

Guidelines for Plan-Approved Domestic Relations Orders

*Dissolution of Marriage or
Domestic Partnership*



SAN JOSE
CAPITAL OF SILICON VALLEY

San José Police and Fire Department Retirement Plan

Guidelines for Plan-Approved Domestic Relations Orders

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San José Municipal Code Chapter 3.36, Part 17

Plan-Approved Domestic Relations Orders

Sample PADRO 1
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GUIDELINES FOR PLAN-APPROVED DOMESTIC RELATIONS ORDERS

Dissolution of Marriage or Domestic Partnership

San José Police and Fire Department Retirement Plan

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Introduction

As a general rule, Police and Fire Plan benefits are only payable to Plan participants and their survivors. However, there is an exception to this general rule when there is a dissolution of a participant's marriage or State-registered domestic partnership.

Under California's community property laws, retirement benefits earned during a marriage or a State-registered domestic partnership are community property assets that may be divided when a marriage is dissolved or a domestic partnership is terminated. This can involve complicated property rights and tax issues. **You should seek competent legal advice to help you understand these issues.**

We hope these *Dissolution of Marriage or Domestic Partnership Guidelines* will provide answers to most of the questions that participants, former spouses, former partners and their attorneys need to know about the Police and Fire Plan during the preparation of the court order that divides the retirement benefits. A copy of the Plan provisions which describe Plan-Approved Domestic Relations Orders (PADROs) is included for your reference.

The Retirement Office staff can not provide legal advice, but we can provide additional information about the Plan. If you have questions, please contact us. We are ready to help you through this difficult process.

Basic Information

San José Municipal Code, Chapter 3.36, Part 17 sets out the requirements for a Plan- Approved Domestic Relations Order (PADRO). This is a court order setting forth the terms and conditions of the division of the retirement benefits. The Retirement Board can comply only with a court order that meets the requirements of Part 17.

One of the requirements of Part 17 is that if payments are to be made by the Retirement Plan to a former spouse or former domestic partner, the Police and Fire Department Retirement Plan **must be joined** as a party in the marital dissolution or the termination of a domestic partnership in accordance with Chapter 6 of Part 1 of Division 6 of the California Family Code.

The law firm of Saltzman & Johnson represents the Plan in these cases. The firm's contact information is: Russell Richeda, Saltzman & Johnson, 44 Montgomery Street, Suite 2110, San Francisco, CA 94104; (415) 882-7900; rricheda@sjlawcorp.com. We strongly suggest that you submit the draft PADRO to Saltzman & Johnson for review before its submission to the Court to make sure it meets the requirements of Part 17.

The Police and Fire Department Retirement Plan is a governmental plan under federal law. It is not subject to the Employee Retirement Income Security Act (ERISA).

Neither the Retirement Office staff nor the Retirement Board administers the City of San José Deferred Compensation Plan. You must contact Human Resources for Deferred Compensation Plan information.

Dividing Your Retirement Benefits

Part 17 permits the Court to divide the retirement benefits under two different options, the Combined Account Option and the Separate Account Option. If you are already retired or otherwise separated from City service, the only option available is the Combined Account Option. The Separate Account Option is available only if the participant is an active City employee.

Three sample PADROs are included with these *Guidelines* to assist the parties in the preparation of the PADRO.

- If the participant is retired or has otherwise separated from City service, refer to sample PADRO 1. This PADRO divides the benefit which the Plan is already paying (or will pay when the separated participant begins distribution) and permits the Plan to make payments directly to each party.
- If the participant is an active employee and the parties have elected the combined account option, refer to sample PADRO 2. This PADRO divides the benefit that will be paid upon retirement and permits the Plan to make payments directly to each party.
- If the participant is an active employee and the parties have elected the separate account option, refer to sample PADRO 3. This PADRO divides the retirement account proportionally and allows each party to make independent decisions on handling the account.

There are advantages and disadvantages with each of these options. You should consult with your legal counsel to determine which option is better for you.

Combined Account Option

In the Combined Account Option, the Retirement Plan maintains one account. When the participant retires, the Plan pays a portion of the monthly benefit to each person. Each person's share of the community property interest in the retirement benefits is calculated as a percentage. The calculation is done at the time of the participant's retirement, and the percentage is then applied to each monthly retirement benefit when the benefit is paid.

The most common method for calculating the percentage is known as the "time rule" formula, but the parties may determine the percentage themselves or provide that number in the PADRO.

The "time rule" calculation is as follows.

First the Community Fraction is determined. The numerator of the Community Fraction is the number of years of service credit in the Plan earned during the marriage or domestic partnership. The denominator is the participant's total years of service credit in the Plan at the time of the participant's retirement.

Example:

If the number of years the parties were married while the participant was in the Plan is 15 and the participant's total service credit at the time of retirement is 30, the Community Fraction would be $\frac{15}{30}$ or 50%.

Next, the Community Fraction is divided between the parties, usually one-half (or 50%) to each, and the result becomes the percentage of each monthly benefit that is paid to the alternate payee.

Combined Account (Continued)

Example:

In the above example, if the Community Fraction is divided 50% to each party, the former spouse would receive 25% of each monthly retirement benefit payment ($50\% \times \frac{15}{30} = 25\%$), and the participant would receive the remaining 75%.

Payments to Participant and Alternate Payee

In the Combined Account Option, the Plan only makes payments to the former spouse or former domestic partner (known as the "alternate payee") at the times the Plan makes payments to the participant. The Plan will send the participant's share of each monthly benefit to the participant and the alternate payee's share to the alternate payee. This can be done by check or, in certain situations, by direct deposit. If the participant is already retired, the Plan will start making payments to the alternate payee as soon as possible after the PADRO is filed with the court and served on the Plan. If the participant has not yet retired, the alternate payee must wait until the participant retires in order to receive benefits paid from the Plan. If the participant continues to work beyond retirement eligibility, the alternate payee may be able to elect to have the participant pay the benefits from other assets (e.g., current salary) until such time as the participant actually retires.

If the participant has not yet retired, the alternate payee may be able to elect an alternate distribution of his or her share of the benefits to be paid when the participant retires. This consists of converting the actuarially equivalent amount of the alternate payee's benefits to a life annuity. Generally, the alternate payee would receive a smaller monthly payment but the payments would continue for the rest of the alternate payee's life. If the alternate payee does not elect

this form of distribution, payments to the alternate payee will terminate once the participant and any eligible surviving spouse or eligible surviving domestic partner both die. **NOTE:** This election is only available if it is made no earlier than when the participant files a retirement application and no later than 30 days after retirement. It is not available if the participant has already retired.

Death of Either Party

Under the terms of the Plan, a former spouse or former domestic partner is not entitled to survivor's benefits. If the participant dies, the Plan will pay survivorship benefits only to an eligible surviving spouse or domestic partner (i.e., the person who was the spouse or domestic partner both at the time of the participant's retirement and at the time of the participant's death). The PADRO may provide that the alternate payee has an interest in surviving spouse or surviving domestic partner benefits in the case where the participant dies and such benefits are payable by the Plan (sample language is included in the sample PADROs); payments to the alternate payee would stop upon the death of the eligible survivor. However, if the PADRO does not contain this provision, the Plan will pay survivor's benefits, if any are payable, only to the surviving spouse or domestic partner and all payments to the alternate payee will stop. In addition, if the participant dies leaving no eligible surviving spouse or domestic partner, no further payments will be made to the alternate payee.

Part 17 provides that an alternate payee may designate a beneficiary to receive amounts which otherwise would be payable to the alternate payee. If the alternate payee does not designate a beneficiary, the amounts will be paid to the alternate payee's estate.

Separate Account Option

In the Separate Account Option, the participant's retirement account is divided at the time of the marital dissolution and a separate account is established in the name of the alternate payee. The participant's service credit earned and the employee contributions (plus interest) accrued during the marriage or domestic partnership are divided between the participant's account and the alternate payee's account. The division may be determined by using the time rule formula discussed above or the division may be on an equal basis with one-half to each party or the parties may specify another division. **The Separate Account Option is available only if the participant is an active City employee.**

The division of the service credit will not affect a participant's vesting or eligibility for retirement. For those purposes, the service credit is aggregated. However, the service credit in the alternate payee's account will not be used to calculate the amount of the participant's actual monthly benefit.

