IN THE IOWA DISTRICT COURT IN AND FOR BUENA VISTA COUNTY

|  |  |  |
| --- | --- | --- |
| STATE OF IOWA, |  | No. |
| Plaintiff, |  |
|  | **WAIVER OF RIGHTS** |
| v. | **AND** |
|  | **PLEA OF GUILTY** |
| , |  |
| Defendant. |  |

I, the undersigned defendant, have carefully read and fully understand the following:

1. **Pleading Offense**. I am entering a plea of guilty to the following offense:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. **Preliminary matters.**
   1. I read, write and understand the English language. I have read and understand this document and the plea agreement.

I do NOT read, write or understand the English language. I have reviewed this document and the plea agreement with the assistance of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Following these documents being interpreted to me from English to \_\_\_\_\_\_\_\_\_\_\_, I understand both documents.

* 1. I am \_\_\_\_ years of age and I have completed \_\_\_\_\_\_\_\_ years of school. My highest level of education is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
  2. I am of sound mind now. I am not affected by a mental or physical illness, nor am I under the influence of alcohol or drug that renders me unable to knowingly, voluntarily, or intelligently enter this plea. To the extent that I am taking medication as prescribed, those medications do not affect my ability to understand the contents and consequences of this written plea.
  3. I have received, read, and reviewed the trial information and minutes of testimony with my attorney. I understand the nature of the charges against me and what the State would be required to prove.
  4. I have discussed possible legal defense with my attorney, including any potential suppression issues. I know of no legal defense to the charge(s), suppression issues(s), or any other reason that would change my decision to enter this written guilty plea.
  5. I have had enough time and opportunity to meet and speak with my attorney. I am satisfied with their representation and the services they have provided.

