



# Board of County Commissioners Agenda Request

6D  
Agenda Item #

Requested Meeting Date:

Title of Item: MCIS JPA & Bylaw Updates

- REGULAR AGENDA
- CONSENT AGENDA
- INFORMATION ONLY

**Action Requested:**

- Approve/Deny Motion
- Adopt Resolution (attach draft)

- Direction Requested
- Discussion Item
- Hold Public Hearing\*

*\*provide copy of hearing notice that was published*

**Submitted by:**  
Kirk Peysar, County Auditor

**Department:**  
County Auditor

**Presenter (Name and Title):**  
Kirk Peysar, County Auditor

**Estimated Time Needed:**  
n/a

**Summary of Issue:**

Updates to the Joint Powers Agreement and Bylaws as recommended by the MCIS Board.

**Alternatives, Options, Effects on Others/Comments:**

**Recommended Action/Motion:**

Adopt resolution

**Financial Impact:**

Is there a cost associated with this request?  Yes  No


What is the total cost, with tax and shipping? \$ as attached

Is this budgeted?  Yes  No *Please Explain:*

**Kirk Peysar**  
**Aitkin County Auditor**  
209 Second Street Northwest Room 202  
Aitkin, Minnesota 56431  
218.927.7354

December 28, 2016

To: Board of Commissioners

From: Kirk Peysar, County Auditor 

Re: MCIS Joint Powers Agreement and By-laws

The MCIS Board has reviewed the joint powers agreement and by-laws to update and provide clarification on language issues, those changes are:

- Withdrawal notices need to be provided by April 1<sup>st</sup> of the current year. Sections (VII, 7.2 (d) and IX 9.1)
- Effective date of the revised JPA will be January 1, 2017.

Copies of the documents are attached.

I am requesting County Board approval of the revised JPA and by-laws.



## **MINNESOTA COUNTIES INFORMATION SYSTEMS JOINT AND COOPERATIVE AGREEMENT**

This Agreement is made and entered into pursuant to Minnesota Statutes, Section 471.59. The parties to this Agreement are Governmental Units as defined in subdivision 1, Section 471.59, as quoted in Article II, Section 6, below. This Agreement supersedes and replaces any and all previous joint and cooperative agreements related to the MCIS Organization between the parties. It shall commence January 1, 2017, with respect to all present members of MCIS and shall become effective with respect to all future members upon adoption.

### **I. GENERAL PURPOSE**

The general purpose of this Agreement is to provide for an organization through which the Parties may jointly and cooperatively provide for the establishment, operation and maintenance of custom computer applications, the support and management of information systems for the use and benefit of the Parties and related activities as may be authorized by the Board.

### **II. DEFINITION OF TERMS**

- 2.1. For the purpose of this Agreement, the terms defined in this article shall have the meanings given them.
- 2.2. Minnesota Counties Information Systems means the organization created pursuant to this Agreement, which organization is hereafter referred to as "MCIS."
- 2.3. "Member" means a Governmental Unit as defined by Minn. Stat. § 471.59 which enters into this Agreement pursuant to the process defined herein.
- 2.4. "Associate" means a Governmental Unit purchasing services from MCIS through an executed service agreement that are not signatories to this Agreement and are not members of MCIS.
- 2.5. "Governmental Unit" is defined by subdivision 1, § 471.59 of Minnesota Statutes.
- 2.6. "Good Standing" means payment of bills within sixty (60) days of due date and meeting all contractual obligations.
- 2.7. "Director" means the primary representative designated by the governing body of the Member of MCIS. Alternate means the secondary representative designated



by the governing body of the Member of MCIS to represent and act in the absence of the primary Director.

- 2.8. "Board" means the governing body of MCIS, consisting of one Director from each Member.
- 2.9. "Day" or "days" shall refer to calendar days. "Fiscal Year" shall be the calendar year.
- 2.10. "Class 1 charges" refers to charges intended to cover the costs of design and development of computer programs, systems and other capital or general operating costs. Members of MCIS pay such portion of the Class 1 charges as shall be established by the Board on an annual basis.
- 2.11. "Class 2 charges" refers to charges intended to cover the costs of system operation and maintenance on an "as requested" basis and the costs associated with other requested projects. The amount of such charges shall be determined by the Board and such amounts shall be computed on the basis of workload, costs utilized by each Member or Associate/Contracted User and special projects.

