

Notice & Agenda
Swift County Board of Commissioners
Tuesday, October 6, 2020
9:00 AM

LEC Meeting Room – 301 14th St N, Benson, MN

If you need any type of accommodation to participate in this meeting, please contact the County Administrator at 320-314-8399 at least 48 hours prior to the meeting.

<u>Time</u>	<u>Reference</u>	<u>Item</u>
9:00 a.m.		Call to Order and Roll Call
9:01 a.m.		Approve Agenda
9:02 a.m.		Consent Agenda
	1-2	(1) Minutes from the September 15, 2020 Regular Meeting
9:04 a.m.		Consider Approval of Commissioner warrants and review Auditor warrants
9:05 a.m.		Commissioner and Board reports
9:25 a.m.		County Administrator report
9:30 a.m.		Citizens Comments
9:35 a.m.		Scott Collins, Environmental Services Director
	3-5	Consider approval of a Conditional Use Permit #5759 requested by Willmar Poultry Farms, Inc, (Owner) for expanding their turkey operation
		Amanda Ness, Administration
9:45 a.m.	6	Consider approval of the appointment of the Executive Director of the RDA and approve the recommendation for wage at step 5
9:55 a.m.		Catie Lee, Human Services
	7-39	Consider approving resolution 20-10-36 for authorizing signatory on the Department of Human Services Community Support Grant for 2021-2022
10:10 a.m.		Liz Auch, Countryside Public Health Director
	40-56	Consider approval of the final Tobacco Ordinance adoption
10:30 a.m.		Other Business
	57	Prairie Five Open House Oct 6 th 1-3:00 pm
10:35 a.m.		Recess
11:00 a.m.		Human Services Work Session
3:00 p.m.		Adjournment

SWIFT COUNTY BOARD MINUTES

September 15, 2020

Chairman Hendrickx called the meeting to order at 9:01 AM with all members present. Also present: County Administrator Kelsey Baker, Assistant County Attorney Shawn Reinke, and Terri Orr.

Chairman Hendrickx asked if there were any changes or additions to the agenda. There were no changes.

09-15-20-01 Commissioner Fox moved and Commissioner Rudningen seconded to approve the agenda. Motion carried unanimously.

09-15-20-02 Commissioner P. Peterson moved and Commissioner E. Pederson seconded to approve the Consent Agenda: (1) Approval of Minutes from September 1, 2020 Regular Meeting, (2) Approval of Safe Assure Contract/Agreement October 1, 2020 to September 30, 2021. Motion carried unanimously.

09-15-20-03 Commissioner Rudningen moved and Commissioner Fox seconded to approve the Commissioner warrants as follows: Revenue: \$326,371.97; Solid Waste: \$48,954.83; County Road & Bridge: \$10,183.99; Human Services: \$114.66; County Ditches Fund: \$5,514.49; which includes the following bills over \$2,000: 2853 School District Treasurer, \$6,346.54; 6W Department of Community Correction, \$145,398.42; 775 School District Treasurer; \$32,588.99; American Surplus & MFG, \$19,190.00; Appleton Area Health Services, \$2,150.00; Benson ISD 777, Acc 31127-101, \$36,064.47; Scott Borman, \$13,800.00; Counties Providing Technology, \$6,574.00; Esri, \$4,646.00; Hawleys Inc., \$3,108.01; Johnson Controls, \$4,603.40; Alex C Larson, \$3,432.00; Lincoln National Corporation, \$2,356.23; Pflipsen Trucking LLC, \$14,467.60; RDO Equipment Company, \$3,996.97; Treasurer, City of Clontarf, \$11,346.00; Treasurer, City of Danvers, \$8,373.00; Treasurer, City of DeGraff, \$9,001.16; U S Postal Service, \$5,000.00; University of Minnesota, \$2,081.53; Upper MN Valley RDC, \$2,407.20; Waste Management Of WI-MN, \$11,569.99. Motion carried unanimously.

Board and Committee Reports were given as follows: Commissioner P. Peterson reported on 6W Community Corrections and Countryside Public Health. Commissioner E. Pederson reported on RDA and Soil and Water Conservation District. Chairman Hendrickx reported on 6W Community Corrections, PrimeWest, CARES Act Team, AMC, Human Services, Revolving Loan Fund and Personnel meeting. Commissioner Fox reported on PrimeWest, Restorative Practices, Pomme de Terre Watershed, Revolving Loan Fund and Well-Being Committee. Commissioner Rudningen reported on Prairie Lakes Youth Program and Well-Being Committee.

Administrator Baker reported on Personnel meeting, CARES Act Team, DAC meeting, Well-Being Committee, Budget, work group signups and City of Benson meeting.

Chairman Hendrickx asked for citizen's comments. Mark Hughes had concerns on 6W Community Corrections, County Pick-up, up-coming building projects, Skid Steer, local businesses and E85 and blended diesel gas.

Dan Enderson and Melissa McGinty-Thompson updated the board on the SCBHS.

Director Catie Lee updated the board on the Financial Summary and Human Services update.

Auditor Kim Saterbak requested approval to purchase a tax-forfeited property by the City of Appleton.

09-15-20-04 Commissioner P. Peterson moved and Commissioner Fox seconded to approve the purchase of a tax-forfeited property by the City of Appleton. A brief discussion was held. Motion carried unanimously.

The board recessed for a break at 10:11 AM.

The board reconvened at 10:16 AM.

Administrator Kelsey Baker presented the 2021 Budget and requested approval of resolution 20-09-35 on the 2021 preliminary budget and levy for Swift County.

09-15-20-05 Commissioner Rudningen moved and Commissioner P. Peterson second to approve resolution 20-09-35 on the 2021 preliminary budget and a 1% levy increase for Swift County. A lengthy discussion was held. Motion carried 4-1 with Commissioner E. Pederson opposing.

Kelsey Baker further requested approval of the Coronavirus Relief Funds for Prairie Lakes Youth Program in the amount of \$22,800.00 and DAC in the amount of \$90,000.00.

Commissioner Rudningen requests to amend the motion to wait with paying the Prairie Lakes Youth Program dollars from the Coronavirus Relief Funds money until we have the decision from all other counties. A lengthy discussion was held. Motion carried unanimously.

09-15-20-06 Commissioner Rudningen moved and Commissioner E. Pederson seconded to approve the amended motion to wait with paying the Prairie Lakes Youth Program dollars from the Coronavirus Relief Funds money until we have the decision from all other counties. Motion carried unanimously.

09-15-20-07 Commissioner Rudningen moved and Commissioner E. Pederson seconded to approve the motion on the Coronavirus Relief Funds for Prairie Lakes Youth Program in the amount of \$22,800 and the Commissioners increased the DAC amount to \$100,000. Motion carried unanimously.

Kelsey further requested approval on the 3-year Ongoing Maintenance Contract with David Drown & Associates.

09-15-20-08 Commissioner Rudningen moved and Commissioner P. Peterson seconded to approve the 3-year Ongoing Maintenance Contract with David Drown & Associates. A lengthy discussion was held. Motion carried unanimously.

09-15-20-09 Chair Hendrickx adjourned the meeting.

The meeting adjourned at 10:49 AM.

WITNESSED:

Gary Hendrickx, Chair

ATTEST:

Kelsey Baker, County Administrator



Request for Board Action

BOARD MEETING DATE:
October 6, 2020

Commissioner's Report

Department Information

ORIGINATING DEPARTMENT: Environmental Services	REQUESTOR: Scott Collins	REQUESTOR PHONE: 320-843-2356
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Agenda Item Details

BRIEF DESCRIPTION OF YOUR REQUEST: Consider approval of a Conditional Use Permit #5759 requested by Willmar Poultry Farms, Inc, P.O. Box 933, Kerkhoven, MN 56252 (Owner) for expanding their turkey operation by constructing a 182' x 650' total confinement barn with concrete floors and stockpiled litter storage. The proposed barn will hold 54,000 turkeys (under 5 lbs.) and 54,000 turkeys (over 5 lbs.) for a total of 1,242 animal units, which is an increase from the previous 500 animal unit capacity. The three outdated quonset barns on the site will be demolished.	
AGENDA YOU ARE REQUESTING TIME ON: 10-05-2020	ARE YOU SEEKING APPROVAL OF A CONTRACT? No
IS THIS MANDATED? No	EXPLANATION OF MANDATE: Click here to enter text.
BACKGROUND/JUSTIFICATION: Required Conditional Use Permit per subsection 3.3 Code of Ordinances, Agricultural District 1. Allowable use with Conditional Use Permit.	
PREVIOUS ACTION ON REQUEST / OTHER PARTIES INVOLVED?	

Budget Information

FUNDING:

Review/Recommendation

COUNTY ATTORNEY: Danielle Olson	COUNTY ADMINISTRATOR: Kelsey Baker
RECOMMENDATIONS: Click here to enter text.	RECOMMENDATIONS: Click here to enter text.
COMMENTS: Click here to enter text.	COMMENTS: Click here to enter text.

Board Action

Motions ___ E. Rudningen ___ G. Hendrickx ___ E. Pederson ___ P. Peterson ___ J. Fox	
Action	Vote

Proposed Special Conditions
Willmar Poultry Farms, Inc.
Conditional Use Permit Amendment #5759

1. The permit holder shall comply with all applicable governmental laws, rules and regulations as they may apply to the project.
2. Applicant's personnel must address all complaints, problems or concerns regarding public health, safety and welfare within 72 hours of presentation of the complaint. Copies of all complaints and responses addressed to them shall be submitted to Swift County Environmental Services.
3. Granting of the conditional use-permit shall be for the plans submitted with the initial application only.
4. All plans regarding approaches and access roads, as well as traffic control must be submitted to the County Highway Department.
5. Dead animals shall be disposed of in a manner consistent with the Minnesota Board of Animal Health and the Minnesota Pollution Control Agency (MPCA) requirements.
6. The permit holder shall allow the Zoning Administrator or MPCA staff to inspect the site whenever necessary. However, the Zoning Administrator shall provide a 24-hour notice in advance of any inspection that involves accessing the buildings in which the animals are confined.
7. An animal manure plan must be completed.
8. A Water Appropriation Permit must be granted from the MN DNR.
9. Drainage in the area cannot be negatively affected.
10. That a Good Neighbor Policy be in effect. Prior to spreading, the residents of dwellings within $\frac{3}{4}$ mile of agitation and spreading sited would be contacted to determine if they have any special events planned which may be affected by the spreading. If possible, another location or time would be chosen. Neighbors are encouraged to contact the applicant with any scheduled events in advance so as to help them plan manure application.
11. Reasonable measures will be taken to minimize offensive odor, fumes, dust and noise so that none of these will constitute a public nuisance.
12. This Conditional Use Permit #5759 shall expire one year from the date of issuance if the permit is not utilized.
13. Violation of any of the above stated conditions may result in revocation of the conditional use permit.

Summary

Expanding the turkey operation by adding:

182' x 650' total confinement barn with concrete floors and stockpiled litter storage. The proposed barn will hold 54,000 turkeys (under 5 lbs.) and 54,000 turkeys (over 5 lbs.) totaling 1,242 animal units, which is an increase from the previous 500 animal unit capacity.

Demolition of existing old barns will be completed and tree screening placed along St. Hwy. 12.



Request for Board Action

BOARD MEETING DATE:
November 19, 2019

Commissioner's Report

Department Information

ORIGINATING DEPARTMENT: Administration	REQUESTOR: Amanda Ness	REQUESTOR PHONE: 320-314-8321
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Agenda Item Details

BRIEF DESCRIPTION OF YOUR REQUEST: Request approval of the appointment of the Executive Director of the RDA and approve the recommendation for wage at Step 5	
AGENDA YOU ARE REQUESTING TIME ON: Regular	ARE YOU SEEKING APPROVAL OF A CONTRACT? No
IS THIS MANDATED? No	EXPLANATION OF MANDATE: N/A
BACKGROUND/JUSTIFICATION: The RDA hiring committee and County Administration interviewed candidates and would like to offer the Executive Director of the RDA position to Laura Ostlie. Ms. Ostlie brings a background of Swift County knowledge and understands the importance of Economic Development in our county. The committee is recommending to start her at Grade 17, Step 5.	
PREVIOUS ACTION ON REQUEST / OTHER PARTIES INVOLVED?	N/A

Budget Information

FUNDING: Funding for this position is included in the 2020 and 2021 RDA Budget.

