County Auditors (or equivalent) of two Members and the County Administrators/Coordinators of two Members, who shall be selected by the Board at its annual meeting.
- 4.9 The Board may accumulate and maintain reasonable working capital reserves and may invest and reinvest funds not currently needed for the purposes of CPT. Such investment and reinvestment shall be in accordance with and subject to the laws applicable to the investment of county funds.
- 4.10 The Board shall make its data processing and management information systems available to its Members, according to such fee schedules as the Board shall periodically set.
- 4.11 The Board may pay reasonable and necessary expenses of officers, Directors and Alternates incurred in connection with their duties as such.
- 4.12 The Board shall provide for its employees to be members of the Public Employees Retirement Association and may make any required employer contributions to that organization and any other employer contributions which counties are authorized or required by law to make.
- 4.13 The Board shall purchase public liability insurance and such other bonds or insurance as it may deem necessary.
- 4.14 The Board may develop additional rules concerning the financing of CPT and the disbursement of funds may be adopted by the Board provided they are not inconsistent with the provisions contained in this Agreement or state statutes.
- 4.15 The Board may exercise any power necessary and incidental to the implementation of its powers and duties.

ARTICLE V

FINANCING AND DISBURSEMENT OF FUNDS

- 5.1 Board shall have exclusive control over all monies credited to any CPT fund in accordance with state and federal laws and rules. Expenditures shall be made in accordance with the approved budget, contractual obligations of the JPO and the approval of the Board or the Executive Committee with respect to those matters under the jurisdiction of the Executive Committee.
- 5.2 The Board shall adopt an annual operating budget.
- 5.3 The adopted budget, which shall describe projected income and expenditures, shall be filed with the County Auditors of the Members and applicable Minnesota state agencies.
- 5.4 CPT will ensure strict accountability for all funds of the organization and will report on all receipts and disbursements made to, or on behalf of CPT.
- 5.5 The initial operating capital contributed by each Member shall be repaid from any excess in the fund balance at the end of the fiscal year in proportion to the initial contribution. The capital contribution of Members shall be equalized. Signatories to this Agreement that contribute higher initial capital contributions shall be repaid the difference between their contribution and the equalized contribution of other Members before CPT begins repayment of the equalized capital contribution.

ARTICLE VI

PROCEDURE TO JOIN

- 6.1 If a Governing Unit wishes to join CPT as a Member, it may make written application to the Board. The application shall consist of the governing body of a Governmental Unit adopting a resolution containing language to indicate full acceptance (without deviation) of the contents of this Joint Powers Agreement.

The Governmental Unit shall formally submit the adopted resolution under cover to the Chair of the CPT Joint Board. Upon a two-thirds (2/3) approval of the Board Members representing the Members who have not given a notice to withdraw, the request will be approved, subject to the provisions of Section 7.3. The Board shall notify all Members in writing of its decision.

- 6.2 All Members agree to abide by the terms and conditions of this Joint Powers Agreement, the Bylaws and the Policies or Procedures adopted by the Board.

- 6.3 At the time of application, CPT shall notify the applying Governmental Unit of the amount of initial operating capital the Governmental Unit will be required to contribute upon becoming a Member. Approval of membership by the Board shall be contingent upon agreement of the Governmental Unit to contribute its proportionate share of operating capital.

ARTICLE VII

ASSOCIATE (NON-VOTING) PARTICIPANT

- 7.1 Eligibility for Associate Participant: Governmental Units may wish to use or participate in the services and activities of CPT without becoming Members.
- 7.2 A Governmental Unit desiring to become an Associate Participant may do so by making application to CPT or by having a valid agreement for services. The Board shall establish charges to be paid by Associate Participants based upon the services agreed. The Board may charge Associate Participants higher fees than Members for services.
- 7.3 Associate Participants may apply for membership pursuant to Article VI.

ARTICLE VIII

RIGHT TO WITHDRAW

- 8.1 A Member may withdraw from this Agreement by adopting a resolution which specifically contains language of its "Notice to Withdraw." The approved Member governing body's resolution shall be submitted under cover letter and sent via certified mail to each party to this Agreement and to Board Chair of CPT. The Notice must be received by July 1 to be effective December 31 providing at least eighteen (18) months for the withdrawal process.
- 8.2 Withdrawal may occur at an earlier time by mutual agreement of a two-thirds (2/3) majority vote of the non-withdrawing Members of the Board and the withdrawing Governmental Unit.
- 8.3 If any party exercises its right to withdraw, this Agreement shall remain in full force and effect between the remaining parties.
- 8.4 A Member withdrawing from CPT at a time when such withdrawal does not result in dissolution of CPT (for a two-year period), shall forfeit its claim to any assets of CPT.

- 8.5 A Member withdrawing from Membership at a time when such withdrawal results in dissolution of CPT within a two-year period, shall retain both its obligations and its claims to any assets of CPT, except that it shall not have access to any Software developed or maintained during the period between its withdrawal and the dissolution of CPT.