If, at the time the PADRO is filed with the court, the participant has less than 10 years of service credit, the alternate payee will receive a pay-out of the accumulated contributions placed in the alternate payee's account.

If, at the time the PADRO is filed with the court, the participant has 10 or more years of service credit, the alternate payee can elect to receive a pay-out of the accumulated contributions or can leave the money on deposit with the Plan and receive a monthly benefit later when the alternate payee meets the eligibility requirements. The monthly payments will be based on the amount of service credit in the alternate payee's separate account and on the participant's final average compensation. If the alternate

payee begins receiving benefits before the participant retires, final compensation is fixed as of the date the first payment is made to the alternate payee. If the participant retires before the alternate payee receives a benefit, final compensation is the same as the compensation used to calculate the participant's benefit.

If the alternate payee receives a pay-out, the participant can elect to redeposit the funds (plus interest) and receive service credit for the service that had been allocated to the alternate payee. The election must be made within 5 years of the time the participant is notified of the right to make the redeposit, and the redeposit must be completed before the participant retires. Staff at the Retirement Office will be able to calculate the amount that would need to be redeposited if the participant wants to make this election.

In order for the alternate payee to receive monthly payments certain conditions must be met.

- The alternate payee must be at least 50 years of age. (There is a reduction in the benefit if the alternate payee is age 50 – 54. There is no reduction if the alternate payee is at least age 55.)
- The participant must be eligible to retire for service. If the participant has already retired for disability or has died prior to becoming eligible for service retirement, the alternate payee must wait until the time the participant would have been eligible for service retirement had the participant continued working.
- The alternate payee must file a written application with the Retirement Office.
- The Retirement Board must approve the payment.

Separate Account (Continued)

Unlike the Combined Account, in the Separate Account Option, the alternate payee does not have to wait until the participant actually retires in order to receive benefits. If the alternate payee meets the eligibility requirements set out above, the alternate payee can elect to receive benefits from the Plan even if the participant continues working.

Death of Either Party

In the Separate Account Option, the alternate payee's benefits are not dependent upon the participant or any survivor of the participant. Benefits payable to the alternate payee do not terminate if the participant dies leaving no eligible surviving spouse or domestic partner. The alternate payee can still receive benefits from the alternate payee's separate account for the alternate payee's lifetime.

The alternate payee may designate a beneficiary to receive a pay-out of any accumulated contributions remaining in the alternate payee's separate account at the time of the alternate payee's death. If the alternate payee does not name a beneficiary, any remaining contributions in the account will be paid to the alternate payee's estate. There is no continuation benefit to the alternate payee's beneficiary; except for a pay-out of remaining contributions, payments from the separate account cease upon the death of the alternate payee.

Definitions

"Police and Fire Department Retirement Plan" and "Police and Fire Plan" refer to the retirement plan set out in Chapters 3.36 and 3.44 of the San José Municipal Code. A copy of the Plan can be found on the City's website at www.sanjoseca.gov through the Municipal Code link found under "Local Government".

"Participant" means a person who is a member of the Police and Fire Plan or who has retired under the Police and Fire Plan.

"Alternate payee" means the former spouse or the former domestic partner of the participant.

"Domestic partnership" means a domestic partnership that has been established under State law (Division 2.5 of the California Family Code). If the partnership was formed in California, this must be done by filing a Declaration of Domestic Partnership with the Secretary of State. If the legal union was formed in another state or country, it must be recognized as a domestic partnership under Family Code Section 299.2. If the parties have submitted an Affidavit of Domestic Partnership to participate in the City of San José health plans and have not formed a domestic partnership recognized by the State, that is not sufficient for the community property statutes to apply. The partnership must meet State law requirements.

Guidelines Not Mandatory

Participants and former spouses are not required to use the provisions in these *Guidelines*. The *Guidelines* are intended to assist the parties and their attorneys in preparing PADROs. However, if you decide to deviate from the *Guidelines*, you are advised to consult with the Retirement Office to determine whether the changes you make will satisfy the requirements of Part 17.

Part 17 - PLAN-APPROVED DOMESTIC RELATIONS ORDERS

*Footnotes:**--- (3) ---*

Editor's note— Ord. 27712, § 16, adopted May 16, 2006 amended Part 17, in its entirety, to read as herein set out. Prior to inclusion of said ordinance, Part 17 pertained to similar subject matter. See also the Code Comparative Table.

3.36.3500 - Purpose and applicability.

- A. The purpose of this Part 17 is to set forth the requirements for plan-approved domestic relations orders that may be awarded by a court in a dissolution of marriage, termination of domestic partnership, or legal separation action with respect to community property rights in benefits provided by this plan.
- B. This part shall apply only in those dissolution of marriage, termination of domestic partnership, or legal separation proceedings which are pending on January 14, 2000, in which the court has reserved jurisdiction over the retirement benefits or has not yet awarded the benefits, or in which the court issues a supplemental order with respect to the division of the community property rights in benefits provided by this plan.
- C. If benefits are payable pursuant to a qualified domestic relations order that meets the requirements of a domestic relations order as defined in Section 414(p) of the Internal Revenue Code, then the applicable requirements of Section 414(p) of the Internal Revenue Code shall be followed by the retirement plan.

(Ords. 27712, 28886.)

3.36.3510 - Compliance with plan-approved domestic relations orders.

The board of administration shall comply only with domestic relations orders that are plan-approved domestic relations orders pursuant to this Part. The board shall not authorize payments to an alternate payee pursuant to any order that does not meet the requirements of a plan-approved domestic relations order.

(Ord. 27712.)

3.36.3520 - "Domestic relations order" defined.

"Domestic relations order" or "DRO" means any judgment, decree or order (including court approval of a property settlement agreement) which relates to community property rights in the case of a marital dissolution, termination of domestic partnership, or legal separation and which is made pursuant to a state domestic relations law.

(Ord. 27712.)

3.36.3530 - "Participant" defined.

"Participant" means a member of this plan, a retired member of this plan, or a former member of this plan who separated from city service but left his or her accumulated contributions on deposit with the plan.

(Ord. 27712.)

3.36.3540 - "Alternate payee" defined.

- A. "Alternate payee" means the spouse, domestic partner, former spouse or former domestic partner of a participant in this plan who, as a result of petitioning a court of competent jurisdiction for the division of community property, has been awarded an interest in the benefits payable to a participant in this plan.
- B. A spouse, domestic partner, former spouse or former domestic partner who is awarded an interest in such benefits shall not be or become a participant of this plan by virtue of such award or the payment of such benefits.

(Ord. 27712.)

3.36.3550 - "Plan-approved domestic relations order" defined.

- A. "Plan-approved domestic relations order" means a domestic relations order which:
 - 1. Sets forth an alternate payee's right to receive a portion of the benefits payable to a participant of this plan;
 - 2. Pursuant to Section 2610 of the California Family Code, orders the division of the community interest in the benefits payable to a participant; and
 - 3. Meets the requirements of this part.
- B. A DRO is a plan-approved domestic relations order only if the plan has been joined in the dissolution of marriage, termination of domestic partnership, or legal separation action pursuant to Chapter 6 (commencing with Section 2060) of Part 1 of Division 6 of the California Family Code.
- C. A DRO is a plan-approved domestic relations order only if the order clearly specifies that it:
 - 1. Does not require the plan to provide any type or form of benefit, or any option, not otherwise provided under the plan; and
 - 2. Does not require the plan to provide benefits (determined on the basis of actuarial value) in excess of those provided by the plan.
- D. A DRO is not a plan-approved domestic relations order if it provides for any of the following:
 - 1. Payment from this plan to an alternate payee at any time prior to the date the participant has both separated from city service and begun to receive payments from this plan, except as provided in Section 3.36.3600, Section 3.36.3620, or Section 3.36.3630.
 - 2. Payment from this plan because of the disability of the alternate payee, except as provided in Section 3.36.3580 or Section 3.36.3660.
 - 3. Payment from this plan of any premium, or portion thereof, for medical or dental insurance coverage for the alternate payee.
 - 4. Designation of the alternate payee as a surviving spouse or surviving domestic partner for the purpose of receiving any surviving spouse benefit, surviving domestic partner benefit, or death benefit provided under this plan on account of the death of the participant.
 - 5. The alternate payee to make any contributions to the plan or the retirement fund or to purchase service credit in the plan.