Review/Recommendation

COUNTY ATTORNEY: Danielle Olson	COUNTY ADMINISTRATOR: Kelsey Baker
RECOMMENDATIONS: Not submitted for review	RECOMMENDATIONS: Approve
COMMENTS: n/a	COMMENTS: none



Request for Board Action

BOARD MEETING DATE:
October 6, 2020

Commissioner's Report

Department Information

ORIGINATING DEPARTMENT: Human Services	REQUESTOR: Catie Lee	REQUESTOR PHONE: 320-843-6301
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Agenda Item Details

BRIEF DESCRIPTION OF YOUR REQUEST: Consider approving resolution for authorizing signatory on the Department of Human Services Community Support Grant for 2021-22	
AGENDA YOU ARE REQUESTING TIME ON: Regular board	ARE YOU SEEKING APPROVAL OF A CONTRACT? Click here to enter text.
IS THIS MANDATED? Yes	EXPLANATION OF MANDATE: DHS requires requests for mediation in writing by August 15 th .
BACKGROUND/JUSTIFICATION: Due to Covid-19 DHS is requiring a complicated e signature on the Community Support Grant. To simplify the process, I am requesting authorization through a resolution to e-sign for this contract. We have received this contract for 20 plus years and is included in the board packet. This contract has been sent for review by the county attorney on 9/18/20.	
PREVIOUS ACTION ON REQUEST / OTHER PARTIES INVOLVED?	Click here to enter text.

Budget Information

FUNDING:

Review/Recommendation

COUNTY ATTORNEY: Danielle Olson	COUNTY ADMINISTRATOR: Kelsey Baker
RECOMMENDATIONS: Click here to enter text.	RECOMMENDATIONS: Approve
COMMENTS: n/a	COMMENTS: Click here to enter text.

Swift County Board of Commissioners
Resolution 20-10-36

Be it resolved that Swift County will enter into a Grant Contract for Community Support Plan Services with the Department of Human Services, Mental Health Division.

Catherine (Catie) Lee, Director for Swift County Human Services is hereby authorized to execute such agreements and amendments, as are necessary to implement the Grant Contract on behalf of Swift County.

I certify that the above resolution was adopted by the Swift County Board of Commissioners on October 6, 2020.

Gary Hendrickx, Chair
Swift County Board of Commissioners

Attest:

Kelsey Baker, Administrator



Minnesota Department of Human Services County Grant Contract

This Grant Contract, and all amendments and supplements to the contract (“CONTRACT”), is between the State of Minnesota, acting through its Department of Human Services, Behavioral Health Division (“STATE”) and Swift County Human Services, an independent grantee, not an employee of the State of Minnesota, located at 410 21st Street South, Benson, MN 56215 (“COUNTY”).

RECITALS

STATE, pursuant to Minnesota Statutes, section 256.01, subdivision 2(a)(6) and 245.461 to 245.486 (the “Minnesota Comprehensive Adult Mental Health Act”), has authority to enter into contracts for the following services: create and ensure a unified, accountable, and comprehensive adult mental health system with services administered under Adult Mental Health Initiative and/or Community Support Program funding.

STATE, in accordance with Minnesota Statutes, section 13.46, is permitted to share information with COUNTY.

COUNTY represents that it is duly qualified and willing to perform the services set forth in this CONTRACT to the satisfaction of STATE.

THEREFORE, the parties agree as follows:

CONTRACT

1. CONTRACT TERM AND SURVIVAL OF TERMS.

1.1. Effective date: This CONTRACT is effective on **January 1, 2021**, or the date that STATE obtains all required signatures under Minnesota Statutes, section 16B.98, subdivision 5, whichever is later.

1.2. Expiration date. This CONTRACT is valid through **December 31, 2022**, or until all obligations set forth in this CONTRACT have been satisfactorily fulfilled, whichever occurs first.

1.3. No performance before notification by STATE. COUNTY may not begin work under this CONTRACT, nor will any payments or reimbursements be made, until all required signatures have been obtained per Minn. Stat. § 16B.98, subd. 7, and COUNTY is notified to begin work by STATE’s Authorized Representative.

1.4. Survival of terms. COUNTY shall have a continuing obligation after the expiration of CONTRACT to comply with the following provisions of CONTRACT: 9. Liability; 10. Information Privacy and Security; 11. Intellectual Property Rights; 13.1. State audit; and 14. Jurisdiction and Venue.

1.5. Time is of the essence. COUNTY will perform its duties within the time limits established in CONTRACT unless it receives written approval from STATE. In performance of CONTRACT, time is of the essence.

2. COUNTY'S DUTIES.

2.1 Duties. COUNTY shall perform duties in accordance with **Attachment A**, County Duties, which is attached and incorporated into this CONTRACT.

2.2 Accessibility. Any information systems, tools, content, and work products produced under this CONTRACT, including but not limited to software applications, web sites, video, learning modules, webinars, presentations, etc., whether commercial, off-the-shelf (COTS) or custom, purchased or developed, must comply with the [Minnesota IT \(MN.IT\) Accessibility Standards](#), as updated on June 14, 2018. This standard requires, in part, compliance with the Web Content Accessibility Guidelines (WCAG) 2.0 (Level AA) and Section 508 Subparts A-D.

Information technology deliverables and services offered must comply with the MN.IT Services Accessibility Standards and any documents, reports, communications, etc. contained in an electronic format that COUNTY delivers to or disseminates for the STATE must be accessible. (The relevant requirements are contained under the "Standards" tab at the link above.) Information technology deliverables or services that do not meet the required number of standards or the specific standards required may be rejected and STATE may withhold payment pursuant to clause 3.2(a) of CONTRACT.

3. CONSIDERATION AND TERMS OF PAYMENT.

3.1 Consideration. STATE will pay for all services satisfactorily provided by COUNTY under this CONTRACT.

a. Compensation. COUNTY will be paid in accordance with **Attachment B**, Budget, which is attached and incorporated into this CONTRACT.

1. Attachment B, "Budget", covers two full calendar years. The total budget amount indicated in Attachment B is to be dispersed over two calendar years. In calendar year 2021, COUNTY shall not invoice the STATE, and STATE shall not pay COUNTY, for more than half of the total budget amount indicated in Attachment B.
2. All expenditures must be for services or items necessary for the delivery of those services. "Capital" purchases are prohibited. Capital purchases are defined as something which has a useful life of more than one year and a per-unit acquisition cost which exceeds \$5,000 and is 1) land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, lease-purchase, exchange, or through capital leases; or 2) additions, improvements, modifications, replacements,

rearrangements, reinstallations, renovations, alterations, or repairs of the items listed above that materially increase their value or useful life.

3. COUNTY must obtain STATE written approval before changing any part of the budget. Notwithstanding Clause 16.1 of CONTRACT, revisions shall be done on a form provided by the STATE. Revisions are required when adding or removing a BRASS code from the budget or adding or removing a provider(s). Shifting of funds between budget line items does not require an amendment. Amendments are required when extending the end date or changing the total grant award, pursuant to Clause 16.1 of CONTRACT. If COUNTY's approved budget changes proceed without an amendment pursuant to this clause, COUNTY must record the budget change on a form provided by STATE.

- b. Travel and subsistence expenses.** Reimbursement for travel and subsistence expenses actually and necessarily incurred as a result of COUNTY's performance under this CONTRACT shall be no greater an amount than provided in the most current Commissioner's Plan (which is incorporated by reference), promulgated by the Commissioner of Minnesota Management and Budget as specified in the [Commissioner's Plan](#).¹ COUNTY shall not be reimbursed for travel and subsistence expenses incurred outside the geographical boundaries of Minnesota unless it has received prior written approval from STATE. Minnesota shall be considered the home state for determining whether travel is out of state.
- c. Total obligation.** The total obligation of STATE for all compensation and reimbursements to COUNTY shall not exceed **one hundred twelve thousand, thirty six dollars (\$112,036)**.
- d. Withholding.** For compensation payable under this CONTRACT, which is subject to withholding under state or federal law, appropriate amounts will be deducted and withheld by STATE as required.

3.2. Terms of payment

- a. Advance.** The COUNTY will receive one initial payment **fourteen thousand, five dollars (\$14,005)** pursuant to Minnesota Administrative Rule 9535.1740 at the start of the CONTRACT. The COUNTY is not eligible to receive a cash advance from the STATE in Year 2 of the CONTRACT.
- b. Invoices.** Payments shall be made by STATE promptly after COUNTY submits an invoice for services performed and the services have been determined acceptable by STATE's authorized agent pursuant to Clause 4.1. Invoices shall be submitted via quarterly SEAGR report (DHS-2557) and on the BRASS-Based Grant Fiscal Report (DHS-2895) specific to the grant, and according to the following schedule: **following each March 31, June 30, September 30, and December 31.**
- c. Reconciliation.** Within sixty (60) days of the end of the grant period, the STATE will complete a reconciliation of payments issued against expenditures reported by the COUNTY. If actual expenditures by the COUNTY are less than listed in the total approved program budget at the

¹ <https://mn.gov/mmb/employee-relations/labor-relations/labor/commissioners-plan.jsp>

end of the CONTRACT, the STATE shall reduce the final payment so as not to exceed total expenditures.

4. CONDITIONS OF PAYMENT.

4.1. Satisfaction of STATE. All services provided by COUNTY pursuant to this CONTRACT shall be performed to the satisfaction of STATE, as determined at the sole discretion of its authorized representative, and in accord with all applicable federal, state, and local laws, ordinances, rules and regulations. COUNTY shall not receive payment for work found by STATE to be unsatisfactory, or performed in violation of federal, state or local law, ordinance, rule or regulation.

4.2. Payments to subcontractors. As required by Minn. Stat. § 16A.1245, COUNTY must pay all subcontractors, within ten (10) calendar days of COUNTY's receipt of payment from STATE for undisputed services provided by the subcontractor(s) and must pay interest at the rate of 1-1/2 percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

4.3. Administrative costs and reimbursable expenses. Pursuant to Minn. Stat. § 16B.98, subd. 1, COUNTY agrees to minimize administrative costs as a condition of this grant. COUNTY shall ensure that costs claimed for reimbursement shall be actual costs, to be determined in accordance with 2 C.F.R. § 200.0 et seq., COUNTY shall not invoice STATE for services that are reimbursable via a public or private health insurance plan. If COUNTY receives funds from a source other than STATE in exchange for services, then COUNTY may not receive payment from STATE for those same services. COUNTY shall seek reimbursement from all sources before seeking reimbursement pursuant to CONTRACT.

5. PAYMENT RECOURPMENT.

COUNTY must reimburse STATE upon demand or STATE may deduct from future payments under this CONTRACT or future CONTRACTS the following:

- a. Any amounts received by COUNTY from the STATE for contract services which have been inaccurately reported or are found to be unsubstantiated;
- b. Any amounts paid by COUNTY to a subcontractor not authorized in writing by STATE;
- c. Any amount paid by STATE for services which either duplicate services covered by other specific grants or contracts, or amounts determined by STATE as non-allowable under the line item budget, clause 2.1(a);
- d. Any amounts paid by STATE for which COUNTY'S books, records and other documents are not sufficient to clearly substantiate that those amounts were used by COUNTY to perform contract services, in accordance with clause 1, COUNTY'S Duties; and/or
- e. Any amount identified as a financial audit exception.

6. CANCELLATION.

6.1. For cause or convenience. In accord with Minn. Stat. § 16B.04, subd. 2, the Commissioner of Administration has independent authority to cancel this CONTRACT. CONTRACT may be canceled by

STATE or COUNTY at any time, with or without cause, upon thirty (30) days written notice to the other party. The thirty (30) day notice may be waived, in writing, by the party receiving notice. In the event of such a cancellation, COUNTY shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed. STATE has the right to suspend or terminate this CONTRACT immediately when STATE deems the health or welfare of the service recipients is endangered, when STATE has reasonable cause to believe that COUNTY has breached a material term of the CONTRACT, or when COUNTY's non-compliance with the terms of the CONTRACT may jeopardize federal financial participation.

6.2. Insufficient funds. STATE may immediately terminate this CONTRACT if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination will be by written notice to COUNTY. STATE is not obligated to pay for any services that are provided after the effective date of termination. COUNTY will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. STATE will not be assessed any penalty if the CONTRACT is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. STATE must provide COUNTY notice of the lack of funding within a reasonable time of STATE's receiving that notice.

