

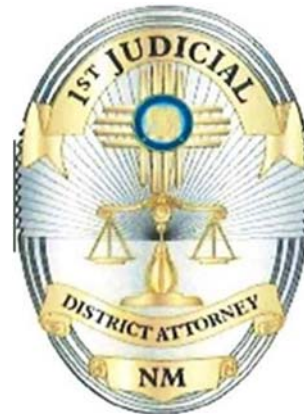
# FIRST JUDICIAL DISTRICT ATTORNEY

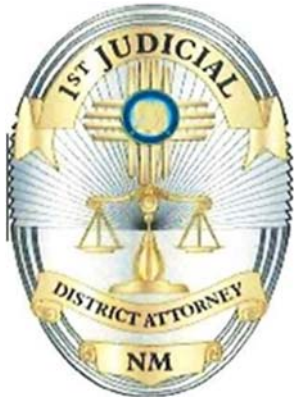
## Pre-Prosecution Diversion Program

*“Proudly serving Santa Fe, Rio Arriba and Los Alamos Counties”*

### PRE-PROSECUTION DIVERSION MISSION STATEMENT:

The mission of the First Judicial District Attorney's Pre-Prosecution Diversion Program pursuant to the Pre-Prosecution Diversion Act (31-16A-1 NMSA 1978), is to better serve the people of Santa Fe, Los Alamos and Rio Arriba counties. The program will recognize those persons from the criminal justice system who are most amenable to rehabilitation and least likely to commit future offenses. By providing those persons with services designed to assist them in avoiding future criminal activity, the Pre-Prosecution Diversion Program conserves community and criminal justice resources, and ensures that victim(s) within Santa Fe, Los Alamos and Rio Arriba counties are given the monetary restitution that they deserve.





## *Table of Contents*

Marco Serna  
District Attorney

Nurit Walsky  
PPD Program Director  
505-428-6990

327 Sandoval St.  
Santa Fe, NM 87501  
Phone: 505-827-5000  
Fax: 505-827-5076  
Email:  
NWalskey@da.state.nm.us

Eligibility Requirements – Page 3

Application Procedure – Page 4

Requirements for Admission Statement – Page 5

Requirement for Treatment Statement – Page 6

Acceptance – Page 7

Rejection – Page 8

Program Completion/Termination – Page 8

Application – Page 9

Treatment Statement – Page 16

Waiver of Rights – Page 18

Release of Waiver of Arrest Information Act – Page 22

Admission Statement – Page 23

Pre-Prosecution Diversion Contract – Page 28

**FIRST JUDICIAL DISTRICT ATTORNEY**  
**PRE-PROSECUTION DIVERSION PROGRAM GUIDELINES**

**I. ELIGIBILITY REQUIREMENTS**

- A. The defendant must be represented by an attorney.
- B. The defendant must have no prior felony convictions for a violent crime and no prior felony convictions for any crime for the previous ten years.
- C. The current charge(s) must be a non-violent felony offense and the circumstances of the crime must be non-violent in nature.
- D. If the defendant's charges involve drugs, only those cases in which a small amount of drugs are involved will be considered.
- E. Charge(s) involving only non-violent property and/or economic crimes will be considered.
- F. If the defendant has already been indicted, the Defendant, through their attorney, must file a Speedy Trial Waiver in District Court to be considered for the Program.
- G. Defendants who qualify for the Pre-Prosecution Diversion Program and have co-defendants will be required to truthfully testify against their co-defendant(s) in all proceedings the First Judicial District Attorney's Office deems necessary. A failure to do so may constitute a violation of this agreement and may result in termination from the program.
- H. The defendant must not have had his/her probation revoked or unsatisfactorily discharged.
- I. The defendant must not have been admitted to a diversion program within the last ten years.
- J. If restitution is owed, the defendant can pay the full amount prior to, or at the time of the application into the program. Exceptions to this rule must be approved by the District Attorney or Designee.
- K. The investigating law enforcement agency and the victim(s) will be consulted as to the defendant's participation in the Pre-Prosecution Diversion Program.
- L. The defendant must have the recommendation of the Pre-Prosecution Diversion Program Director for acceptance into the program. Final approval of acceptance will come from the District Attorney or Chief Deputy District Attorney.

- M. The defendant must agree to comply with all of the requirements of the Pre-Prosecution Diversion Program as outlined in the Pre-Prosecution Diversion Program Contract.
- N. The District Attorney may at any time elect not to divert any person to the Pre-Prosecution Diversion Program, even though that person may meet the minimum criteria.
- O. Pre-Prosecution Diversion requires an admission statement setting forth all elements of each crime committed by the Applicant and all appropriate waivers to allow the case to be refiled without a probable cause proceeding.

## **II. APPLICATION PROCEDURE**

- A. While the defendant is being considered for the Pre-Prosecution Diversion Program, defense counsel shall be responsible for working with the ADA assigned to their case to hold the defendant's file from indictment or preliminary hearing.
- B. The ADA assigned to the case must agree and make a referral to the Pre-Prosecution Diversion Program Director asking that the case be screened for the Pre-Prosecution Diversion Program.
- C. After the referral has been made, a preliminary assessment will occur to determine if the defendant qualifies under the eligibility guidelines for Pre-Prosecution Diversion Program.
- D. If the defendant qualifies under the preliminary assessment the Pre-Prosecution Diversion Program Director will obtain approval for admission from the Chief Deputy, followed by notification to the prosecutor and defense. A letter of instructions will be mailed to the defendant. The defendant must complete the Pre-Prosecution Application with the assistance of defense counsel. The defendant or their attorney must set an interview within thirty (30) days of the Pre-Prosecution Program Director contacting defense counsel. Defense counsel must also inform the Pre-Prosecution Diversion Program Director if the defendant is a Spanish only speaker prior to the interview being conducted. During this interview, defense counsel must be prepared to submit the following paperwork or must fill out the paperwork during their interview with the defendant:
  - 1. Pre-Prosecution Diversion Program Application
  - 2. Admission Statement by Defendant
  - 3. Agreement to Receive Treatment
  - 4. Stipulation and Waiver of Speedy Trial
  - 5. Authorization and Release Waiver of Arrest Information Act
  - 6. Waiver of Rights & Admission Statement
  - 7. Release of Information
  - 8. Copy of paycheck stub or proof of income
  - 9. Pre-Prosecution Diversion Program Contract

- E. A final background investigation will be conducted to determine the defendant's suitability for acceptance into the Pre-Prosecution Diversion Program. This can take up to 30-45 days to complete the investigation to determine whether the defendant will be accepted into or rejected from the Pre-Prosecution Diversion Program. During this time the defendant's application to the Pre Prosecution Diversion Program will remain pending.