(Ord. 27712.)

3.36.3560 - Dissolution, termination or legal separation before the participant has separated from city service.

If the marital dissolution, termination of domestic partnership or legal separation occurs before the participant has separated from city service, and the court orders the division of the community interest in this plan pursuant to Section 2610 of the Family Code, then the DRO will be a plan-approved domestic relations order if it meets the requirements of Section 3.36.3580 or Section 3.36.3600.

(Ord. 27712.)

3.36.3570 - Dissolution, termination or legal separation after the participant has separated from city service.

If the marital dissolution, termination of domestic partnership, or legal separation occurs after the participant has separated from city service, whether for retirement, resignation or any other reason, and the court orders the division of the community interest in this plan pursuant to Section 2610 of the Family Code, then:

- A. In order to be a plan-approved domestic relations order the DRO must satisfy the requirements of Section 3.36.3580.
- B. The separate account option set forth in Section 3.36.3600 shall not be available, and the DRO shall not order the establishment of a separate account for the alternate payee.
- C. The DRO shall not in any way change any election made by the participant at the time of retirement or other separation from city service.

(Ord. 27712.)

3.36.3580 - Combined account option.

- A. If the court orders the division of the community interest in this plan pursuant to Section 2610 of the Family Code, the board will comply with a DRO which divides the community property interests of a participant and the participant's alternate payee, provided that the DRO meets all of the following requirements:
 1. Is a plan-approved domestic relations order under Section 3.36.3550.
 2. Includes the date of the marriage or the date of establishing the domestic partnership and the date on which the parties separated.
 3. Includes the last known mailing address of the alternate payee covered by the order.
 4. Specifies the amount or percentage of the participant's monthly benefit, or the participant's accumulated contributions in the event the participant elects a withdrawal of accumulated contributions, which is to be paid to the alternate payee or specifies the manner in which such amount or percentage is to be determined.
 5. Subject to Sections 3.36.3650 and 3.36.3660, specifies the portion of the participant's monthly disability benefits which is to be paid to the alternate payee and the time when such payment to the alternate payee is to commence:
 - a. In the event the participant retires for disability after the date of the dissolution of marriage or legal separation but prior to the time the participant is eligible to retire for service; or
 - b. In the event the participant has already retired for disability as of the date of the dissolution of marriage or legal separation.
 6. Specifies that the plan shall pay the alternate payee's portion of the benefits to the alternate payee only at such time or times as the plan makes payments to the participant.

7. Specifies that, unless the alternate payee has elected a life annuity option pursuant to Section 3.36.3590, payments by the plan to the alternate payee shall terminate when payments to the participant (or the participant's eligible surviving spouse or eligible surviving domestic partner) terminate.
 8. Specifies that the alternate payee shall not be entitled to payment from the plan of any premium, or portion thereof, for medical or dental insurance coverage.
 9. Specifies that the alternate payee shall not be deemed an eligible surviving spouse or eligible surviving domestic partner under the terms of the plan.
 10. Specifies that the plan may offset any payments made by the plan to either party for any amounts to which the other party was entitled, but which were erroneously paid to the party against whom the offset is made.
- B. In addition to the requirements of subsection A., the DRO may address the rights of the alternate payee with respect to the following:
1. In accordance with Section 3.36.3640, the right to designate a beneficiary.
 2. The right to elect an alternate distribution option pursuant to Section 3.36.3590.

(Ord. 27712.)

3.36.3590 - Alternate distribution option for alternate payee.

- A. In the event the alternate payee is awarded a combined account, the alternate payee may elect an alternate distribution option as provided in this section by filing a written election with the retirement board on a form provided by the secretary to the board. The election must be filed no earlier than the time the participant files an application for retirement and no later than thirty (30) days after the effective date of the participant's retirement.
- B. Any election made pursuant to the provisions of this section may be revoked by the alternate payee provided that the revocation is made in writing and is filed with the retirement board no later than thirty (30) days after the effective date of the participant's retirement. If the election is not revoked within thirty (30) days of the effective date of the participant's retirement, the election shall be irrevocable and benefits shall be paid in accordance with the election and the provisions of this plan.
- C. The alternate distribution option consists of an election to have the actuarial equivalent of any allowance payable to the alternate payee from the combined account applied to provide a lesser monthly allowance to the alternate payee until the participant's death and, thereafter, to continue such lesser monthly allowance to the alternate payee for the life of the alternate payee.
- D. Any age factor used in the calculation of benefits payable under the alternate distribution option shall be based on the ages of the participant and the alternate payee as of the date benefits first become payable to the participant.

(Ord. 27712.)

3.36.3600 - Separate account option.

- A. If the court orders the division of the community interest in this plan pursuant to Section 2610 of the Family Code, and the participant has not separated from city service at the time of the entry of the DRO, the court may order that the accumulated employee contributions and service credit attributable to periods of the

participant's service during the marriage shall be divided into two (2) separate and distinct accounts in the name of the participant and alternate payee, respectively.

- B. Any accumulated contributions or service credit that are not explicitly awarded by the DRO shall be deemed to be the exclusive property of the participant.
- C. The board will comply with a DRO which orders the establishment of separate accounts provided that the DRO meets all of the following requirements:
 - 1. Is a plan-approved domestic relations order under Section 3.36.3550.
 - 2. Includes the date of the marriage or date of establishing the domestic partnership and the date on which the parties separated.
 - 3. Includes the last known mailing address of the alternate payee covered by the order.
 - 4. Specifies the amount or percentage of the accumulated contributions and service credit to be credited to the alternate payee's separate account or specifies the manner in which such amount or percentage is to be determined.
 - 5. Specifies the rights of the alternate payee with respect to the following:
 - a. In accordance with Section 3.36.3610, the right to a refund of accumulated employee contributions and interest.
 - b. In accordance with Section 3.36.3630, the right to receive a monthly allowance.
 - c. In accordance with Section 3.36.3640, the right to designate a beneficiary.
 - 6. Specifies that, in the capacity of alternate payee, the alternate payee shall not be entitled to any of the following:
 - a. Payment from the plan because of the disability of the alternate payee.
 - b. Payment from the plan of any death benefit or survivor's benefit payable because of the death of the participant.
 - c. Payment from the plan of any premium, or portion thereof, for medical or dental insurance coverage.

(Ord. 27712.)

3.36.3610 - Distribution of accumulated contributions in separate account.

- A. If the court orders the establishment of separate accounts pursuant to Section 3.36.3600 and, as of the date of entry of the DRO with the court, the participant is entitled to less than ten (10) years of service credit in this plan, the alternate payee shall receive a distribution of the accumulated contributions and credited interest placed in the alternate payee's account.
- B. If, as of the date of entry of the DRO with the court, the participant is entitled to ten (10) or more years of service credit in this plan, the alternate payee may elect to receive a distribution of the accumulated contributions and credited interest placed in the alternate payee's account.
 - 1. The alternate payee may make such election at any time after the establishment of the alternate payee's separate account.
 - 2. The alternate payee shall make such election by filing an application for distribution with the secretary to the board on a form provided by the secretary.
- C. Any distribution of accumulated contributions made to an alternate payee shall be effective when the plan

deposits in the United States mail a warrant drawn in favor of the alternate payee and addressed to the latest address for the alternate payee on file with the plan, or to such other address as is specified in writing by the alternate payee.

D. Once a distribution made pursuant to this section becomes effective:

1. The alternate payee may not cancel the refund or revoke the election for distribution.
2. The alternate payee shall be deemed to have permanently waived all rights in this Plan and all rights to the payment of any other benefits pertaining to the service credit or accumulated contributions, or both, in the alternate payee's separate account; and
3. The alternate payee shall have no right to redeposit the distributed accumulated contributions.

(Ord. 27712.)