ARTICLE IX

DISSOLUTION

- 9.1. CPT shall be dissolved:

- a. Whenever a sufficient number of Members withdraws from CPT to reduce the total number of Members to less than two (2); or
- b. Two-thirds (2/3) of the governing boards of the Members who have not given a notice to withdraw vote to dissolve.

A Member which has given notice of withdrawal shall not be counted under this subsection.

- 9.2. Upon dissolution, the remaining assets of CPT, after payment of all obligations, shall be distributed among the then existing Members and those former Members who had been members within the previous two-year period in proportion to their contributions as determined by the Board (subject to Section 8.5).

- 9.3. In the event of dissolution, the following provisions shall govern the distribution of computer Software and licenses owned by CPT:

All such Software and licenses shall be an asset of CPT. As such it may be sold. Members agree to abide by any existing licensing provisions, including, but not limited to, any licensing provisions identified in a separate existing or future agreement, or any conditions placed on such sale by the Board.

- 9.4. Winding-up and Distribution. Upon termination of this Agreement, CPT shall be dissolved. The Board shall continue to exist after dissolution as long as is necessary to wind-up and conclude the affairs subject to this Agreement.

ARTICLE X

DATA PRACTICES AND PROCEDURES

- 10.1 All Members agree to comply with state and federal statutes and rules regulating data, particularly the collection, creation, receipt, maintenance, or dissemination of private data, nonpublic and confidential data, as defined and regulated by the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, and or any other applicable state or federal laws.

ARTICLE XI

AMENDMENTS

- 11.1 Amendments to this Agreement may be proposed either by the Board or by governing boards of Members. Some changes may be mandated by law. Notice of proposed changes shall be served on the governing boards of Members by certified mail not later than 60 days prior to the proposed change unless an earlier date is mandated by a change in law.
- 11.2 Amendments to this Agreement must be approved by a two-thirds (2/3) vote of governing boards of Members who have not given a notice to withdraw, and shall be approved by the governing boards of Members at least 30 days prior to the effective date.
- 11.3 Adopted amendments shall remain in full force and effect, subject to the terms stated herein, until such time as this Agreement is terminated.

ARTICLE XII

INDEMNIFICATION AND HOLD HARMLESS

- 12.1 CPT shall be considered a separate and distinct public entity to which the Members have transferred all responsibility and control for actions taken pursuant to this Agreement. CPT shall comply with all laws and rules that govern a public entity in the State of Minnesota and shall be entitled to the protections of Minnesota Statutes Chapter 466.
- 12.2 CPT shall fully defend, indemnify and hold harmless the signatory Members and Board Members against all claims, losses, liability, suits, judgments, costs and expenses by reason of the action or inaction of the employees or agents of CPT. This agreement to indemnify and hold harmless does not constitute a waiver by

any Party/Member of limitations on liability under Minnesota Statutes section 466.04.

- 12.3 To the full extent permitted by law, actions by the Parties/Members pursuant to this Agreement are intended to be and shall be construed as a “cooperative activity” and it is the intent of the Members that they shall be deemed a “single governmental unit” for the purposes of liability, all as set forth in Minnesota Statutes section 471.59, subdivision 1a(a); provided further that for purposes of that statute, each Member party to this Agreement expressly declines responsibility for the acts or omissions of the other party.
- 12.4 The Parties/Members to this Agreement are not liable for the acts or omissions of the other Parties/Members to this Agreement except to the extent to which they have agreed in writing to be responsible for acts or omissions of the other Parties/Members.

ARTICLE XIII

GOVERNING LAW, FINALITY, SEVERABILITY

- 13.1 Governing Law. This Agreement shall be governed by and construed according to the laws of the State of Minnesota. Any legal proceedings taken arising out of the terms and conditions of the Agreement shall be venued in the district courts of the State of Minnesota.
- 13.2 Severability. The provisions of this Agreement are severable. If any section, paragraph, subdivision, sentence, clause or phrase of the Agreement is held to be contrary to law, rule, or regulation having the force and effect of law, such decision shall not affect the remaining portions of this Agreement.
- 13.3 Final Agreement. It is understood and agreed that the entire agreement of the parties is contained here and that this contract supersedes all oral or written agreements and negotiations between the parties relating to this subject matter. All items referred to in this Agreement are incorporated or attached and deemed to be part of the Agreement. This Agreement may be executed in multiple parts.

ARTICLE XV

DURATION

This Agreement shall continue in effect indefinitely, unless terminated in accordance with its terms, or superseded by a subsequent joint powers agreement specifically related to the purposes of this Agreement.

IN WITNESS WHEREOF, the undersigned Governmental Unit has caused this agreement to be signed and delivered on its behalf. In the process of:

(Name of Governmental Unit)

By _____

Title: _____ Dated _____

By _____

Title: _____ Dated _____

Approved as to form and execution:

(Attorney) _____
Dated

Accepted and approved by:

(CPT Chair) _____
Dated

RRM: #295521