

Board of County Commissioners Agenda Request

4B
Agenda Item #

Requested Meeting Date: 6/28/16

Title of Item: Dissolution of Central MN Community Corrections				
▼ REGULAR AGENDA	Action Requested:		Direction Requested	
CONSENT AGENDA	Approve/Deny Motion		Discussion Item	
INFORMATION ONLY	Adopt Resolution (attach dr		Hold Public Hearing* earing notice that was published	
Submitted by: Nathan Burkett, County Administrator		Departm Administra		
Presenter (Name and Title): Nathan Burkett, County Administrator			Estimated Time Needed: 10 min	
Summary of Issue: Attached is a copy of the agreement which would dissolve CMCC.				
Administration will discuss the agreement with the Board at the board meeting in lieu of a written summary.				
Alternatives, Options, Effects on Others/Comments:				
Recommended Action/Motion:				
Approve Central MN Community Corrections Dissolution agreement.				
Financial Impact: Is there a cost associated with this	request? Yes		No	
What is the total cost, with tax and Is this budgeted?	l shipping? \$ No Please Exp	olain [.]		
100	LIFE THOUSE EXP			

DISSOLUTION AGREEMENT

This Agreement, made and entered into as of this 1st day of July, 2016, by and between Central Minnesota Community Corrections, with an address of 322 Laurel Street, Suite 32, Brainerd, MN 56401 (hereinafter "CMCC"), and Aitkin County, Crow Wing County and Morrison County, (hereinafter collectively "Members" and individually a "Member").

RECITALS

WHEREAS, CMCC is a Minnesota joint powers entity formed by the Members pursuant to Minnesota Statutes § 471.59 and which provides community corrections programs and services for the benefit of the Members; and

WHEREAS, the Members now choose to dissolve CMCC and to resume providing the community corrections programs and services individually within and for the benefit of each Member county; and

WHEREAS, CMCC and Members wish to dissolve CMCC in accordance with CMCC's Bylaws and related organizational agreements and pursuant to Minnesota law.

NOW, THEREFORE, in consideration of the foregoing, and in consideration of the mutual terms and conditions contained herein, the parties hereby agree as follows:

- 1. <u>Dissolution</u>. Pursuant to the Joint Powers Agreement Between Aikin, Crow Wing and Morrison Counties for Provision of Community Corrections Services dated October 1, 2009 ("Joint Powers Agreement"), Minnesota Statutes § 471.59, and Minnesota Statutes § 401.01 et. Seq. and related statutes, CMCC, pursuant to the Resolution of its Governing Board shall cease conducting business effective July 1, 2016 and shall wind up and formally dissolve by December 31, 2016.
- 2. Assets and Liabilities. Members hereby agree that CMCC shall cease doing business effective July 1, 2016 and that all liabilities of CMCC, to the extent of the assets of CMCC and to the extent such liabilities are capable of being fully paid and discharged, shall be fully paid and discharged prior to December 31, 2016. On December 31, 2016 all of the remaining liabilities and the disbursable property and remaining funds of CMCC shall, except as otherwise may be provided herein, be divided in accordance with the Joint Powers Agreement among all remaining Members on the basis of each Member's cost share ratios as determined pursuant to the Joint Powers Agreement and as otherwise required by applicable law. Such determination shall be made by CMCC's board and the Members with the assistance of CMCC's accountant.

Upon final payment of all liabilities capable of being determined and paid by December 31, 2016, all of the remaining liabilities and disbursable property not being capable of being determined and/or paid prior to December 31, 2016, together with the remaining funds of CMCC, shall be divided in accordance with the Joint Powers Agreement among the Members on the basis of the Member's cost share ratio as finally determined by CMCC's accountant. Exhibit "A" attached hereto is the Determination of Cost Share Ratio for Distribution of Remaining Assets and Liabilities Following Dissolution. It is specifically understood and agreed by the Members that the assets of CMCC will be either insufficient to fully pay and discharge all of the liabilities of CMCC as of December 31, 2016 or that there will be continuing liabilities of CMCC that cannot be effectively discharged as a part of the timely winding up of the business of CMCC before December 31, 2016.