3.36.3620 - Participant's redeposit of contributions refunded to alternate payee.

If an alternate payee receives a refund under Section 3.36.3610, the participant may elect to redeposit the accumulated contributions and interest refunded to the alternate payee and to receive credit for the service that had been allocated to the alternate payee.

- A. Such election shall be made within five years after notice to the participant from the secretary to the board of the participant's option to redeposit the contributions.
- B. The participant shall make such election by filing, a written statement of election with the secretary to the board on a form provided by the secretary.
- C. Except as provided in paragraph 1. of Subsection F. below, the participant shall not be entitled to receive credit for the service that had been allocated to the alternate payee unless, prior to the date the participant retires the participant redeposits:
 1. All contributions and interest distributed to the alternate payee; plus
 2. All additional interest which would have been earned on the distributed contributions and interest at the actual rate earned by the retirement fund, as of the date the participant elects to redeposit, if the contributions and interest had not been distributed to the alternate payee; plus
 3. Interest on the unpaid balance of all such moneys, at the interest rate in effect on the date the participant files the election, from the date the participant elects the redeposit to the date all such moneys and interest are fully redeposited into the retirement fund.
- D. Such redeposit shall be made within the time and in the manner provided by the board.
- E. If the participant does not make the election within the time provided herein, the participant shall be deemed to have elected not to have such service credited to the participant.
- F. If the participant elects to redeposit contributions and interest refunded to the alternate payee but does not redeposit all required amounts plus interest within the time and in the manner provided by the board, then:
 1. If the failure to complete the redeposit is because of the death of the participant, while a member of this plan but prior to retirement, the participant shall be credited with the amount of service which is determined by the board to be attributable to the amount of payments made as of the date of the participant's death.

2. If the failure to complete the redeposit is for any reason other than the death of the participant prior to payments made pursuant to the election shall be credited to the participant's accumulated contribution: the participant shall receive no service credit that had been allocated to the alternate payee.

(Ords. 27712, 29266, 29879.)

3.36.3630 - Monthly allowance for alternate payee.

- A. An alternate payee who has been awarded a separate account shall be paid a monthly allowance from the retirement fund, for the life of the alternate payee, if all of the following conditions are satisfied:
 1. The alternate payee has not received a refund of accumulated contributions.
 2. Notwithstanding any service credit awarded to the alternate payee as of the date the alternate payee files an application for monthly benefits:
 - a. The participant is eligible to retire for service under provisions of this plan; or
 - b. In the case where the participant retired for disability or died prior to becoming eligible for service retirement, the participant would have been eligible to retire for service had the participant continued working; or
 - c. In the case of a participant who left city service without retiring, the participant is eligible to receive a monthly allowance under Section 3.36.1640, or would have been eligible had the participant not elected a refund of his or her accumulated contributions.
 3. The alternate payee has attained at least fifty years of age.
 4. The alternate payee files a written application for monthly benefits with the secretary to the board on a form provided by the secretary.
 5. The board approves the payment of such monthly allowance.
- B. The monthly allowance to the alternate payee shall begin to accrue on the later of the date designated in the alternate payee's application or the day following the date of the court order dividing the community property of the participant and the alternate payee. In no event shall the monthly allowance begin to accrue earlier than the first day of the month in which the alternate payee's application is received by the secretary to the board.
- C. Subject to the provisions of Section 3.36.3650 and 3.36.3660 and Subsection D., unless a different calculation is expressly provided in the domestic relations order:
 1. In the case where the participant separated from service prior to February 4, 2000, and subject to a maximum of forty percent of the participant's final compensation, the amount of the monthly allowance payable to the alternate payee shall be:
 - a. Two and one-half percent of the participant's final compensation for each of the first ten years of service credit credited to the alternate payee's separate account; plus
 - b. Three percent of the participant's final compensation for each year of service credit credited to the alternate payee's separate account that is in excess of ten years.
 2. Except as provided in paragraph 3. or paragraph 4. below, in the case where the participant is not a tier 2 member and separates from service on or after February 4, 2000, and subject to a maximum of forty-two and one-half percent of the participant's final compensation, the amount of the monthly allowance payable to the alternate payee shall be:

- a. Two and one-half percent of the participant's final compensation for each of the first ten years of service credited to the alternate payee's separate account; plus
 - b. Three percent of the participant's final compensation for each of the next two and one-half years of service credit credited to the alternate payee's separate account; plus
 - c. Four percent of the participant's final compensation for each year of service credit credited to the alternate payee's separate account that is in excess of twelve and one-half years.
 3. In the case where the participant is not a tier 2 member and was employed in the police department and separates from service on or after July 1, 2006, and subject to a maximum of forty-five percent of the participant's final compensation, the amount of the monthly allowance payable to the alternate payee shall be:
 - a. Two and one-half percent of the participant's final compensation for each of the first ten years of service credit credited to the alternate payee's separate account; plus
 - b. Four percent of the participant's final compensation for each year of service credit credited to the alternate payee's separate account that is in excess of ten years.
 4. In the case where the participant is not a tier 2 member and was employed in the fire department and separates from service on or after July 1, 2008, and subject to a maximum of forty-five percent of the participant's final compensation, the amount of the monthly allowance payable to the alternate payee shall be:
 - a. In the case where the alternate payee's account is credited with less than ten years of service credit, two and one-half percent of the participant's final compensation for each year of service credit credited to the alternate payee's separate account.
 - b. In the case where the alternate payee's account is credited with ten or more years of service credit, three percent of the participant's final compensation for each year of service credit credited to the alternate payee's separate account.
 5. In the case where a tier 2 member separates from service and is subject to a maximum of eighty percent of the tier 2 participant's final compensation, the amount of the monthly allowance payable to the alternate payee shall be determined based on an annual allowance equal to two and two-fifths percent of his or her final compensation for each of the first twenty full years of service, plus three percent of his or her final compensation for each of the next five full years of service, plus three and two-fifths percent of his or her final compensation for each full year of service in excess of the first twenty-five years of service for each year of service credit credited to the alternate payee's separate account.
- D. In the event the alternate payee of participant other than a tier 2 member elects to receive a monthly benefit before the nonmember spouse reaches age fifty-five, the alternate payee's monthly benefit shall be reduced by an amount calculated in the same manner as the reduced monthly service retirement allowance of a member under Subsection B. of Section 3.36.810. In the event the alternate payee of a tier 2 member elects to receive a monthly benefit before the nonmember spouse reaches age fifty-seven, the alternate payee's monthly benefit shall be reduced by an amount calculated in the same manner as the reduced monthly service retirement allowance of a member under Subsection F. of Section 3.36.810.
- E. For the purposes of this section:
1. If the alternate payee elects to receive a monthly allowance prior to the date the participant retires, "final compensation" means the monthly final compensation of the participant as of the effective date of the

first payment of the alternate payee's allowance.

2. If the participant retired either for service or disability prior to the effective date of the payment of the alternate payee's allowance, "final compensation" means the monthly final compensation used in calculating the participant's retirement allowance.

F. Monthly allowances payable to the alternate payee shall be increased by cost-of-living adjustments in accordance with Chapter 3.44.

(Ords. 27712, 27721, 28300, 29266, 29879.)

3.36.3640 - Monthly allowance for participant.

A. If the court orders the establishment of separate accounts pursuant to Section 3.36.3600 and, as of the date the participant separates from service, the alternate payee has not received a distribution pursuant to Section 3.36.3610, then the monthly allowance payable to the participant upon the participant's eligibility for a monthly allowance shall be:

1. The monthly allowance that would be payable to the participant if no separate account had been established, less
2. The monthly allowance payable to the alternate payee pursuant to subsection C. of Section 3.36.3630.

B. If the court orders the establishment of separate accounts pursuant to Section 3.36.3600 and, as of the date the participant separates from service, the alternate payee has received a distribution pursuant to Section 3.36.3610 but the participant has received credit pursuant to Section 3.36.3620 for the service that had been allocated to the alternate payee, then the monthly allowance payable to the participant upon the participant's eligibility for a monthly allowance shall be the monthly allowance that would be payable to the participant if no separate account had been established.