1. **Acknowledgment of Waiver of Trial Rights.** I understand that, by pleading guilty, there will not be a trial of any kind. By pleading guilty, I am giving up the following rights:
   1. A speedy and public trial by a jury of twelve (12) people.
   2. A unanimous verdict before I can be found guilty by the jury.
   3. The right to have my case tried to a judge instead of a jury, if I timely waive my right to a jury trial.
   4. An attorney to represent me at all proceedings and if the court determine that I am unable to afford an attorney, one would be appointed at state expense to represent me at all stages of this criminal matter. I understand that my attorney is willing to represent me at trial if I desire a trial.
   5. The privilege against self-incrimination. I do not have to testify at my trial unless I want to, and the prosecution cannot comment on my refusal to testify, nor can the jury consider my silence again me.
   6. The presumption of innocence. At trial, I would be presumed innocent until such a time, if eve, the State established my guilty beyond a reasonable doubt by producing evidence in compliance with the Iowa Law(s) and Rules of Evidence.
   7. Confront and cross-examine witnesses called by the State.
   8. Call witness and present evidence on my own behalf and subpoena witnesses to secure their attendance.
2. **Incarceration and Fine**. I understand that the maximum and minimum punishments for this offense are as follows:
   1. First Offense (Serious Misdemeanor)
      1. Imprisonment of not more than one (1) year in jail and a fine of $1,250.00 plus a 15% Crime Service Surcharge of $187.50, or both.
      2. There is a minimum term of forty-eight hours in jail and a fine of $1,250.00, plus a 15% Crime Service Surcharge of $187.50. I understand that if no personal or property injury resulted from my actions, the Court may waive up to $625.00 of the fine when I present to the court a temporary restricted license.
   2. Second Offense (Aggravated Misdemeanor)
      1. Imprisonment of up to two (2) years in prison *or* not more than one (1) year in jail and a maximum fine of not more than $6,250.00 plus a 15% Crime Service Surcharge of $937.50, or both. Any sentence of incarceration with the exception of the minimum may be suspended.
      2. There is a minimum term of seven (7) days in jail and a fine of $1,875.00, plus a 15% Crime Service Surcharge of $281.25.
   3. Third or Subsequent Offense (Class D Felony)
      1. Imprisonment of up to five (5) years in prison and a fine of not more than $9,375.00 plus a 15% Crime Service Statutory surcharge of $1,406.25. Any sentence of incarceration with the exception of the minimum jail time that is outlined in may be suspended.
      2. Imprisonment of up to five (5) years in prison. There is a minimum term of thirty (30) days in jail of and a fine of $3,125.00, plus a 15% Crime Service Surcharge of $468.75.
3. **Firearms/Ammunition/Concealed Weapons Permit.** I understand that if I am convicted of a felony or a misdemeanor crime of domestic violation as defined in Iowa Code Section 724.26(2)(c), I am not permitted to possess, ship, transport or receive a firearm, offensive weapon or ammunition in Iowa, unless/until I have been pardoned or had my their civil right concerning firearms restored. I further understand that if I receive a deferred judgment, I may not possess, ship, transport or receive a firearm until I am successfully discharged from probation.
4. **Category A Restitution.** I understand that, pursuant to Iowa Code §§910.1, 910.3, I shall pay all fines, penalties, and surcharges to the Clerk of Court as set forth above. These items will be assessed against me immediately, subject to any restitution plan of payment. Payment of Pecuniary Damages takes priority over other Category A restitution. Category A restitution takes priority over other Category B restitution. I will be responsible for payment of all Category A fines, penalties, and surcharges as defined in §910.2(1)(a)(1) without regard to my reasonable ability to make payments in amounts to be determined.
5. **Category B Restitution**. I understand that, pursuant to Iowa Code §910.2, I will pay (subject to the reasonable-ability-to-pay), in the priority order below, any of the following:
   * 1. Restitution owed to the Crime Victim Compensation Program.
     2. Restitution to public agencies pursuant to Iowa Code §321J.2(13)(b).
     3. Court costs as certified by the Clerk of Court for this matter or other matters that are dismissed as a result of a plea agreement.
     4. Court-appointed attorney’s fees, not to exceed the amount authorized by the State Public Defender’s office, unless the Court has allowed my attorney to exceed such fees.
     5. Contribution to a local anti-crime organization.
     6. Restitution to the Medical Assistance Program, pursuant to Iowa Code Chapter 249A.
6. **Reasonable Ability-to Pay.** I understand that Category B restitution is subject to a Reasonable-Ability-to-Pay analysis. Pursuant to §910.2A, I am presumed to have a reasonable ability to pay the full amount for Category B and must affirmatively prove by a preponderance of the evidence that I am unable to reasonably make Category B payments. I further understand that I must request a reasonable ability to pay hearing within thirty days of the judgment being entered and submit a financial affidavit, otherwise I will be required to pay the full amount of Category B Restitution and waive any future claim regarding ability to pay, except as otherwise provided by law.
7. **Payment Due upon Judgment.** I understand that all fines and costs, unless otherwise ordered, shall be paid on the day imposed. Payment of any fines, surcharges, court costs, restitution, or court-appointed attorney’s fees may be paid on-line by going to www.iowacourts.gov, at the Clerk of Court’s office or at the County Attorney’s office. If a payment is more than 30 days past due, the Clerk of Court will turn the matter over to begin collection efforts. In addition, Defendant’s motor vehicle registration will be held, or suspension of Defendant’s driver’s license, or both, may be initiated. The State of Iowa may intercept any state income tax refund due to Defendant, any vendor amounts due Defendant by the State of Iowa, or monetary amounts held by the Clerk of Court and payable to Defendant, even if installment payments are current. Unless Defendant fully complies with all the requirements ordered in this judgment, including payment of the restitution, fine, surcharges, and court costs within the required time, Defendant may be ordered to appear in person before this court and show cause why Defendant should not be held in contempt of court. If Defendant is held in contempt of court, a jail term may be imposed.
8. **Jail Fees.** I understand that the Buena Vista County Jail (or other approved facility) may seek a civil judgment against me for fees incurred as a result of time served in connection to this matter. I understand that this is a separate civil action and is not part of this case.
9. **DNA Profiling.** I understand that if I am convicted of an offense outlined in Iowa Code §81.2 and §901.5(8A)(a), I will be ordered to submit a physical specimen for DNA profiling.
10. **Collateral Consequences.** I understand that the following are collateral consequences of pleading guilty to this crime:
    1. I understand that my driving privileges will be revoked. I understand that driving while revoked is a serious misdemeanor in the State of Iowa and carries with it certain penalties that are in addition to the ones outlined for my current offense.
    2. I understand that pleading guilty may result in deportation or other adverse immigration consequences if I am not a citizen of the United States. \*\*See Immigration Consequence Advisory below.
    3. I understand that a conviction of the charged offense(s) may be the basis to increase the length of sentence or the level of the offense for a later crime I am alleged to commit.
    4. A conviction may result in the loss and/or denial of federal or state benefits.
    5. I understand that if I am on parole or probation, this plea of guilty may be grounds for revocation and/or other consequences related to probation or parole.
    6. A conviction of any offense may also affect professional licensure.
11. **Substance Abuse Evaluation**. I understand that prior to sentencing, I shall participate in a substance abuse evaluation and file proof of attendance with the Buena Vista County Clerk. I understand that failure to attend an evaluation or file proof of attendance may result in contempt of court. I understand that I will be ordered to follow through with recommendations made in the evaluation until maximum benefits of treatment have been achieved. I understand that I can complete this evaluation at the following locations:

**Season’s Center- Center for Behavioral Health**

824 Flindt Dr., St. 104

Storm Lake, Iowa 50588

Ph: (800) 242-5101

OR

**Plains Area Mental Health Center**

728 Erie St.

Storm Lake, Iowa 505888

Ph: (712) 213-8402

OR Other Similar Facility Approved by the Iowa Department of Transportation

1. **Drinking Driver Education Course.** I understand that, at my own expense, I shall complete a course for drinking drivers at any location approved by the Iowa Department of Transportation and file proof with the Buena Vista County Clerk of Court and Iowa Department of Transportation. I understand that I failure to attend such course and file proof of completion may result in contempt of court, as well as prevent me regaining my driving privileges. I understand that I can attend an approved course at:

**Iowa Central Community College**

916 Russell Street

Storm Lake, Iowa

Ph: (712)732-2911

1. **Acknowledgment of Rights.** If I plead ***not*** guilty, I would be entitled to the following rights and that, by pleading guilty, I am giving up or waiving the following rights:
   1. The right to a speedy and public trial by a jury of twelve people.
   2. The right to have an attorney represent me at trial and, if the Court found I was unable to afford an attorney, the Court would, at public expense, appoint an attorney to represent me.
   3. At trial, I would be presumed innocent until such time, if ever, the State established my guilt beyond a reasonable doubt.
   4. At trial, a jury verdict of guilty would have to be unanimous.
   5. At trial, I would have the privilege against self-incrimination, that is, I cannot be forced to testify, and if I choose not to testify, the State may not comment on the fact of my failure to testify and, at my request, I would be entitled to a jury instruction stating that the jury could not infer guilt from my failure to testify.
   6. At trial, the State would have to confront me with witnesses upon whose testimony it relied to obtain conviction, and I would have the right to cross-examine those witnesses.
   7. At trial, I would be entitled to present witnesses to testify on my behalf and to compulsory process to secure their attendance.
2. **Acknowledgment of Waiver of Rights.** I understand that, by pleading guilty, there will not be a trial of any kind. By pleading guilty, I waive my right to trial and will be treated as if I had been tried and found guilty by a jury.
3. **Plea is of own free will.** I affirm that my plea is knowing and voluntary. No one made any promises or inducements to make me plead guilty, other than the plea agreement described below. The decision to plead guilty is my decision and not anyone else’s decision.
4. **Entirety of Plea Agreement.** The entire agreement between the State and this defendant is outlined in the document titled, “Plea Agreement”.
5. **Terms of Probation.** I understand that, if a term of probation is ordered, I have seven (7) days from the date the judgment is entered to contact the Third Judicial District Department of Correctional Services (DOC) and sign a probation agreement. The address and phone number for DOC is as follows:

Third Judicial District of Correctional Services

720 Western Ave.

Sheldon, Iowa 51201

Ph: (712) 324-5384 Fx: (712) 324-5366

1. **Failure to Contact DOC/ Sign Agreement.** I understand that if I fail to contact DOC within seven (7) days of the entry of the judgment order, fail to sign a probation agreement as ordered above, or fail to abide by the terms of the probation agreement or any term of the judgment, may result in being found to be in contempt of court and/or may be a basis to revoke my term of probation and impose sentence.
2. **State of Mind.** I was of sound mind at the time the crime was committed, and I am of sound mind now. I am not affected by a mental or physical illness, nor am I under the influence of alcohol or drug that renders me unable to knowingly, voluntarily, or intelligently enter this plea.
3. **Plea of Guilty.** I now state to the Court that I am, in fact, GUILTY of the charge of

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

and that no threats or promises have been made to induce me to enter my plea of guilty.

1. **Factual Basis.** The present charge against me was committed by me on the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, in this county by my doing the following: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

I have been previously convicted of Operating While Intoxicated, as stated in the Minutes of Testimony.

