




## FLUEGEL LAW FIRM P.A.

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To: Honorable Mayor and City Council  
From: Daniel J. Fluegel, City Attorney   
Date: June 11, 2019  
Item: Driving Diversion Program

### **Council Action Requested.**

The City Council is requested to consider and approve the enclosed Driving Diversion Program Services Agreement.

### **Background Information.**

In 2016, the City Council approved as a pilot program the Driving Diversion Program that was initiated by Diversion Solutions, LLC with the State of Minnesota. The program allows individuals who have suspended or revoked driver's licenses as a result of unpaid financial obligations to have their licenses reinstated subject to making and complying with payment plans to get the financial obligations paid. The Minnesota Legislature has now approved the Driving Diversion Program as a permanent program. As such, we will need the attached Driving Diversion Program Services Agreement to be approved by the City Council if we want to continue with this program.

### **Financial Impact.**

There is no cost to the City for enrolling in the program. The City will generally receive \$100.00 of the enrollment fee for each participant, subject to some limitations. We also expect a very modest increase in fine revenue associated with increased collection rates from driver's license citations.

### **Attachments.**

Driving Diversion Program Services Agreement for the City of Hastings.

DAN/ksk

**DRIVING DIVERSION PROGRAM  
SERVICES AGREEMENT  
FOR THE  
CITY OF HASTINGS**

1. **Contractual Agreement** - This Agreement is made and entered into this \_\_\_\_\_ day of June, 2019, by and between the City of Hastings, State of Minnesota, by and through its Prosecuting City Attorney's Office, ("City") and Diversion Solutions, LLC, of 415 Main Street, Red Wing, Minnesota 55066.
2. **Purpose** – The purpose of this Agreement shall be to implement the License Reinstatement Program: "2019 First Special Session Chapter 5 SF8 Sec. 5. [171.2405] LICENSE REINSTATEMENT DIVERSION PROGRAM." **Exhibit A**
3. **Contract Terms** - This Agreement shall be in force until either party exercises the termination clause provided in Section 10.
4. **Definitions:**
  - A. **Participant** – the individual who has enrolled in the Driving Diversion Program voluntarily as part of the City Diversion Program or has otherwise been ordered by the Court or prosecutor to complete the program.
  - B. **Restitution Recovery** – Fines, reinstatement fees, and diversion fees payable by a Participant.
5. **City Duties** – The following is needed for the implementation of the Program:
  - A. Designee will conduct, as needed, authorization of applicants, meet with key Diversion Solutions staff to offer procedural guidance, evaluate program performance, and provide support and direction.
6. **Diversion Solutions Duties** - Diversion Solutions will provide the following services to the City in a timely and efficient manner:
  - A. Operation and management of the driver's license diversion program for participants who would otherwise be involved in the court legal system.
  - B. Perform daily operations and management of all clerical and accounting functions related to individual participant files.
  - C. Manage the collection and disbursement of Restitution Recovery Fees, participant fees and other fees as appropriate.
  - D. Provide necessary responses, correspondence, and follow-up of telephone inquiries to address issues or questions of Participants.
  - E. Properly maintain all physical files, financial records, documentation, reports, computer files, etc. as required by law or requested by the City.
  - F. Conduct classes designed to teach and provide meaningful information and lessons to Participants on licensure, criminal consequences, and other appropriate topics.
  - G. Schedule and conduct all classes necessary for the program, which shall include but not be limited to development of curriculum, provision of appropriate materials, and provision of appropriate space/locations for the classes.

Reports

Maintain and provide records to the City as defined in Exhibit A.

7. Program Operational Fees/Revenue:**Participant Fees**

- |    |  |   |
|----|--|---|
| A. | Program fees based on money owed on citations: |   |
|    | \$250 or less owed                             | \$140.00  |
|    | \$251 - \$500                                  | \$210.00  |
|    | \$501 or more                                  | \$350.00  |
| B. | Failure to attend class                        | \$30 reschedule fee   |
| C. | Reentry if FMR 90                              | \$35 (accepted' did not start program)  |
| D. | Reentry if FMR 2                               | \$150<br>(post class citation, failure to make payment<br>attorney/judge reentry) |
| E. | CC processing fee                              | \$7 per transaction   |

Pilot fee extended to city that previously contracted with Diversion Solutions and now under this contract: For each program fee paid in full, \$100.00 of the fee will be paid to County and \$250.00 will be retained by Diversion Solutions. No fee shall be paid from a participant that qualifies for discount under the License Reinstatement Program Subd. 4. (b).

