IN THE MUNICIPAL COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS
CITY OF WEST LINN

State of Oregon **Case No:** _____

v.

PETITION AND AGREEMENT

_____
Defendant

DUII Diversion

Date of DUII Offense: _____

Defendant's Residence: _____ Street City State ZIP _____ Mailing Address (if different)			
Date of Birth: _____ /_____ /_____ Month Day Year	Phone #: _____	Driver License: _____ _____ Number State	SID# (if known): _____

DEFENDANT'S AGREEMENT AND WAIVER

I am the Defendant. I ask the court to grant a diversion under ORS 813.200 to 813.270 for the charge of driving under the influence of intoxicants (DUII). If the court allows this petition:

(1) I have read and understand all of the information in the attached *Explanation of Rights and DUII Diversion Agreement* and I agree to:
   a) Pay the required diversion fees and any restitution ordered
   b) Complete an alcohol and drug abuse assessment and any recommended treatment
   c) Attend a victim impact panel as ordered by the court
   d) Not use alcohol or other intoxicants except as allowed in the attached *Explanation of Rights and DUII Diversion Agreement*
   e) Install and use an approved Ignition Interlock Device (IID) if ordered by the court
   f) Keep the court advised of my current mailing address

2) I plead guilty or no contest to the DUII charge as shown in the *Petition to Plead Guilty or No Contest* submitted with this diversion petition

3) I waive (give up) the rights listed in the *Petition to Plead Guilty or No Contest*

4) I waive my former jeopardy rights under the federal or state constitutions and ORS 131.505 to 131.525 in any future action on the charge or any other offenses based on the same criminal incident

_____ _____ _____
Defendant's Signature Defendant's Name (typed or printed) Date

NOTE: The *Defendant's Declaration of Eligibility,* and *Petition to Plead Guilty or No Contest* must be filed with this form and served on the district attorney or city attorney who filed the charge

EXPLANATION OF RIGHTS AND DUII DIVERSION AGREEMENT

Read this entire form carefully. You are charged with driving under the influence of intoxicants (DUII). You can apply for the DUII Diversion Program, but you can enter the program only if you meet all eligibility requirements. The court will appoint a lawyer to help you if you ask for one and you are financially eligible.

ELIGIBILITY FOR DIVERSION PROGRAM

You are eligible to participate in the diversion program only if:

- you meet all requirements described in the attached *Defendant's Declaration of Eligibility* **and**
- you appeared in court on the date scheduled for your first appearance on the charge (unless the court finds good reason to excuse your failure to appear) **and**
- you file the *Petition and Agreement* with the court within thirty (30) days of your first appearance in court (unless the court finds there is good cause to allow a later date)

AGREEMENT WITH THE COURT

The *DUII Diversion Petition and Agreement* is your agreement with the court. To have the DUII charge dismissed, you must do all the following (if ordered by the court):

a. **Pay the required diversion fees** to the court. Fees are listed in Section 1 of the *Summary of DUII Diversion Fees*. If you cannot afford to pay these fees, tell the judge. The court may waive some of the fees or allow you to make payments over time, depending on your financial situation.

b. **Pay restitution** (See Section 1 of the *Summary of DUII Diversion Fees*)

c. **Complete an alcohol and drug abuse assessment**. The court will assign you to an agency for assessment. You must give the agency accurate and truthful information about your use of drugs and alcohol. You must pay fees to the agency. The agency will recommend a treatment program if they find that you need treatment.

d. **Complete the recommended treatment program.** You must pay the treatment provider directly. If you cannot pay the cost of treatment, tell the treatment provider. They may be able to waive certain costs or let you make payments over time.