The Members therefore hereby agree that all such liabilities shall be assumed and paid by the Members pursuant to their obligations as set forth in the Joint Powers Agreement; provided, however, that the administration and payment of the same shall be undertaken through the process described below or any other process that shall be established by the Members, which such process shall be and remain the joint obligation of the Members to undertake and fulfill until such time as all such continuing liabilities have been paid in full or otherwise discharged.

Nicole Kern and Elizabeth DeRuyck shall provide the initial review and approval of any liabilities of CMCC that are received after June 30, 2016, including any such liabilities that may be received after December 31, 2016. Final approval shall be the joint responsibility of the county administrators, with Crow Wing County continuing to act as the fiscal agent for the purposes of processing and paying such liabilities and for billing Aitkin County and Morrison County for their applicable cost share ratio. Aitkin County and Morrison County will each reimburse Crow Wing County within a reasonable time following receipt of a request for payment, but in no event not more than 60 days unless a payment is disputed or unless a longer payment term is approved by Crow Wing County. In the event of a disputed payment, the payment, if any, shall be made within 60 days following the resolution of the dispute. In addition, following the close of CMCC's books and records, an audit will be requested from the State Auditor which audit will cover the last six months' of the operations of CMCC.

- 3. <u>Employees</u>. Employees of CMCC shall be accorded the following rights as negotiated with their unions, as required under CMCC's Personnel Manual, or as may be otherwise agreed to between the Members or mandated by Minnesota Statutes.
 - (a) CMCC and the Members will follow the terms of the Effects Bargaining Employer Transition Agreement dated effective July 1, 2016 (a copy of the

Effects Bargaining Employer Transition Agreement is attached hereto as Exhibit B).

- (b) Unemployment Compensation Liability following dissolution.
 - (i) Each county agrees that it will assume and pay the unemployment compensation liability, if any, for any employee who at the time of the dissolution is employed by CMCC and assigned to a specific county, but who has not been hired by one of the Members to work for that Member after June 30, 2016.
 - (ii) For all other employees previously employed by CMCC and assigned to work for a CMCC Member or whose employment was terminated for reasons other than those directly related to the dissolution and for whom there exists an unemployment compensation liability, the cost of any such liability shall be borne and paid by the Members in accordance with the cost share ratios established by the Joint Powers Agreement.
- (c) Employees represented by Minnesota Teamsters Public and Law Enforcement Employees' Union, Local 320 (Field Services Employees and Clerical Unit) whose employment with CMCC has terminated by CMCC prior to July 1, 2016 and who have met the retirement criteria and have voluntarily retired will be eligible to participate in the Effects Bargaining Employer Transition Agreement's provisions concerning participation in retiree health benefits. Nonunion employees, to the extent provided by the CMCC Personnel Manual or as may be required in accordance with applicable law, are eligible for the same benefits that have been provided to union represented employees under the Effects Bargaining Employer Transition Agreement. Payment of the retiree health benefits are a continuing obligation that cannot be satisfied on or before December 31, 2016 and as such will be paid by the Members at the time they arise and in accordance with the cost share ratios established by the Joint Powers Agreement. The determination and payment of such continuing obligations shall be as more particularly set forth in Exhibit A attached hereto. The following are the general eligibility requirements:
 - (i) Full Time employees who have retired from CMCC prior to July 1, 2016 and who meet the eligibility requirements for retirement under the Minnesota Public Employees Retirement Association shall continue to receive contributions toward the payment of health insurance premiums for themselves and their surviving spouses as administered in accordance with the personnel policies of Crow

Wing County for non-contract employees and in accordance with the health insurance plan provided by Crow Wing County to its Minnesota Teamsters Public and Law Enforcement Employees' Union, Local 320 employees on the following basis:

- (1) Employees with less than seven (7) years of continuous qualifying service: the insured pays 100% of the premium.
- (2) Employees with seven (7) years of continuous qualifying service: CMCC pays one-third of the premium.
- (3) Employees with fifteen (15) years of continuous qualifying service: CMCC pays two-thirds of the premium.
- (4) Employees with twenty-five (25) years of continuous qualifying service: CMCC pays full cost of the premium.