8. Non-Compete – During the term of this agreement, the City shall not establish a competing program or any other similar program that addresses driver's license diversions.

9. CITY has no Financial Liability - It is understood and agreed by and between the parties that Diversion Solutions will bear all financial liability for all aspects of its operations under this Agreement.

10. Termination of this Agreement:

- A. This Agreement may be terminated at any time, without cause, by either party upon 30 days written notice to the authorized agent of the City or Diversion Solutions.
- B. This Agreement may be immediately terminated by the City at any time if the City determines that Diversion Solutions is acting, or has acted at any time during the term of this Agreement, in violation of state or federal law.

11. Amendments or Material Modifications - All amendments or modifications to this Agreement must be in writing and approved by both parties.

12. No CITY Obligation - Diversion Solutions and Participants who participate in this program fully understand that the program is a public service, and the City is held harmless and has no liability to make recovery or obligation to take criminal action against Participant(s).

13. Criminal Action – Diversion Solutions acknowledges, and will advise all Participants that, the City Attorney's Office may reinstate prosecution of the citation which brought the Participant(s) to the program if the Participant fails to participate or complete the program.

14. Hold Harmless and Indemnification:

- A. Diversion Solutions shall save and protect, hold harmless, indemnify and defend the City, its officers and employees against any and all claims, causes of action, suits, liabilities, losses, charges, damages or costs and expenses arising from, or allegedly arising from, or resulting directly or indirectly from any professional errors and omissions and/or negligent or willful acts or omissions of Diversion Solutions and its employees and agents, in the performance of this Agreement.

15. **Independent Contractor:**
- A. Nothing contained in this Agreement is intended to or shall be construed in any manner as creating or establishing the relationship of employer/employee between the parties. Diversion Solutions shall at all times remain an independent contractor with respect to the services to be provided under this agreement.
- B. The City shall be exempt from payment of all unemployment insurance, FICA, retirement, life and medical insurance, and workers' compensation insurance for any and all of Diversion Solutions employees and agents. Payment of insurance premiums, tax withholding, and all other benefits are strictly Diversion Solutions' responsibility.
16. **Subcontractor** - Diversion Solutions shall not subcontract any portion of the work to be performed under this Agreement without prior written approval of City. Diversion Solutions reserves the right to assign this agreement with written City approval.
17. **Data Practices** - Diversion Solutions agrees to comply with the Minnesota Government Data Practices Act and all other applicable state and federal laws relating to data privacy or confidentiality. Diversion Solutions will immediately report to the department head signing this agreement any request from a third party for information relating to this agreement. The City agrees to promptly respond to inquiries from Diversion Solutions concerning data requests. Diversion Solutions agrees to hold the City, its officers and employees harmless from any claims resulting from the Diversion Solution's unlawful disclosure or use of data protected under state and federal laws.
18. **Compliance with the Law** - Diversion Solutions agrees to abide by the requirements and regulations of The Americans with Disabilities Act of 1990 (ADA), the Minnesota Human Rights Act (Minn. Stat. C.363), and Title VII of the Civil Rights Act of 1964. These laws deal with discrimination based on race, gender, disabilities, religion, and with sexual harassment. The City agrees to promptly supply all necessary clarifications. Violation of any of the above can lead to the termination of this Agreement.
19. **Entire Agreement** - This entire Agreement supersedes any and all other Agreements, either oral or written, between the parties hereto with respect to the subject matter hereof, and contains all of the Agreements between the parties with respect to said matter. Each party to this Agreement acknowledges that no representations, inducements, promises, or Agreements, oral or otherwise, have been made by either party which are not embodied herein, and that no other Agreements, statements, or promises not contained within this Agreement shall be valid or binding. All provisions contained within this Agreement shall be valid or binding. The laws of Minnesota and the United States of America shall govern all provisions within this Agreement.
20. **Audits and Inspections** - The City Attorney's office or designated representative or other governmental agency exercising regulatory function over the City's business activities, while exercising reasonable, non-disruptive procedures, may inspect Diversion Solutions records at any time at City expense.
21. **Notice** - Any notice to be given hereafter by either party to the other, shall be in writing and may be affected by personal delivery, or by registered mail, return receipt requested, addressed to the proper party, to each of the party's respective address.
22. **Insurance** - Diversion Solutions and or its subcontractors agree to provide and maintain, at its own cost and at all times during its performance under this contract until completion of the work, such liability insurance coverage as is set forth below, and to otherwise comply with the provisions that follow:

- A. **Workers' Compensation:** Workers' Compensation insurance in compliance with all applicable statutes.
- B. **Auto Insurance** – Owned and unowned
- C. **General Liability:** "Commercial General Liability Insurance" (Insurance Service Office policy form title), or equivalent policy form, providing coverage on an "occurrence," rather than on a claims made basis, the policy for which shall include, but not limited to, coverage for bodily injury, property damage, personal injury, contractual liability (applying to this contract), Independent Contractors, and Products-Completed Operations Liability. Coverage for explosions, collapse and underground hazards shall **not** be included.  
Such a policy shall name the City as an additional insured thereunder, and shall apply on a primary basis with respect to any similar insurance maintained by the City, which other insurance of the City, if any, shall apply in excess of Diversion Solutions insurance and not contributed therewith. Diversion Solutions agrees to maintain Products-Complete Operations coverage on a continuing basis for a period of at least two years after date of completion

Such Commercial General Liability insurance policy shall provide a combined single limit in the amount of at least \$2,000,000 (two million) Each Occurrence, applying to liability for bodily injury and property damage, and a combined single limit of at least the same amount applying to liability for Personal Injury and Advertising Injury. Such minimum limits may be satisfied by the limit afforded under Firm's Commercial General Liability Insurance Policy, or by such Policy in combination with limits afforded by an Umbrella or Excess Liability Policy (or policies), provided that the coverage afforded under any such Umbrella or Excess Policy is at least in all material respects as broad as that afforded by the underlying Commercial Liability Policy, and further that the CITY is included as an additional insured thereunder.

Such Commercial General Liability Policy and Umbrella or Excess Liability Policy (or policies) may provide aggregate limits for some or all of the coverage afforded thereunder, so long as such aggregated limits are not at any time during which such coverage is required to be maintained hereunder reduced to less than the required Each Occurrence limit stated above, and further, that the Umbrella or Excess Liability provides from the point that such aggregate limits in the underlying Commercial General Liability Policy become reduced or exhausted. An Umbrella or Excess Liability Policy which "drops down" to respond immediately over reduced underlying limits, or in place of exhausted underlying limits, but subject to a deductible or "retention" amount, shall be acceptable in this regard so long as such deductible or retention amount does not cause the firm total deductibles or retention for Each Occurrence to exceed \$10,000.

D. **Professional Liability:**

Liability Insurance in the amount of at least \$1,000,000 Each Occurrence (or "Wrongful Act" or equivalent) and if applicable, Aggregate, covering Diversion Solutions Liability for negligent acts, errors, or omissions in the performance of professional services in connection with this Agreement. Diversion Solutions Professional Liability Insurance may afford coverage on an occurrence basis or on a claims-made basis. It is, however, acknowledged and agreed by Diversion Solutions, that under claims-made coverage, changes in insurers or in insurance policy forms could result in the impairment of the liability insurance protection intended for the City hereunder. Diversion Solutions therefore agrees that it will not seek or voluntarily accept any such change in its Professional Liability Insurance coverage if such impairment of the protection for the City could result; and further, that it will exercise its right under any Extended Reporting Period ("tail coverage") or similar claims-made policy option if necessary or appropriate to avoiding impairment of such protection.

Diversion Solutions further agrees that it will, keep required coverage and for an additional period of two (2) years following cancellation of this agreement, immediately:

(a) advise the City of any intended or pending change in Professional Liability insurance or in policy forms, and provide the City with all pertinent information that the City may reasonably request to determine compliance with this paragraph; and (b) advise the City of any claims or threat of claims that might reasonably be expected to reduce the amount of such insurance remaining available for the protection of the City.

