

PUBLIC SAFETY COMMITTEE

11-0379R

RESOLUTION AUTHORIZING AGREEMENT WITH FINANCIAL CRIMES SERVICES, LLC, FOR ADMINISTRATION OF THE DRIVING DIVERSION PILOT PROGRAM FOR AN ADDITIONAL TWO YEAR PERIOD AT NO COST TO CITY.

CITY PROPOSAL:

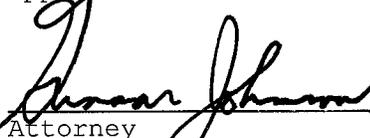
RESOLVED, that the proper city officials are hereby authorized to execute an agreement with Financial Crimes Services, LLC (FCS), substantially the same as that on file in the office of the city clerk as Public Document No. _____, for the administration of the driving diversion pilot program for the city of Duluth, said program established by Laws of Minnesota 2009, c. 59, art. 3, section 4, and recently extended by Laws of Minnesota 2011, c. 87, funds generated by the program and collected by FCS pursuant to the terms of the agreement shall be deposited in Fund 110-110-1104-4644 (General, Legislative and Executive, Attorney and Human Rights, Miscellaneous Fees).

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

ATTY CS:cjk 7/8/2011

STATEMENT OF PURPOSE: This resolution authorizes the proper city officials to execute an agreement with Financial Crimes Services, LLC (FCS) for the administration of the driving diversion pilot program for the city for an additional two year period.

The driving diversion pilot program was created by a law written by criminal prosecutors from Duluth, St. Paul, West St. Paul, South St. Paul and Inver Grove

Heights. The program, working through Financial Crimes Services, LLC, seeks to assist individuals who have been charged with driving without a valid licence to earn back their valid license status through a supervised payment plan, a life skills course, mandatory financial management, and the issuance of a diversion license. The program was initially established for a two year period in 2009, the legislature reviewed the program during the 2011 session. Due to the success of the program the legislature renewed the program for another two years and also provided for the participation of eligible counties. The cities of Bloomington, Minneapolis, Maplewood and Isanti have now joined the program and several counties are petitioning to be included in the program.

The agreement with FCS is for an additional two year period, through June 30, 2013, concurrent with the term of the pilot program. The terms of the agreement remain the same. Under the agreement FCS shall accept referrals of individuals into the program, collect participation fees, provide education classes, monitor attendance and completion of classes, maintain payment records by participants and pay to the city any fees collected that are owed to it. Each participant the city refers to the program will pay the city \$125 upon completion of the program which will be collected by FCS.

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

1. **Contractual Agreement** - This Agreement is made and entered into this by and between the City of Duluth, State of Minnesota, ("City") and Financial Crimes Services, LLC ("FCS"), of 406 Main Street Suite 200, Red Wing, Minnesota 55066-2398.

2. **Purpose** – The purpose of this Agreement shall be to implement the Driving Diversion Pilot Program for the City of Duluth as described on Exhibit A attached hereto (the "Program").

3. **Contract Terms** - This Agreement is deemed effective as of July 1, 2011 and shall remain in effect until June 30, 2013 unless sooner terminated as provided for herein.

4. **Definitions:**
 - A. **Offender** – the individual who has enrolled in the Driving Diversion Program voluntarily or has been ordered by the Court to complete the program.
 - B. **Education Class Fees** – The fee associated with the training classes the offender attends as part of their restitution agreement.

5. **City Duties** – The following is needed for the implementation of the Program:
 - A. Designated staff from the City Attorney's Office and Duluth Police Department (hereinafter collectively referred to as "Designees") will assist FCS in organizing and implementing the restitution program with courts and law enforcement personnel. Designees will also provide guidance in publicizing the program to the business community.
 - B. Designees will conduct, as needed, meetings with key FCS staff to offer procedural guidance, evaluate Program performance, and provide support and direction.
 - C. The City Attorney's Office and the Police Department shall implement departmental policies that are consistent with the fulfillment of the terms of this Agreement.