C. If the court orders the establishment of separate accounts pursuant to Section 3.36.3600 and, as of the date the participant separates from service, the alternate payee has received a distribution pursuant to Section 3.36.3610 and the participant has not made a redeposit pursuant to Section 3.36.3620, then the monthly allowance payable to the participant upon the participant's eligibility for a monthly allowance shall be:

1. The monthly allowance that would be payable to the participant if no separate account had been established, less
2. The monthly allowance that would have been payable to the alternate payee pursuant to Subsection C. of Section 3.36.3630 if the alternate payee had not received a distribution.

(Ord. 27712.)

3.36.3650 - Designation of beneficiary by alternate payee.

- A. The alternate payee who has been awarded a combined account may designate a beneficiary to receive amounts which would be payable to the alternate payee but for the death of the alternate payee.
- B. The alternate payee who has been awarded a separate account may designate a beneficiary:
 1. To receive the accumulated contributions in the alternate payee's account in the case where the alternate payee dies prior to receipt of payment.
 2. To receive any accumulated contributions remaining in the alternate payee's separate account or to receive any unpaid allowance payable at the time of the alternate payee's death.

- C. The beneficiary shall be a natural person or persons. The designation may be by class, in which case the member of the class living at the time of the alternate payee's death shall be entitled as beneficiaries and shall take in equal shares unless otherwise specified by the alternate payee.
- D. A designation of a beneficiary shall be filed with the secretary to the board on a form provided by the secretary.
- E. The alternate payee may revoke or change the designation of a beneficiary at any time prior to the nonmember spouse's death. Any revocation or change of a designation of a beneficiary shall be in writing on a form provided by the secretary to the board, shall be notarized by a notary public, and shall be filed with the secretary.
- F. If the alternate payee does not designate a beneficiary or if all designated beneficiaries predecease the alternate payee:
 - 1. In the case of a alternate payee who has been awarded a combined account, any payments which would have been made to the alternate payee but for the death of the alternate payee shall be paid to the alternate payee's estate.
 - 2. In the case of an alternate payee who has been awarded a separate account, any accumulated contributions remaining in alternate payee's separate account and any unpaid monthly allowance payable at the time of the alternate payee's death shall be paid to the alternate payee's estate.
- G. Nothing in this section shall be deemed to mean that any alternate distribution option elected by an alternate payee shall continue beyond the death of the alternate payee. Payments of any amounts under an alternate distribution option cease upon the death of the alternate payee. Payment of any such amount to the alternate payee's beneficiary or estate is expressly limited to the monthly allowance, or portion thereof due but unpaid for the month in which the death of the alternate payee occurs.

(Ord. 27712.)

3.36.3655 - No payments resulting in increased benefits.

- A. Under no circumstances shall the board or this plan be required to make payments in any manner that would result in an increase in the amount of benefits provided under this plan.
- B. All benefits payable from this plan shall be determined on the basis of the actuarial assumptions and interest rates that are specifically set forth in this plan, or the economic and demographic actuarial assumptions and interest rates adopted by the board in those instances where the board has such authority under the provisions of this plan.
- C. Any age factor used in calculation of benefits to the alternate payee shall be based on the age of the alternate payee at the time benefits commence or, in the case where the alternate payee elects an alternate distribution option pursuant to Section 3.36.3590, as of the date benefits first become payable to the participant.

(Ord. 27712.)

3.36.3660 - Disability retirement of participant.

- A. If the participant retires for disability, the combined benefit payments to both the participant and the alternate payee shall not exceed the amount that would otherwise have been paid to the participant alone.

- B. In the case where the alternate payee has been awarded a separate account, no payment shall be made to the alternate payee until such time as the participant would have been eligible for a service retirement had the participant continued working. Disability benefits shall be allocated between the participant and the alternate payee as follows:
1. Until the date the participant would have been eligible for a service retirement or the date the alternate payee applies to receive a monthly allowance, whichever date is later, disability retirement benefits shall be paid to the participant without regard to the service credit awarded to the alternate payee.
 2. Once the participant would have been eligible for a service retirement had the participant continued working and the alternate payee applies to receive a monthly allowance from the retirement fund, the amount of the monthly allowance payable to each party shall be determined as though the participant had retired for service.

(Ord. 27712.)

**SAMPLE STIPULATION AND ORDER RE EMPLOYEE PENSION BENEFIT PLAN
(MEMBER SEPARATED FROM CITY SERVICE)**

SAMPLE PADRO 1

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF _____

In re the *[Marriage][Domestic Partnership]* of

Petitioner: _____

And

Respondent: _____

NO.:

**STIPULATION AND ORDER RE
EMPLOYEE PENSION BENEFIT
PLAN (PLAN-APPROVED
DOMESTIC RELATIONS ORDER)**

Claimant: POLICE AND FIRE
DEPARTMENT RETIREMENT PLAN

This Stipulation and Order is intended to determine and dispose of the interest of
_____ ("Alternate Payee") in the benefits provided to
_____ ("Participant") by Claimant, POLICE AND FIRE
DEPARTMENT RETIREMENT PLAN (the "Plan") in conformance with state law and the
provisions of the Plan[, and in conformance with the Settlement Agreement filed in the
Superior Court on _____].

SECTION 1. Participant and Alternate Payee stipulate to the following facts:

A. The *[marriage] [domestic partnership]* of Participant and Alternate Payee was
terminated by Final Judgment of Dissolution entered on _____, in the
Superior Court of _____ County, Case No. _____.

B. The Plan was joined in the dissolution proceeding on _____.

**SAMPLE STIPULATION AND ORDER RE EMPLOYEE PENSION BENEFIT PLAN
(MEMBER SEPARATED FROM CITY SERVICE)**

1 C. The date of [marriage] [domestic partnership] is _____.

2 D. The date of separation is _____.

3 E. The date of Participant's retirement/separation from City service
4 is _____.

5 F. The Social Security Numbers of Participant and Alternate Payee are:

6 Participant: _____

7 Alternate Payee: _____

8 *NOTE: Social Security Numbers may be omitted if they are provided to the Plan.*

9 **SECTION 2. Community Interest.**

10 The community interest in retirement benefits payable to Participant by the Plan
11 shall be determined by the fraction (the "Community Fraction") whose numerator
12 represents the number of months of service credit in the Plan earned during the [marriage]
13 [domestic partnership] and whose denominator represents the total service credit in the
14 Plan at the time of Participant's retirement or other separation from City service.

15 *NOTE: If the parties have agreed to a different calculation of the community*
16 *interest, substitute that calculation for the above paragraph.*

17 **SECTION 3. Division of Benefits Upon Participant's Retirement.**

18 Alternate Payee's share of monthly retirement benefits payable to Participant shall
19 be determined by multiplying each monthly payment by ____% of the Community Fraction.
20 Alternate Payee shall receive a pro rata share of any benefit increases resulting from cost-
21 of-living adjustments made to the monthly retirement allowance payments because of any
22 applicable Plan provisions. The Plan shall make payment of Alternate Payee's share of
23 monthly payments, less any taxes and other applicable deductions, directly to Alternate
24 Payee at such time as the Plan makes payment to Participant. The Plan shall begin such
25 payment to Alternate Payee as soon as practicable after the date of entry of this
26 Stipulation and Order and service of the Order on the Plan. Such payment shall be to
27 Alternate Payee at the address specified in Section 11 or to such other address as
28 Alternate Payee provides to the Plan in writing.

**SAMPLE STIPULATION AND ORDER RE EMPLOYEE PENSION BENEFIT PLAN
(MEMBER SEPARATED FROM CITY SERVICE)**

NOTE: If special provisions will apply in the case where Participant has retired for disability, those special provisions should be included.

SECTION 4. Division of Return of Employee Contributions.

A. Participant shall not request or receive a return of employee contributions without the written consent of Alternate Payee or further order of the court. In the event Alternate Payee consents to a return of employee contributions, the Plan shall pay a portion of such contributions plus accrued interest directly to Alternate Payee. Alternate Payee's share shall be determined by multiplying the amount of the distribution by ____% of the Community Fraction.