   - In addition to any other requirement to participate in an alcohol or drug treatment program, the court may order you to complete an alcohol or drug treatment program if the court receives 2 or more negative IID reports

e. **Attend a victim impact panel** and pay the participation fee

f. **Do not use <u>any</u> alcohol or other intoxicant** (includes marijuana) during the term of the diversion agreement. Comply with state laws that prohibit the use of intoxicants. You **can** use:

   - sacramental wine given or provided as part of a religious rite or service
   - alcohol or a controlled substance taken *as directed* with a valid prescription
   - a non-prescription drug that contains alcohol **if** you follow the directions for use that are printed on the label

g**. Keep the court advised of your current mailing address**

h. **Install and use an approved ignition interlock device (IID)** in all the vehicles you operate during the term of the diversion agreement when you have driving privileges, if ordered by the court

REQUIRED BOOKING
If the court grants your petition, you will have to be booked and fingerprinted on the DUII charge, if you have not already been booked and fingerprinted.

INFORMATION ON IGNITION INTERLOCK DEVICES (IIDs)

i. You must install and use an approved ignition interlock device (IID) in all vehicles you operate during the term of the diversion period when you have driving privileges if:
   - Your Blood Alcohol Content (BAC) was 0.08 or above
   - You refused a breath/blood test when requested by the arresting officer
   - Your BAC was greater than 0.00 and less than 0.08 and your blood test showed the presence of cannabis, a controlled substance, or an inhalant, or
   - Your BAC was less than 0.08 and your blood test did not show the presence of cannabis, a controlled substance, or an inhalant, when ordered by the court to do so

j. The IID requirement applies in all cases and to all vehicles you operate during the term of the diversion agreement when you have driving privileges, except:
   - If the court finds that you meet requirements for a medical exemption under the rules of the Oregon Department of Transportation
   - While operating an employer's vehicle in the course and scope of your employment (contact DMV for more information), or
   - If your BAC was less than 0.08 and your blood test did not show the presence of cannabis, a controlled substance, or an inhalant, and the court does not order the installation and use of the IID

k. The IID requirements continue until you submit a certificate to the DMV from the IID provider. The certificate must state that the device did not record a negative report for the last 90 consecutive days of the required installation period.

l. After 6 months, you can apply for an order vacating (ending) the IID requirement as a condition of diversion if:
   - You provide the court with a certificate from the IID service provider stating that the device has not recorded a negative report for at least 6 consecutive months, ***and***
   - You have been in compliance with any treatment program you were ordered to participate in as a condition of your diversion agreement

ADDITIONAL INFORMATION AND WAIVER OF RIGHTS

m. The diversion agreement applies only to the DUII charge. If you are charged with other offenses arising from the same incident, the other charges will be prosecuted separately. By entering into a diversion agreement, you give up the right to have the DUII charge decided at the same time as your other charges (former jeopardy - which means the right not to be prosecuted twice for the same offense).

n. If you have a prior DUII conviction, the Interstate Compact for Adult Offender Supervision rules may prohibit you from leaving the state without permission during the diversion period

o. Prosecution of the DUII charge will be delayed during the diversion period

p. If you successfully complete the diversion agreement, the court may automatically dismiss the DUII charge at the end of one year. If you do not receive notice of dismissal, you must file a motion at the end of the diversion period asking the court to dismiss the DUII charge.

q. If the court finds that you violated the terms of the diversion agreement or that you were not eligible for diversion, the court will terminate the diversion agreement. The court may hold a hearing where you can "show cause" why the court should not terminate your diversion agreement. **The court will send notice of such hearings by regular mail. If you fail to appear in court, the court can terminate the diversion agreement and may issue a warrant for your arrest.**

r. The court will terminate the diversion agreement if at any time during the diversion period the court finds that you failed to fulfill all of the terms of the agreement. Among other things, a new DUII or breaking open container laws will violate the agreement.

s. If the court terminates your diversion agreement or you fail to fulfill the terms of the agreement by the end of the diversion period, the court will sentence you without a trial

t. You may file a motion asking the court to extend the diversion period, **but you must file the motion within the last 30 days of your scheduled diversion period.** The court may grant an extension if the court finds that you have made a good faith effort to complete the diversion program and that you can complete all remaining conditions within the extension period. The court may grant an extension **only once** and for **not more than 180 days**.

u. If the court denies the diversion petition, the state cannot use your guilty or no contest plea (in the *Petition to Plead Guilty or No Contest*) when the state continues the prosecution