6. **FCS Duties** - FCS will provide the following administrative services to the City of Duluth in a timely and efficient manner:
 - A. Perform daily operations and management of all clerical and accounting functions related to the individual Offender file.
 - B. Follow through with respect to the collection and disbursement of restitution of fines, administrative fees, and FCS Education Class Fees.

- C. Provide necessary correspondence and follow-up telephone inquiries to Offenders.
- D. Properly maintain all physical files, financial records, documentation, reports, computer files, etc. for a period of no more than six (6) years.
- E. Conduct classes designed to teach and provide meaningful information and lessons to Offenders on criminal consequences.
- F. Schedule all classes.
- G. Maintain records of eligible Offenders, payment of fees, and records of attendance of Offenders completing, as well as failing, to attend the training session.
- H. Provide reports to the City of Duluth: annual, quarterly, monthly financial revenues, completed offender classes, and related reports as required by the City.
- I. Report Offenders who refuse to enroll in the program or fail to complete the Program.

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

- A. **State/City/FCS** - Dollar recovery will be paid out as defined in the Program description attached hereto as Exhibit A.
- B. **Enrollment Fees** -
 - a. The Education Class Fee will be \$300.00. Of this fee, \$175 will be retained by FCS to conduct the classes and \$125 will be paid to the City.
 - b. Offenders shall also pay FCS additional sums of money which FCS will direct first to reinstatement fees and next to surcharges, and finally to fines due.
 - c. A fee of \$20.00 will be assessed to an Offender who fails to appear at education class and has to re-schedule for the class. This fee will be assessed each time the Offender has to re-schedule. This may occur up to three (3) times before referring the Offender to the City Attorney as failing to appear.

8. **City has no Financial Liability** - It is understood and agreed by and between the parties that FCS will bear all financial liability for all aspects of its operations under this Agreement.

9. **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 FCS.
- B. This Agreement may be immediately terminated by the City at any time if the City determines that FCS is acting, or has acted at any time during the term of this Agreement, in violation of state or federal law.

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

11. **No City Obligation** - FCS and Offenders who participate in this program fully understand that the Program is a public service, and the City of Duluth is held harmless and has no liability to make recovery or obligation to take criminal action against Offender(s).

12. **Criminal Action** – The City Attorney's Office for the City of Duluth may choose to prosecute Offender(s) at its sole discretion in the case where the Offender fails to participate or complete agreements with FCS.

13. **Hold Harmless and Indemnification** - FCS 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 FCS and its employees and agents, in the performance of this Agreement.

14. **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. FCS shall at all times remain as 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 FCS employees and agents. Payment of insurance premiums, tax withholding, and all other benefits are strictly FCS responsibility.

15. **Subcontractor** - FCS shall not subcontract any portion of the work to be performed under this Agreement nor assign this Agreement without the prior written approval of the authorized agent of the City.

16. **Data Practice** - FCS agrees to comply with the Minnesota Government Data Practices Act and all other applicable state and federal laws relating to data privacy or confidentiality. FCS 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 FCS concerning data request. FCS 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.

17. **Compliance with the Law** - FCS 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

Duluth 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. The City agrees to promptly supply all necessary clarifications. Violation of any of the above can lead to the termination of this Agreement.

18. **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.

19. **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 FCS records at any time.

20. **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, at the following addresses:

Duluth City Attorney's Office
411 W. 1st. Street
Duluth, MN 55802
Attn: City Attorney

Financial Crimes Services, LLC
406 Main Street Suite 200
Red Wing, MN 55066
Attn: Scott Adkisson

21. **Insurance** - FCS agrees 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 FCS insurance and not contributed therewith. FCS 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.

B. Professional Liability: Professional or "Error & Omissions" Liability Insurance in the amount of at least \$1,000,000 Each Occurrence (or "Wrongful Act" or equivalent) and if applicable, Aggregate, covering FCS Liability for negligent acts, errors, or omissions in the performance of professional services in connection with this Agreement. FCS Professional Liability Insurance may afford coverage on an occurrence basis or on a claims basis. It is, however, acknowledged and agreed by FCS, 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. FCS 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.