### **III. REQUIREMENTS FOR THE ADMISSION STATEMENT**

- A. Defendant must have his/her fifth amendment right explained to him/her by defense counsel and understand and specifically waive his/her fifth amendment right against self-incrimination.
- B. This program is intended for defendant's who accept full responsibility for their actions. Extenuating circumstances and matters regarding the nature of a defense are inappropriate. PPD will not accept a case where culpability is not clear. Therefore, an admission statement, as further explained herein, is required. *See* "Section L" herein.
- C. This program requires a specific kind of admission to the offense. Even though some form of statement may have been given previously, a statement meeting Pre-Prosecution Diversion Program requirements is necessary.
- D. The admission statement must be true, complete and voluntary and facts should not be altered by the defendant in order to qualify for the Pre-Prosecution Diversion Program.
- E. If more than one crime is involved, then each crime must be set forth separately within the admission statement. For each crime, the admission statement must include a detailed and factual admission of each essential element of the crime including, but not limited to the following:
  - 1. Date, time and place city, county and state
  - 2. Intent
  - 3. How the crime was committed
  - 4. Damage done
  - 5. Property taken or Returned
  - 6. Participation of other individuals
  - 7. Acknowledgement of agreed restitution amount owed
- F. If additional pages of the admission statement are needed, the defendant must sign the admission statement on each page.
- G. Extenuating circumstances and defenses are not appropriate for this admission statement and defendants who are unwilling to accept and take responsibility for their actions will not be accepted into the program.

H. Admission statements shall be signed in front of a notary and dated by the applicant.

I. If the applicant is not accepted into the program, the admission statement will be returned upon the request of the applicant and/or their attorney and will not be used as evidence against the Defendant. However, if the Defendant is admitted into PPD and subsequently discharged, then the admission statement will be used as evidence against the Defendant.

J. **EXAMPLE:** I, (Defendant name), hereby admit to the following charges:

COUNT 1: SHOPLIFTING (OVER \$500 BUT NOT MORE THAN \$2,500) (4616)

That on or about the 1<sup>st</sup> day of January, 2014 in Santa Fe County, New Mexico, the above-named defendant (*altered a label, price tag or marking on/transferred from the container in or on which it was displayed to another container, took possession of and/or concealed merchandise*), (*Describe Merchandise*) belonging to (*Owners Name*), which had a market value over \$500 but not more than \$2,500, with the intent to convert it to defendant's own use without paying for it, contrary to §30-16-20(A), NMSA 1978.

COUNT 2: POSSESSION OF A CONTROLLED SUBSTANCE (FELONY-NARCOTIC DRUG) (5614)

That on or about the 1<sup>st</sup> day of January, 2014, in Santa Fe County, New Mexico, the above-named defendant intentionally had (*Name Substance*), a narcotic drug which is a Schedule I or II controlled substance, in defendant's possession knowing or believing it to be (*Name Substance*) or believing it to be some drug or other substance the possession of which is regulated or prohibited by law, contrary to §30-31-23, NMSA 1978.

#### **IV. REQUIREMENTS FOR THE TREATMENT STATEMENT**

- A. One of the goals of the Pre-Prosecution Diversion Program is to help those defendants who have a substance abuse problem receive and complete treatment even if their crime is not drug related.
- B. The Treatment Statement is intended to assess the needs of the defendant, the history of use of the defendant, and their past or current treatment or counseling for substance abuse to better assess what type of Pre-Prosecution Diversion Program Treatment Plan they will need.
- C. This statement must be true, complete and be made by the applicant. Facts should not be altered by the defendant in order to qualify for the Pre-Prosecution Diversion Program.
- D. The statement must be in the defendant's own words & to the point. If additional pages are needed for the statement, the defendant must sign the statement on each page.

- E. The defendant must state all of the substances used in the last year including any illegal drugs, prescribed drugs, marijuana and alcohol & how often used.
- F. The defendant must list all of the substances he or she has ever tried including any illegal drugs, prescribed drugs, marijuana and alcohol & include the number of times used.
- G. The defendant must list any type of treatment, counseling or program he or she has participated in for substance abuse including any illegal drugs, prescribed drugs, marijuana and alcohol. They will include type of treatment or counseling, where occurred, how long & approximate dates that treatment occurred.
- H. If it is determined that the defendant does need treatment, defense counsel and the defendant will be responsible for assisting in finding an appropriate treatment location that is ultimately approved by the Pre-Prosecution Diversion Program Director. The defendant will be responsible for finding the appropriate funds to pay for the treatment program. Failure to successfully complete the treatment program shall result in termination from the Pre-Prosecution Diversion Program. If the defendant successfully completes in-patient treatment, then the defendant shall receive day-for-day credit for time served during in-patient treatment.
- I. Statements should be signed in front of a notary and dated by the applicant.
- J. If the applicant is not accepted into the program, the statement will be returned upon the request of the applicant and/or their attorney.

#### **V. ACCEPTANCE**

- A. If the defendant is determined to be suitable for the Pre-Prosecution Diversion Program, the Pre-Prosecution Diversion Program Contract (“PPD Contract”) will be prepared by the Pre-Prosecution Diversion Program Director. The Defendant will be required to review the PPD Contract with defense counsel and the Pre-Prosecution Diversion Program Director. The PPD Contract contains specific requirements of the Defendant's participation in the Pre-Prosecution Diversion Program, including the number of months in the program, the monthly fee, amount of restitution due, number of hours of community service work required, agreement for appropriate treatment, deadline dates, and any other special conditions as deemed necessary for rehabilitation purposes by the PPD Director.
- B. If the defendant and defense counsel are in agreement with the Pre-Prosecution Diversion Program Contract, both must sign the document and return it to the Pre-Prosecution Diversion Program Director. Defendants may be required to sign the PPD Contract in person and in front of the Pre-Prosecution Diversion Program Director. The Pre-Prosecution

Diversion Program Contract must be signed and returned to the Pre-Prosecution Diversion Program Director before the defendant will be officially accepted into the program. Failure to return the PPD Contract may result in the application being rejected.

