IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _____
CITY OF _____

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.