IN THE MUNICIPAL COURT FOR THE
CITY OF GIG HARBOR

CITY OF GIG HARBOR, Plaintiff, v. _____, Defendant.	)	NO. PRE-TRIAL DIVERSION AGREEMENT, WAIVERS, AND STIPULATED ORDER OF CONTINUANCE

PRE-TRIAL DIVERSION AGREEMENT

COMES NOW the Prosecution, by and through its attorney of record below-named, and the Defendant, by and through his or her attorney of record below-named, and hereby enter the following Pre-Trial Diversion Agreement (hereafter "Agreement")–

DEFENDANT'S WAIVER OF RIGHTS AND AGREEMENT

1. **Waiver of Speedy Trial (CrRLJ 3.3(c)(2)(i)).** The Defendant understands that he or she has the right to be tried within 90 days following the "commencement date" as defined in CrRLJ 3.3(e), and that if the Defendant does not receive a trial within this time period the case may be dismissed with prejudice unless the Defendant waives this right.

The Defendant understands that he or she has a right to trial by _____ (date).

The Defendant gives up that right and agrees to a new commencement date of _____ (date two and one half years from today).

As a result of this waiver, the last allowable date for trial will be _____ (90 days beyond new commencement date).

2. **Waiver of Jury Trial (CrRLJ 6.1.1(a)).** The Defendant understands that he or she has the right to trial by jury unless he or she waives the right to a jury trial. The Defendant hereby waives his or her jury trial right and requests that his or her guilt or innocence be decided by a judge.

3. ❒ **Waiver of Right to Counsel** (This waiver applies only if the box at the beginning of this paragraph

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is checked and the Defendant signs his or her name below). The Defendant understands the he or she has the right to be represented by a lawyer, and that he or she may talk to a lawyer before signing this document and/or any Addendum to this document. The Defendant knows that if he or she cannot afford a lawyer the Defendant could ask the Court to appoint a lawyer to represent the Defendant.

Being aware of the right to be represented by a lawyer, the Defendant hereby waives that right at this time. The waiver is made freely, knowingly and voluntarily. The Defendant has no more questions to ask about his or her right to be represented by a lawyer. The Defendant chooses to sign this document and/or any Addendum to this document without legal representation.

_____ _____

DATE DEFENDANT

4. **Waiver of Rights (CrRLJ 6.1.2(b)).** The Defendant understands that he or she has the right to contest and object to evidence presented against the Defendant. The Defendant gives up the right to contest and object to any evidence presented against the Defendant as to the Defendant's guilt or innocence regarding the underlying charge(s) at any future hearings if the Defendant fails to comply with the conditions in this Agreement. The Defendant also understands that he or she has the right to present evidence on the Defendant's own behalf. The Defendant gives up the right to present evidence on the Defendant's own behalf as to the Defendant's guilt or innocence regarding the underlying charge(s). The Defendant understands that evidence will be presented against the Defendant at a future hearing and the Defendant understands that the Judge will read and review that evidence in determining the Defendant's guilt or innocence.

The Defendant understands that, by this process, he or she is giving up the constitutional right to a jury trial, the right to hear and question witnesses, the right to call witnesses in his or her own behalf, the right to testify or not to testify, the right to remain silent, the right to challenge the admissibility of statements the Defendant has made (CrRLJ 3.5), the right to challenge physical, oral or identification evidence (CrRLJ 3.6), the right to assert husband-wife privileges (RCW 5.60.060), the right to assert a physician-patient privilege (RCW 5.60.060), psychologist-client privilege (RCW 18.83.110), registered nurse privilege (RCW 5.62.020), and counselor privilege (RCW 18.19.180).

The Defendant understands that the maximum sentence for the crime(s) charged herein of– _____ is [❑ 365] [❑ 90] days in jail and/or a [❑ $5,000] [❑ $1,000] fine, _____ is [❑ 365] [❑ 90] days in jail and/or a [❑ $5,000] [❑ $1,000] fine, plus costs and assessments, and that the judge can impose any sentence up to the maximum, no matter what the prosecuting authority or the defense recommends.

5. **Consent for the Release of Confidential Information.** The Defendant hereby consents to communication between the Court, Probation Staff, and the Gig Harbor Prosecutor's Office, and any health care and/or treatment provider for evaluation(s) and/or treatment required in this Agreement. The purpose for disclosure is to inform the criminal justice agencies listed above of the Defendant's attendance, and progress in treatment, and/or the Defendant's compliance with Court Orders and/or conditions of probation. The extent of information to be disclosed is the Defendant's diagnosis, information about the Defendant's attendance, or lack of attendance, at treatment sessions, the Defendant's cooperation with the treatment

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program, prognosis, all medical records, including all clinical, and hospital records in full. This includes but is not limited to diagnostic testing, laboratory tests, correspondence, and notes, or written documents of any nature within the meaning of the Uniform Health Care Act.