- C. If it is determined that the defendant is required to participate in a treatment program, both the Defendant and defense counsel shall cooperate and assist in finding an appropriate treatment program for the defendant.
- D. Upon acceptance into the Pre-Prosecution Diversion Program, prosecution and defense counsel will be notified in writing.

#### **VI. REJECTION**

- A. If the defendant is determined to be unsuitable for the Pre Prosecution Diversion Program the defendant, defense counsel and the prosecutor will be notified in writing of the rejection. Once this occurs the case will be returned to the ADA for prosecution.

#### **VII. SUCCESSFUL COMPLETION**

- A. Successful completion of the Pre Prosecution Diversion Program is dependent upon the defendant's satisfactory performance and completion of all program requirements specified in the Pre Prosecution Diversion Program Contract.
- B. If the defendant successfully completes the Pre Prosecution Diversion Program, there will be no further criminal proceedings. A graduation letter will be given to the defendant. Prosecution and defense counsel will be notified of Pre-Prosecution Diversion Program completion and will be required to file the necessary documents.

#### **VIII. UNSUCCESSFUL TERMINATION**

- A. Violation of any of the terms of the Pre Prosecution Diversion Program Contract will constitute sufficient grounds for defendant's termination from the program.
- B. If the defendant is accepted in to the Program and subsequently it is discovered that the defendant has made an untruthful statement, this will constitute sufficient grounds for termination from the program.

Upon termination the defendant and his counsel shall be notified in writing of the specific reasons for termination. Once terminated from the Pre Prosecution Diversion Program, the defendant may not be reinstated.



# *First Judicial District Attorney Pre-Prosecution Diversion Program Application*

---

## I. General Information

---

Today's Date: \_\_\_\_\_ Your Attorney's Name: \_\_\_\_\_

Your Name: \_\_\_\_\_ Home Phone#: \_\_\_\_\_

Aliases/Maiden Name: \_\_\_\_\_ Cell Phone#: \_\_\_\_\_

What is your Native language? \_\_\_\_\_ Email Address: \_\_\_\_\_

Please check one:      Male \_\_\_\_\_      Female \_\_\_\_\_

Do you speak English?              Yes \_\_\_\_\_              No \_\_\_\_\_

Do you read English?              Yes \_\_\_\_\_              No \_\_\_\_\_

Do you write English?              Yes \_\_\_\_\_              No \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Age: \_\_\_\_\_ Social Security# \_\_\_\_\_

Do you currently have medical insurance?      Yes: \_\_\_\_\_ No: \_\_\_\_\_

- If yes, list: \_\_\_\_\_

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

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

List Previous Addresses for the last 5 years

Street Address	City/State/Zip

***At first meeting please provide a copy of current Driver's License, Vehicle Registration and Proof of Insurance.***

Your Name: \_\_\_\_\_

Height: \_\_\_\_\_ Weight: \_\_\_\_\_ Eye Color: \_\_\_\_\_

Hair Color: \_\_\_\_\_ Sex: \_\_\_\_\_ Ethnicity: \_\_\_\_\_

Do you have any tattoos: Yes: \_\_\_\_\_ No: \_\_\_\_\_

- If yes, list and describe below:

---

---

---

---

---

---

**Marital Status:**

Married: \_\_\_\_\_ Single: \_\_\_\_\_ Separated: \_\_\_\_\_ Widowed: \_\_\_\_\_ Living Together: \_\_\_\_\_

List name of current partner and previous partner(s) below:

Name	Age/DOB	Address

Do you have any children? Yes: \_\_\_\_\_ No: \_\_\_\_\_ if yes, please list:

Name	Age	Address

Your Name: \_\_\_\_\_

List below parent(s), step-parent(s), and guardian(s):

Name	Age	Phone#	Employment

List below brother(s), sister(s), step-brother(s) & step-sister(s):

Name	Age	Phone#	Employment

Please list below any Interests or Hobbies:

---

---

---

---

---

---

---

**II. Employment History**

Are you presently employed: Yes: \_\_\_\_\_ No: \_\_\_\_\_

Employer Name: \_\_\_\_\_ Address: \_\_\_\_\_

Telephone#: \_\_\_\_\_ Rate of Pay: \_\_\_\_\_

How long have you been at this job? \_\_\_\_\_ Supervisor name: \_\_\_\_\_

Job Duties: \_\_\_\_\_

Is your employer aware of your current Pre-Prosecution Program attendance? Yes \_\_\_\_\_ No \_\_\_\_\_

Your Name: \_\_\_\_\_

List previous employers in last 10 years in order from most recent to oldest

<b>Name</b>	<b>Address</b>	<b>Telephone#</b>

***Must bring a copy of paycheck stubs or proof of income***

**III. Education**

What is the highest level of education you have received? \_\_\_\_\_

List High School, College and other training below:

<b>School</b>	<b>Address</b>	<b>Dates Attended</b>	<b>Did you Graduate</b>

- If, so please list Diploma/Degree received: \_\_\_\_\_

***Must bring proof of high school diploma or GED***

**IV. Military Service**

Have you ever been in the Military? Yes: \_\_\_\_\_ No: \_\_\_\_\_

- If yes, what branch of the Military? \_\_\_\_\_ Date of Entry: \_\_\_\_\_

Honorably Discharged? Yes: \_\_\_\_\_ No: \_\_\_\_\_

If No, please explain circumstances below:

\_\_\_\_\_

Have you ever deserted or been A.W.O.L.? Yes: \_\_\_\_\_ No: \_\_\_\_\_

***Must bring DD214 to Interview  
Additional documentation may be required***

Your Name: \_\_\_\_\_

**V. Financial Information**

List Income (Job, child support, social security, AFDC, worker’s comp., insurance, etc.)

<b>Source of Income</b>	<b>Amount of Income &amp; How Often Received</b>

List all bills and monthly payments below:

Rent/House Payment:		Child Support:	
Car Payment:		Alimony:	
Utilities:		Medical:	
Food:		Car Insurance:	
Phone:		Insurance:	
Credit Cards:		Other:	
Credit Cards:		Other:	
Student Loans:		Other:	

<b>List Financial Obligations</b>	<b>List Financial Assets &amp; Property</b>

**VI. Criminal Charges**

**YOU MUST DISCLOSE ALL PRIOR ARRESTS IN THE U.S. OR ABROAD WHETHER OR NOT YOU WERE CONVICTED, AND ANY PRIOR PROBATION ANY FAILURE TO DISCLOSE PRIOR INVOLVEMENT WITH LAW ENFORCEMENT AGENCIES WILL RESULT IN YOUR IMMEDIATE REVOCATION FROM THIS PROGRAM**

What are the current offence(s) that you have been charged with?