ADDITIONAL INFORMATION FOR ACTIVE MILITARY PERSONNEL

The following may apply if you are engaged in active military service:

v. The court may not deny your petition for a DUII diversion agreement solely because military service will impair your ability to complete the diversion program **if**:
   - You are a member of the Armed Forces of the United States, the reserve components of the Armed Forces of the United States, or the National Guard **and**
   - You have been called to active duty

w. You may ask the court to allow you to participate in a comparable treatment program conducted by or authorized by a government entity in another jurisdiction

x. You may file a motion asking the court to extend the diversion period. The court may grant an extension if the court finds you have made a good faith effort to complete the diversion program and that you can complete all remaining conditions within the extension period. **If you are serving on active duty, you must file the motion by the end of your scheduled diversion period.** The court may extend the diversion period as necessary to allow you to complete the conditions of the diversion agreement.

IN THE MUNICIPAL COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS
CITY OF WEST LINN

State of Oregon **Case No:** _____

v.

ORDER RE: DUII DIVERSION

_____
Defendant

ODL: _____ DOB: _____

The alleged DUII occurred on *(date)*_____

Based on Defendant's *DUII Diversion Petition and Agreement,* **THE COURT ORDERS:**

The petition for diversion is

☐ **Denied**
☐ **Allowed**. The court withholds entry of a judgment of conviction pending completion or termination of the diversion agreement and orders that:

1) Defendant is ordered to comply with all terms in the *Petition and Agreement*
Assessment Evaluator information: _____
_____

2) The diversion period is 1 year beginning *(date)*_____and ending *(date)*_____
☐ Defendant must file a motion to dismiss after the diversion period ends in order for the court to dismiss the charge *(if this option is not checked the defendant does not need to file a motion to dismiss)*

3) Defendant must pay a fee of **$490.00** to the court for the diversion as required by statute unless waived or deferred. Payment is due ☐ **immediately** or ☐ **per payment schedule:**
$_____ / month due by the ___ day of each month beginning _____ ☐ other: _____

4) ☐Defendant must attend a victim impact panel approved by this court ***and*** must pay a participation fee to that program **Victim Impact Panel Date:** _____

5) ☐ Defendant must pay court-appointed attorney fees
☐ in an amount of $_____ on a schedule determined by the court. The court finds that the defendant has the ability to pay court-appointed attorney fees.
☐as ordered in a separate limited judgment or order

6) ☐ Defendant must install and use an **ignition interlock device (IID)** in any vehicle operated by the Defendant during the period of the agreement when the Defendant has driving privileges *
☐ Defendant need not install an IID because Defendant:
☐ meets the requirements for medical exemption under Oregon Department of Transportation rules and is exempt from the IID requirement
☐ submitted to a blood, breath, or urine test that showed no cannabis, inhalants, or controlled substances, and a BAC below 0.08%

7) ☐Defendant must be booked and fingerprinted

8) Restitution/Other: _____

Judge Signature:

_____ _____

**if Defendant is required to operate an employer-owned motor vehicle, an IID need not be installed if Defendant notifies employer of the IID requirement and has written proof of the notification*

IN THE MUNICIPAL COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS
CITY OF WEST LINN

State of Oregon **Case No: _____**

v. **DEFENDANT'S DECLARATION OF ELIGIBILITY**

_____
Defendant *DUII Diversion*

I am eligible to participate in a driving under the influence of intoxicants (DUII) diversion program because:

1. I have never been convicted of a felony DUII offense in Oregon or any other place

2. On the date I sign the attached petition for a DUII diversion agreement:
    a. Except for the DUII charge in this case, there is no charge pending against me in Oregon or any other place for an offense involving operation of a vehicle while:
        - under the influence of alcohol, cannabis, a controlled substance, an inhalant, or any combination of the four, or
        - having a blood alcohol content above the allowable blood alcohol content

    b. I am not participating in a DUII diversion program or any similar alcohol or drug rehabilitation program in Oregon or any other place except:
        - a program I may have entered as a result of the DUII charge in this case, or
        - a charge for minor in possession of alcohol under ORS 471.430

    c. There is no charge of an offense pending against me in Oregon or any other place for any degree of aggravated vehicular homicide, murder, manslaughter, criminally negligent homicide, or assault that resulted from the operation of a motor vehicle