The Defendant consents to the release of information regarding himself or herself which may be protected by local, state, or federal laws which could pertain to testing, and/or treatment for HIV infection, AIDS, sexually transmitted diseases, mental health problems, alcohol abuse, or drug abuse. The Defendant understands that this consent will remain in effect, and cannot be revoked by the Defendant until this case is completed. The Defendant understands that any disclosure made is bound by Part 2 of Title 42 of the Code of Federal Regulations governing confidentiality of alcohol and drug abuse patient records, and that recipients of this information may re-disclose it only in connection with their official duties.

6. **Cooperation and Truthfulness.** The Defendant agrees to fully cooperate and completely and truthfully answer any and all questions from this Court, Probation Staff, and any health care and/or treatment provider for evaluation(s) and/or treatment required in this Agreement.

7. **Defendant's Promise to be Present in Court.** The Defendant understands and agrees that he or she shall be present in court at all future court hearings herein unless previously waived in writing by the judge.

8. **Additional Conditions.** The Defendant agrees to fully and completely satisfy all of the following selected conditions–

☒ **Criminal Law Violations.** The Defendant shall have no criminal law violations. The Defendant agrees that this Court may take action on the Prosecution's motion alleging the Defendant's violation of this condition prior to any resolution of the alleged new criminal law violation. The Defendant specifically agrees that a "conviction" for a criminal law violation occurring after the signing of this Agreement is not a prerequisite to this Court taking action on the Prosecution's motion to revoke this Agreement due to the Defendant's alleged violation of this condition. The Defendant further agrees that the Defendant's petition or otherwise request of any Washington court to grant the Defendant a deferred prosecution pursuant to RCW 10.05 et seq. for any new criminal law violation occurring after the signing of this Agreement shall be a violation of this condition.

☒ **Address and Telephone Information.** The Defendant agrees to immediately notify the Court in person or in writing of any change of residence or mailing address and telephone number.

☒ **Bench Warrant Costs.** The Defendant shall pay any bench warrant costs imposed herein.

☒ **Failure to File Proof of Compliance With the Court.** The Defendant agrees that failure to file written proof with the Court Clerk when required herein shall be a violation of this Agreement.

☒ **DV Order(s) Prohibiting Contact.** The Defendant agrees to strictly comply with all provisions of any court order entered in this case or any other case prohibiting contact with the named victim(s) herein.

☒ **Seized Property.** The Defendant agrees as of today's date to forfeit all property seized herein by law enforcement.

☒ **Drugs Prohibited.** The Defendant shall not possess or consume any non-prescribed drugs.

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☒ **Court Costs.** The Defendant shall pay court costs of [❑ $250] [❑ $500] [❑ $_____] at $75 per month by the 5th of each month beginning _____. Payments shall be made to–

Gig Harbor Municipal Court, 3510 Grandview Street, Gig Harbor WA 98335.

Any amounts paid by check should include the Defendant's full name and case number. Part or all of the court costs may be converted to community restitution in accordance with court policy.

❑ **Monitoring of Conditions by Prosecutor's Office.** The Defendant agrees that compliance with this Agreement shall be monitored by the Prosecutor's Office.

❑ **Monitoring of Conditions by Municipal Court.** The Defendant agrees that compliance with this Agreement shall be monitored by the Municipal Court.

❑ **Valid License and Insurance.** The Defendant shall not drive a motor vehicle without a valid driver's license and/or proof of insurance.

❑ **DUI Victim's Panel.** The Defendant shall attend a DUI victim's panel and within 90 days from today's date file written proof thereof with the Court Clerk.

❑ **Chemical Dependency Treatment.** The Defendant shall obtain a chemical dependency evaluation from a state-certified agency, and thereafter successfully comply with all treatment recommendations, and within 90 days from today's date file written proof thereof with the Court Clerk.

❑ **Drinking and Driving.** The Defendant shall not drive or be in actual physical control of a motor vehicle while having an alcohol concentration of 0.03 or more within two hours after driving or being in physical control. The Defendant shall not refuse to submit to a test of his/her breath or blood to determine alcohol and/or drug concentration upon request of a law enforcement officer who has reasonable grounds to believe that the Defendant was driving or in actual physical control of a motor vehicle while under the influence of an intoxicating liquor and/or drugs.

❑ **Alcohol Prohibited.** The Defendant shall not possess or consume alcohol.

❑ **Ignition Interlock Device.** The Defendant shall not operate any vehicle that is not equipped with a functioning ignition interlock alcohol device. This condition may be rescinded by this Court after one (1) year from today's date if the Defendant is in full compliance with this Agreement at that time.

❑ **DV Perpetrator's Program.** The Defendant shall successfully complete a state-certified one year Domestic Violence Perpetrator's Treatment program (which includes the Men's Ending Violence program), and within one year from today's date file written proof thereof with the Court Clerk.

❑ **Firearm.** The Defendant shall not possess or own any firearm.

❑ **DV Parenting Class.** The Defendant shall attend and successfully complete a parenting class for a minimum 24 hours that includes discussion concerning the effects of domestic violence on children, and within 90 days from today's date file written proof thereof with the Court Clerk.

❑ **Anger Management Course.** The Defendant shall attend and successfully complete an anger management course, and within 90 days from today's date file proof thereof with the Court Clerk.