---

List any and all previous charges including from the military, as a juvenile and as an adult below:

Offense – Adult, Juvenile, Military	Date of Offense	Disposition or what happened?

Have you ever been placed on probation? Yes \_\_\_\_\_ No \_\_\_\_\_ Where \_\_\_\_\_

If yes, did you successfully complete? Or what happened while on probation?

---

Have you ever been sent to a youth facility or boys or girls school? Yes \_\_\_\_\_ No \_\_\_\_\_

Have you ever participated in a first offender’s diversion program? Yes \_\_\_\_\_ No \_\_\_\_\_

**VII. Misc. Information**

Do you have a co-defendant in this case? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, list co-defendant(s) and their charges.

---

Do you have or have had any substance abuse problems (alcohol, illegal drugs, or prescription drugs)?

**If yes, state form and dates of treatment and counseling in your treatment statement.**

Are the criminal charges pending against you alcohol related? Yes \_\_\_\_\_ No \_\_\_\_\_

Do you drink alcoholic beverages? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, how often & how much?

---

Have you ever received treatment or counseling for alcohol abuse? Yes \_\_\_\_\_ No \_\_\_\_\_

Are the criminal charges pending against you drug related? Yes \_\_\_\_\_ No \_\_\_\_\_

Have you received treatment of counseling for drug abuse? Yes \_\_\_\_\_ No \_\_\_\_\_

Do you have a current health concern, illness, disease or disability? Yes \_\_\_\_\_ No \_\_\_\_\_

Driver's License Number: \_\_\_\_\_ Valid \_\_\_\_\_ Suspended \_\_\_\_\_ Revoked \_\_\_\_\_

If it is determined that you need treatment are you willing to participate? Yes \_\_\_ No \_\_\_

Why are you a good candidate for the Pre-Prosecution Diversion Program? \_\_\_\_\_

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

**YOU WILL BE REQUIRED TO MAKE RESTITUTION IN THIS MATTER, IF APPLICABLE.**

**YOU MAY BE REQUIRED TO TAKE A DRUG TEST AT YOUR FIRST SESSION AT THE DISCRETION OF THE PRE-PROSECUTION DIVERSION PROGRAM DIRECTOR.**

Attorney Comments: \_\_\_\_\_

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

**I certify that the information contained in this application is correct and complete to the best of my knowledge and belief.**

\_\_\_\_\_  
Attorney for Applicant

\_\_\_\_\_  
Applicant

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

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**FIRST JUDICIAL DISTRICT ATTORNEY  
PRE-PROSECUTION DIVERSION TREATMENT STATEMENT**

I, \_\_\_\_\_, state the following:

State substances used in the last year. Include any illegal drugs, prescribed drugs, marijuana and alcohol used & how often: \_\_\_\_\_

---

---

---

---

---

---

---

List all of the substances you have ever tried and age when started using, including any illegal drugs, prescribed drugs, marijuana and alcohol below & include the number of times used: \_\_\_\_\_

---

---

---

---

---

---

---

List any type of treatment, counseling or program you have received for substance abuse including any illegal drugs, prescribed drugs, marijuana and alcohol below: (List type, where occurred, how long & approximate dates) \_\_\_\_\_

---

---

---

---

---

---

---

Do you feel that you have a substance abuse problem? If yes, do you want to change or feel that you need help? Why? \_\_\_\_\_

---

---

---

---

---

---

---



I fully understand that if it is determined that I may have an issue requiring treatment or substance abuse treatment, I may be required to participate in and successfully complete a treatment program if I am selected to enter the Pre-Prosecution Diversion Program. \_\_\_\_\_

I, along with my attorney or family, may also be required to locate a treatment facilities for my treatment. \_\_\_\_\_

I further understand that I may be required to pay for or find funding for my treatment if my insurance does not cover the costs. \_\_\_\_\_

I understand that if I do not successfully complete this treatment program I may be discharged from the Pre-Prosecution Diversion Program and I may be prosecuted for my current charges. \_\_\_\_\_

Finally if I do complete this treatment successfully I may receive credit towards my PPD. \_\_\_\_\_

I fully understand that this statement is true, accurate and complete to the best of my knowledge and belief. \_\_\_\_\_

\_\_\_\_\_  
Defendant's Signature

STATE OF NEW MEXICO  
COUNTY OF SANTA FE / LOS ALAMOS / RIO ARRIBA  
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO,

Plaintiff,

vs.

D.A. File No. SF-\_\_\_\_\_  
NO. D-0101-CR-2017-\_\_\_\_\_

\_\_\_\_\_,  
Defendant.

DOB: xx/xx/xxxx

SSN: xxx-xx-xxxx

**STIPULATIONS AND WAIVER OF PRELIMINARY HEARING  
AND/OR GRAND JURY PRESENTATION**

I understand that criminal charges contained in District Attorney File No. SF-\_\_\_\_\_  
have been or are about to be brought against me, charging me with committing:

1. [insert charging language from information or indictment]

OR

2. Related offenses on \_\_\_\_\_, 20\_\_\_\_.

I further understand that my attorney, \_\_\_\_\_,  
has submitted a PROPOSAL FOR PRE-PROSECUTION PROBATION on my behalf with my  
consent.

It is hereby agreed between the applicant, defense counsel, and Marco Serna, District  
Attorney for the First Judicial District, that I will be placed on Pre-Prosecution Probation for a  
period of twelve to twenty-four (12-24) months subject to the conditions set forth in the PRE-  
PROSECUTION DIVERSION PROBATION CONTRACT.

It is further agreed and understood, being fully advised by my attorney, that if I violate any  
of the terms or conditions of this Stipulation or the Pre-Prosecution Probation Contract that the  
criminal case will be filed and set for trial. I agree and understand that if I do not comply with the  
conditions set forth in the Pre-Prosecution Diversion Contract, the State can and will proceed by  
filing an Information to initiate criminal proceedings. I have been informed of the criminal charges

against me and of my right to have a preliminary hearing or presentation to a grand jury on those charges.