6.3. Breach. Notwithstanding clause 6.1, upon STATE's knowledge of a curable material breach of the CONTRACT by COUNTY, STATE shall provide COUNTY written notice of the breach and ten (10) days to cure the breach. If COUNTY does not cure the breach within the time allowed, COUNTY will be in default of this CONTRACT and STATE may cancel the CONTRACT immediately thereafter. If COUNTY has breached a material term of this CONTRACT and cure is not possible, STATE may immediately terminate this CONTRACT.

7. AUTHORIZED REPRESENTATIVES, RESPONSIBLE AUTHORITY, and PROJECT MANAGER.

7.1. State. STATE's authorized representative for the purposes of administration of this CONTRACT is **Gertrude Matemba-Mutasa** or successor. Phone and email: **gertrude.matemba-mutasa@state.mn.us, 651-431-6408**. This representative shall have final authority for acceptance of COUNTY's services and if such services are accepted as satisfactory, shall so certify on each invoice submitted pursuant to Clause 3.2.

7.2. County. COUNTY's Authorized Representative is **Catherine Lee** or successor. Phone and email: **320-843-6301, catie.lee@co.swift.mn.us**. If COUNTY's Authorized Representative changes at any time during this CONTRACT, COUNTY must immediately notify STATE.

7.3. Information Privacy and Security. COUNTY's responsible authority for the purposes of complying with data privacy and security for this CONTRACT is **Danielle Olson** or successor. Phone and email: **320-314-8326, danielle.olson@co.swift.mn.us**.

8. INSURANCE REQUIREMENTS.

8.1. Worker's Compensation. The COUNTY certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers' compensation insurance coverage. The COUNTY'S employees and agents will not be considered employees of the STATE. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees or agents are in no way the STATE'S obligation or responsibility.

9. LIABILITY.

To the extent provided for in Minn. Stat. §§ 466.01-466.15, the COUNTY agrees to be responsible for any and all claims or causes of action arising from the performance of this grant contract by COUNTY or COUNTY'S agents or employees. This clause shall not be construed to bar any legal remedies COUNTY may have for the STATE'S failure to fulfill its obligations pursuant to this grant.

10. INFORMATION PRIVACY AND SECURITY. Information privacy and security shall be governed by the "Data Sharing Agreement and Business Associate Agreement Terms and Conditions" which is attached and incorporated into this CONTRACT as **Attachment C**, except that the parties further agree to comply with any agreed-upon amendments to the Data Sharing Agreement and Business Associate Agreement.

11. INTELLECTUAL PROPERTY RIGHTS.

11.1. Definitions. Works means all inventions, improvements, discoveries (whether or not patentable or copyrightable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by COUNTY, its employees, agents, and subcontractors, either individually or jointly with others in the performance of the CONTRACT. Works includes "Documents." Documents are the originals of any data bases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by COUNTY, its employees, agents, or subcontractors, in the performance of this CONTRACT.

11.2. Ownership. STATE owns all rights, title, and interest in all of the intellectual property, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents created and paid for under this CONTRACT. The Works and Documents will be the exclusive property of STATE and all such Works and Documents must be immediately returned to STATE by COUNTY upon completion or cancellation of this CONTRACT. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." If using STATE data, COUNTY must cite the data, or make clear by referencing that STATE is the source.

11.3. Responsibilities.

- a. Notification.** Whenever any Works or Documents (whether or not patentable) are made or conceived for the first time or actually or constructively reduced to practice by COUNTY,

including its employees and subcontractors, and are created and paid for under this CONTRACT, COUNTY will immediately give STATE's Authorized Representative written notice thereof, and must promptly furnish the Authorized Representative with complete information and/or disclosure thereon. COUNTY will assign all right, title, and interest it may have in the Works and the Documents to STATE.

- b. Filing and recording of ownership interests.** COUNTY must, at the request of STATE, execute all papers and perform all other acts necessary to transfer or record STATE's ownership interest in the Works and Documents created and paid for under this CONTRACT. COUNTY must perform all acts, and take all steps necessary to ensure that all intellectual property rights in these Works and Documents are the sole property of STATE, and that neither COUNTY nor its employees, agents, or subcontractors retain any interest in and to these Works and Documents.
- c. Duty not to infringe on intellectual property rights of others.** COUNTY represents and warrants that the Works and Documents created and paid for under this CONTRACT do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 9, COUNTY will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless STATE, at COUNTY's expense, from any action or claim brought against STATE to the extent that it is based on a claim that all or part of these Works or Documents infringe upon the intellectual property rights of others. COUNTY will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney's fees. If such a claim or action arises, or in COUNTY's or STATE's opinion is likely to arise, COUNTY must, at STATE's discretion, either procure for STATE the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of STATE will be in addition to and not exclusive of other remedies provided by law.

12. OWNERSHIP OF EQUIPMENT. The STATE shall have the right to require transfer of all equipment purchased with grant funds (including title) to STATE or to an eligible non-STATE party named by the STATE. If federal funds are granted by the STATE, then disposition of all equipment purchased under this grant contract shall be in accordance with OMB Uniform Grant Guidance, 2 C.F.R. § 200.313. For all equipment having a current per unit fair market value of \$5,000 or more, STATE shall have the right to require transfer of the equipment (including title) to the Federal Government. These rights will normally be exercised by STATE only if the project or program for which the equipment was acquired is transferred from one grantee to another.

13. AUDIT REQUIREMENTS AND COUNTY DEBARMENT INFORMATION.

13.1. State audit.

Under Minn. Stat. § 16B.98, subd. 8, the books, records, documents, and accounting procedures and practices of the COUNTY or other party that are relevant to the CONTRACT are subject to examination by STATE and either the legislative auditor or the state auditor, as appropriate, for a minimum of six

years from the CONTRACT end date, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later.

13.2. Independent audit. If COUNTY conducts or undergoes an independent audit during the term of this CONTRACT, a copy of the audit must be submitted to STATE within thirty (30) days of the audit's completion.

13.3. Federal audit requirements and COUNTY debarment information. COUNTY certifies it will comply with 2 C.F.R § 200.501 et seq., as applicable. To the extent federal funds are used for this CONTRACT, COUNTY acknowledges that COUNTY and STATE shall comply with the requirements of 2 C.F.R. § 200.331. Non-Federal entities receiving \$750,000 or more of federal funding in a fiscal year must obtain a single or program-specific audit conducted for that year in accordance with 2 C.F.R. § 200.501. Failure to comply with these requirements could result in forfeiture of federal funds.

13.4. Debarment by STATE, its departments, commissions, agencies or political subdivisions.

COUNTY certifies that neither it nor its principles are presently debarred or suspended by the State of Minnesota, or any of its departments, commissions, agencies, or political subdivisions. COUNTY's certification is a material representation upon which the CONTRACT award was based. COUNTY shall provide immediate written notice to STATE's authorized representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

13.5. Certification regarding debarment, suspension, ineligibility, and voluntary exclusion – lower tier covered transactions.

COUNTY's certification is a material representation upon which CONTRACT award was based. Federal money will be used or may potentially be used to pay for all or part of the work under CONTRACT, therefore COUNTY must certify the following, as required by 2 C.F.R. § 180, or its regulatory equivalent.

a. Instructions for Certification

1. By signing and submitting this CONTRACT, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this CONTRACT is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and

voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverages sections of rules implementing Executive Order 12549. You may contact the person to which this CONTRACT is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this response that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this CONTRACT that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

b. Lower Tier Covered Transactions.

1. The prospective lower tier participant certifies, by submission of this CONTRACT, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this CONTRACT.

14. JURISDICTION AND VENUE.

This CONTRACT, and amendments and supplements, are governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of this CONTRACT, or breach of the CONTRACT, shall be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota.

15. CLERICAL ERRORS AND NON-WAIVER.

15.1. Clerical error. Notwithstanding Clause 16.1, STATE reserves the right to unilaterally fix clerical errors contained in the CONTRACT without executing an amendment. COUNTY will be informed of errors that have been fixed pursuant to this paragraph.

15.2. Non-waiver. If STATE fails to enforce any provision of this CONTRACT, that failure does not waive the provision or STATE's right to enforce it.

16. AMENDMENT, ASSIGNMENT, SEVERABILITY, ENTIRE AGREEMENT, AND DRAFTING PARTY.

16.1. Amendments. Any amendments to this CONTRACT shall be in writing, and shall be executed by the same parties who executed the original CONTRACT, or their successors in office.

16.2. Assignment. COUNTY shall neither assign nor transfer any rights or obligations under this CONTRACT without the prior written consent of STATE.

16.3. Entire Agreement.

- a. If any provision of this CONTRACT is held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this CONTRACT shall not in any way be affected or impaired. The parties will attempt in good faith to agree upon a valid and enforceable provision that is a reasonable substitute, and will incorporate the substitute provision in this CONTRACT according to clause 16.1.
- b. This CONTRACT contains all negotiations and agreements between STATE and COUNTY. No other understanding regarding this CONTRACT, whether written or oral may be used to bind either party.

16.4. Drafting party. The parties agree that each party individually has had an opportunity to review with a legal representative, negotiate and draft this CONTRACT, and that, in the event of a dispute, the CONTRACT shall not be construed against either party.

17. PROCURING GOODS AND CONTRACTED SERVICES.

17.1. Contracting and bidding requirements. COUNTY certifies that it shall comply with Minn. Stat. § 471.345.

17.2 Debarred vendors. In the provision of goods or services under this CONTRACT, COUNTY must not contract with vendors who are suspended or debarred in Minnesota or under federal law. Before entering into a subcontract, COUNTY must check if vendors are suspended or debarred by referencing

the Minnesota Department of Administration's [Suspended/Debarred Vendor Report](#). A link to vendors debarred by Federal agencies is provided at the bottom of the web page.

18. SUBCONTRACTS.

COUNTY, as an awardee organization, is legally and financially responsible for all aspects of this award that are subcontracted, including funds provided to sub-recipients and subcontractors, in accordance with 45 C.F.R. §§ 75.351-75.352. COUNTY shall ensure that the material obligations, borne by the COUNTY in this CONTRACT, apply as between COUNTY and sub-recipients, in all subcontracts, to the same extent that the material obligations apply as between the STATE and COUNTY.

19. LEGAL COMPLIANCE.

19.1 General compliance. All performance under this CONTRACT must be in compliance with state and federal law and regulations, and local ordinances. Allegations that STATE deems reasonable, in its sole discretion, of violations of state or federal law or regulations, or of local ordinances, may result in CONTRACT cancellation or termination and/or reporting to local authorities by STATE.

19.2 Nondiscrimination. COUNTY will not discriminate against any person on the basis of the person's race, color, creed, religion, national origin, sex, marital status, gender identity, disability, public assistance status, sexual orientation, age, familial status, membership or activity in a local commission, or status as a member of the uniformed services. COUNTY must refrain from such discrimination as a matter of its contract with STATE. "Person" includes, without limitation, a STATE employee, COUNTY's employee, a program participant, and a member of the public. "Discriminate" means, without limitation, to: fail or refuse to hire, discharge, or otherwise discriminate against any person with respect to the compensation, terms, conditions, or privileges of employment, or; exclude from participation in, deny the benefits of, or subject to discrimination under any COUNTY program or activity.

COUNTY will ensure that all of its employees and agents comply with Minnesota Management and Budget Policy #[1329](#) (Sexual Harassment Prohibited) and #[1436](#) (Harassment and Discrimination Prohibited).

19.3 Grants management policies. COUNTY must comply with required [Grants Management Policies and procedures](#) as specified in Minn. Stat. § 16B.97, subd. 4(a)(1). Compliance under this paragraph includes, but is not limited to, participating in monitoring and financial reconciliation as required by Office of Grants Management (OGM) [Policy 08-10](#).

19.4 Conflict of interest. COUNTY certifies that it does not have any conflicts of interest related to this CONTRACT, as defined by OGM [Policy 08-01](#). COUNTY shall immediately notify STATE if a conflict of interest arises.

20. OTHER PROVISIONS

20.1. No Religious Based Counseling. COUNTY agrees that no religious based counseling shall take place under the auspices of this CONTRACT.