❑ **Psycho-sexual Evaluation.** The Defendant shall obtain a psycho-sexual evaluation from a state-certified agency, and thereafter successfully comply with all treatment recommendations, and within 90 days from today's date file proof thereof with the Court Clerk.

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❑ **No Contact [Non-DV Cases Only].** The Defendant shall not make any attempts (including but not limited to directly or indirectly, in person, in writing, by telephone, or through other persons) to contact the following– _____.

❑ **Consumer Awareness Course.** The Defendant shall attend and successfully complete a consumer awareness course, and within 90 days from today's date file written proof thereof with the Court Clerk.

❑ **Driver's Education Program.** The Defendant shall attend and successfully complete a Washington State Department of Licensing approved five (5) week Driver Training Course which shall include a minimum thirty (30) hours of classroom instruction (including four hours behind the wheel), and within 90 days from today's date file written proof thereof with the Court Clerk.

❑ **Restitution.** The Defendant agrees to pay the following restitution directly to the Municipal Court, to be distributed to the person(s) listed below in the amount(s) shown below. The Defendant further agrees that this amount will be paid in full to the Court Clerk no later than 90 days from today's date

Amount	**Name**	**Address**

$_____ Total

❑ _____

❑ _____

8. **Defendant's Promise to Fully Satisfy Conditions.** The Defendant understands and agrees that he or she shall fully and completely satisfy all of the conditions of this Agreement, and that failure or neglect to carry out and fulfill any term or condition of this Agreement shall constitute a violation of this Agreement.

The Defendant also understands and agrees that any allegation by the Prosecution that the Defendant has violated this Agreement will result in a hearing by this Court to determine whether a violation has been proven, and that the Prosecution will not be required to comply with its obligations in the section entitled "Prosecution's Agreement" until this Court has determined that the Defendant did not violate this Agreement and that the Defendant is in full compliance with this Agreement.

❒ PROSECUTION'S AGREEMENT TO DISMISS THE CHARGE(S)

If the Defendant successfully complies with the promises he or she has made herein, the Prosecution agrees to move to dismiss with prejudice the charge(s) of _____ _____ at a hearing to be scheduled not before **two years** following entry of this Agreement.

❒ PROSECUTION'S AGREEMENT TO AMEND THE CHARGE(S)

If the Defendant successfully complies with the promises he or she has made herein, the Prosecution agrees to move to amend the charge(s) and the Defendant agrees to the Court's entry of a guilty finding to _____ at a hearing to be scheduled not before **two years** following entry of this Agreement.

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Upon the Defendant's successful compliance with this Agreement and the Court's entry of a guilty finding to the amended charge(s) as previously discussed, the Prosecution will make the following sentencing recommendation to the Judge–

90 days in jail with 90 days suspended for two years

$1,000 fine with $1000 suspended

The Defendant shall have no violation of any criminal laws, and Probation shall be unsupervised.

The Judge does not have to follow anyone's recommendation as to sentence. The Judge can give the Defendant any sentence up to the maximum authorized by law no matter what the prosecuting authority or anyone else recommends.

PROCEDURE ON ALLEGED VIOLATION OF AGREEMENT

The Defendant and Prosecution agree that the prompt resolution of a party's allegation of violation of this Agreement by the other party is desirable. Accordingly, the parties request this Court to set a hearing date within approximately 30 days of any party's violation allegation so that this Court can promptly determine whether a violation of this Agreement has occurred.

The parties further agree that any Prosecution motion to revoke this Agreement based upon an alleged violation of this Agreement by the Defendant will be handled in accordance with the procedures set forth in *State v. Marino*, 100 Wn.2d 719, 674 P.2d 171 (1984) and *State v. Kessler*, 75 Wn.App. 634, 879 P.2d 333 (1994).

DATED this _____ day of _____, _____.

_____
DEFENDANT

Defendant address: _____

Defendant phone: _____

Defendant e-mail:_____

PRESENTED BY–

_____
_____, WSBA NO. _____
Deputy Prosecuting Attorney

APPROVED FOR ENTRY–

_____
_____, WSBA NO. _____
Attorney for Defendant

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ACCEPTANCE OF WAIVERS, PDA AND STIPULATED ORDER OF CONTINUANCE

THIS MATTER having come on regularly before the undersigned Judge of the above-entitled Court by agreement of the parties for entry of a Pre-Trial Diversion Agreement, Defendant's waiver of rights and a Stipulated Order of Continuance; the Court having considered this Agreement, motion and the files and records herein, and being fully advised in the premises; now, therefore, it is hereby

ORDERED that probable cause exists to believe that the Defendant committed the offense(s) charged herein. It is further

ORDERED that the Court finds that the above Pre-Trial Diversion Agreement, Defendant's waiver of rights and Stipulated Order of Continuance have been entered into freely, voluntarily and knowingly by all parties hereto with full awareness and explanation of the possible legal consequences. It is further

ORDERED that the above-entitled matter shall be continued to a date set by separate order. The Defendant shall appear as required by separate order.

DONE IN OPEN COURT this _____ day of _____, _____.

_____

JUDGE OF THE GIG HARBOR MUNICIPAL COURT

Distribution–Original (Court Clerk); 1 copy (Prosecutor), 1 copy (Defendant)

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