I do hereby freely and voluntarily waive my right to a preliminary hearing and presentation to a Grand Jury.

It is further agreed and understood, being fully advised by my attorney, that any written or oral statement given to any police agency or the District Attorney's Office by me, regarding the above offense(s), can and will be used against me at trial in the State's Case-in-Chief, if there is any violation of the terms and conditions of this agreement I understand my right to a speedy public trial in District Court on the charges against me. Being fully advised by my attorney of all my legal rights regarding these charges and with the knowledge that I am being placed on Pre-Prosecution Diversion Probation, as a condition of that Pre-Prosecution Probation, I do hereby fully and voluntarily waive my right to a speedy trial.

It is further agreed and understood that if I successfully complete the probationary period, the criminal charges recited herein will be dismissed and will not be prosecuted.

---

Defendant Counsel for Defendant

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, by DEFENDANT, Applicant herein.

---

NOTARY PUBLIC  
My commission expires:

STATE OF NEW MEXICO  
COUNTY OF SANTA FE / LOS ALAMOS / RIO ARRIBA  
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO,

Plaintiff,

vs.

D.A. File No. SF-\_\_\_\_\_  
NO. D-0101-CR-2017-\_\_\_\_\_

\_\_\_\_\_,  
Defendant.

DOB: xx/xx/xxxx  
SSN: xxx-xx-xxxx

**WAIVER OF SPEEDY TRIAL**

COMES NOW \_\_\_\_\_, Defendant herein, by and through, \_\_\_\_\_ attorney at law, and states to the Court that Defendant is being placed in the Pre-Prosecution Diversion Program (PPD Program) and, after consultation with counsel, Defendant hereby freely and voluntarily stipulates and agrees to the following conditions and waiver of rights.

1. As a condition of the Pre-Prosecution Program, Defendant waives any constitutional right to a speedy trial in this case and waives any rights as provided by Rule 5-604.
2. Defendant acknowledges that this Waiver shall be used if his/her participation in the Pre-Prosecution Program is canceled because of his/her failure to abide by the various terms, condition or requirements of such program or by any misstatements, half-truths or omissions in my application for acceptance.
3. As a Pre-Prosecution client, Defendant acknowledges that the time to prosecute the above-styled case commences on the date the District Attorney filed with the

District Court Clerk a notice of the termination from the Pre-Prosecution Program for failure to comply with the terms, conditions or requirements of such program.

\_\_\_\_\_  
Defendant

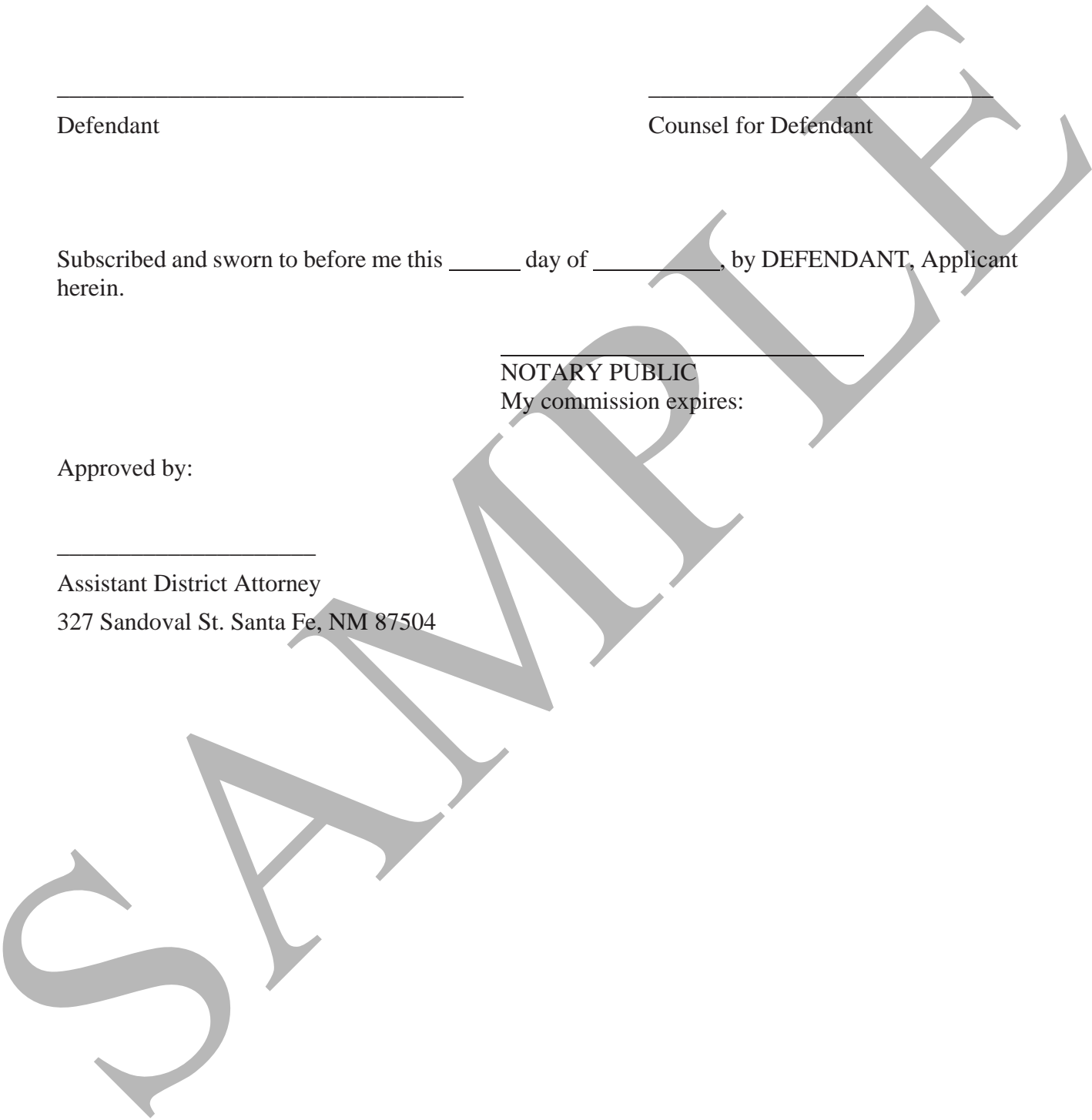
\_\_\_\_\_  
Counsel for Defendant

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, by DEFENDANT, Applicant herein.