20.2. Contingency Planning. This section applies if COUNTY will be fulfilling Priority 1 or Priority 2 functions under this contract. A *Priority 1* function is a function that, for purposes of planning business continuity during an emergency or disaster, must continue 24 hours per day and 7 days per week, or be recovered within hours. A *Priority 2* function is a function that, for purposes of planning business continuity during an emergency or disaster, must be resumed within 25 hours to 5 days. Within 90 days of the execution of this CONTRACT, COUNTY and any subcontractor will have a contingency plan. The contingency plan shall:

- a. Ensure fulfillment of Priority 1 or Priority 2 obligations under this CONTRACT;
- b. Outline procedures for the activation of the contingency plan upon the occurrence of a governor or commissioner of the Minnesota Department of Health declared health emergency;
- c. Identify an individual as its Emergency Preparedness Response Coordinator (EPRC), the EPRC shall serve as the contact for STATE with regard to emergency preparedness and response issues, the EPRC shall provide updates to STATE as the health emergency unfolds;
- d. Outline roles, command structure, decision making processes, and emergency action procedures that will be implemented upon the occurrence of a health emergency;
- e. Provide alternative operating plans for Priority 1 or Priority 2 functions;
- f. Include a procedure for returning to normal operations; and
- g. Be available for inspection upon request.

20.3. Open Meeting Law. COUNTY must comply with all applicable requirements of the Open Meeting Law in Minnesota Statutes chapter 13D.

20.4. Complaints. COUNTY shall work cooperatively and proactively with STATE to resolve complaints received from an Individual; from an authorized representative; from a partnering entity; from a community organization; or from a state, federal, or other health oversight agency. STATE will provide technical assistance for process improvements related to complaints received.

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Signature Page Follows

By signing below, the parties agree to the terms and conditions contained in this CONTRACT.

APPROVED:

1. STATE ENCUMBRANCE VERIFICATION

Individual certifies that funds have been encumbered as required by Minnesota Statutes, chapter 16A and section 16C.05.

By: _____

Date: _____

Contract No: _____

Distribution: (fully executed contract to each)

Contracting and Legal Compliance Division

County

State Authorized Representative

2. COUNTY

Signatory certifies that County's articles of incorporation, by-laws, or corporate resolutions authorize Signatory both to sign on behalf of and bind the County to the terms of this Agreement. County and Signatory agree that the State Agency relies on the Signatory's certification herein.

By: _____

Title: _____

Date: _____

3. STATE AGENCY

By (with delegated authority): _____

Title: _____

Date: _____

ATTACHMENT A: COUNTY DUTIES

The following items will be evaluated throughout the contract period: 1/1/21-12/31/22.

Objective	Description of Tasks and Deliverables	Evaluation Method
CSP only		
Ensure that Community Support Plan services are planned and administered according to Minn. Stat. 245.4712	<ul style="list-style-type: none"> Assure sufficient community support services are available to meet the needs of adults with SPMI in the county 	Twice yearly site visits
AMHI and CSP		
Work to achieve the mission statement described in the Minnesota Comprehensive Adult Mental Health Act Minn. Stat. 245.461	<ul style="list-style-type: none"> Lived experience with mental illness guides the governance and services Brings together people with lived experience, providers, counties, tribes, MCOs and DHS to fully utilize all available resources to meet regional needs. Develops and provides an array of person centered services that builds on personal and cultural strengths. Utilizes a data driven model to evaluate the impact of services on health outcomes. Assures access, early intervention, coordination, and application of resources through creative partnerships. 	Twice yearly site visits
Ensure all revenue received by COUNTY and its contracted or subcontracted providers is managed according to Minnesota Rules chapter 9535.1740 subd.3	<ul style="list-style-type: none"> Submit quarterly fiscal reports / invoices to DHS for payment 	Twice yearly site visits
Ensure their contracted providers bill eligible insurance before accessing Adult Mental Health grant funding		Twice yearly site visits
Have a transition plan that complies with Minnesota Statute 245.466 subd.3a	<ul style="list-style-type: none"> Transition plan for continuity of care in the event of contract termination with a community mental health center Transition plan for continuity of care in the event of contract termination with a community support services provider 	Twice yearly site visits
Complete all required data reporting and ensure their contracted providers are completing all required data reporting	<ul style="list-style-type: none"> MHIS data reporting completed twice a year SSIS data reporting completed Supplemental spreadsheet reporting completed twice a year Effort made to have providers reporting into MHIS instead of the supplemental spreadsheet 	Twice yearly site visits

<p>Meet the policy requirements from the Office of Grants Management for all subcontracts that are over \$50,000</p>	<ul style="list-style-type: none"> • Grant monitoring plan for all subcontracts over \$50,000, including site visits and financial reconciliation • Conflict of interest assessed and documented 	<p>Twice yearly site visits</p>
<p>Incorporate the National Culturally and Linguistically Appropriate Services (CLAS) Standards into County administered services and contracts/agreements with community service providers</p>	<ul style="list-style-type: none"> • Demonstrated effort to provide effective, equitable, understandable, and respectful quality care and services that are responsive to diverse cultural health beliefs and practices, preferred languages, health literacy, and other communication needs 	<p>Twice yearly site visits</p>

Attachment B – Budget

Grant Budget Summary				
2895 BRASS Code Summary for:		Swift		
Funding Totals				
	CSP	AMHI	Moose Lake	TOTAL
TOTAL ALLOCATION	\$ 112,036	\$ -	\$ -	\$ 112,036
Requested Funding By BRASS Code				
BRASS CODE	CSP	AMHI	Moose Lake	TOTAL
402	\$ -	\$ -	\$ -	\$ -
403	\$ -	\$ -	\$ -	\$ -
408	\$ -	\$ -	\$ -	\$ -
416	\$ -	\$ -	\$ -	\$ -
418	\$ -	\$ -	\$ -	\$ -
420	\$ -	\$ -	\$ -	\$ -
431	\$ -	\$ -	\$ -	\$ -
434	\$ 20,000	\$ -	\$ -	\$ 20,000
436	\$ -	\$ -	\$ -	\$ -
437	\$ -	\$ -	\$ -	\$ -
438	\$ -	\$ -	\$ -	\$ -
443	\$ -	\$ -	\$ -	\$ -
446	\$ 74,000	\$ -	\$ -	\$ 74,000
451	\$ -	\$ -	\$ -	\$ -
452	\$ -	\$ -	\$ -	\$ -
454	\$ -	\$ -	\$ -	\$ -
468	\$ -	\$ -	\$ -	\$ -
469	\$ -	\$ -	\$ -	\$ -
474	\$ -	\$ -	\$ -	\$ -
491	\$ -	\$ -	\$ -	\$ -
493	\$ 18,036	\$ -	\$ -	\$ 18,036

**ATTACHMENT C –
DATA SHARING AND BUSINESS ASSOCIATE AGREEMENT
TERMS AND CONDITIONS**

This Attachment sets forth the terms and conditions in which STATE will share data with and permit COUNTY to Use or Disclose Protected Information that the parties are legally required to safeguard pursuant to the Minnesota Government Data Practices Act (“MGDPA”) under Minnesota Statutes, chapter 13, the Health Insurance Portability and Accountability Act rules and regulations codified at 45 C.F.R. Parts 160, 162, and 164 (“HIPAA”), and other Applicable Safeguards.

The parties agree to comply with all applicable provisions of the MGDPA, HIPAA, and any other Applicable Safeguard that applies to the Protected Information.

General Description of Protected Information That Will Be Shared: Adult Mental Health Initiative (AMHI) and/or Community Support Program (CSP) data for the term of the contract

Purpose for Sharing Protected Information and Expected Outcomes: Review of AMHI and/or CSP grantee projects to assure program integrity, quality, and effectiveness.

STATE is permitted to share the Protected Information with COUNTY pursuant to: Minnesota Data Practices Act under Minnesota Statutes, Chapter 13

It is expressly agreed that COUNTY is a “business associate” of STATE, as defined by HIPAA under 45 C.F.R. § 160.103, “Definitions.” The Disclosure of Protected Health Information to COUNTY that is subject to the Health Insurance Portability Accountability Act (HIPAA) is permitted by 45 C.F.R. § 164.502(e)(1)(i), “Standard: Disclosures to Business Associates.”

It is understood by COUNTY that, as a business associate under HIPAA, COUNTY is directly liable under the HIPAA Rules and subject to civil and, in some cases, criminal penalties for making Uses and Disclosures of Protected Health Information that are not authorized by contract or permitted by law. COUNTY is also directly liable and subject to civil penalties for failing to safeguard electronic Protected Health Information in accordance with the HIPAA Security Rule, Subpart C of 45 C.F.R. Part 164, “Security and Privacy.”

DEFINITIONS

- A. “Agent” means COUNTY'S employees, contractors, subcontractors, and other non-employees and representatives.

- B. "Applicable Safeguards" means the state and federal safeguards listed in subsection 2.1.A of this Attachment.
- C. "Breach" means the acquisition, access, Use, or Disclosure of unsecured Protected Health Information in a manner not permitted by HIPAA, which compromises the security or privacy of Protected Health Information.
- D. "Business Associate" shall generally have the same meaning as the term "business associate" found in 45 C.F.R. § 160.103, and in reference to the party in the Contract and this Attachment, shall mean COUNTY.
- E. "Contract" means the Grant Contract between STATE and COUNTY to which this Attachment is attached.
- F. "Disclose" or "Disclosure" means the release, transfer, provision of access to, or divulging in any manner of information by the entity in possession of the Protected Information.
- G. "HIPAA" means the rules and regulations codified at 45 C.F.R. Parts 160, 162, and 164.
- H. "Individual" means the person who is the subject of protected information.
- I. "Privacy Incident" means a violation of an information privacy provision of any applicable state and federal law, statute, regulation, rule, or standard, including those listed in the Contract and this Attachment.
- J. "Protected Information" means any information, regardless of form or format, which is or will be Used by STATE or COUNTY under the Contract that is protected by federal or state privacy laws, statutes, regulations, policies, or standards, including those listed in this Attachment. This includes, but is not limited to, individually identifiable information about a State, county or tribal human services agency client or a client's family member. Protected Information also includes, but is not limited to, Protected Health Information, as defined below, and Protected Information maintained within or accessed via a State information management system, including a State "legacy system" and other State application.
- K. "Protected Health Information" is a subset of Protected Information (defined above) and has the same meaning as the term "protected health information" found in 45 C.F.R. § 160.103. For the purposes of this Attachment, it refers only to that information that is received, created, maintained, or transmitted by COUNTY as a Business Associate on behalf of STATE.
- L. "Security Incident" means the attempted or successful unauthorized accessing, Use, or interference with system operations in an information management system or application. "Security Incident" does not include pings and other broadcast attacks on a system's firewall, port scans, unsuccessful log-on attempts, denials of service, and any combination of the above,

provided that such activities do not result in the unauthorized exposure, viewing, obtaining, accessing, or Use of Protected Information.

- M. "Use" or "Used" means any activity involving Protected Information including its creation, collection, access, acquisition, modification, employment, application, utilization, examination, analysis, manipulation, maintenance, dissemination, sharing, Disclosure, transmission, or destruction. "Use" includes any of these activities whether conducted manually or by electronic or computerized means.

1. INFORMATION EXCHANGED

- 1.1 This Attachment governs the data that will be exchanged pursuant to COUNTY performing the services described in the Contract. The data exchanged under the Contract will include: BRASS Code data by client including, but not limited to, demographic information such as age, sex, race, the number of people served, and information related to housing, employment, hospitalization, symptoms, and satisfaction with services reported by COUNTY and its SUBCONTRACTORS to STATE. Data is submitted via the Mental Health Information System (MHIS), the Social Services Information System (SSIS), and other encrypted spreadsheet as directed by the STATE.
- 1.2 The data exchanged under the Contract is provided to STATE by COUNTY and its SUBCONTRACTORS for: review of AMHI and/or CSP grantee projects to assure program integrity, quality, and effectiveness and to ensure COUNTY is meeting the terms of the Contract.
- 1.3 It is permissible to share the Protected Information between STATE and COUNTY pursuant to: the terms and conditions of the Contract and this Data Sharing and Business Associate Agreement in accordance with the Minnesota Data Practices Act under Minnesota Statutes, Chapter 13.

2. INFORMATION PRIVACY AND SECURITY

COUNTY and STATE must comply with the MGDPA, HIPAA, and all other Applicable Safeguards as they apply to all data provided by STATE under the Contract, and as they apply to all data created, collected, received, stored, Used, maintained, or disseminated by COUNTY under the Contract. The civil remedies of Minn. Stat. § 13.08, "Civil Remedies," apply to COUNTY and STATE. Additionally, the remedies of HIPAA apply to the release of data governed by HIPAA.