B. In the event the Plan provides for a return of employee contributions to Participant's estate because of the death of Participant, then upon Participant's death, the Plan shall pay a portion of such contributions plus accrued interest directly to Alternate Payee. Alternate Payee's share shall be determined by multiplying the amount of the distribution by ____% of the Community Fraction.

SECTION 5. Reinstatement of Participant as a Member of the Plan.

In the event Participant is reinstated to City service and is reinstated as a member of the Plan, this Order shall be suspended for the duration of such reinstatement. Upon Participant's retirement or other separation from City service after reinstatement, the suspension shall terminate and this Order shall be in full force and effect.

NOTE: This section may not be needed if the parties believe Participant will not return to City service.

SECTION 6. Survivor's Benefits.

Alternate Payee is acknowledged to have a pro rata interest in any surviving spouse or surviving domestic partner benefits payable by the Plan on account of the death of Participant. Alternate Payee's pro rata interest is ____% of the Community Fraction determined in accordance with Section 2 above. If surviving spouse or surviving domestic partner benefits are payable from the Plan, the Plan shall pay Alternate Payee's pro rata share directly to Alternate Payee. It is expressly understood that the terms of the Plan do

**SAMPLE STIPULATION AND ORDER RE EMPLOYEE PENSION BENEFIT PLAN
(MEMBER SEPARATED FROM CITY SERVICE)**

not provide survivorship benefits to former spouses or former domestic partners and that payment of a pro rata interest in surviving spouse or surviving domestic partner benefits is contingent upon such benefits being payable by the Plan. In the event Participant should die leaving no eligible surviving spouse and no eligible surviving domestic partner, as defined in the Plan, no further payments shall be made by the Plan to Alternate Payee.

NOTE: This provision may is not be needed if the Participant has is retired at the time of the dissolution; it may be appropriate if the Participant has separated from service other than for retirement and the Participant has not begun a distribution from the Plan. If the Alternate Payee is not awarded an interest in surviving spouse or surviving domestic partner benefits or if other arrangements are made in the property settlement such as an arrangement for an insurance policy on Participant's life with proceeds payable to Alternate Payee, this Section should be replaced with a Section that specifies that Alternate Payee has no interest in surviving spouse benefits which may become payable to an eligible surviving spouse.

SECTION 7. Remarriage/New Domestic Partnership of Participant.

In the event Participant remarries or enters into a domestic partnership and elects an optional settlement under San José Municipal Code Section 3.36.1468 providing for an actuarial reduction in Participant's monthly benefit in order to provide a continuation benefit to Participant's new spouse or domestic partner, Alternate Payee's benefit shall not be reduced but shall be calculated as though no such election were made. In the event Participant predeceases Alternate Payee and a continuation benefit is paid to Participant's new spouse or domestic partner because of the election for an actuarially reduced benefit, Alternate Payee shall have no interest in such continuation benefit, it being expressly understood that the continuation benefit has been paid for by the reduction in Participant's monthly benefit.

SECTION 8. Death of Participant.

It is expressly understood that the terms of the Plan do not provide survivorship benefits to former spouses or former domestic partners. Upon Participant's death, no

**SAMPLE STIPULATION AND ORDER RE EMPLOYEE PENSION BENEFIT PLAN
(MEMBER SEPARATED FROM CITY SERVICE)**

further payments shall be made by the Plan to Alternate Payee, except as provided in Section 4.B above.

SECTION 9. Prior Death of Alternate Payee.

Alternate Payee shall have the right to designate a beneficiary in accordance with the terms of the Plan. In the event Alternate Payee predeceases Participant, the Plan shall make payments of amounts that would otherwise have been made to Alternate Payee (a) to Alternate Payee's beneficiary designated in accordance with the terms of the Plan, or (b) to Alternate Payee's estate in any case where Alternate Payee has not designated a beneficiary in accordance with the Plan.

SECTION 10. Benefits Allocated to Participant.

All benefits payable from the Plan which are not allocated to Alternate Payee by this Stipulation and Order shall be allocated to Participant as Participant's separate property.

SECTION 11. Limitations.

- A. Alternate Payee shall not be or become a member of the Plan except to the extent that Alternate Payee is or becomes an employee of the City of San José otherwise entitled to become a member of the Plan.
- B. Alternate Payee shall not be entitled to payment from the Plan of any premium, or portion thereof, for medical or dental insurance coverage.
- C. Alternate Payee shall not be deemed an eligible surviving spouse or eligible surviving domestic partner under the terms of the Plan.

SECTION 12. Notice Addresses.

The current addresses of the parties and the Plan are:

Retirement Plan:	Police and Fire Department Retirement Plan
	City of San José
	1737 North First Street, Suite 580
	San José, CA 95112

**SAMPLE STIPULATION AND ORDER RE EMPLOYEE PENSION BENEFIT PLAN
(MEMBER SEPARATED FROM CITY SERVICE)**

Participant: _____

Alternate Payee: _____

Participant and Alternate Payee shall keep the Plan notified in writing of any change of address.

SECTION 13. Miscellaneous Provisions.

A. To the extent that either party receives the other party's share of any Plan benefits, for example as a result of a processing delay or error by the Plan, the party receiving sums properly due to the other shall promptly pay the other party such sums that may be due to him or her. Each party shall be under a duty of inquiry to ascertain that the payment he or she receives is the correct amount and does not contain the other party's share. This Order is without prejudice to the Plan's right to offset any payments made by the Plan to either party for any amounts to which the other party was entitled, but which were erroneously paid to the party against whom the offset is made.

B. The Plan shall not be required by the terms of this Order to provide any type or form of benefit or any option not otherwise provided under the Plan, to increase the amount of benefits provided by the Plan, to commit any violation of ordinances of the City of San José or the statutes of the State of California, nor to take any action that would jeopardize the Plan's tax qualification status under the Internal Revenue Code of 1986, as amended.

SECTION 13. Reservation of Jurisdiction.

Should any portion of this order be rendered invalid, illegal, unconstitutional, or otherwise incapable of enforcement, the court reserves jurisdiction to make such

**SAMPLE STIPULATION AND ORDER RE EMPLOYEE PENSION BENEFIT PLAN
(MEMBER SEPARATED FROM CITY SERVICE)**

adjustment in this Order as will effect the intent of the parties as to the benefits payable from the Plan. The court reserves jurisdiction to interpret and enforce this Order.

THE FOREGOING IS AGREED TO BY:

Participant

Alternate Payee:

[Name]

[Name]

Dated: _____

Dated: _____

[Name]

Attorney for Participant

[Name]

Attorney for Alternate Payee

ORDER

IT IS SO ORDERED:

Dated: _____

JUDGE OF THE SUPERIOR COURT

**SAMPLE STIPULATION AND ORDER RE EMPLOYEE PENSION BENEFIT PLAN
(ACTIVE EMPLOYEE – COMBINED ACCOUNT OPTION)**

SAMPLE PADRO 2

SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____

In re the *[Marriage][Domestic Partnership]* of

Petitioner: _____

and

Respondent: _____

Claimant: POLICE AND FIRE DEPARTMENT
RETIREMENT PLAN

NO.

**STIPULATION AND ORDER
RE EMPLOYEE PENSION
BENEFIT PLAN (PLAN-
APPROVED DOMESTIC
RELATIONS ORDER)**

This Stipulation and Order is intended to determine and dispose of the interest of _____ ("Alternate Payee") in the benefits provided to _____ ("Participant") by Claimant, POLICE AND FIRE DEPARTMENT RETIREMENT PLAN (the "Plan") in conformance with state law and the provisions of the Plan[, *and in conformance with the Settlement Agreement filed in the Superior Court on* _____].

SECTION 1. Participant and Alternate Payee stipulate to the following facts:

A. The *[marriage][domestic partnership]* of Participant and Alternate Payee was terminated by Final Judgment of Dissolution entered on _____, in the Superior Court of _____ County, Case No. _____.

B. The Plan was joined in the dissolution proceeding on _____.

**SAMPLE STIPULATION AND ORDER RE EMPLOYEE PENSION BENEFIT PLAN
(ACTIVE EMPLOYEE – COMBINED ACCOUNT OPTION)**

C. The date of [marriage][domestic partnership] is _____.

D. The date of separation is _____.

E. The Social Security Numbers of Participant and Alternate Payee are:

Participant: - - - -

Alternate Payee: - - - -

NOTE: Social Security Numbers may be omitted if they are provided to the Plan.