3. During the fifteen (15) years before the date of the alleged DUII offense in this case and from the time between the alleged DUII offense and the date I sign the attached petition:
    a. I have not been convicted in Oregon or any other place for an offense involving the operation of a vehicle while:
        - under the influence of alcohol, cannabis, a controlled substance, an inhalant, or any combination of the four, or
        - having a blood alcohol content above the allowable blood alcohol content

    b. I have not participated in a DUII diversion program or any similar alcohol or drug rehabilitation program in Oregon or any other place except a program I may have entered as a result of a charge for minor in possession of alcohol under ORS 471.430

    c. I have not been convicted, in Oregon or any other place, on any charge of an offense in any degree for aggravated vehicular homicide, murder, manslaughter, criminally negligent homicide, or assault that resulted from the operation of a motor vehicle, ***and***

    d. If this is my second or subsequent diversion, I have not been convicted of any criminal offenses involving a motor vehicle

4. The DUII offense described in the attached petition did not involve any deaths or any physical injury to any other person *("physical injury" means impairment of physical condition or substantial pain)*

5. At the time of the alleged offense, I did not have commercial driving privileges

6. At the time of the alleged offense, I was not operating a commercial motor vehicle

I hereby declare that the above statement is true to the best of my knowledge and belief. I understand it is made for use as evidence in court and I am subject to penalty for perjury.

_____	_____	_____
Defendant's Signature	Defendant's Name (printed)	Date

NOTE: this declaration must be completed by Defendant and filed with DUII diversion *Petition and Agreement (with attached Explanation of Rights and DUII Diversion Agreement), Order re: DUII Diversion, Petition to Plead Guilty or No Contest,* and *Order on Petition to Plead Guilty or No Contest*

IN THE MUNICIPAL COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS
CITY OF WEST LINN

State of Oregon **Case No: _____**

v.

PETITION TO PLEAD GUILTY OR NO CONTEST

_____
Defendant

DUII Diversion

1. My true name is *(first, middle, last)* _____

   I also am known as _____

2. I am _____ years old. The highest grade level of school I have completed is_____

3. My physical and mental health are satisfactory. I am not under the influence of any drugs or intoxicants, except

   _____

   _____

4. The following statement best describes me:

   ☐ I am able to read, write, and understand English, and I have read this petition completely
   ☐ I am able to understand English, and this petition has been read aloud to me completely
   ☐ I am unable to read English, and this petition has been read aloud to me completely in English
   ☐ I am unable to read, write, or understand English, and this petition has been read aloud to me in the _____ language by _____, who is qualified to translate English into the _____ language

5. I ☐ am ☐ am not represented by a lawyer. I understand that I have the right to hire a lawyer or have the court appoint a lawyer to represent me if the court finds that I cannot afford to hire a lawyer.

   ☐ I choose to give up my right to a lawyer. I will represent myself. (_____) [*initial here*]

6. If represented by a lawyer, I have told my lawyer all the facts I know about the charge against me. My lawyer has advised me of the nature of the charge and the defenses, if any, that I have in this case. I am satisfied with the advice and help my lawyer has given me.

7. I understand that I have the following rights: a) the right to jury trial; b) the right to confront and question all witnesses who testify against me at trial; c) the right to remain silent about all facts of the case; d) the right to subpoena witnesses and evidence in my favor; e) the right to have my lawyer assist me at trial; f) the right to testify at trial; g) the right to have the jury told, if I decided not to testify at trial, that they cannot hold that decision against me; and h) the right to require the prosecutor to prove my guilt beyond a reasonable doubt.

8. I understand that I give up all of the rights listed in paragraph 7 when I plead guilty or no contest. I understand I give up: a) any defenses I may have to the charge; b) objections to evidence; and c) challenges to the accusatory instrument.