### **III. BOARD OF DIRECTORS**

- 3.1. The governing body of MCIS shall be its Board. Each Member shall be entitled to one vote. Each Member shall appoint one Director and may appoint up to two Alternates. An Alternate may attend the Board of Directors' meeting(s) and vote in the absence of the Director.
- 3.2. Directors and Alternates shall serve without compensation from MCIS, but this shall not prevent a Member from providing compensation for its Director or Alternates, if such compensation is authorized by such Member's Governmental Unit and by law.
- 3.3. Directors and Alternates shall be appointed to serve until their successors are appointed or until such time as they are no longer employed by or serving as an official of the Member Governmental Unit. Any Director or Alternate shall be subject to removal by the governing body of the Member appointing him/her, at any time. 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. When the Member's governing body appoints a Director or an Alternate, it shall give notice of such appointment to MCIS in writing. Such notice shall include the



mailing address, e-mail address and phone number of any person so appointed. The contact information shown on such notices may be used as the official names and addresses for the purposes of giving any notice required by this Agreement or by the Bylaws of MCIS.

**3.5. Ineligible Voting Period:**

A Director or any Alternate of a Member shall not be eligible to vote on behalf of his/her Governmental Unit during the time that such Governmental Unit is in default on any contribution to MCIS or on any contract with it. During the existence of such default, such Governmental Unit shall not be counted in calculations for determining a quorum or for determining carrying of motions.

**3.6. Officers and Committees:**

The Board shall elect officers from its Memberships.

**IV. POWERS AND DUTIES OF THE BOARD**

- 4.1. The Board may adopt and follow such Bylaws as may be appropriate and consistent with this Agreement and law. Bylaws shall be adopted by and amended by an affirmative vote of a majority of members present at the annual meeting or at any other meeting of the Board provided that: 1) the proposed amendment shall have been submitted in writing to all Directors for review at least fourteen (14) days prior to the meeting and; 2) the proposed amendment shall have had a first reading at the regular meeting of the Board immediately prior to the meeting at which action is taken on the proposed amendment.
- 4.2. It shall take such action as it deems necessary and appropriate to accomplish the general purposes of the organization including the establishment of computer application and support and management information systems, engaging in the development and implementation of the necessary programs, therefore, acquiring any necessary site, purchasing any necessary supplies, equipment and machinery, employing any necessary personnel and operating and maintaining any systems for the handling of information 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.



- 4.3. The Board shall have full control and management of the affairs of MCIS including the power to make contracts and service agreements as it deems necessary to make effective any power to be exercised by MCIS 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 the MCIS; 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.
- 4.4. It may establish and collect membership dues.
- 4.5. It may establish and collect charges for its services to Members and to others.
- 4.6. It may enter into service agreements with Governmental Units that are not members through associate agreements and may charge fees other than for Members.
- 4.7. It 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 moneys or property in accordance with the terms of the gift, grant, loan or agreement relating thereto.
- 4.8. It shall cause a regular, periodic (not to exceed two years) independent audit of the books to be made and shall make a regular, periodic (not to exceed two years) 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.
- 4.9. It shall establish the annual budget for MCIS as provided in this Agreement.
- 4.10. It may delegate authority to an Executive Committee between Board meetings. Such delegation of authority shall be by resolution of the Board and may be conditioned in such manner as the Board may determine.
- 4.11. It may accumulate and maintain reasonable working capital reserves and may invest and reinvest funds not currently needed for the purposes of MCIS. Such



investment and reinvestment shall be in accordance with and subject to the laws applicable to the investment of county funds.

- 4.12. It shall make its information processing and management information systems available to its Members, according to this Agreement.
- 4.13. It shall make all decisions concerning the availability and transfer of its data processing and management information systems to any entity.
- 4.14. It may pay the reasonable and necessary expense of officers, Directors and Alternates incurred in connection with their duties as such.
- 4.15. It may provide for any of 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.
- 4.16. It may purchase public liability insurance and such other bonds or insurance as it may deem necessary.
- 4.17. It may develop additional rules concerning the financing of MCIS and the disbursement of funds may be adopted by the Board providing they are not inconsistent with the provisions contained in this Agreement or State Statutes.
- 4.18. It may exercise any power necessary and incidental to the implementation of its powers and duties.