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires:

Approved by:

\_\_\_\_\_  
Assistant District Attorney  
327 Sandoval St. Santa Fe, NM 87504



STATE OF NEW MEXICO  
COUNTY OF SANTA FE / LOS ALAMOS / RIO ARRIBA  
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO,

Plaintiff,

vs.

D.A. File No. SF-\_\_\_\_\_  
NO. D-0101-CR-2017-\_\_\_\_\_

\_\_\_\_\_,  
Defendant.

DOB: xx/xx/xxxx  
SSN: xxx-xx-xxxx

**AUTHORIZATION AND RELEASE WAIVER OF  
ARREST RECORD INFORMATION ACT**

I, \_\_\_\_\_, the undersigned applicant, hereby authorize the Office of the District Attorney to release to the public all information submitted by me in my application to the Pre-Prosecution Probation Program. I understand that certain information which might be released by the Office of the District Attorney may otherwise be confidential under the terms of the Arrest Record Information Act. I hereby waive any rights I may have to privacy regarding any arrest record information concerning me under the Arrest Record Information Act.

I understand that the Pre-Prosecution Probation Program will not release to the public the statement I made admitting guilt or any notes of the various probation officers, or other employees of the Pre-Prosecution Probation Program made with regard to my admission or performance on probation.

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Counsel for Defendant

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, by DEFENDANT, Applicant herein.

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires:

STATE OF NEW MEXICO  
COUNTY OF SANTA FE / LOS ALAMOS / RIO ARRIBA  
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO,  
Plaintiff,

vs.

D.A. File No. SF-\_\_\_\_\_  
NO. D-0101-CR-2017-\_\_\_\_\_

\_\_\_\_\_,  
Defendant.

DOB: xx/xx/xxxx  
SSN: xxx-xx-xxxx

CRIMES: Embezzlement (Over \$2500).

**ADMISSION BY DEFENDANT**

I, \_\_\_\_\_, in giving this Statement, understand that I am giving up my fifth amendment right against self-incrimination, that is, the right not to be a witness against myself. I waive this right intentionally, voluntarily and intelligently. I have been counseled by my attorney, \_\_\_\_\_, regarding the legal ramifications of making the following admission. I further understand that this Statement may be used against me in a court if I am unsatisfactorily terminated from the Pre-Prosecution Diversion Program (PPD).

Knowing and understanding this, I, \_\_\_\_\_, freely and willfully state that on or about the dates listed below, I did commit the following crimes in the County of Santa Fe/Rio Arriba/Los Alamos, State of New Mexico:

**Count 1: Embezzlement (Over \$2500)**, (0607), on or about October 01, 2016, through October 27, 2016, I, the above-named defendant, DEFENDANT DAN, did convert to MY own use LOTS OF STUFF, which had a market value of over \$2500, and with which I had been entrusted, with intent at the time of conversion to fraudulently deprive the owner of his/her property, a third-degree felony, contrary to Section 30-16-8, NMSA 1978.

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Counsel for Defendant

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, by DEFENDANT, Applicant herein.

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires:

STATE OF NEW MEXICO  
COUNTY OF SANTA FE / LOS ALAMOS / RIO ARRIBA  
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO,

Plaintiff,

vs.

D.A. File No. SF-\_\_\_\_\_  
NO. D-0101-CR-2017-\_\_\_\_\_

\_\_\_\_\_,  
Defendant.

DOB: xx/xx/xxxx  
SSN: xxx-xx-xxxx

**MOTION TO SUSPEND PROSECUTION**

COMES NOW the State of New Mexico, and respectfully moves the Court for an order suspending the prosecution of this criminal cause pursuant to NMSA 1978 §31-16A-6B, and as grounds therefor states:

1. On \_\_\_\_\_, Defendant was accepted into the First Judicial District Attorney's Pre-Prosecution Program and signed a "Waiver of Speedy Trial", the original which is filed in this Court and is incorporated by reference.
2. Pursuant to the Pre-Prosecution Probation Contract, the State of New Mexico moves to suspend the prosecution of the Criminal Information/Indictment filed herein up to 24 months, subject to reinstatement should the Defendant be terminated for failure to complete the Pre-Prosecution Diversion Program.

RESPECTFULLY SUBMITTED

MARCO SERNA  
DISTRICT ATTORNEY

By: \_\_\_\_\_  
Assistant District Attorney  
327 Sandoval St.  
Santa Fe, NM 87504

**CERTIFICATE OF SERVICE**

I hereby certify that I delivered a true and correct copy of the foregoing pleading to

STATE:

DEFENSE:



STATE OF NEW MEXICO  
COUNTY OF SANTA FE / LOS ALAMOS / RIO ARRIBA  
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO,

Plaintiff,

vs.

D.A. File No. SF-\_\_\_\_\_  
NO. D-0101-CR-2017-\_\_\_\_\_

\_\_\_\_\_,  
Defendant.

DOB: xx/xx/xxxx  
SSN: xxx-xx-xxxx

**ORDER TO SUSPEND PROSECUTION**

THIS MATTER having come before this Court on motion of the State, and it appearing to the Court that defendant has been accepted into the Pre-Prosecution Diversion Program by the First Judicial District Attorney and good-cause appearing therefore,

IT IS THEREFORE ORDERED, ADJUDGED AN DECREED that this prosecution be and same hereby is suspended, subject to reinstatement if the defendant is terminated for failure to complete the Pre-Prosecution Diversion Program.

IT IS FURTHER ORDERED that any bond posted in this cause is hereby released, and the Court Clerk is ordered to return any cash bond to the person having posted the bond.

\_\_\_\_\_  
DISTRICT JUDGE  
Honorable T. Glenn Ellington

Submitted by:

\_\_\_\_\_  
Name of ADA  
Assistant District Attorney

\_\_\_\_\_  
Name of Defense Counsel  
Defense Counsel

STATE OF NEW MEXICO  
COUNTY OF SANTA FE / LOS ALAMOS / RIO ARRIBA  
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO,

Plaintiff,

vs.

D.A. File No. SF-\_\_\_\_\_  
NO. D-0101-CR-2017-\_\_\_\_\_

\_\_\_\_\_,  
Defendant.