SECTION 2. Community Interest.

The community interest in retirement benefits payable to Participant by the Plan shall be determined by the fraction (the "Community Fraction") whose numerator represents the number of months of service credit in the Plan earned during the marriage and whose denominator represents the total service credit in the Plan at the time of Participant's retirement or other separation from City service.

Note: If the parties have agreed to a different calculation of the community interest, substitute that calculation for the above paragraph.

SECTION 3. Division of Benefits Upon Participant's Retirement.

Alternate Payee's share of monthly retirement benefits payable to Participant shall be determined by multiplying each monthly payment by ____% of the Community Fraction. Alternate Payee shall receive a pro rata share of any benefit increases resulting from cost-of-living adjustments made to the monthly retirement allowance payments because of any applicable Plan provisions. The Plan shall make payment of Alternate Payee's share of monthly payments, less any taxes and other applicable deductions, directly to Alternate Payee at such time or times as the Plan makes payment to Participant. Such payment shall be to Alternate Payee at the address specified in Section 12 or to such other address as Alternate Payee provides to the Plan in writing.

SECTION 4. Participant's Retirement for Disability.

A. In the event Participant retires from City service because of a disability and such disability retirement occurs prior to the date Participant would otherwise be eligible to retire under the terms of the Plan, then [the Plan shall pay Alternate Payee's share of each

**SAMPLE STIPULATION AND ORDER RE EMPLOYEE PENSION BENEFIT PLAN
(ACTIVE EMPLOYEE – COMBINED ACCOUNT OPTION)**

1 *monthly disability retirement benefit to Alternate Payee as provided in Section 3] OR*
2 *[notwithstanding Section 3, the Plan shall pay each monthly disability retirement benefit to*
3 *Participant until such time as Participant would have been eligible to retire for service*
4 *under the terms of the Plan had Participant continued working, and thereafter the Plan*
5 *shall pay Alternate Payee's share of each monthly benefit to Alternate Payee as provided*
6 *in Section 3].*

7 B. In the event Participant retires from City service because of a disability and
8 such disability retirement occurs on or after to the date Participant would otherwise be
9 eligible to retire under the terms of the Plan, then the Plan shall pay Alternate Payee's
10 share of each monthly disability retirement benefit to Alternate Payee as provided in
11 Section 3.

12 C. Under no circumstances shall the combined payments made by the Plan to
13 Participant and Alternate Payee exceed the amount that would otherwise be paid by the
14 Plan to Participant alone under the terms of the Plan.

15 **SECTION 5. Division of Return of Employee Contributions.**

16 In the event Participant separates from City service for reasons other than
17 retirement and requests a return of employee contributions, the Plan shall pay a portion of
18 such contributions plus accrued interest directly to Alternate Payee. Alternate Payee's
19 share shall be determined by multiplying the amount of the distribution by ____% of the
20 Community Fraction.

21 **SECTION 6. Continuation of Employment Beyond Retirement Eligibility.**

22 *NOTE: The parties may wish to include provisions regarding how taxes will be*
23 *handled during the time Participant makes payments to Alternate Payee.*

24 On any date after the date on which Participant first becomes eligible for retirement
25 under the terms of the Plan, Alternate Payee may elect to begin receipt of Alternate
26 Payee's share of retirement benefits by notifying Participant and the Plan of his/her
27 election (*In re Marriage of Gillmore*). Participant shall pay Alternate Payee's share directly
28 to Alternate Payee until such time as Participant retires or otherwise separates from City

**SAMPLE STIPULATION AND ORDER RE EMPLOYEE PENSION BENEFIT PLAN
(ACTIVE EMPLOYEE – COMBINED ACCOUNT OPTION)**

1 service. Upon Participant's retirement, such payments shall be made to Alternate Payee
2 by the Plan.

3 Notwithstanding Sections 2 and 3 above, if Alternate Payee elects to begin receipt
4 of payment under this provision, the calculation of Alternate Payee's share of the
5 community interest shall be based upon the service credit earned as of the date of
6 Alternate Payee's election and, except for cost-of-living adjustments provided by the Plan
7 as of the date of Alternate Payee's election, shall not include any amounts attributable to
8 any of the following events occurring after the date Alternate Payee commences his/her
9 receipt of benefits from Participant: changes in compensation earned by Participant,
10 increases in service credit, or increased benefits provided by the Plan.

11 **SECTION 7. Survivor's Benefits.**

12 Alternate Payee is acknowledged to have a pro rata interest in any surviving spouse
13 or surviving domestic partner benefits payable by the Plan on account of the death of
14 Participant. Alternate Payee's pro rata interest is ____% of the Community Fraction
15 determined in accordance with Section 2 above. If surviving spouse or surviving domestic
16 partner benefits are payable from the Plan, the Plan shall pay Alternate Payee's pro rata
17 share directly to Alternate Payee. It is expressly understood that the terms of the Plan do
18 not provide survivorship benefits to former spouses or former domestic partners and that
19 payment of a pro rata interest in surviving spouse or surviving domestic partner benefits is
20 contingent upon such benefits being payable by the Plan. In the event Participant should
21 die leaving no eligible surviving spouse and no eligible surviving domestic partner, as
22 defined in the Plan, no further payments shall be made by the Plan to Alternate Payee.

23 *NOTE: If the Alternate Payee is not awarded an interest in surviving spouse or*
24 *surviving domestic partner benefits or if other arrangements are made in the property*
25 *settlement such as an arrangement for an insurance policy on Participant's life with*
26 *proceeds payable to Alternate Payee, this Section should be replaced with a Section that*
27 *specifies that Alternate Payee has no interest in surviving spouse benefits which may*
28 *become payable to an eligible surviving spouse.*

**SAMPLE STIPULATION AND ORDER RE EMPLOYEE PENSION BENEFIT PLAN
(ACTIVE EMPLOYEE – COMBINED ACCOUNT OPTION)**

SECTION 8. Remarriage/Domestic Partnership of Participant After Retirement.

In the event Participant remarries or enters into a domestic partnership after Participant has retired or otherwise separated from City service and Participant elects an optional settlement under San José Municipal Code Section 3.36.1468 providing for an actuarial reduction in Participant's monthly benefit in order to provide a continuation benefit to Participant's new spouse or domestic partner, Alternate Payee's benefit shall not be reduced but shall be calculated as though no such election were made. In the event Participant predeceases Alternate Payee and a continuation benefit is paid to Participant's new spouse or domestic partner because of the election for an actuarially reduced benefit, Alternate Payee shall have no interest in such continuation benefit, it being expressly understood that the continuation benefit has been paid for by the reduction in Participant's monthly benefit.

SECTION 9. Prior Death of Alternate Payee.

Alternate Payee shall have the right to designate a beneficiary in accordance with the terms of the Plan. In the event Alternate Payee predeceases Participant, the Plan shall make payments of amounts that would otherwise have been made to Alternate Payee (a) to Alternate Payee's beneficiary designated in accordance with the terms of the Plan, or (b) to Alternate Payee's estate in any case where Alternate Payee has not designated a beneficiary in accordance with the Plan.

SECTION 10. Benefits Allocated to Participant.

All benefits payable from the Plan which are not allocated to Alternate Payee by this Stipulation and Order shall be allocated to Participant as Participant's separate property.

/ /

**SAMPLE STIPULATION AND ORDER RE EMPLOYEE PENSION BENEFIT PLAN
(ACTIVE EMPLOYEE – COMBINED ACCOUNT OPTION)**

SECTION 11. Limitations.

A. Alternate Payee shall not be or become a member of the Plan except to the extent that Alternate Payee is or becomes an employee of the City of San José otherwise entitled to become a member of the Plan.

B. Alternate Payee shall not be entitled to payment from the Plan of any premium, or portion thereof, for medical or dental insurance coverage.

C. Alternate Payee shall not be deemed an eligible surviving spouse or eligible surviving domestic partner under the terms of the Plan.

SECTION 12. Notice Addresses.