## **V. MEMBERSHIP**

- 5.1. Eligibility: Any Governmental Unit is eligible to apply for membership in MCIS.
- 5.2. To qualify for membership, a Governmental Unit must:
  - a. Have been a voting Member on or before January 1, 2006; or
  - b. Participate in the minimum service participation levels set annually by the Board of Directors.
- 5.3. Application for Membership:



- a. A Governmental Unit may make written application to the Board, through its Executive Director, no later than July 1 of the year prior to membership becoming effective January 1, including its interest in entering into this Joint Powers Agreement and contact information must also be included.
- b. Following application to MCIS, the Executive Committee or Governing Board shall provide the applicant with information regarding the budget obligations and the proportionate share of budget reserves the applicants will be required to contribute upon becoming a Member. A copy of this Agreement and the Bylaws shall also be provided to the applying Governmental Unit for review and consideration by its Governing Board.
- c. Thereafter, the authorized officer of the Governmental Unit shall file a duly authorized, executed copy of this Agreement, together with a certified copy of the resolution containing language to indicate full acceptance (without deviation) of this Agreement and the budget and reserve prior to membership becoming effective January 1. The resolution shall also list the names, addresses, e-mail addresses and phone numbers of the persons appointed to serve as the primary Board Director and up to two Alternates.

5.4. Approval:

A Governmental Unit shall be admitted as a Member upon a favorable vote of a majority of the Board and the payment of any budget reserve required by the Board. The Board may impose reasonable conditions upon the admission of new Members.

- 5.5. This Agreement shall be in effect for only those Members who have approved and signed it and whose membership has been approved by the Board.
- 5.6. All Members agree to abide by the terms and conditions of this Agreement, the Bylaws and the Policies or Procedures adopted by the Board.

**VI. INDEMNIFICATION AND HOLD HARMLESS**

- 6.1. MCIS shall be considered a separate and distinct public entity to which the parties to this Agreement have transferred all responsibility and control for the actions and practices taken pursuant to this Agreement. MCIS 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.





- 6.2. MCIS shall fully defend, indemnify and hold harmless the Signatory Members and Directors against all claims, losses, liability, suits, judgments, costs and expenses by reasons of the action or inaction of the employees or agents of MCIS. This Agreement to indemnify and hold harmless does not constitute a waiver by any Party of limitations on liability under Minnesota Statutes Section 466.04.
- 6.3. To the full extent permitted by law, actions by the Parties pursuant to this Agreement are intended to be and shall be construed as a “cooperative activity” and it is the intent of the Parties 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 party to this Agreement expressly declines responsibility for the acts or omissions of the other Party.
- 6.4. The Parties to this Agreement are not liable for the acts or omissions of the other Party to this Agreement except to the extent to which they have agreed in writing to be responsible for acts or omissions of the other Party.

## VII. FINANCIAL MATTERS

- 7.1. The fiscal year of the MCIS shall be January 1 through December 31.
- 7.2. Annual Budget:
  - a. Each member shall notify the Board no later than April 1 of the year prior to the effective budget year of any changes to the services that it will be purchasing from MCIS during the next budget year. Any failure to notify the Board of changes will result in the member maintaining the same level of services for the next budget year.
  - b. A copy of the preliminary budget for the upcoming fiscal year shall be developed and forwarded to all Directors by mail and/or e-mail no later than one week prior to the July meeting for consideration by the Board.
  - c. Copies of the budget approved by the Board at the annual meeting shall be mailed, e-mailed or hand delivered to the Director of each Member no later than five (5) days after the Board meeting approving the budget.
  - d. The budget, including the Member’s contribution, shall be deemed approved by the Member and the budget contribution of the Member agreed to unless, prior to April 1<sup>st</sup> of the year prior to the effective budget



year, the Member provides written notice pursuant to Article IX of this Agreement that the Member is withdrawing from MCIS.

- 7.3. In addition to the annual budget and Member contributions, the Board shall have the authority to set charges for services (Class 2) based on usage and other factors determined by the Board.
- 7.4. Member Charges and Billings:
- a. Billings for all charges shall be made by the Board or by their representative. Charges shall be due and payable upon billings being issued.
  - b. Member whose charges have not been paid within sixty (60) days after billing shall be in default and shall not be entitled to further voting privileges, nor to have its Director hold any office, nor to use any MCIS facilities, nor have access to any future release of MCIS Software, until such time as no longer in default.
  - c. Default and Withdrawal: In the event that billed charges have not been paid within sixty (60) days after such billing, such defaulting Member shall be deemed to have given, on such 60th day, notice of withdrawal from Membership. Actual withdrawal shall not take effect for a period of ninety (90) days from the date of such notification (150 days from the unpaid bill).
  - d. Billing Dispute: In the event of a bona fide dispute between the Member and the Board as to the amount which is due and payable, the Member shall nevertheless make such payment in order to preserve its status as a Member, but such payment may be made under protest and without prejudice to its right to dispute the amount of the charge and to pursue any legal remedies available to it.
- 7.5. MCIS funds may be expended by the Board in accordance with procedures established by law for the expenditure of funds by Minnesota counties. Orders, checks, drafts and other legal instruments shall be approved by the Board or their authorized representative and signed by the Fiscal Agent and/or such person as shall be designated by the Board.
- 7.6. Contracts shall be let and purchases shall be made in accordance with the legal requirements applicable to contracts and purchases by Minnesota counties.