2.1 Compliance with Applicable Safeguards.

- A. **State and Federal Safeguards.** The parties acknowledge that the Protected Information to be shared under the terms of the Contract may be subject to one or

more of the laws, statutes, regulations, rules, policies, and standards, as applicable and as amended or revised (“Applicable Safeguards”), listed below, and agree to abide by the same.

1. Health Insurance Portability and Accountability Act rules and regulations codified at 45 C.F.R. Parts 160, 162, and 164 (“HIPAA”);
2. Minnesota Government Data Practices Act (Minn. Stat. Chapter 13);
3. Minnesota Health Records Act (Minn. Stat. § 144.291–144.34);
4. Confidentiality of Alcohol and Drug Abuse Patient Records (42 U.S.C. § 290dd-2, “Confidentiality of Records,” and 42 C.F.R. Part 2, “Confidentiality of Substance Use Disorder Patient Records”);
5. Tax Information Security Guidelines for Federal, State and Local Agencies (26 U.S.C. § 6103, “Confidentiality and Disclosure of Returns and Return Information,” and Internal Revenue Service Publication 1075;
6. U.S. Privacy Act of 1974;
7. Computer Matching Requirements (5 U.S.C. § 552a, “Records Maintained on Individuals”);
8. Social Security Data Disclosure (section 1106 of the Social Security Act: 42 USC § 1306, “Disclosure of information in Possession of Social Security Administration or Department of Health and Human Services”);
9. Disclosure of Information to Federal, State and Local Agencies (DIFSLA Handbook, Internal Revenue Service Publication 3373);
10. Final Exchange Privacy Rule of the Affordable Care Act (45 C.F.R. § 155.260, “Privacy and Security of Personally Identifiable Information,”);
11. NIST Special Publication 800-53, “Security and Privacy Controls for Federal Information Systems and Organizations,” Revision 4 (NIST.SP.800-53r4), and;
12. All state of Minnesota [“Enterprise Information Security Policies and Standards.”](#)²

The parties further agree to comply with all other laws, statutes, regulations, rules, and standards, as amended or revised, applicable to the exchange, Use and Disclosure of data under the Contract.

- B. Statutory Amendments and Other Changes to Applicable Safeguards.** The Parties agree to take such action as is necessary to amend the Contract and this Attachment from time to time as is necessary to ensure, current, ongoing compliance with the requirements of the laws listed in this Section or in any other applicable law.

2.2 COUNTY Data Responsibilities

A. Use Limitation.

1. *Restrictions on Use and Disclosure of Protected Information.* Except as otherwise

² See <https://mn.gov/mnit/government/policies/security/>

authorized in the Contract or this Attachment, COUNTY may only Use or Disclose Protected Information as minimally necessary to provide the services to STATE as described in the Contract and this Attachment, or as otherwise required by law, provided that such Use or Disclosure of Protected Information, if performed by STATE, would not violate the Contract, this Attachment, HIPAA, or state and federal statutes or regulations that apply to the Protected Information.

2. *Federal tax information.* To the extent that Protected Information Used under the Contract constitutes “federal tax information” (FTI), COUNTY shall ensure that this data only be Used as authorized under the Patient Protection and Affordable Care Act, the Internal Revenue Code, 26 U.S.C. § 6103(C), and IRS Publication 1075.

B. Individual Privacy Rights. COUNTY shall ensure Individuals are able to exercise their privacy rights regarding Protected Information, including but not limited to the following:

1. *Complaints.* COUNTY shall work cooperatively and proactively with STATE to resolve complaints received from an Individual; from an authorized representative; or from a state, federal, or other health oversight agency.
2. *Amendments to Protected Information Requested by Data Subject Generally.* Within three (3) business days, COUNTY must forward to STATE any request to make any amendment(s) to Protected Information in order for STATE to satisfy its obligations under Minn. Stat. § 13.04, “Rights of Subjects of Data,” subd. 4. If the request to amend Protected Information pertains to Protected Health Information, then COUNTY must also make any amendment(s) to Protected Health Information as directed or agreed to by STATE pursuant to 45 C.F.R. § 164.526, “Amendment of Protected Health Information,” or otherwise act as necessary to satisfy STATE or COUNTY’s obligations under 45 CF.R. § 164.526 (including, as applicable, Protected Health Information in a designated record set).

C. Background Review and Reasonable Assurances of Agents.

1. *Reasonable Assurances.* COUNTY represents that, before any Agent is allowed to Use or Disclose Protected Information, COUNTY has conducted and documented a background review of the Agent sufficient to provide COUNTY with reasonable assurances that the Agent will fully comply with the terms of the Contract, this Attachment and Applicable Safeguards.
2. **Documentation.** COUNTY shall make available documentation required by this Section upon request by STATE.

D. Ongoing Responsibilities to Safeguard Protected Information.

1. *Privacy and Security Safeguards.* COUNTY shall develop, maintain, and enforce policies, procedures, and administrative, technical, and physical safeguards that comply with the Applicable Safeguards to ensure the privacy and security of the Protected Information, and to prevent the Use or Disclosure of Protected Information, except as expressly permitted by the Contract and this Attachment.
2. **Electronic Protected Information.** COUNTY shall implement and maintain appropriate safeguards with respect to electronic Protected Information, and comply with Subpart C of 45 C.F.R. Part 164 (HIPAA Security Rule) with respect to to prevent the Use or Disclosure other than as provided for by the Contract or this Attachment.
3. *Monitoring Agents.* COUNTY shall ensure that any Agent to whom COUNTY Discloses Protected Information on behalf of STATE, or whom COUNTY employs or retains to create, receive, Use, store, Disclose, or transmit Protected Information on behalf of STATE, agrees in writing to the same restrictions and conditions that apply to COUNTY under the Contract and this Attachment with respect to such Protected Information, and in accordance with 45 C.F.R. §§ 164.502, “Use and Disclosure of Protected Health Information: General Rules,” subpart (e)1)(ii) and 164.308, “Administrative Safeguards,” subpart (b)(2).
4. **Encryption.** According to the state of Minnesota’s “[Enterprise Information Security Policies and Standards](#),”³ COUNTY must use encryption to store, transport, or transmit Protected Information and must not use unencrypted email to transmit Protected Information.
5. *Minimum Necessary Access to Protected Information.* COUNTY shall ensure that its Agents acquire, access, Use, and Disclose only the minimum necessary Protected Information needed to complete an authorized and legally permitted activity.
6. *Training and Oversight.* COUNTY shall ensure that Agents are properly trained and comply with all Applicable Safeguards and the terms of the Contract and this Attachment.

E. Responding to Privacy Incidents, Security Incidents, and Breaches. COUNTY will comply with this Section for all Protected Information shared under the Contract. Additional obligations for specific kinds of Protected Information shared under the Contract are addressed in subsection 2.2(F), “Reporting Privacy Incidents, Security

³ <https://mn.gov/mnit/government/policies/security/>

Incidents, and Breaches.”

1. *Mitigation of harmful effects.* Upon discovery of any actual or suspected Privacy Incident, Security Incident, and/or Breach, COUNTY will mitigate, to the extent practicable, any harmful effect of the Privacy Incident, Security Incident, and/or Breach. Mitigation may include, but is not limited to, notifying and providing credit monitoring to affected Individuals.
2. *Investigation.* Upon discovery of any actual or suspected Privacy Incident, Security Incident, and/or Breach, COUNTY will investigate to (1) determine the root cause of the incident, (2) identify Individuals affected, (3) determine the specific Protected Information impacted, and (4) comply with notification and reporting provisions of the Contract, this Attachment, and applicable law.
3. *Corrective action.* Upon identifying the root cause of any Privacy Incident, Security Incident, and/or Breach, COUNTY will take corrective action to prevent, or reduce to the extent practicable, any possibility of recurrence. Corrective action may include, but is not limited to, patching information system security vulnerabilities, sanctioning Agents, and/or revising policies and procedures.
4. *Notification to Individuals and others; costs incurred.*
 - a. **Protected Information.** COUNTY will determine whether notice to data subjects and/or any other external parties regarding any Privacy Incident or Security Incident is required by law. If such notice is required, COUNTY will fulfill the STATE’s and COUNTY’s obligations under any applicable law requiring notification, including, but not limited to, Minn. Stat. §§ 13.05, “Duties of Responsible Authority,” and 13.055, “Disclosure of Breach in Security.”
 - b. **Protected Health Information.** If a Privacy Incident or Security Incident results in a Breach of Protected Health Information, as these terms are defined in this Attachment and under HIPAA, then COUNTY will provide notice to Individual data subjects under any applicable law requiring notification, including but not limited to providing notice as outlined in 45 C.F.R. § 164.404, “Notification to Individuals.”
 - c. **Failure to notify.** If COUNTY fails to timely and appropriately notify Individual data subjects or other external parties under subparagraph (a), then COUNTY will reimburse STATE for any costs, fines, or penalties incurred as a result of COUNTY’s failure to timely provide appropriate notification.
5. *Obligation to report to STATE.* Upon discovery of a Privacy Incident, Security Incident, and/or Breach, COUNTY will report to STATE in writing as further specified in subsection 2.2(F).

- a. **Communication with authorized representative.** COUNTY will send any written reports to, and communicate and coordinate as necessary with, STATE's authorized representative or designee.
- b. **Cooperation of response.** COUNTY will cooperate with requests and instructions received from STATE regarding activities related to investigation, containment, mitigation, and eradication of conditions that led to, or resulted from, the Security Incident, Privacy Incident, and/or Breach, and all matters pertaining to reporting and notification of a Security Incident, Privacy Incident, and/or Breach.
- c. **Information to respond to inquiries about an investigation.** COUNTY will, as soon as possible, but not later than forty-eight (48) hours after a request from STATE, provide STATE with any reports or information requested by STATE related to an investigation of a Security Incident, Privacy Incident, and/or Breach.

6. *Documentation.* COUNTY will document actions taken under paragraphs 1 through 5 of this Section, and retain this documentation for a minimum of six (6) years from the date it discovered the Privacy Incident, Security Incident, and/or Breach or the time period required by Section H, whichever is longer. COUNTY shall provide such documentation to STATE upon request.

F. Reporting Privacy Incidents, Security Incidents, and Breaches. COUNTY will comply with the reporting obligations of this Section as they apply to the kind of Protected Information involved. COUNTY will also comply with Subsection 2.2(E), "Responding to Privacy Incidents, Security Incidents, and Breaches," above in responding to any Privacy Incident, Security Incident, and/or Breach.

1. *Protected Health Information.* COUNTY will report Privacy Incidents, Security Incidents, and/or Breaches involving Protected Health Information as follows:

- a. **Reporting Breaches to STATE.** COUNTY will report, in writing, any Breach involving Protected Health Information to STATE within five (5) calendar days of discovery, as defined in 45 C.F.R. § 164.410, "Notification by a Business Associate," subpart (a)(2), for all Breaches involving fewer than 500 Individuals, and immediately for all Breaches involving 500 or more Individuals. These reports shall include, at a minimum, the following information:
 1. Identity of each Individual whose unsecured Protected Health Information has been, or is reasonably believed by COUNTY, to have been accessed, acquired, Used, or Disclosed during the incident or Breach.
 2. Description of the compromised Protected Health Information.
 3. Date of the Breach.
 4. Date of the Breach's discovery.
 5. Description of the steps taken to investigate the Breach, mitigate its

- impact, and prevent future Breaches.
6. Sanctions imposed on COUNTY's Agents involved in the Breach.
 7. All other information that must be included in notification to the Individual under 45 C.F.R. § 164.404(c).
 8. Statement that COUNTY has notified, or will notify, impacted Individuals in accordance with 45 C.F.R. § 164.404 and, upon the completion of said notifications, provide through documentation of the recipients, date, content, and manner of the notifications.
- b. Reporting Breaches to external parties.** COUNTY shall timely report all Breaches involving Protected Health Information to the impacted Individuals (as specified in 45 C.F.R. § 164.404), the U.S. Department of Health and Human Services (as specified in 45 C.F.R § 164.408, "Notification to the Secretary"), and, for Breaches involving 501 or more Individuals, to the media (as specified in 45 C.F.R. § 164.406, "Notification to the Media"). As soon as possible and no later than 10 (ten) business days prior to any report to the media required by 45 C.F.R. § 164.406, COUNTY shall draft and provide to STATE for its review and approval all Breach-related reports or statements intended for the media.
- c. Reporting Security Incidents that do not result in a Breach to STATE.** COUNTY will report, in writing, all Security Incidents that do not result in a Breach, but involve systems maintaining Protected Health Information created, received, maintained, or transmitted by COUNTY or its Agents on behalf of STATE, to STATE on a monthly basis, in accordance with 45 C.F.R § 164.314, "Organizational Requirements."
- d. Reporting other violations to STATE.** COUNTY will report, in writing, any other Privacy Incident and/or violation of an Individual's privacy rights as it pertains to Protected Health Information to STATE within five (5) calendar days of discovery as defined in 45 C.F.R. § 164.410(a)(2). This includes, but is not limited to, any violation of Subpart E of 45 C.F.R. Part 164.
- 4. Other Protected Information.** COUNTY will report all other Privacy Incidents, Security Incidents, and/or Breaches to STATE.
- a. Initial report.** COUNTY will report all other Privacy Incidents, Security Incidents, and/or Breaches to STATE, in writing, within five (5) calendar days of discovery. If COUNTY is unable to complete its investigation of, and response to, a Privacy Incident, Security Incident, and/or Breach within five (5) calendar days of discovery, then COUNTY will provide STATE with all information under subsections 2.2(E)(1)–(4), of this Attachment that are available to COUNTY at the time of the initial report, and provide updated reports as additional information becomes available.
 - b. Final report.** COUNTY will, upon completion of its investigation of and response to a Privacy Incident, Security Incident, and/or Breach, or upon

STATE's request in accordance with subsection 2.2(E)(5) submit in writing a report to STATE documenting all actions taken under subsections 2.2(E)(1)–(4), of this Attachment.