1. **Minutes used for Factual Basis.** I agree that the Court may determine whether there is a factual basis for this plea of guilty by examining the Minutes of Testimony attached to the Trial Information, by reviewing the investigative reports of law enforcement agents who have investigated the offense, or by asking me or my counsel to recite and summarize the material facts that would be offered at trial.
2. **Request for Court to accept plea.** I ask the Court to accept this plea of guilty. I waive the preceding rights and my right to have the Court address me personally regarding this plea.
3. **Request for Court to Enter Sentencing.** I ask the Court to enter sentencing without a hearing. I waive any right to be sentenced personally in court.
4. **NOTICE: Motion in Arrest of Judgment.** If the Court accepts my plea of guilty, I wish to be sentenced now. I understand that by sentenced immediately, I am giving up the following:
   1. The Court would have set a sentencing date not less than fifteen (15) days after the date of its acceptance of this Guilty Plea.
   2. In order to contest this plea of guilty, I must file a motion in arrest of judgment at least five (5) days prior to sentencing, and no later than forty-five (45) days after a plea of guilty.
   3. The right to file a Motion in Arrest of Judgment will be waived by having the Court impose a sentence today.
   4. If the Court imposes a sentence today, I will never be able to challenge this plea of guilty, and I will be giving up my right to directly appeal my guilty plea.
5. **Waiver of Motion In Arrest of Judgment.** I hereby request the Court sentence me now, and I waive any time to which I may be entitled for sentencing at a later date.
6. **NOTICE: Right of Appeal.** I understand that I have no right of appeal of a guilty plea. However, if I allege good cause and/or a defect in this plea or improper denial of a motion in arrest of judgment, I have thirty (30) days to file a written Application for Permission to Appeal and an Application to Authorize a Transcript to be Prepared at State Expense. The appellate courts will determine whether my application is granted or denied or under what conditions it will proceed, if any.
7. **NOTICE: Right of Allocution.** I understand that I have a right of allocution which allows me to address the Court personally and make a statement in mitigation of my punishment in this case, as provided by Iowa Rule of Criminal Procedure 2.23(3)(d). I further understand that if I am represented by counsel in this case, my attorney may address the Court on my behalf and make a statement in mitigation of my punishment in this case.
8. **Waiver of Right of Allocution**. I hereby waive this right of allocution.
9. **NOTICE: Immigration Consequences Advisory.** If you are not a citizen of the United States, whether or not you have lawful immigration status, your guilty plea or admission of guilty may result in detention, deportation, exclusion from the United States, or denial of naturalization or other immigration benefits pursuant to federal law, depending on the specific facts and circumstances of your cases. In some cases, detention and deportation will be required. Your lawyer must investigate and advise you about these immigration consequences before you plead guilty or admit guilt to any offense. Upon request, the Court will allow you (and your lawyer if you have one) additional time to consider the appropriateness of the guilty plea in light of this advisory. You should tell your lawyers or the Court if you need more time. You are not required to disclose your immigration or citizenship status to the Court.
10. **Acknowledgement of Immigration Consequences Advisory**. I have either sought the advice of the potential negative immigration consequences of my guilty plea or have affirmatively chosen to not seek such advice. I understand I cannot challenge this plea in the future based on my decision to knowingly and voluntarily not seek legal advice as to the potential negative immigration consequences of my guilty plea.
11. I understand that failure to abide by the terms of the judgment may result in contempt of court.

**THIS SECTION INTENTIONALLY LEFT BLANK**

**DEFENDANT CERTIFICATION:** I ask the court to accept my plea of guilty. I certify that my plea is knowingly and voluntary and that there is a factual basis for my plea. I waive my ability to file a Motion in Arrest of Judgment, as well as my right of Allocution. I affixed my initials in the blank space at the beginning of each paragraph to acknowledge that I read, understood, and agreed to the content of each paragraph.

Defendant’s Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Defendant’s Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ATTORNEY CERTIFICATION**: As an Officer of the Court, I hereby certify that I have consulted with my client in regard to this plea and that I have provide my client with sufficient opportunity to ask any questions he/she may have. I have advised my client of all their legal rights and have adequately researched the issues presented. To the best of my knowledge, and in my professional opinion, this plea is made knowingly and voluntarily and the plea is supported by a factual basis.

Attorney Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

My commission expires: \_\_\_\_\_\_\_\_\_\_\_\_\_

**PERSONAL CONTACT INFORMATION**

I understand that if I am unable to pay all amounts listed above in full on the date judgment is entered, I need to provide the Clerk of Court with a current address. I state that my current contact information is

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Employer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

I further understand that if the above information changes between now and the date all amounts owed are paid in full, it is my responsibility to update my address with the Clerk of Court. I understand that failure to do so may result in further Court action.

Signed on this day of , 20 .

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Defendant