9. By this petition, I am pleading ☐ guilty ☐ no contest to the crime of driving under the influence of intoxicants (DUII) which is a Class A misdemeanor under Oregon law. The maximum penalties, applicable if I do not enter diversion or if I fail to comply with the conditions of diversion are 364 days in jail and a fine of $6,250 or $10,000 if the offense was committed in a motor vehicle and there was a passenger younger than 18 and at least three years younger than me. The minimum penalties are 48 hours of imprisonment or 80 hours of community service and a fine of:

- $1,000 if this is my first conviction
- $1,500 if this is my second conviction
- $2,000 if this is my third conviction and I am not sentenced to a term of imprisonment
- $2,000 if my blood alcohol level (BAC) was 0.15 percent or greater

If I do not enter diversion or if I fail to comply with the conditions of diversion, there will be a mandatory suspension of my driving privileges for:

- 1 year if this is my first conviction
- 3 years if this is my second conviction within 5 years
- my lifetime if this is my third or subsequent conviction

10. I understand that if I am not a U.S. citizen, this plea may result in my removal from this country, exclusion from admission to the United States, or denial of naturalization.
11. I understand that I will be required to pay all of the fees listed in the *Summary of DUII Diversion Fees*, unless the court finds me unable to pay and waives all or part of these fees. These fees include an alcohol or drug abuse assessment and any recommended or court-ordered treatment. The court may order me to attend a victim impact panel and pay a participation fee. I may be required to reimburse the state for the cost, if any, of a court-appointed attorney.
12. I am submitting this plea along with a petition to enter the diversion program under ORS 813.200 to 813.270. I understand that if the court grants the petition, the court will accept this plea but will not enter a judgment of conviction at this time.
13. I understand that:
    a. If I fully comply with the conditions of the diversion agreement within the period authorized by law and by the court, the court will dismiss the charge with prejudice under ORS 813.250. If the court does not have a policy of automatically dismissing the DUII charge at the end of one year, I will have to file a motion at the end of the diversion period requesting that the charge be dismissed.

    b. If I fail to comply with the diversion agreement within the diversion period, the court will enter a judgment of conviction on the charge and will sentence me
14. I understand that if the court enters judgment on this plea for failing to comply with the diversion agreement, it is the same as a conviction. This court can find me guilty of the crime of DUII based on this plea alone, without receiving any evidence.
15. I understand that if the court denies the diversion petition and I go to trial, nothing in this petition will be used against me
16. This plea is based only on what is written on this petition. No promises have been made to me by my lawyer or any officer or agent of any branch of government (federal, state, or local) that I will receive a particular sentence or form of treatment from this or any other court, on these or any other charges, other than what is set forth in this petition.
17. ☐ I plead no contest *or*

    ☐ I plead guilty because in _____ County, Oregon, I did the following:

_____

_____

_____

_____

18. I ☐ am ☐ am not currently on probation, parole, or post-prison supervision. I know that if I am and the court enters judgment on this plea, my failure to comply with the conditions of the diversion agreement may cause my probation, parole, or post-prison supervision to be revoked and I may be required to serve jail or prison time in that case in addition to any sentence imposed in this case.
19. I understand the charge against me and the information in this petition. I am signing this petition and entering this plea voluntarily, intelligently, and knowingly.
20. I understand that if I fail to comply with the terms of the diversion and the court enters a judgment of conviction, I have the right to appeal the conviction. My right to an appeal will be explained to me when the court enters the judgment of conviction.

_____	_____	_____
Defendant's Signature	Defendant's Name (printed)	Date

CERTIFICATE OF COUNSEL

I am the attorney for the defendant in this proceeding and I certify that:

1. I have fully explained to my client the charge and possible defenses that may apply in this case
2. I have personally examined this plea petition, explained all of its provisions to my client, and discussed fully with my client all matters described and referred to in the petition
3. I have explained to my client the maximum penalty and other consequences of entering a guilty or no contest plea, including possible immigration consequences
4. To the best of my knowledge and belief, my client's decision to enter this plea is made voluntarily, intelligently, and knowingly
5. I have told my client that if he or she is eligible for court-appointed counsel and wishes to pursue an appeal, I will transmit the information necessary to perfect the appeal to the Office of Public Defense Services