FCS further agrees that it will, throughout the entire period of 2 years, keep required coverage and for an additional period of two (2) years following completion 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 caused this Agreement to be duly executed intending to be bound thereby.

CITY OF DULUTH

FINANCIAL CRIME SERVICES, LLC

By _____
Mayor
Dated: _____

By _____
(Scott Adkisson – President)
Dated: _____

Attest _____
City Clerk
Dated: _____

Countersigned:

City Auditor
Dated: _____

Approved as to form:

City Attorney
Dated: _____

1.1 A bill for an act
1.2 relating to drivers' licenses; allowing counties to participate in driver's license
1.3 reinstatement diversion pilot program; extending diversion pilot program;
1.4 amending Laws 2009, chapter 59, article 3, section 4, as amended.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Laws 2009, chapter 59, article 3, section 4, as amended by Laws 2010,
1.7 chapter 197, section 1, is amended to read:

1.8 Sec. 4. **LICENSE REINSTATEMENT DIVERSION PILOT PROGRAM.**

1.9 Subdivision 1. **Establishment.** An eligible city or county may establish a license
1.10 reinstatement diversion pilot program for holders of class D drivers' licenses who have
1.11 been charged with violating Minnesota Statutes, section 171.24, subdivision 1 or 2, but
1.12 have not yet entered a plea in the proceedings. An individual charged with driving
1.13 after revocation under Minnesota Statutes, section 171.24, subdivision 2, is eligible for
1.14 diversion only if the revocation was due to a violation of Minnesota Statutes, section
1.15 169.791; 169.797; 169A.52; 169A.54; or 171.17, subdivision 1, paragraph (a), clause (6).
1.16 An individual who is a holder of a commercial driver's license or who has committed an
1.17 offense in a commercial motor vehicle is ineligible for participation in the diversion
1.18 pilot program.

1.19 Subd. 2. **Eligible cities and counties.** Each of the cities of Duluth, St. Paul, South
1.20 St. Paul, West St. Paul, and Inver Grove Heights is eligible to establish the license
1.21 reinstatement diversion pilot program within its city. The commissioner of public safety
1.22 may permit other cities and counties to establish license reinstatement diversion pilot
1.23 programs within their cities respective jurisdictions.

2.1 Subd. 3. **Contract.** Notwithstanding any law or ordinance to the contrary, an
2.2 eligible city or county may contract with a third party to create and administer the
2.3 diversion program.

2.4 Subd. 4. **Diversion of individual.** A prosecutor for a participating city or county
2.5 may determine whether to accept an individual for diversion, and in doing so shall
2.6 consider:

2.7 (1) whether the individual has a record of driving without a valid license or other
2.8 criminal record, or has previously participated in a diversion program;

2.9 (2) the strength of the evidence against the individual, along with any mitigating
2.10 factors; and

2.11 (3) the apparent ability and willingness of the individual to participate in the
2.12 diversion program and comply with its requirements.

2.13 Subd. 5. **Diversion driver's license.** (a) Notwithstanding any law to the contrary,
2.14 the commissioner of public safety may issue a diversion driver's license to a person who
2.15 is a participant in a pilot program for diversion, following receipt of an application and
2.16 payment of:

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

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

2.22 (3) the reinstatement fee under Minnesota Statutes, section 171.29, subdivision 2,
2.23 paragraph (a), by a participant whose driver's license has been revoked under Minnesota
2.24 Statutes, section 169A.52 or 169A.54. The reinstatement fee and surcharge, both of which
2.25 are provided under Minnesota Statutes, section 171.29, subdivision 2, paragraph (b), also
2.26 must be paid during the course of, and as a condition of, the diversion program.

2.27 The diversion driver's license may bear restrictions imposed by the commissioner suitable
2.28 to the licensee's driving ability or other restrictions applicable to the licensee as the
2.29 commissioner may determine to be appropriate to assure the safe operation of a motor
2.30 vehicle by the licensee.