IN WITNESS WHEREOF, the parties have executed the Agreement as of the date first written above

Diversion Solutions, LLC  
415 Main Street  
Red Wing, MN 55066

City of Hastings  
101 4<sup>th</sup> Street East  
Hastings MN 55033

By \_\_\_\_\_  
(Scott Adkisson – CEO)

By \_\_\_\_\_  
Mary Fasbender, Mayor

By \_\_\_\_\_  
Julie Flaten, City Clerk

## 2019 First Special Session Chapter 5 SF8

### Sec. 5. [171.2405] LICENSE REINSTATEMENT DIVERSION PROGRAM.

#### Subdivision 1. Establishment.

(a) A CITY or City may establish a license reinstatement diversion program for holders of class D drivers' licenses who have been charged with violating section 171.24, subdivision 1 or 2. An individual charged with driving after revocation under section 171.24, subdivision 2, is eligible for diversion only if the revocation was due to a violation of section 169.791; 169.797; 169A.52; 169A.54; 171.17, subdivision 1, paragraph (a), clause (6); or 171.177. An individual who is a holder of a commercial driver's license or who has committed an offense in a commercial motor vehicle is not eligible to participate in the diversion program. Nothing in this section authorizes the issuance of a driver's license to a diversion program participant during the underlying suspension or revocation period at issue in the violation of section 171.24, subdivision 1 or 2.

(b) Notwithstanding any law or ordinance to the contrary, a CITY or City may contract with a third party to create and administer the diversion program under this section. Any participating CITY or City, at its own expense, may request an audit of the administrator.

(c) For purposes of this section, "administrator" means the CITY, City, or administrator of the program.

#### Subd. 2. Diversion of an individual.

(a) A prosecutor for a participating CITY or City may determine whether to accept an individual for diversion. When making the determination, the prosecutor must consider:

- (1) whether the individual has a record of driving without a valid license or other criminal record, or has previously participated in a diversion program;
- (2) the strength of the evidence against the individual, along with any mitigating factors; and
- (3) the apparent ability and willingness of the individual to participate in the diversion program and comply with program requirements.

(b) A CITY or City attorney may request that an individual be reviewed for a diversion program without a formal CITY or City diversion program being established. The CITY or City attorney must follow the requirements of subdivisions 1 and 2 and may submit the individual's application to an administrator for processing in collaboration with DVS to determine if an individual is eligible for approval into the diversion program. The participant must meet the requirements in subdivision 4.

(c) A judge may submit a request for an individual to apply for entry into a diversion program under subdivisions 1 and 2. The participant must meet the requirements in subdivision 4.

Subd. 3. Diversion driver's license.

(a) Notwithstanding any law to the contrary, the commissioner may issue a diversion driver's license to a person who is a participant in a diversion program, after receiving an application and payment of:

(1) the reinstatement fee under section 171.20, subdivision 4, by a participant whose driver's license has been suspended;

(2) the reinstatement fee under section 171.29, subdivision 2, paragraph (a), by a participant whose driver's license has been revoked under section 169.791; 169.797; or 171.17, subdivision 1, paragraph (a), clause (6); or

(3) the reinstatement fee under section 171.29, subdivision 2, paragraph (a), by a participant whose driver's license has been revoked under section 169A.52, 169A.54, or 171.177. The reinstatement fee and surcharge under section 171.29, subdivision 2, paragraph (b), must also be paid during the course of and as a condition of the diversion program.

(b) The commissioner may impose restrictions on a diversion driver's license that are suitable to the licensee's driving ability or applicable to the licensee as the commissioner deems appropriate to ensure the safe operation of a motor vehicle by the licensee. The participant must follow all requirements of this section, the requirements set out by DVS and court restrictions.

(c) Payments made by participants in the diversion program of the reinstatement fee and surcharge under section 171.29, subdivision 2, paragraph (b), must be applied first toward payment of the reinstatement fee and, after the reinstatement fee has been fully paid, toward payment of the surcharge. Each payment that is applied toward the reinstatement fee must be credited as provided in section 171.29, subdivision 2, paragraph (b), and each payment that is applied toward the surcharge must be credited as provided in section 171.29, subdivision 2, paragraphs (c) and (d). After the reinstatement fee and surcharge are satisfied, the participant must pay the program participation fee.

(d) Notwithstanding any law to the contrary, a diversion driver's license issued to a participant in the program must not be revoked or suspended for convictions entered due to payments made under subdivision 4.



Subd. 4. Program components.

(a) At a minimum, the diversion program must require individuals to:

- (1) successfully attend and complete, at the individual's expense, educational classes that provide, among other things, information on driver's licensure;
- (2) pay to the administrator, under a schedule approved by the prosecutor, all required related fees, fines, and charges, including applicable statutory license reinstatement fees and costs of participation in the program;
- (3) comply with all traffic laws; and
- (4) demonstrate compliance with motor vehicle insurance requirements.