For retired CMCC employees covered under the field services contract and for non-union employees who were hired after April 1, 1996, benefits shall cease upon reaching age sixty-five (65).

The Members' contributions to the payment of Health Insurance for retired regular full-time CMCC employees and eligible regular part-time CMCC employees or the employee's surviving spouse following dissolution does not apply to any non-contract employee or clerical unit contract employees hired after January 01, 2004. The Members contributions to the payment of Health Insurance for retired regular full-time CMCC employees and eligible regular part-time CMCC employees or the employee's surviving spouse following dissolution does not apply to any field service contract employee that was hired after January 01, 2014.

The health insurance plan to which this benefit shall be tied after June 30, 2016, shall be the health insurance plan provided by Crow Wing County to its Minnesota Teamsters Public and Law Enforcement Employees' Union, Local 320 employees and will be administered according to the terms of that plan. Aitkin and Morrison Counties will be billed annually, or more frequently by Crow Wing County as the parties may subsequently agree, for their share of the premiums determined in accordance with the cost share ratio described above.

- (d) Eligible contract and non-contract employees who have not retired as of July 1, 2016 and who have become employed by a Member will have 30 days from the date the proposal is offered to determine whether to accept the terms of the proposal and, if accepted, to determine how they wish to have their Paid Time Off ("PTO") account balances handled at the time of the termination of their employment with CMCC. Employees in this category may exercise one of the following three options:
 - (i) To have the entire remaining balance of their PTO account paid to them, less mandatory deductions.
 - (ii) To have a designated portion of the balance in their PTO account paid to them and the remaining portion transferred to their new Member employer.
 - (iii) To have the entire balance of their PTO account transferred to their new Member employer.

In the event option (ii) or (iii) is elected by employees, to the extent an employee's PTO time is transferred to a Member CMCC will fund the amount of the PTO, including the employer's portion of any mandatory taxes on such payments to be funded out of the available remaining funds of CMCC before such funds are distributed to the Members pursuant to the cost share ratio. In the event of PTO payouts as provided in sections (ii) or (iii) above, the amount oaid will be calculated based on the employee's CMCC wage at the time of termination.

- (e) CMCC employees who are hired by a Member effective on or before July 1, 2016, and who have an Extended Leave Bank ("ELB") account balance at the time their employment with CMCC ends, will be allowed to transfer their ELB account balances to be used and administered by the employee's new employer, subject to the mandatory accrual limits in existence under the new employer's personnel policies and procedures, and subject to being used in accordance with the new employer's personnel policies and procedures. CMCC will fund the amount of the ELB transferred for each eligible employee, including the employer's portion of any mandatory taxes on such payments. Such amounts will be funded out of the available remaining funds of CMCC before such funds are distributed to the Members pursuant to the cost share ratio.
- 4. <u>Specific Assets and Contracts</u>. The tangible assets of CMCC that are currently housed in one of the three Member locations and owned by CMCC, such as, but not necessarily limited to, general office equipment, televisions, telephone equipment,

computers, printers, tables, desks and chairs and similar such items shall remain in the locations where currently housed and shall become the property of the Member where the property is housed with no adjustments to the amount each Member is entitled to contribute or receive under paragraph 2 above.

Concerning property that is titled such as automobiles that are used in the Crow Wing specialty courts and the Morrison Drug court, the title to such vehicles shall be transferred to the Member where such vehicles are located without any valuation or payment, it being agreed that such vehicles have little or no resell value.

Contracts of CMCC with vendors that can be terminated by July 1, 2016 or within a reasonable time thereafter, but in no event not later than December 31, 2016, shall be terminated and it shall be the right of each Member to enter into any new contract with such vendor(s) as the Member in its sole discretion determines. Concerning any contracts that cannot be terminated or that are chosen by mutual agreement among the Members to be split and/or assumed by one or more of the Members, the Members shall document any such splitting of or assumption of the existing contracts with the liability of CMCC for the performance of such contracts ceasing as of the effective date of the contract split or assumption.

It shall be the responsibility of each Member at their own cost to enter into such agreements with such providers as GovPay, MCCC, MGA, E-file/E-Serve, BCA User Agreement, and Redwood Toxicology.