G. Designated Record Set—Protected Health Information. If, on behalf of STATE, COUNTY maintains a complete or partial designated record set, as defined in 45 C.F.R. § 164.501, "Definitions," upon request by STATE, COUNTY shall, in a time and manner that complies with HIPAA or as otherwise directed by STATE:

1. Provide the means for an Individual to access, inspect, or receive copies of the Individual's Protected Health Information.
2. Provide the means for an Individual to make an amendment to the Individual's Protected Health Information.

H. Access to Books and Records, Security Audits, and Remediation. COUNTY shall conduct and submit to audits and necessary remediation as required by this Section to ensure compliance with all Applicable Safeguards and the terms of the Contract and this Attachment.

1. COUNTY represents that it has audited and will continue to regularly audit the security of the systems and processes used to provide services under the Contract and this Attachment, including, as applicable, all data centers and cloud computing or hosting services under contract with COUNTY. COUNTY will conduct such audits in a manner sufficient to ensure compliance with the security standards referenced in this Attachment.
2. This security audit required above will be documented in a written audit report which will, to the extent permitted by applicable law, be deemed confidential security information and not public data under the Minnesota Government Data Practices Act, Minn. Stat. § 13.37, "General Nonpublic Data," subd. 1(a) and 2(a).
3. COUNTY agrees to make its internal practices, books, audits, and records related to its obligations under the Contract and this Attachment available to STATE or a STATE designee upon STATE's request for purposes of conducting a financial or security audit, investigation, or assessment, or to determine COUNTY's or STATE's compliance with Applicable Safeguards, the terms of this Attachment and accounting standards. For purposes of this provision, other authorized government officials includes, but is not limited to, the Secretary of the United States Department of Health and Human Services.
4. COUNTY will make and document best efforts to remediate any control deficiencies identified during the course of its own audit(s), or upon request by STATE or other authorized government official(s), in a commercially reasonable

timeframe.

- I. **Documentation Required.** Any documentation required by this Attachment, or by applicable laws, standards, or policies, of activities including the fulfillment of requirements by COUNTY, or of other matters pertinent to the execution of the Contract, must be securely maintained and retained by COUNTY for a period of six years from the date of expiration or termination of the Contract, or longer if required by applicable law, after which the documentation must be disposed of consistent with subsection 2.6 of this Attachment.

COUNTY shall document Disclosures of Protected Health Information made by COUNTY that are subject to the accounting of disclosure requirement described in 45 C.R.F. 164.528, "Accounting of Disclosures of Protected Health Information," and shall provide to STATE such documentation in a time and manner designated by STATE at the time of the request.

- J. **Requests for Disclosure of Protected Information.** If COUNTY or one of its Agents receives a request to Disclose Protected Information, COUNTY shall inform STATE of the request and coordinate the appropriate response with STATE. If COUNTY Discloses Protected Information after coordination of a response with STATE, it shall document the authority used to authorize the Disclosure, the information Disclosed, the name of the receiving party, and the date of Disclosure. All such documentation shall be maintained for the term of the Contract or six years after the date of the Disclosure, whichever is later, and shall be produced upon demand by STATE.

- K. **Conflicting Provisions.** COUNTY shall comply with all applicable provisions of HIPAA and with the Contract and this Attachment. To extent that the parties determine, following consultation, that the terms of this Attachment are less stringent than the Applicable Safeguards, COUNTY must comply with the Applicable Safeguards. In the event of any conflict in the requirements of the Applicable Safeguards, COUNTY must comply with the most stringent Applicable Safeguard.

- L. **Data Availability.** COUNTY, or any entity with legal control of any Protected Information provided by STATE, shall make any and all Protected Information under the Contract and this Attachment available to STATE upon request within a reasonable time as is necessary for STATE to comply with applicable law.

2.3 Data Security.

- A. **STATE Information Management System Access.** If STATE grants COUNTY access to Protected Information maintained in a STATE information management system (including a STATE "legacy" system) or in any other STATE application, computer, or

storage device of any kind, then COUNTY agrees to comply with any additional system- or application-specific requirements as directed by STATE.

- B. Electronic Transmission.** The parties agree to encrypt electronically transmitted Protected Information in a manner that complies with NIST Special Publications 800-52, "Guidelines for the Selection and Use of Transport Layer Security (TLS) Implementations"; 800-77, "Guide to IPsec VPNs"; 800-113, "Guide to SSL VPNs," or other methods validated under Federal Information Processing Standards (FIPS) 140-2, "Security Requirements for Cryptographic Modules." As part of its compliance with the NIST publications, and the State of Minnesota's "Enterprise Information Security Policies and Standards," DATA SHARING PARTNER must use encryption to store, transport, or transmit any Protected Information. DATA SHARING PARTNER must not use unencrypted email to send any Protected Information to anyone, including STATE.

- C. Portable Media and Devices.** The parties agree to encrypt Protected Information written to or stored on portable electronic media or computing devices in a manner that complies with NIST SP 800-111, "Guide to Storage Encryption Technologies for End User Devices."

2.4 COUNTY Permitted Uses and Responsibilities.

- A. Management and Administration.** Except as otherwise limited in the Contract or this Attachment, COUNTY may:
 - 1. Use Protected Health Information for the proper management and administration of COUNTY or to carry out the legal responsibilities of COUNTY.

 - 2. **Disclose Protected Health Information for the proper management and administration of COUNTY**, provided that:
 - a. The Disclosure is required by law; or

 - b. The Disclosure is required to perform the services provided to or on behalf of STATE or the Disclosure is otherwise authorized by STATE, and COUNTY:
 - i. Obtains reasonable assurances from the entity to whom the Protected Health Information will be Disclosed that the Protected Health Information will remain confidential and Used or further Disclosed only as required by law or for the purposes for which it was Disclosed to the entity; and

- ii. Requires the entity to whom Protected Health Information is Disclosed to notify COUNTY of any instances of which it is aware in which the confidentiality of Protected Health Information has been Breached or otherwise compromised.

- B. Notice of Privacy Practices.** If COUNTY’s duties and responsibilities require it, on behalf of STATE, to obtain individually identifiable health information from Individual(s), then COUNTY shall, before obtaining the information, confer with STATE to ensure that any required Notice of Privacy Practices includes the appropriate terms and provisions.

- C. De-identify Protected Health Information.** COUNTY may use Protected Health Information to create de-identified Protected Health Information provided that COUNTY complies with the de-identification methods specified in 45 C.F.R. § 164.514, “Other Requirements Relating to Uses and Disclosures of Protected Health Information.” De-identified Protected Health Information remains the sole property of STATE and can only be Used or Disclosed by COUNTY on behalf of STATE and pursuant to the Contract or by prior written approval of STATE.

- D. Aggregate Protected Health Information.** COUNTY may use Protected Health Information to perform data aggregation services for STATE, and any such aggregated data remains the sole property of STATE. The COUNTY must have the written approval of STATE prior to using Protected Health Information to perform data analysis or aggregation for parties other than STATE.

2.5 STATE Data Responsibilities

- A. STATE shall Disclose Protected Information to COUNTY only as authorized by law to COUNTY.

- B. STATE shall obtain any consents or authorizations that may be necessary for it to Disclose Protected Information with COUNTY.

- C. STATE shall notify COUNTY of any limitations that apply to STATE’s Use and Disclosure of Protected Information—including any restrictions on certain Disclosures of Protected Health Information requested under 45 C.F.R. § 164.522, “Rights to Request Privacy Protection for Protected Health Information,” subpart (a), to which STATE has agreed and that would also limit the Use or Disclosure of Protected Information by COUNTY.

- D. STATE shall refrain from requesting COUNTY to Use or Disclose Protected Information in a manner that would violate applicable law or would be impermissible if the Use or Disclosure were performed by STATE.

2.6 Obligations of COUNTY Upon Expiration or Cancellation of the Contract. Upon expiration or termination of the Contract for any reason:

- A. In compliance with the procedures found in the Applicable Safeguards listed in subsection 2.1.A, or as otherwise required by applicable industry standards, or directed by STATE, COUNTY shall immediately destroy or sanitize (permanently de-identify without the possibility of re-identification), or return in a secure manner to STATE all Protected Information that it still maintains.
- B. COUNTY shall ensure and document that the same action is taken for all Protected Information shared by STATE that may be in the possession of its Agents. COUNTY and its Agents shall not retain copies of any Protected Information.
- C. In the event that COUNTY determines that returning or destroying the Protected Information is not feasible or would interfere with its ability to carry out its legal responsibilities, maintain appropriate safeguards, and/or comply with Subpart C of 45 C.F.R. Part 164, it shall notify STATE of the specific laws, rules, policies, or other circumstances that make return or destruction not feasible or otherwise inadvisable. Upon mutual agreement of the Parties that return or destruction of Protected Information is not feasible or otherwise inadvisable, COUNTY will continue to extend the protections of the Contract and this Attachment to the Protected Information and take all measures possible to limit further Uses and Disclosures of the Protected Information for so long as it is maintained by COUNTY or its Agents.
- D. COUNTY shall document and verify in a written report to STATE the disposition of Protected Information. The report shall include at a minimum the following information:
 - 1. A description of all Protected Information that has been sanitized or destroyed, whether performed internally or by a service provider;
 - 2. The method by which, and the date when, the Protected Data were destroyed, sanitized, or securely returned to STATE; and
 - 3. The identity of organization name (if different than COUNTY), and name, address, and phone number, and signature of Individual, that performed the activities required by this Section.
- E. Documentation required by this Section shall be made available upon demand by STATE.
- F. Any costs incurred by COUNTY in fulfilling its obligations under this Section will be the sole responsibility of COUNTY.

3. INSURANCE REQUIREMENTS

3.1 Network Security and Privacy Liability Insurance. COUNTY shall, at all times during the term of the Contract, keep in force a network security and privacy liability insurance policy. The coverage may be endorsed on another form of liability coverage or written on a standalone policy.

COUNTY shall maintain insurance to cover claims which may arise from failure of COUNTY's security or privacy practices resulting in, but not limited to, computer attacks, unauthorized access, Disclosure of not public data including but not limited to confidential or private information or Protected Health Information, transmission of a computer virus, or denial of service.

4. INTERPRETATION

4.1 Any ambiguity in this Agreement shall be interpreted to permit compliance with all Applicable Safeguards.

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Request for Board Action

BOARD MEETING DATE:
October 6, 2020

Commissioner's Report

Department Information

ORIGINATING DEPARTMENT: Administration/County Attorney	REQUESTOR: Kelsey Baker/Danielle Olson	REQUESTOR PHONE: Click here to enter text.
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Agenda Item Details

BRIEF DESCRIPTION OF YOUR REQUEST: Final tobacco ordinance adoption.	
AGENDA YOU ARE REQUESTING TIME ON: Regular	ARE YOU SEEKING APPROVAL OF A CONTRACT? No
IS THIS MANDATED? No.	EXPLANATION OF MANDATE:
BACKGROUND/JUSTIFICATION: See attached correspondence regarding status of ordinance and choices to be made.	
PREVIOUS ACTION ON REQUEST / OTHER PARTIES INVOLVED?	See attached correspondence for full history.