(b) Individuals whose underlying citations cost less than \$250 shall receive a 60 percent discount on the diversion program fee. Individuals whose underlying citations cost \$250 to \$500 shall receive a 40 percent discount on the diversion program fee.

Subd. 5. Termination of participation; reinstatement of driver's license.

(a) An individual's participation in the diversion program must be terminated if:

- (1) the individual is found guilty of a moving traffic violation;
- (2) the individual fails to provide proof of vehicle insurance; or
- (3) the administrator of the diversion program informs the commissioner that the individual is no longer satisfying the conditions of the diversion program.

(b) The commissioner must cancel an individual's diversion driver's license upon receiving notice from the administrator that the individual is not complying with the requirements of the program.

(c) The original charge against the individual of a violation of section 171.24 may be reinstated against an individual whose participation in the diversion program terminates under paragraph (a), clause (1) or (2).

(d) If an individual satisfies all requirements of the diversion program, including, at a minimum, satisfactory fulfillment of the components under subdivision 4, the administrator must inform the court, the prosecutor, and the commissioner of the individual's satisfactory completion of the diversion program.

(e) Upon receiving notice under paragraph (d), the commissioner must reinstate the individual's driver's license.

(f) Upon receiving notice under paragraph (d), the court must dismiss the charge or the prosecutor must decline to prosecute the individual.

Subd. 6. Fees held on termination of participant.

(a) Upon termination of the participant in the program under subdivision 5, where there are any held funds and only after the administrator has made payouts on citations and fees, the third-party administrator shall hold remaining participant fees for 12 months from the date of termination under subdivision 5, paragraph (a), clause (1) or (2).

(b) A participant who meets DVS requirements to re-enter the diversion program may use held funds to pay fees to be reinstated into the program.

(c) After 12 months, the administrator shall retain the funds for the work performed during the participant's enrollment period, prior to the participant's termination date in the diversion program.

Subd. 7. Biennial report.

(a) By February 1 of each even-numbered year, the administrator must report on each CITY and City that participated in the diversion program and provide a report to each participating CITY and City, the commissioner, and the legislative committees with jurisdiction over transportation and the judiciary concerning the results of the program. The report must be made available electronically and, upon request, in print. The report must include, without limitation, the effect of the program on:

- (1) recidivism rates for participants in the diversion program;
- (2) the number of participants who successfully completed the program;
- (3) the amount charged to individuals for program fees;
- (4) payment of the fees and fines collected in the diversion program to cities, counties, and the state;
- (5) the total amount of money collected from participants in the program;
- (6) the total amount of money, by category, paid or applied to reinstatement;
- (7) educational support provided to participants in the diversion program;
- (8) the total number of participants in the diversion program;
- (9) the total number of participants terminated from the program under subdivision 5, paragraph (a), clauses (1) to (3);

(10) the reimbursement policy for all payments listed under clause (4); and

(11) the amount of all payments listed under clause (4) retained from participants who were terminated from the program.

(b) The report must include all recommendations made by cities or counties regarding the future of the program and any necessary or suggested legislative changes.

#### EFFECTIVE DATE.

This section is effective July 1, 2019. A CITY or City participating in the diversion program may accept an individual into the program until June 30, 2019. The third party administering the diversion program may collect and disperse fees collected pursuant to Minnesota Statutes, section 171.2405, subdivision 6, paragraph (a), clause (2), through June 30, 2019.

Sec. 6. Laws 2009, chapter 59, article 3, section 4, subdivision 9, as amended by Laws 2010, chapter 197, section 1, Laws 2011, chapter 87, section 1, subdivision 9, Laws 2013, chapter 127, section 60, and Laws 2017, chapter 95, article 3, section 29, is amended to read:

Subd. 9. Sunset; transition.

A CITY or City participating in this pilot program may accept an individual for diversion into the pilot program until June 30, 2019. and the third party administering the diversion program may collect and disburse fees collected pursuant to subdivision 6, paragraph (a), clause (2), through December 31, 2020 until the day following the date the permanent diversion program established under Minnesota Statutes, section 171.2405, is effective, at which time the pilot program under this section expires. An individual participating in but who has not completed the pilot program on the date the pilot program expires is automatically transferred and enrolled in the permanent diversion program under Minnesota Statutes, section 171.2405, and credited for any fees paid or activities completed under the pilot program.

#### EFFECTIVE DATE.

This section is effective the day following final enactment.