- 5. Personnel, Litigation and Other Files; Litigation Matters..
- (a) All files concerning pending litigation, personnel and other matters for which document retention is required by applicable law shall be retained by Crow Wing County as fiscal agent. Crow Wing County shall have no authority or duty to perform any functions with respect to such files except to deliver the same as may be properly requested from time to time or to destroy the same in accordance with the state schedule applicable to the retention and destruction of such files and as mutually approved by Aitkin County's and Morrison County's county administrator or their designees.
- (b) The County Administrators for Aitkin County, Crow Wing County and Morrison County, or their designees, shall be authorized to act from and after July 1, 2016 on behalf of the winding down or dissolved CMCC, as the case may be, to respond to or initiate whatever process, legal or otherwise, that may be prudent or necessary in order for CMCC to be able to assert any legal rights it

has remaining during the winding down process and following dissolution and to direct the defense of any legal action seeking to affect the assets, legal interests or rights of CMCC or the counties arising out of the operation of CMCC to the extent those assets, legal interests and rights of CMCC have been assumed by the respective counties pursuant to the Joint Powers Agreement and this Dissolution Agreement. In fullfilling this responsibility, it shall be the duty of the county which is served with legal process or with notice of a legal claim to provide timely and appropriate notice to the other two counties. In addition, should the need to engage in litigation occur after December 31, 2016, each county shall appoint two members to serve on a joint litigation committee to act on behalf of the three counties, which committee shall have the authority in consultation with the counties to prosecute, defend and/or conclude such litigation in a manner that is in the counties' and CMCC's mutual best interests. Any liability (costs associated with the liability, a settlement, final disposition, and/or attorney's fees and any other associated costs) incurred by or on the behalf of CMCC in any such action which are not covered by insurance will be paid by each of the three counties in accordance with the cost share ratio. The intent of the provisions of this paragraph 5(b) is not to expand or extend the legal liability of CMCC beyond that which is required by the Joint Powers Agreement, this Dissolution Agreement or as may otherwise be required in accordance with applicable law.

- 6. <u>Conditions to CMCC's and Members' Obligations Hereunder</u>. The obligation of the parties to complete the dissolution of CMCC in accordance with the terms set forth in this Agreement is subject to the satisfaction (or written waiver by each party) of each of the following conditions:
 - (a) The Joint Powers Agreement of CMCc and all statutory requirements must have been complied with by all parties.
 - (b) The boards of each Member shall have approved the terms and conditions applicable to them to the extent that any such approval is required or requested.
 - (c) The parties agree to use their best efforts and good faith to have the above conditions satisfied as soon as possible.
- 7. <u>Binding Effect.</u> This Agreement is binding upon, and shall inure to the benefit of, the parties hereto and their respective successors, representatives and assigns.

- 8. <u>Interpretation and Amendment</u>. This Agreement shall be interpreted in accordance with Minnesota law. This Agreement may be amended only in writing signed by all parties.
- 9. <u>Mediation/Arbitration</u>. Any controversy or claim arising out of or related to this Agreement, or the breach thereof, shall be settled by first attempting to mediate the dispute and upon the failure of mediation upon binding arbitration as provided in the following paragraphs.
 - Before resorting to arbitration as provided in paragraph (b) below, the (a) parties involved in a dispute arising under this Agreement, agree to first try to settle the dispute by mediation. The mediation shall be conducted by a single third party neutral mediator mutually acceptable to all involved parties, using procedures to be determined by the mediator. If the parties are unable to agree on a mediator within fifteen (15) calendar days (or such longer period as is agreed upon by the parties), each party shall nominate a proposed mediator and such nominated mediators shall mutually agree on a neutral mediator. Mediation shall commence using procedures to be determined by the mediator. All mediations shall be conducted in compliance with the Minnesota Civil Mediation Act, over such period of time and at such times and locations as the neutral mediator determines until the dispute is resolved or the mediator determines that the dispute cannot be resolved through mediation. Except as hereinafter provided, the costs and expenses of the mediation, including compensation of the mediator, will be borne equally by the parties. If the dispute is not resolved by mediation, the matter may be submitted to binding arbitration as provided in Paragraph (b) below.
 - (b) In the event that mediation does not result in resolving such dispute, a party may by written request submit the dispute for resolution by binding arbitration before a single qualified neutral under the authority of the Minnesota Uniform Arbitration Act. The arbitrator will be selected, and, except as otherwise provided in this Agreement, the arbitration shall be conducted in accordance with the rules promulgated by the American Arbitration Association relevant to the nature of the dispute to be arbitrated or on such other rules on which the parties may mutually agree. In addition the parties shall adhere to the following procedures:
 - (i) In rendering an award the arbitrator shall determine the rights and obligations of the parties according to the substantive and procedural laws of the State of Minnesota.