DOB: xx/xx/xxxx  
SSN: xxx-xx-xxxx

**ORDER OF DISMISSAL**

THIS MATTER came before the Court upon the motion of the State for an order dismissing with prejudice the criminal charges in the above entitled cause on the grounds the defendant has successfully completed the Pre-Prosecution Probation Program of the First Judicial District Attorney.

The court having found, the State's Motion well-taken, it is hereby GRANTED,

IT IS THEREFORE ORDERED that the Criminal Information filed in the above entitled cause is hereby dismissed with prejudice the Defendant having successfully completed the First Judicial District Attorney's Pre-Prosecution Probation Program.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ .

\_\_\_\_\_  
DISTRICT JUDGE

\_\_\_\_\_  
Assistant District Attorney  
327 Sandoval St.  
Santa Fe, NM 87504

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO

Plaintiff,  
v.

D.A. File No. SF-\_\_\_\_\_  
NO. D-0101-CR-2017\_\_\_\_\_

\_\_\_\_\_  
Defendant.

**NOTICE OF TERMINATION FROM PRE-PROSECUTION DIVERSION PROGRAM**

**COMES NOW**, the State of New Mexico, by and through its District Attorney, Marco Serna, and advises the Court that the above-named Defendant \_\_\_\_\_ was terminated from further participation in the Pre-prosecution Diversion Program because of \_\_\_\_\_.

**THEREFORE**, the State of New Mexico respectfully moves to reinstate the criminal proceedings in the above-captioned and numbered cause of action.

**WHEREFORE**, the State of New Mexico respectfully requests that a trial date be set within six months of the filing of this pleading.

Respectfully submitted,

**Marco Serna**  
**1st JUDICIAL DISTRICT ATTORNEY**

BY:

\_\_\_\_\_  
Asst. District Attorney  
P.O. Box 2041  
Santa Fe, NM 87504

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was provided to defense counsel, this \_\_\_\_\_ day of \_\_\_\_\_, 2017

\_\_\_\_\_  
Asst. District Attorney

**First Judicial District Attorney**  
**Pre-Prosecution Diversion Contract**

This contract is between the Defendant and the First Judicial District Attorney's Office by the authority of the District Attorney, Marco P. Serna. The Defendant shall comply with all of the following terms specified in this agreement.

**I. VOLUNTARY PARTICIPATION**

The defendant's participation in the Pre Prosecution Diversion Program is completely voluntary.

---

**II. LAW ABIDING**

The Defendant agrees to comply with all municipal, county, state, federal, or tribal ordinances or laws. \_\_\_\_\_

**III. COMMUNICATION**

The Defendant agrees to reply to any communications from the Pre Prosecution Diversion Program Director or her representative immediately or as soon as practicably possible.

---

**IV. DEFENSE ATTORNEY'S APPROVAL**

The Defendant's attorney, having advised Defendant of the applicable law in this matter, believes it to be in the best interest of the Defendant to apply to the Pre Prosecution Diversion Program.

---

**V. WRITTEN REPORTS**

The Defendant will submit written reports in accordance with instructions given by the Pre Prosecution Diversion Program Director, and such other written or oral reports as required by the First Judicial District Attorney's Office. \_\_\_\_\_

**VI. REJECTION/WITHDRAWAL**

If the Defendant's application to the Pre Prosecution Diversion Program is rejected or withdrawn, the prosecution of the case shall continue. The Defendant shall not again apply to the Pre Prosecution Diversion Program. \_\_\_\_\_

**VII. TERMINATION**

If the defendant is accepted into the Pre Prosecution Diversion Program and then terminated from the Pre Prosecution Diversion Program for cause, the court may issue a warrant for arrest or a summons to compel defendant's appearance before the court. \_\_\_\_\_

**VIII. FIREARMS**

The Defendant will not own, use, possess, sell, distribute any firearm or other deadly weapon.

---

**IX. PRIOR CRIMINAL RECORD**

The defendant states that he or she has no prior felony conviction within the last 10 years, no prior violent felony conviction or significant criminal record, has never been unsatisfactorily discharged from probation, has no prior juvenile commitment to a boy's or girl's school or similar youth facility and has never participated in a first offenders diversion program.

---

**X. STATEMENTS**

The defendant states that he/she shall give a written admission statement about defendant's participation in the crime(s) with which defendant is charged. If defendant is rejected from the Pre Prosecution Diversion Program, the statement may be used against the defendant only for the purposes of impeachment. If defendant is accepted into and then terminated from the Pre Prosecution Diversion Program, that statement may be used against the defendant in court.

---

The defendant states that he/she shall give a written treatment statement about his or her previous drug and/or alcohol history, previous participation in a drug treatment facility or drug counseling. In this statement the defendant also agrees to voluntarily participate and successfully complete any drug and/or alcohol treatment that is deemed necessary.

---

**XI. DRIVER'S LICENSE/IDENTIFICATION**

The Defendant shall have or obtain a valid driver's license or photo identification card.

---

**XII. EMPLOYMENT**

The defendant shall make diligent efforts to obtain and maintain employment. If employment changes or ceases the Defendant shall immediately report this to the Pre Prosecution Diversion Program Director. \_\_\_\_\_

**XIII. SUPPORT DEPENDENTS**

The defendant shall support any dependents and assume legal obligations of any dependents.

---

**XIV. ALCOHOL & DRUGS**

The defendant shall not consume alcoholic beverages and shall not own, use, possess, sell, distribute or have under his or her control any controlled substance, illegal drugs including marijuana and synthetic marijuana, in any form without a prescription from a licensed physician.

---

**XV. ALCOHOL & DRUG TESTING**

The defendant shall submit to and pay for any random urine, blood, breath tests, or alcohol monitoring system at the discretion of the Pre Prosecution Diversion Program Director or one of her designees. \_\_\_\_\_

**XVI. TREATMENT**

The defendant shall submit to and pay for any alcohol or drug evaluation, recommended counseling or treatment or testing at the discretion of the Pre Prosecution Diversion Program Director. The defendant and his or her counsel shall be responsible for assisting in finding an appropriate treatment facility. The defendant shall comply with any treatment requirements; failure to complete a treatment program will be grounds for immediate dismissal from the program. \_\_\_\_\_

**XVII. EVALUATION/COUNSELING**

The defendant shall submit to and pay for any tests, examinations, psychological evaluation or recommended counseling or treatment program deemed necessary by the Pre Prosecution Diversion Program Director or her designee. \_\_\_\_\_

