

**DRIVING DIVERSION PROGRAM
SERVICES AGREEMENT
FOR THE
CITY OF WEST ST. PAUL**

1. **Contractual Agreement** - This Agreement is made and entered into this ____ day of June 2020, by and between the City of West St. Paul, 1616 Humboldt Avenue, West St. Paul, Minnesota 55118 (“City”) and Diversion Solutions, LLC, 415 Main Street, Red Wing, Minnesota 55066 (“Diversion Solutions”).
2. **Purpose:** The purpose of this Agreement shall be to implement the License Reinstatement Program authorized under Minn. Stat. §171.2405, License Reinstatement Diversion Program.
3. **Contract Terms:** This Agreement shall be in force until either party exercises the termination clause provided in Section 11.
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. City will assign a designee who 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 as needed.
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.

7. **Reports:** Maintain and provide records to the City as defined in Minn. Stat. §171.2405.

8. **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 but did not start program)
- D. Reentry if FMR 2 \$150 (post-class citation, failure to make payment attorney/judge reentry)
- E. CC processing fee \$7 per transaction

For each \$350 program fee paid in full, \$100.00 of the fee will be paid to the City and \$250.00 will be retained by Diversion Solutions. The City will not receive a portion of the participation fee in which a participant falls under the discounted program fee.

9. **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.

10. **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.

11. **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.

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

13. **No City Obligation:** Diversion Solutions and Participant(s) 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).
14. **Criminal Action:** Diversion Solutions acknowledges and will advise all Participants that the City Attorney's Office may reinstate prosecution, file a probation violation, or otherwise pursue prosecution of the citation which brought the Participant(s) to the program if the Participant fails to participate, complete the program, fails to attend court appearances, fails to remain law abiding, or the prosecutor exercises discretion and revokes the offer for diversion.
15. **Hold Harmless and Indemnification:** 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.
16. **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.
17. **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.
18. **Data Practice:** 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 Police Chief 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 request. Diversion Solutions agrees to hold the City, its officers and employees harmless from any claims resulting from the Contractor's unlawful disclosure or use of data protected under state and federal laws.
19. **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), the City Civil Rights Ordinance (Ch. 139), 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. Violation of any of the above can lead to the termination of this Agreement.

20. **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.
21. **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.
22. **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 parties' respective address.
23. **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 claim's 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.

[Remainder of this page has been intentionally left blank]

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

Diversion Solutions, LLC

By: _____
Scott Adkisson – CEO

City of West St. Paul

By: _____
David J. Napier, Mayor

By: _____
Ryan Schroeder, City Manager