Signed by me in the presence of the above-named defendant/petitioner and after full discussion of the contents of the certificate with the defendant on *(date)*_____

_____	_____	_____
Defendant's Attorney's Signature	Attorney Name (typed or printed)	Bar Number

CERTIFICATE OF INTERPRETER

I, the undersigned interpreter, certify that I have read aloud the petition to the above defendant in the _____ language

Signed by me in the presence of the above-named defendant on *(date)*_____

_____	_____
Interpreter's Signature	Interpreter Name (printed)

IN THE MUNICIPAL COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS
CITY OF WEST LINN

State of Oregon **Case No:** _____

v.

ORDER ON PETITION TO PLEAD GUILTY OR NO CONTEST

_____
Defendant

(DUII Diversion)

Regarding Count _____

The court finds:

That the defendant's plea of ☐ **no contest** ☐ **guilty** is knowingly, intelligently, and voluntarily made

ORDER:

The court ☐ **accepts** ☐ **denies** the plea petition for purposes of ORS 813.200 to 813.270

Judge Signature:

_____ _____

SUMMARY OF DUII DIVERSION FEES

You are required to pay the fees listed below to participate in a DUII diversion program

Section 1: Payment to the Court

A. **Court Fees**

The court may waive all or part of these fees if it finds that you are low-income. The court may also allow you to pay in installments over time.

- $490 filing fee
- Court-appointed attorney fees

B. **Restitution**

The court may order restitution in cases where a victim suffered economic damages. After the end of the diversion period, you must continue making payments if you have not paid the full amount of restitution. The court cannot terminate a diversion agreement for failure to pay restitution if you have otherwise complied with and performed all of the conditions of the diversion agreement.

Section 2: Other Fees

C. **Alcohol and drug abuse assessment and treatment**

- You must pay $150 directly to the agency or organization doing the assessment

- You must pay for any treatment recommended by the assessment or ordered by the court. The cost of treatment varies. You must pay treatment costs directly to the agency or organization providing the treatment. If you are unable to pay, the provider may allow payment in installments over time.

D. **Victim Impact Panel**

The court may order you to attend a Victim Impact Panel and pay a participation fee. The fee can range from $5 to $50. You must pay this fee directly to the panel coordinator on the day of the panel.

E. **Ignition Interlock Device**

The court may order you to install and use an approved ignition interlock device in any vehicle you operate during the term of the diversion agreement when you have driving privileges. You must pay the cost of installing, leasing, and maintaining the device to the provider of the device. The Department of Transportation may waive or defer (postpone) all or part of these fees if the Department finds you are low-income. The Department may also allow payment to be made in installments over time.

PADES

Pioneer Alcohol and Drug Evaluation Services, Inc.

To begin your Diversion program, you must report to:

PIONEER ALCOHOL AND DRUG EVALUATION SERVICES
511 MAIN STREET, SUITE 203
OREGON CITY, OR 97045
(503) 722-5250
Fax (503) 722-5254

You must report within the time limit the Court has ordered. You may report any time between the hours of 9:30 a.m. to 11:00 a.m. or 1:30 p.m. to 4:00 p.m. Monday through Thursday. We are closed on Fridays and all major holidays.

When you report, you will be required to complete questionnaires, which will take approximately 30 minutes. You do not need to have any money at the time that you report. You will be scheduled for an evaluation appointment and a DUII Victims Impact Panel. You will be required to pay a $150 evaluation fee and a $75 Ignition Interlock Device monitoring fee, totaling $225 at the time of your evaluation appointment. The fees can be pre-paid. We accept cash or money orders (No personal checks or cards accepted).

There will also be a $50 fee payable to the DUII Impact Panel at the time that you attend the panel.

At the time of your evaluation, you will be referred to a treatment program and the requirements of Diversion will be explained to you. If you cancel your evaluation appointment without notice or fail to appear for your evaluation, you will be charged an additional $50 reset fee and the Court may be notified of your failure to comply.

Should you fail to report within the time frame given by the Court, they will be notified immediately.