**XVIII. EDUCATION**

The defendant shall enroll in a GED program if the defendant does not have a high school diploma and is not attending school, provided that such enrollment does not interfere with defendant's employment. \_\_\_\_\_

**XIX. LENGTH OF TIME IN PROGRAM**

The defendant shall be in the Pre Prosecution Diversion Program for a period of up to 24 months and it shall be extended at the discretion of the Pre Prosecution Diversion Program Director if the defendant fails to comply with any of the terms of the Program. \_\_\_\_\_

**XX. REPORTING**

The defendant shall report to the Pre Prosecution Diversion Program staff at least once a month, but may be required to check in more than once a month including phone check ins if requested by the Pre Prosecution Diversion Program Director or as otherwise directed by the Pre Prosecution Diversion Program Director. \_\_\_\_\_

**XXI. MONTHLY FEE**

The defendant shall pay a monthly Pre Prosecution Diversion Program fee in the form of a money order in the amount of \$85.00. This fee is based upon a sliding fee scale, which is determined by evaluating your monthly income and financial obligations. These fees will not be waived, and may change if defendant's financial circumstances change. \_\_\_\_\_

**XXII. RESTITUTION**

The defendant shall pay restitution in the form of a money order to the victim(s) for any damages or loses resulting from any criminal act in which defendant was a principal, assessor or co-conspirator. The defendant must pay the full amount prior to, or at the time of the application into the program. If the defendant cannot pay the entire amount, one-half payment may be accepted and the defendant must pay the balance in monthly payments over a specified period of time. Additionally, the defendant may also be required to sign a promissory note if he or she fails to pay the full amount of restitution owed. \_\_\_\_\_

The defendant shall pay a monthly restitution payment of \$\_\_\_\_\_to \_\_\_\_\_, in the form of a money order and shall be brought when the defendant reports monthly to the Pre Prosecution Diversion Program Director. \_\_\_\_\_

**XXIII. EXTRADITION**

If extradition becomes necessary in this matter, the defendant shall pay the county for any extradition costs. \_\_\_\_\_

**XXIV. COMMUNITY SERVICE WORK**

The defendant shall complete community service work of 50 – 80 hours and provide written documentation of the work done each month to show his or her progress. Additional hours of community service work may be required at the discretion of the Pre Prosecution Diversion Program Director. \_\_\_\_\_

**XXV. TRAVEL**

The defendant shall seek permission of the Pre Prosecution Diversion Program Director to leave the State of New Mexico. \_\_\_\_\_

**XXVI. CURRENT STATUS**

The defendant shall inform the Pre Prosecution Diversion Program Director of defendant's whereabouts at all times and will report immediately any change in employment, residence, mailing address, telephone, marital status, income, financial status or other important change. All notices and correspondence will be sent to the defendant at the last address provided by the defendant to the Pre Prosecution Diversion Program Director. \_\_\_\_\_

**XXVII. NEW ARRESTS**

The defendant shall report any arrest or contact with any law enforcement agency to the Pre Prosecution Diversion Program Director within five (5) days. Any arrests while in the Pre Prosecution Diversion Program may sufficient reason for the defendant to be terminated from the Pre Prosecution Diversion Program. \_\_\_\_\_

**XXVIII. FIELD VISITS**

The defendant gives permission to the Pre Prosecution Diversion Program Director or Designee to visit the defendant's, school or any other location for the purposes of carrying out adequate supervision at any time without any prior notice. \_\_\_\_\_

**XXIX. TRUTHFULNESS**

The Defendant shall truthfully answer all inquiries made by the Pre Prosecution Program Director or their designee. \_\_\_\_\_

**XXX. ADDITIONAL CONDITIONS**

The defendant shall follow all instructions of the Pre Prosecution Diversion Program Director and shall abide by any additional reasonable conditions she deems necessary. \_\_\_\_\_

**XXXI. FALSE INFORMATION**

If the defendant provides false information or omits information on any documents or interview relating to the defendant's application to the Pre Prosecution Diversion Program, this will be sufficient reason for defendant's rejection from the Pre Prosecution Diversion Program. \_\_\_\_\_

**XXXII. VIOLATION OF TERMS**

The defendant agrees that any violation of these terms and conditions will be sufficient reason for the defendant's rejection from the Pre Prosecution Diversion Program, termination from the Pre Prosecution Diversion Program, prosecuting the criminal charges, and extension of the term or probation originally agreed upon. \_\_\_\_\_

**XXXIII. TESTIFYING TRUTHFULLY**

The defendant will truthfully testify in all criminal proceedings involving themselves & any co-defendant(s) (list co-defendant(s)):

\_\_\_\_\_  
\_\_\_\_\_,  
including but not limited to Grand Jury, pre-trial motion hearings, and/or trial. The defendant will make him or herself available for proceedings and/or witness interviews. During the period of supervision the Pre Prosecution Diversion Program Director may revoke the contract or modify conditions in the defendant fails to make him or herself available for testimony or statements or if the defendant fails to testify truthfully. \_\_\_\_\_

**XXXIV. IMMIGRATION CONSEQUENCES**

The defendant understands that entry into the Pre Prosecution Diversion Program may have an effect upon his or her immigration or naturalization status, and he or she acknowledges that, his or her attorney has advised him or her of the immigration consequences due to entry into the Pre Prosecution Diversion Program. \_\_\_\_\_





**ATTORNEY ACKNOWLEDGEMENT**

I have read this Pre-Prosecution Diversion Program Contract and I fully understand its contents. I have fully read this Pre-Prosecution Diversion Program Contract with my client and completely discussed any and all terms and the meaning of the terms of this Pre-Prosecution Diversion Program Contract with my client. After a thorough and complete consultation with my client, I am of the opinion that my client completely understands any and all terms of the Pre-Prosecution Diversion Program Contract and I am further of the opinion that my client knowingly and voluntarily has authorized me to fully and completely agree to its terms.

\_\_\_\_\_  
Defense Counsel

\_\_\_\_\_ My client is primarily Spanish speaking and I have had the Pre-Prosecution Diversion Packet including the Contract consisting of pages #1-26 translated from English to Spanish, therefore, my aforementioned acknowledgement is based on a complete translation of the Pre-Prosecution Diversion Packet as well as a complete translation of all other communications regarding this Pre-Prosecution Diversion Program Packet with my client. \_\_\_\_\_

Approved by:

\_\_\_\_\_  
Pre-Prosecution Diversion Program Director