Budget Information

FUNDING:

Review/Recommendation

COUNTY ATTORNEY: Danielle Olson	COUNTY ADMINISTRATOR: Kelsey Baker
RECOMMENDATIONS: Make appropriate policy decisions and adopt appropriate revised ordinance.	RECOMMENDATIONS: Click here to enter text.
COMMENTS: Click here to enter text.	COMMENTS: Click here to enter text.

September 10, 2020

Gary Hendrickx, Chair, Commissioner
Edward Peterson, Commissioner
Pete Peterson, Commissioner
Joe Fox, Commissioner
Eric Rudningen, Commissioner

Re: Swift County Tobacco Ordinance

Dear Chair Hendrickx and Commissioners,

On January 21, 2020, the Board held a discussion regarding revision of the Swift County Tobacco Ordinance and updating the same as it related to the then-recent federal law revisions to age requirements. There was a discussion about various components of the ordinance being outdated and in need of significant revision. It was discussed and decided that the Swift County Attorney's Office would work with Countryside Public Health to revise the ordinance and correct any technical matters and return to the Board for discussion of policy matters. Our office received an editable copy of the Ordinance on February 14, 2020.

During the 2nd half of the State Legislature's 2019-2020 biennium, significant discussions were had regarding a possible adoption of Tobacco 21 throughout the State of Minnesota. I brought this matter back before the Board on the March 3, 2020 meeting to discuss whether it would be more advantageous to wait for the State to pass its Tobacco 21 legislation or to proceed with passing the ordinance and revise after the State amended the relevant statutes. The Board instructed that we proceed and revise later if necessary. Accordingly, a revised Swift County Ordinance was sent to Countryside Public Health for review from our office on March 10, 2020.

Due to the COVID-19 pandemic and the need for Countryside Public Health to shift its focus, feedback was not immediately received from Countryside relating to this draft of the ordinance.

On May 16, 2020 Governor Tim Walz signed Minnesota's Tobacco 21 legislation, which affected many provisions of the County's tobacco ordinance. The Swift County ordinance was revised, and on May 19, 2020, I requested a few minutes to discuss a policy change that arose as

a result of the Tobacco 21 legislation. Although the discussion was placed on the agenda, the Chair later removed the discussion item from the agenda.

The matter was raised again at the following Board meeting on June 2, 2020 where I asked the Board to opine as to the policy matter relating to license holders and the revocation of licenses on third or subsequent violations. After some discussion, the Board advised that it would prefer to wait for Countryside Public Health to provide feedback on what other counties were doing and how that was being handled in other counties. We then reached out to Countryside regarding this issue who advised that they were in the process of reviewing the newly-passed legislation and did not have any updated model policies at the time.

On August 17, 2020, Countryside Public Health was able to provide feedback to the original revised ordinance, which pre-dated the Tobacco 21 legislation. Inquiry was made with Countryside Public Health regarding the approach taken by other counties regarding the licensing penalty issue, and Countryside indicated the issue had not been raised. Because this Board had indicated a strong desire to wait for a consensus amount the other counties and had expressed that this matter was not pressing, no additional action was taken at that time.

On September 6, 2020, Countryside Public Health notified this office that Commissioner Rudningen and Administrator Baker sought to finalize the draft ordinance at the October 6, 2020 meeting. As such, the ordinance was again revised.

Enclosed, you will find a current revision based upon the feedback from Countryside regarding the initial draft. As previously discussed, there is a policy decision regarding penalties that this Board must decide. In comparing the post-Tobacco 21 revisions with the feedback from Countryside Public Health, two additional policy matters have been called into question.

With the technical matters addressed by our office, the Board needs to make policy decisions regarding the following ordinance provisions:

1. Definition: “Loosies”:

- a. Issue: Countryside Public Health has proposed alternative language for the definition of “loosies,” which would modify the current ordinance. The modified language would allow for the sale of single, premium cigars, which is currently prohibited.
- b. Recommendation: This is entirely policy-related, and the Swift County Attorney’s Office takes no position on this matter.

2. Compliance Checks:

- a. Issue: The current ordinance calls for a minimum of one compliance check per year. Countryside Public Health has suggested changing that minimum from one to two to comply with the number of checks typically performed annually.

- b. Recommendation: Remain as is with minimum of one check. The ordinance requires “at least one” check, but it does not provide any type of upper limit. While increasing from one to two seems minimal – especially when it’s the current practice – it could potentially limit the County in the future should something like COVID-19 occur again where Countryside Public Health needs to shift its focus away from things like this to focus on other issues.

3. Administrative Penalties:

- a. Issue: This is the policy issue previous brought to the Board’s attention created through the Tobacco-21 legislation. The current ordinance contemplates a 30-day license suspension on a third violation of the ordinance with revocation on the fourth violation. The Tobacco-21 legislation contemplates a 7-day suspension and potential revocation on a third violation.
- b. Recommendation: Adopt the language that mirrors the State statute. Although Swift County could retain its current language, deviation from the State statute provides additional points of confusion, which could create enforcement issues. While the County would certainly argue in an enforcement proceeding that the Ordinance was duly-enacted and therefore understood and enforceable, it would be best to avoid that potential problem.

Attached is a final version of the Ordinance with the various policy choices highlighted for your convenience (recommended language is italicized). With these options, the Board will be able to choose the version best suited to its policy choice. Final versions of each choice are available on request and can be brought to the upcoming Board meeting if desired.

Should you have any questions, please do not hesitate to contact our office.

Best,



Shawn C. Reinke, Esq.
Assistant Swift County Attorney

SWIFT COUNTY TOBACCO ORDINANCE

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SWIFT COUNTY TOBACCO ORDINANCE

SECTION 1. PURPOSE

Because the County recognizes that the sale of commercial tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products to persons under the age of 21 violates state and federal law; and because studies, which are hereby accepted and adopted (i.e. CDC, Minnesota Department of Public Health/ASSIST) have shown that youth use of any commercial tobacco product has increased to 27.6% in Minnesota; and because most people who smoke begin smoking before they have reached the age of 21 years and that those persons who have reached the age of 21 years without having started smoking are significantly less likely to begin smoking; and because studies show that youth and young adults are especially susceptible to commercial tobacco product availability, advertising, and price promotions at tobacco retail environments; and because commercial tobacco use has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this Ordinance shall be intended to regulate the sale of commercial tobacco, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products, for the purpose of enforcing and furthering existing laws and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to smoke, as stated in Minnesota Statute 144.391.

SECTION 2. DEFINITIONS AND INTERPRETATIONS

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural, and the plural shall include the singular. The masculine shall include the feminine and neuter, and vice-versa. The term "shall" means mandatory and the term "may" means permissive. The following terms shall have the definitions given them:

Subd. 1. Child-resistant packaging. "Child-resistant packaging" shall mean packaging that meets the definition as set forth in Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1, 2015, when tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015.

Subd. 2. Compliance Checks. "Compliance Checks" shall mean the system used by the County investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this ordinance. Compliance checks may involve the use of persons under the age of 21 as authorized by this Ordinance and applicable state and federal laws. Compliance checks may also mean the use of persons under the age of 21 who attempt to purchase licensed products for educational, research and training purposes as authorized by state and federal laws. Compliance

checks may also be conducted by other units of government for the purpose of enforcing appropriate federal, state, or local laws and regulations relating to licensed products.

Subd. 3. Electronic Delivery Device. "Electronic Delivery Device" shall mean any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through inhalation of aerosol or vapor from the product. Electronic Delivery Device includes but is not limited to devices manufactured, marketed, or sold as electronic cigarettes, electronic cigars, electronic pipe, vape pens, modes, tank systems, or under any other product name or descriptor. Electronic Delivery Device shall include any component part of such a product whether or not sold separately. Electronic Delivery Device excludes drugs, devices, or combination products, as those terms are defined in the Federal Food, Drug, and Cosmetic Act, that are authorized for sale by the United States Food and Drug Administration.

Subd. 4. Indoor Area. "Indoor Area" shall mean all space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent. A standard (0.011) gauge window screen is not considered a wall.

Subd. 5. Licensed Products. "Licensed Products" shall mean any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery device, as they are defined by this section.

Subd. 6. Loosies. ["Loosies" shall mean the common term used to refer to a single or individually packaged cigarette, or any other licensed product that has been removed from its packaging and sold individually.]

OR

["Loosies" shall mean the common term used to refer to single cigarettes, cigars, and any other licensed products that have been removed from their original retail packaging and offered for sale. "Loosies" does not include premium cigars that are hand-constructed, have a wrapper made entirely from whole tobacco leaf, and have a filler and binder made entirely of tobacco, except for adhesives or other materials used to maintain size, texture, or flavor.]

Subd. 7. Moveable Place of Business. "Moveable Place of Business" shall refer to any form of business whose physical location is not permanent, including, but not limited to, any business operated out of a motorized vehicle, mobile sales kiosk, trailer, or other structure or equipment not permanently attached to the ground.

Subd. 8. Nicotine or Lobelia Delivery Products. "Nicotine or Lobelia Delivery Products" shall mean any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco or an electronic delivery device as defined in this section, not including any product that has

been approved or otherwise certified for legal sale by the United States Food and Drug Administration for tobacco use cessation, harm reduction, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

Subd. 9. Retail Establishment. "Retail Establishment" shall mean any place of business where tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores, and restaurants.

Subd. 10. Sale. A "Sale" shall mean any transfer of goods for money, trade, barter, or other consideration.

Subd. 11. School. A "School" shall mean any public or private educational institution with the purpose of providing academic classroom instruction, trade, craft, computer or other technical training to pupils ordinarily enrolled in prekindergarten through grade 12 and as defined by Minn. Stat. § 120A.05, subds. 9, 10a, 11, 13, and 17.

Subd. 12. Self-Service Merchandising. "Self-Service Merchandising" shall mean open displays of licensed products in any manner where any person shall have access to licensed products without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the licensed products between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

Subd. 13. Smoke or Smoking. "Smoke" or "Smoking" shall mean inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other tobacco or plant product, whether natural or synthetic, or inhaling or exhaling aerosol or vapor from any electronic delivery device. Smoking shall include being in possession of a lighted or heated cigar, cigarette, pipe, or any other tobacco or plant product or an activated electronic delivery device intended for inhalation.

Subd. 14. Tobacco or Tobacco Products. "Tobacco" or "Tobacco Products" shall mean any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product including but not limited to cigarettes, cigars, cheroots, stogies, perique, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco. Tobacco excludes any drugs, devices, or combination products, as those terms are defined in the Federal Food, Drug, and Cosmetic Act, that are authorized for sale by the United States Food and Drug Administration.

Subd. 15. Tobacco Related Devices. "Tobacco Related Devices" shall mean any pipe, wraps, rolling papers, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking, or inhalation of aerosol or

vapor of tobacco or tobacco products. Tobacco related devices shall include accessories or components of tobacco related devices which may be marked or sold separately.

Subd. 16. Vending Machine. "Vending Machine" shall mean any mechanical, electric or electronic, or other type of device which dispenses licensed products, upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the licensed product.

Subd. 17. Tobacco Products Shop. "Tobacco Products Shop" shall mean a retail establishment that has an entrance door opening directly to the outside, that cannot be entered at any time by persons younger than 21 years of age, and that derives more than 90 percent of its gross revenue from the sale of tobacco, tobacco-related devices, and other electronic delivery devices, as defined in Minn. Stat. § 609.685, and in which the sale of other products is merely incidental. Tobacco Products Shop does not include a tobacco department or section of any individual business establishment with any type of liquor, food, or restaurant license.

SECTION 3. COUNTY TOBACCO RETAILER LICENSE

No person shall sell or offer to sell any tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products, without first having obtained a license from the county.

Subd. 1. License Application. An application for a license to sell a licensed product shall be made on a form provided by the County. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information deemed necessary. Upon receipt of a completed application, the County Auditor shall forward the application to the County Board of Commissioners, or its designee for action at its next regularly scheduled meeting. If the County Auditor, or designee, shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

Subd. 2. Action on License. Within thirty (30) days, the County Board or its designee may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application it deems necessary. If the County Board shall approve the license, the County Auditor or designee shall issue the license to the applicant. If the license is denied or delayed, notice of the denial or delay, which shall include the reason for the denial or delay, shall be given to the applicant along with the notice of the applicant's right to appeal the decision. Notice of the County Board's decision shall be sent to the applicant within five (5) business days by the County Auditor.