- (ii) All arbitration proceedings shall be conducted in Aitkin, Morrison or Crow Wing County, Minnesota unless another location is mutually agreed upon.
- (iii) Limited civil discovery shall be permitted for production of documents and taking of depositions. All issues involving compliance with discovery requests shall be decided by the arbitrator.
- (iv) Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction.
- (v) The arbitrator shall have the authority to award any remedy or relief that a court of this state could order or grant, including, without limitation, specific performance of any obligation created by the parties, the issuance of an injunction or the issuance of sanctions for the abuse or frustration of the arbitration process, but may not award punitive or exemplary damages.
- (vi) Notwithstanding anything in this Agreement to the contrary, any party to this Agreement may seek and obtain injunctive or other appropriate equitable relief from a court of competent jurisdiction to prevent or end irreparable harm to such party and for which it would be extremely difficult or impossible to determine the damages that would arise from such violation or the continuance thereof; provided, however, that the substance of any such dispute is to be resolved through arbitration as provided in this Section and that the Court's equitable relief may include an order compelling such mediation and arbitration.
- (vii) The prevailing party shall be entitled to recover all reasonable attorneys' fees, costs, including the mediation and arbitration attorneys' fees and costs it previously advanced, expert fees and costs and related expenses from the non-prevailing party and such recovery shall be made part of the arbitration award and any judgment entered pursuant to such award.

[The Signature Page follows this page 9.]

IN WITNESS WHEREOF, the parties have executed this Agreement as on the day and year first above written.

CENTRAL MINNESOTA COMMUNITY CORRECTIONS

By:	Dated:	, 2016
Its:		
CROW WING COUNTY		
By:	Dated:	, 2016
Its:		
By: Its: Clerk to the County Board	Dated:	, 2016
MORRISON COUNTY		
Ву:	Dated:	, 2016
Its:		
By: Its: Clerk to the County Board	Dated:	, 2016
AITKIN COUNTY		
By:	Dated:	, 2016
Its:		
By:	Dated:	, 2016

EXHIBIT "A"

DETERMINATION OF COST SHARE RATIO FOR DISTRIBUTION OF ASSETS AND LIABILITIES UPON DISSOLUTION

Each of the three Member's proportionate shares of Central Minnesota Community Corrections property and remaining funds will be the current cost share ratio as calculated in accordance with the terms of Paragraph 8 of the October 1, 2009 Joint Powers Agreement as follows:

EXHIBIT "B" EFFECTS BARGAINING EMPLOYER TRANSITION AGREEMENT

In recognition of the dedicated service and loyalty of the employees of Central Minnesota Community Corrections, (hereinafter "CMCC"), and in an effort to help ease the transition of employees affected by the dissolution of CMCC, CMCC, the counties of Crow Wing, Morrison and Aitkin, and the Minnesota Teamsters Public and Law Enforcement Employees' Union, Local 320 (Field Services Employees and Clerical Unit) have mutually developed this Employer Transition Agreement as set forth below:

- 1. This Employer Transition Agreement will become effective upon the dissolution of CMCC on or after July 1, 2016 as determined by CMCC.
- 2. Employees represented by Minnesota Teamsters Public and Law Enforcement Employees' Union, Local 320 (Field Services Employees and Clerical Unit) whose employment with CMCC is terminated by CMCC on July 1, 2016 or who met the retirement criteria and have voluntarily retired will be eligible to participate in the Employer Transition Agreement. Nonunion employees are not eligible for the Employer Transition Agreement.
- 3. Eligible employees who have not retired as of July 1, 2016 and who are covered by this Employer Transition Agreement will have 30 days from the date the Employer Transition Agreement is offered to determine whether to accept the terms of the Employer Transition Agreement and, if accepted, to determine how they wish to have their Paid Time Off ("PTO") account balances handled at the time of termination. Employees in this category may exercise one of the following three options:
 - i. To have the entire remaining balance of their PTO account paid to them, less mandatory deductions.
 - ii. To have a portion of the balance in their PTO account paid to them and have the remaining portion transferred to their new Crow Wing County, Morrison County or Aitkin County employer.
 - iii. To have the entire balance of their PTO account transferred to their new Crow Wing County, Morrison County or Aitkin County employer.

In the event option (ii) or (iii) is elected, the employee will have immediate access and use of the accrued hours in the employee's PTO account in their new employment. Further, an election of option (ii) or (iii) will require that the employee sign an Employee Transition Agreement relating to the termination of employee's employment with CMCC and confirming their election to transfer some or all of their PTO benefits to be used in their new employment as an employee of Crow Wing County, Morrison County or Aitkin County. In the event option (i) or (ii) is selected, the PTO payouts will be calculated based on the employee's CMCC wage at the time of termination.

- 4. Full Time employees who were members of Teamsters Local 320 (Field Services and Clerical Unit) and retired from CMCC prior to July 1, 2016 and who meet the eligibility requirements for retirement under the Minnesota Public Employees Retirement Association shall continue to receive contributions toward the payment of health insurance premiums for themselves and their surviving spouses on the following basis:
 - i. Employees with less than seven (7) years of continuous qualifying service: the insured pays 100% of the premium.
 - ii. Employees with seven (7) years of continuous qualifying service: CMCC pays one-third of the premium.
 - iii. Employees with fifteen (15) years of continuous qualifying service: CMCC pays two-thirds of the premium.
 - iv. Employees with twenty-five (25) years of continuous qualifying service: CMCC pays full cost of the premium.

For retired CMCC Field Services employees hired after April 1, 1996, benefits shall cease upon reaching age sixty-five (65).

CMCC's contribution to the payment of Health Insurance for retired regular full-time employees and eligible regular part-time employees or the employee's surviving spouse following dissolution does not apply to any non-contract employee or clerical unit contract employees hired after January 01, 2004. CMCC's contribution to the payment of Health Insurance for retired regular full-time employees and eligible regular part-time employees or the employee's surviving spouse following dissolution does not apply to any field service contract employee that was hired after January 01, 2014.

The health insurance plan to which this benefit shall be tied after June 30, 2016, shall be the health insurance plan provided by Crow Wing County to its Minnesota Teamsters Public and Law Enforcement Employees' Union, Local 320 employees and will be administered and adjusted according to said plan.

5. For all CMCC employees who are hired by Crow Wing County, Morrison County, or Aitkin County effective on or before July 1, 2016, and who have an Extended Leave Bank ("ELB") account balance at the time their employment with CMCC ends, the ELB account balance for each such employee will be transferred to and administered by the employee's new county employer, subject to the mandatory accrual limits in existence under the new employer's personnel policies and procedures, and subject to being used in accordance with those personnel policies and procedures.

- 6. The payment of any PTO benefits to an employee shall be subject to applicable state and federal payroll taxes.
- 7. All disputes concerning the interpretation and implementation of this Agreement shall be submitted under and handled in accordance with the applicable grievance set forth in the collective bargaining agreement applicable to the employee in the employee's new employment or in the absence of a collective bargaining agreement, in accordance with the employer's dispute resolution policies and procedures applicable to employees.

The above named parties, by their signatures below, approve this Effects Bargaining Employer Transition Agreement and agree to be bound by its terms from and after July 1, 2016.

CENTRAL MINNESOTA COMMUNITY CORRECTIONS

Its: Clerk to the County Board

MORRISON COUNTY	
By:	Dated:, 2016
Its:	
By:	Dated:, 2016
Its: Clerk to the County Board	
AITKIN COUNTY	
By:	Dated:, 2016
Its:	
By:	Dated:, 2016

Its: Clerk to the County Board