## VIII. OWNERSHIP OF ASSETS

- 8.1. The MCIS Building and all of its contents are the property of MCIS.
- 8.2. All furniture, equipment, fixed assets, systems, software, contracts, leases or intellectual property developed or related to the operations of MCIS are owned by MCIS unless specifically designated to be the property of a Member or other entity pursuant to contract or agreement.

## IX. WITHDRAWAL

- 9.1. Notice of Withdrawal: Any Member may give written notice of withdrawal from MCIS no later than April 1<sup>st</sup>, effective at the close of the current fiscal year. Such notice shall be sent to the Executive Director at the legal address of MCIS.

The nonpayment of charges as set forth in § 7.4 or the refusal or declination of any Member to be bound by a term of this Agreement shall also constitute notice of withdrawal.

- 9.2. Effect of Withdrawal:
  - a. Upon effective withdrawal, the withdrawing Member shall continue to be responsible for its budget contributions (Class 1) for the balance of the fiscal year.
  - b. All Members and former Members shall remain responsible for all (Class 2) usage based and contracted charges upon withdrawal.
- 9.3. In the event that a Member withdraws from MCIS and that withdrawal does not result in the dissolution of MCIS, within two (2) years after the withdrawal, the Member shall forfeit any claim to any assets of MCIS. The sole exceptions to this shall be that the withdrawing Member shall have access to any Software developed for its use while it was a Member, in accordance with and subject to the provisions of Article X, § 10.4.
- 9.4. In the event that a Member withdraws from MCIS and MCIS dissolves within two (2) years of that withdrawal, the withdrawing Member shall retain its claims to any assets of MCIS, except that it shall not have access to any Software developed or



maintained during the period between its withdrawal and the dissolution of the organization.

## X. DISSOLUTION

- 10.1. MCIS shall be dissolved:
  - a. Whenever a sufficient number of Members withdraws from the Organization to reduce the total number of Members to less than three (3);  
or
  - b. By a favorable vote of at least majority of the Board.
- 10.2. Upon dissolution the remaining assets of MCIS, after payment of all obligations, shall be distributed among the then existing Members and those former Members that had been members within the previous two-year period in proportion to their contributions, as determined by the Board, provided that computer Software prepared for such Members shall be available to them, subject to such reasonable rules and regulations as the Board shall determine.
- 10.3. If, upon dissolution, there is a financial deficit, such deficit shall be charged to and paid by the Members and those former Members for the previous two-year period on a pro rata basis, based upon the budget contribution (Class 1) and contracted (Class 2) charges incurred by such Members and former Members.
- 10.4. In the event of dissolution, or if a Member withdraws under Article IX, § 9.2, the following provisions shall govern the distribution of computer Software and licenses owned by the Organization:
  - a. All such Software and licenses shall be an asset of MCIS. As such it may be sold in order to meet the financial obligations of the organization. Members agree to abide by any existing licensing provisions, including, but not limited to, any licensing provisions identified in a separate existing or future indemnification agreement, or any conditions placed on such sale by the Board. In no case, however, will such sale prevent a Member from obtaining, using and maintaining the MCIS owned Software for its own use.
  - b. A Member or former Member may use any Software developed for its use during its Membership upon (1) paying any unpaid sums due MCIS, (2) submitting a written request for such Software within three (3) months



of withdrawal and paying the costs of taking such Software, and (3) complying with reasonable rules and regulations the Board may make related to the taking and use of such Software. Such rules and regulations may include, but may not be limited to, a prohibition or restriction on the distribution and marketing of such Software outside the jurisdiction of the Member or former Member.

## **XI. 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.

## **XII. GOVERNING LAW, FINALITY, SEVERABILITY**

- 12.1. **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.
- 12.2. **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.
- 12.3. **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.
- 12.4. **The Parties to this Agreement understand and agree that it may be amended from time to time as deemed necessary by the Parties and as may be required by law.**



**XIII. SIGNATURES AND COUNTERPARTS**

This Agreement shall be executed by each Member separately, each of which version shall be deemed an original, but each of which shall constitute one and the same document. Counterparts may be filed with the Executive Director of MCIS which shall maintain them at its legal address.

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:

\_\_\_\_\_  
*(MCIS Chair)* *Dated*  
 RRM: #246812