Subd. 3. License Fees. Each application for a tobacco retailer's license shall be accompanied by a fee as set by the Swift County Board of Commissioners. Application

for licenses issued after June 30 of a calendar year shall be accompanied by a prorated fee.

Subd. 4. License Term. The licensing period begins on June 30 of a calendar year and ends June 30 of the following calendar year. Each license issued shall expire on the 30th day of June 30 following issuance of the license unless sooner revoked by the County or unless the business with respect to which the license was issued is transferred. In either case the holder of the license shall immediately surrender it to the County Auditor.

Subd. 5. Renewals. The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for renewal shall be made at least thirty days, but no more than sixty days before the expiration of the current license.

Subd. 6. Issuance as a Privilege and Not a Right. The issuance of a license issued under this section shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

Subd. 7 Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premises.

Subd. 8. Transfers. All licenses issued under this Ordinance shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued.

Subd. 9. Revocation or Suspension. Any license issued under this Ordinance may be revoked or suspended as provided in Sections 4 and 11 of this Ordinance.

SECTION 4. BASIS FOR DENIAL OF TOBACCO RETAILER'S LICENSE

Subd. 1. Denial of License. Any one or more of the following shall be grounds for denying the issuance or renewal of a license under this Ordinance:

- A. The applicant is under the age of 21 years.
- B. The applicant has been convicted within the past five years of any violation of a federal, state, or local law, ordinance provision, or other regulation relating to licensed products.
- C. The applicant has had a license to sell tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products, suspended or revoked within the preceding twelve months of the date of application.
- D. The applicant fails to provide any information required on the application, or

provides false or misleading information.

- E. The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from holding such a license.
- F. The applicant seeks a license for a retail establishment that is located within 500 feet of a school, as measured by the shortest line from the property line of the space to be occupied by the proposed licensee to the nearest property line of a school. This restriction shall not apply to an existing license holder who has been licensed to sell licensed products in that same location for at least one year prior to the enactment of this provision.
- G. The applicant seeks licensure for a moveable place of business.

The existence of any particular ground for denial is sufficient for denial of licensure. If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this section.

Subd. 2. Right to Administrative Review. An applicant whose application for license was denied shall have the right to request review. Upon receipt of the County Board's decision, the applicant shall request a review within ten (10) days of receipt of the decision. The review hearing shall be heard at the next regularly scheduled meeting of the County Board, and the applicant shall be allowed to present information to the County Board regarding its license application and the basis for denial. The County Board shall receive the information at its public meeting and shall make a decision regarding issuance of the license. If the County Board denies the license, it must detail why the license was denied pursuant to the factors listed in Section 4, subd. 1.

SECTION 5. LICENSEES RESPONSIBLE FOR ACTION OF EMPLOYEES

All licensees under this Ordinance shall be responsible for the actions of their employees in regard to the sale of licensed products on the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the County from also subjecting the employee to whatever penalties are appropriate under this Ordinance, state or federal law, or other applicable law or regulation.

SECTION 6. MANDATORY COMPLIANCE CHECKS

All licensed premises shall be open to inspection by the Swift County Sheriff's Department or its designee, Countryside Public Health, or other authorized County official during regular business hours. From time to time, but at least **once OR twice** per year, the

County shall conduct a compliance check that shall include the use of a person who is at least 17 years of age, but under the age of 21, to enter the licensed premises to attempt to purchase licensed products under the direct supervision of a law enforcement officer or an employee of Countryside Public Health. Prior written consent of a parent or guardian is required for any person under the age of 18 to participate in a compliance check. The age requirements for persons participating in compliance checks under this section or pursuant to Minn. Stat. § 461.12, subd. 5 shall not affect the age requirements in federal law for persons participating in federally required compliance checks of these locations.

SECTION 7. PROHIBITED SALES

Subd. 1. General. It shall be a violation of this Ordinance for any person to sell or offer to sell any licensed products:

- A. To any person under the age of twenty-one (21) years.
- B. By means of loosies as defined in Section 2, subd. 6 of this Ordinance.
- C. Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substance except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process. It is not the intent of this provision to ban the sale of lawfully manufactured cigarettes or other tobacco products.
- D. By any other means, to any other person, in any other manner or form prohibited by federal, state, or other local law, ordinance provision, or other regulation.

Subd. 2. Vending Machines. It shall be unlawful for any person licensed under this Ordinance to allow the sale of licensed products by the means of a vending machine unless persons under the age of 21 are at all times prohibited from entering the licensed establishment.

Subd. 3. Self-Service Sales. Except where the licensee is a Tobacco Products Shop, it shall be unlawful for a licensee under this Ordinance to allow the sale of licensed products by any means whereby the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the licensed products between the licensee or his or her clerk and the customer.

Subd. 4. Liquid Packaging. The sale of any liquid, whether or not such liquid contains nicotine, intended for human consumption and use in an electronic delivery device, that is not contained in child-resistant packaging is prohibited. All licensees under this chapter must ensure that any liquid intended for use in an electronic delivery device

is sold in child-resistant packaging. Upon request, a licensee shall provide a copy of the certificate of compliance or the full protocol laboratory testing report for the packaging used.

SECTION 8. PROHIBITED ACTS

Unless otherwise provided, the following acts shall be a violation of this Ordinance:

Subd. 1. Illegal Procurement. It shall be a violation of this Ordinance for any person 21 years of age or older to purchase or otherwise obtain such items on behalf of a person under the age of 21. It shall further be a violation for any person 21 years of age or older to coerce or attempt to coerce a person under the age of 21 to illegally purchase or otherwise obtain or use any licensed products.

Subd. 2. Use of False Identification. It shall be a violation of this Ordinance for any person under the age of 21 to attempt to disguise their true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

Subd. 3. Smoking. Smoking shall not be permitted and no person shall smoke within the indoor area of any establishment with a retail tobacco license. Smoking for the purposes of sampling licensed products is prohibited

SECTION 9. AGE VERIFICATION AND SIGNAGE REQUIRED

Subd. 1. Signage. At each location where tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products are sold, the licensee shall display a sign in plain view to provide public notice that selling any of these products to any person under the age of 21 is illegal and subject to penalties. The notice shall be placed in a conspicuous location in the licensed establishment and shall be readily visible to any person who is purchasing or attempting to purchase these products. The sign shall provide notice that all persons responsible for selling these products must verify, by means of photographic identification containing the bearer's date of birth, the age of any person under 30 years of age.

Subd. 2. Age Verification. At each location where tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products are sold, the licensee shall verify, by means of government-issued photographic identification containing the bearer's date of birth, that the purchaser or person attempting to make the purchase is at least 21 years of age. Verification is not required if the purchaser or person attempting to make the purchase is 30 years of age or older. It shall not constitute a

defense to a violation of this subdivision that the person appeared to be 30 years of age or older.

SECTION 10. EXCEPTIONS AND DEFENSES

Subd. 1. Affirmative Defense – Reliance on Identification. It shall be an affirmative defense to an alleged violation of this Ordinance for a person to have reasonably relied on proof of age as described by state law.

Subd. 2. Spiritual or Cultural Ceremony.

Subd. 2a. Notwithstanding Section 8, subd. 1, an Indian may furnish tobacco to an Indian under the age of 21 years if the tobacco is furnished as part of a traditional Indian spiritual ceremony. For purposes of this subdivision, an Indian is a person who is a member of an Indian tribe as defined in Minn. Stat. § 260.755, subd. 12.

Subd. 2b. The penalties of this ordinance do not apply to a person under the age of 21 years who purchases or attempts to purchase tobacco, tobacco-related devices, or electronic delivery devices while under the direct supervision of a responsible adult for training education, research, or enforcement purposes.

SECTION 11. ADMINISTRATIVE REVIEW OF SUSPECTED VIOLATIONS

Subd. 1. Notice. Upon discovery of a suspected violation, the County Auditor shall issue the alleged violator, either personally or by mail, a citation that sets forth the alleged violation and which shall inform the alleged violator of his or her right to be heard on the accusation. The citation shall be issued within ten (10) business days of the suspected violation and shall provide notice that a hearing must be requested within ten (10) business days of receipt of the citation. Any uncontested citations duly served shall be subject to the appropriate Administrative Penalty set forth in Section 12. A copy of the citation shall be sent to the County Attorney's office for record keeping and for review of additional charging.

Subd. 2. Hearings. If a person accused of violating this Ordinance so requests, a hearing shall be scheduled the time and place of which shall be published and provided to the accused violator.

Subd. 3. Hearing Officer. The Swift County Board or its designee shall serve as the hearing officer.

Subd. 4. Decision. If the hearing officer determines that a violation of this Ordinance did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under Section 11 of this Ordinance, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred, or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused violator.

Subd. 5. Appeals. Appeals of any decision made by the hearing officer shall be filed in the district court for the jurisdiction of the county in which the alleged violation occurred.

Subd. 6. Continued Violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

SECTION 12. ADMINISTRATIVE AND OTHER PENALTIES

Subd. 1. Licensees. Any licensee found to have violated this Ordinance, or whose employee shall have violated this Ordinance, shall be charged an administrative fee as follows pursuant to the notice requirements of Section 11:

First Offense:	\$300.00
Second Offense:	\$600.00
Third and any subsequent Offense:.....	\$1,000.00

[Upon the third violation, the license will be suspended for a period of not less than 30 consecutive days. Upon a fourth violation, the license will be revoked.] **OR** [Upon the third violation, the license will be suspended for a period of not less than 30 consecutive days and may be revoked. Upon a fourth violation, the license will be revoked.] **OR** [Upon a third or any subsequent violation, the license shall be suspended for not less than seven (7) days and may be revoked.] A subsequent offense ("Second," "Third") is an offense that occurs at the same licensed premises within a 36-month period following the preceding offense.

Subd. 2. Instructional Program for licensees. Any licensee who has violated this ordinance and all of that licensee's employees shall complete a training program on the legal requirements related to the sale of licensed products and the possible consequences of license violations. Any training program must be pre-approved by the County Board. Licensees must provide documentation of compliance with this requirement to the County within 30 days of notice of violation.

Subd. 3. Persons under the age of 21 - Alternative Penalties for Use of False Identification. The County Board shall consult with interested persons, as applicable, including but not limited to educators, parents, guardians, persons under the age of 21 years, and representatives of the court system to develop alternative penalties for persons

under the age of 21 years who purchase, or attempt to purchase, tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products using a driver's license, permit, Minnesota identification card, or any other type of false identification to misrepresent the person's age in violation of Minn. Stat. § 609.685 or 609.6855. The County Board and the interested persons shall consider a variety of alternative civil penalties, including, but not limited to, tobacco-free education; tobacco-cessation programs; notice to schools, parents, or guardians; community service; and court diversion programs. Alternative civil penalties shall not include fines or monetary penalties.

Subd. 4. Administrative Penalty for Sales and Furnishing. An individual who sells, gives or otherwise furnishes tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of 21 years may be charged an administrative penalty of \$50.00, which may only be imposed following all notice and other requirements of Section 11.

SECTION 13. SEVERABILITY AND SAVINGS CLAUSE

If any section or portion of this Ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not invalidate the effectiveness of any other section or provision of this Ordinance.

SECTION 14. REPEAL OF PRIOR ORDINANCES

This Ordinance, upon its adoption, shall repeal the Swift County Tobacco Ordinance dated January 5, 2016.

SECTION 15. EFFECTIVE DATE

This Ordinance shall take effect upon passage and publication.

ADOPTION OF ORDINANCE

Passed and approved by the Board of County Commissioners, Swift County, Minnesota,
this ____ day of _____, _____.

Gary Hendrickx, Chairperson

Attest: _____
Kelsey Baker, County Administrator

APPROVED AS TO FORM AND EXECUTION:

Danielle H. Olson, County Attorney

Approved: _____

Enacted: _____

Join us for the Prairie Five OPEN HOUSE

Tuesday, October 6th 2020

1:00 - 3:00 pm

Prairie Five Outreach Office, Thrift Store, Swift County Food Shelf, and Swift County Loan Closet have moved downtown into the old Lewis Drug Building (Clarks Drug).



**Prairie Five is excited to continue serving
Swift County in our new location.**

Join us to celebrate!!