2.31 (b) Payments by participants in the diversion program of the reinstatement fee and
2.32 surcharge under Minnesota Statutes, section 171.29, subdivision 2, paragraph (b), must be
2.33 applied first toward payment of the reinstatement fee, and after the reinstatement fee has
2.34 been fully paid, toward payment of the surcharge. Each payment that is applied toward
2.35 the reinstatement fee must be credited as provided in Minnesota Statutes, section 171.29,
2.36 subdivision 2, paragraph (b), and each payment that is applied toward the surcharge must

3.1 be credited as provided in Minnesota Statutes, section 171.29, subdivision 2, paragraphs
3.2 (c) and (d). After the reinstatement fee and surcharge are satisfied, the participant must
3.3 pay the program participation fee.

3.4 Subd. 6. **Components of program.** (a) At a minimum, the diversion program
3.5 must require individuals to:

3.6 (1) successfully attend and complete, at the individual's expense, educational classes
3.7 that provide, among other things, information on drivers' licensure;

3.8 (2) pay, according to a schedule approved by the prosecutor, all those required fees,
3.9 fines, and charges that affect the individual's driver's license status, including applicable
3.10 statutory licensure reinstatement fees and costs of participation in the program;

3.11 (3) comply with all traffic laws; and

3.12 (4) demonstrate compliance with vehicle insurance requirements.

3.13 (b) An individual who is accepted into the pilot program is eligible to apply for a
3.14 diversion driver's license.

3.15 Subd. 7. **Termination of participation in diversion program.** (a) An individual's
3.16 participation in the diversion program may terminate when:

3.17 (1) during participation in the program, the individual is guilty of a moving traffic
3.18 violation or failure to provide vehicle insurance;

3.19 (2) the third-party administrator of the diversion program informs the court and the
3.20 commissioner of public safety that the individual is no longer satisfying the conditions
3.21 of the diversion; or

3.22 (3) the third-party administrator informs the court, the prosecutor, and the
3.23 commissioner of public safety that the individual has met all conditions of the diversion
3.24 program, including, at a minimum, satisfactory fulfillment of the components in
3.25 subdivision 6, whereupon the court shall dismiss the charge or the prosecutor shall decline
3.26 to prosecute.

3.27 (b) Upon termination of an individual's participation in the diversion program, the
3.28 commissioner shall cancel the individual's diversion driver's license.

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

3.32 (d) The commissioner shall reinstate the driver's license of an individual whose
3.33 participation in the diversion program terminates under paragraph (a), clause (3).

3.34 Subd. 8. **Report.** (a) By February 1, ~~2011~~ 2013, the commissioner of public
3.35 safety and each eligible city and county that participates in the diversion program shall
3.36 report to the legislative committees with jurisdiction over transportation and the judiciary

H.F. No. 387, 1st Engrossment - 87th Legislative Session (2011-2012) [H0387-1]

4.1 concerning the results of the program. The report must be made electronically and
4.2 available in print only upon request. The report must include, without limitation, the
4.3 effect of the program on:

4.4 (1) recidivism rates for participants in the diversion pilot program;
4.5 ~~(2) the number of unlicensed drivers who continue to drive in violation of Minnesota~~
4.6 ~~Statutes, section 171.24;~~

4.7 ~~(3)~~ (2) payment of the fees and fines collected in the diversion pilot program to
4.8 cities, counties, and the state;

4.9 ~~(4)~~ (3) educational support provided to participants in the diversion pilot program;
4.10 and

4.11 ~~(5)~~ (4) the total number of participants in the diversion pilot program and the
4.12 number of participants who have terminated from the pilot program under subdivision 7,
4.13 paragraph (a), clauses (1) to (3).

4.14 (b) The report must include recommendations regarding the future of the program
4.15 and any necessary legislative changes.

4.16 Subd. 9. **Sunset.** A city or county participating in this pilot program may accept an
4.17 individual for diversion into the pilot program until June 30, ~~2011~~ 2013. The third party
4.18 administering the diversion program may collect and disburse fees collected pursuant to
4.19 subdivision 6, paragraph (a), clause (2), through December 31, ~~2012~~ 2014, at which time
4.20 the pilot program under this section expires.

4.21 **EFFECTIVE DATE.** This section is effective the day following final enactment.