The current addresses of the parties and the Plan are:

Retirement Plan: Police and Fire Department Retirement Plan
City of San José
1737 North First Street, Suite 580
San José, CA 95112

Participant: _____

Alternate Payee: _____

Participant and Alternate Payee shall keep the Plan notified in writing of any change of address.

SECTION 13. Miscellaneous Provisions.

A. To the extent that either party receives the other party's share of any Plan benefits, for example as a result of a processing delay or error by the Plan, the party receiving sums properly due to the other shall promptly pay the other party such sums that may be due to him or her. Each party shall be under a duty of inquiry to ascertain that the payment he or she receives is the correct amount and does not contain the other party's share. This Order is without prejudice to the Plan's right to offset any payments made by

**SAMPLE STIPULATION AND ORDER RE EMPLOYEE PENSION BENEFIT PLAN
(ACTIVE EMPLOYEE – COMBINED ACCOUNT OPTION)**

the Plan to either party for any amounts to which the other party was entitled, but which were erroneously paid to the party against whom the offset is made.

B. The Plan shall not be required by the terms of this Order to provide any type or form of benefit or any option not otherwise provided under the Plan, to increase the amount of benefits provided by the Plan, to commit any violation of ordinances of the City of San José or the statutes of the State of California, nor to take any action that would jeopardize the Plan's tax qualification status under the Internal Revenue Code of 1986, as amended.

SECTION 12. Reservation of Jurisdiction.

Should any portion of this order be rendered invalid, illegal, unconstitutional, or otherwise incapable of enforcement, the court reserves jurisdiction to make such adjustment in this Order as will effect the intent of the parties as to the benefits payable from the Plan. The court reserves jurisdiction to interpret and enforce this Order.

THE FOREGOING IS AGREED TO BY:

Participant

Alternate Payee:

[Name]

[Name]

Dated: _____

Dated: _____

[Name]

Attorney for Participant

[Name]

Attorney for Alternate Payee

ORDER

IT IS SO ORDERED:

Dated: _____

JUDGE OF THE SUPERIOR COURT

**SAMPLE STIPULATION AND ORDER RE EMPLOYEE PENSION BENEFIT PLAN
(ACTIVE EMPLOYEE – SEPARATE ACCOUNT OPTION)**

SAMPLE PADRO 3

SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____

In re the Marriage of

Petitioner: _____

and

Respondent: _____

NO.

**STIPULATION AND ORDER
RE EMPLOYEE PENSION
BENEFIT PLAN (PLAN-
APPROVED DOMESTIC
RELATIONS ORDER)**

Claimant: POLICE AND FIRE DEPARTMENT
RETIREMENT PLAN

This Stipulation and Order is intended to determine and dispose of the interest of _____ ("Nonmember") in the benefits provided to _____ ("Participant") by Claimant, POLICE AND FIRE DEPARTMENT RETIREMENT PLAN (the "Plan") in conformance with state law and the provisions of the Plan[, and in conformance with the Marital Settlement Agreement filed in the Superior Court on _____].

SECTION 1. Participant and Nonmember stipulate to the following facts:

A. The marriage of Participant and Nonmember was terminated by Final Judgment of Dissolution entered on _____, in the Superior Court of _____ County, Case No. _____.

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1 B. The marriage of Participant and Nonmember was terminated by Final
2 Judgment of Dissolution entered on _____, in the Superior Court of
3 _____ County, Case No. _____.

4 C. The Plan was joined in the marital dissolution proceeding on
5 _____.

6 D. The date of marriage is _____.

7 E. The date of marital separation is _____.

8 F. The Social Security Numbers of Participant and Nonmember are:

9 Participant: ____ - ____ - ____

10 Nonmember: ____ - ____ - ____

11 *Note: Social Security Numbers may be omitted if they are provided to the Plan.*

12 **SECTION 2. Community Interest.**

13 The community interest in retirement benefits payable to Participant by the Plan
14 shall be determined by the fraction (the "Community Fraction") whose numerator
15 represents the number of months of service credit in the Plan earned during the marriage
16 and whose denominator represents the total service credit in the Plan as of _____.

17 *[Insert date; e.g., the date of marital separation, the date the Order is filed with the court.]*

18 *Note: If the parties have agreed to a different calculation of the community interest,*
19 *substitute that calculation for the above paragraph.*

20 **SECTION 3. Separate Account.**

21 A. As soon as administratively feasible after the filing of this Stipulation and
22 Order in the Superior Court and service of the Order and final Judgment of Dissolution on
23 the Plan, the Plan shall establish a separate account in Nonmember's name. The Plan
24 shall credit to Nonmember's account service credit and accumulated employee
25 contributions calculated as follows:

26 1. The amount of service credit to be credited to Nonmember's account
27 shall be determined by multiplying ____% of the Community Fraction by the
28

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number of years of Participant's service credit as of _____ [Insert date; e.g.,
the date of separation, the date this Stipulation and Order is filed with the court].

2. The amount of accumulated employee contributions to be credited to
Nonmember's account shall be determined by multiplying _____% of the Community
Fraction by the amount of the accumulated employee contributions (plus accrued
interest) standing to the credit of Participant as of _____ [Insert date; e.g.,
the date of separation, the date this Stipulation and Order is filed with the court].

B. In making the calculations specified in this Section, the Plan may rely on the
court date stamp on the copy served on the Plan as proof of the date of filing in the Court.

SECTION 4. Allocation to Participant.

All service credit and accumulated contributions not credited to Nonmember's
separate account and all benefits payable from the Plan which are not allocated to
Nonmember by this Stipulation and Order shall be allocated to Participant as Participant's
separate property.

SECTION 5. Control of Separate Accounts.

Participant and Nonmember shall each have control of the respective separate
accounts to the extent permitted by the Plan.

SECTION 6. Rights of Nonmember.

To the extent permitted by the Plan, with respect to Nonmember's separate
account, Nonmember shall have the following rights:

A. The right to a refund of the accumulated employee contributions and interest
credited to Nonmember's separate account.

B. The right to receive a monthly allowance upon satisfying the eligibility
requirements of the Plan. *NOTE: This provision of the Plan applies only if the Participant
is entitled to at least 10 years of service credit in the Plan as of the date of the entry of this
order.*

C. The right to designate a beneficiary in accordance with the terms of the Plan.

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3 **SECTION 7. Limitations.**

4 A. Nonmember shall not be or become a member of the Plan except to the extent
5 that Nonmember is or becomes an employee of the City of San José otherwise entitled to
6 become a member of the Plan.

7 B. Nonmember shall not be entitled to any payment from the Plan because of the
8 disability of Nonmember.

9 C. Nonmember shall not be entitled to payment from the Plan of any premium, or
10 portion thereof, for medical or dental insurance coverage.

11 D. Nonmember shall not be deemed an eligible surviving spouse under the terms
12 of the Plan, and shall not be entitled to any payment from the Plan of any death benefit or
13 survivor's benefit payable because of the death of Participant.

14 E. In the event Participant retires for disability prior to the time Participant is
15 eligible to retire for service, Nonmember shall not be entitled to payment from the Plan
16 except as expressly provided by the Plan.

17 **SECTION 8. Death of Nonmember.**

18 Upon the death of Nonmember, the Plan shall distribute any accumulated
19 employee contributions remaining in Nonmember's separate account or any unpaid
20 allowance otherwise payable to Nonmember as of the date of Nonmember's death (a) to
21 Nonmember's beneficiary designated in accordance with the terms of the Plan, or (b) to
22 Nonmember's estate in any case where Nonmember has not designated a beneficiary in
23 accordance with the Plan.

24 **SECTION 9. Distributions to Nonmember.**

25 Any and all distributions to Nonmember shall be made in accordance with the terms
26 of the Plan and shall be made, less any taxes and other applicable deductions, directly to
27 Nonmember at the address specified in Section ___ or to such other address as
28 Nonmember provides to the Plan in writing.

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SECTION 10. Notice Addresses.

The current addresses of the parties and the Plan are:

Retirement Plan: Police and Fire Department Retirement Plan
City of San José
1737 North First Street, Suite 580
San José, CA 95112

Participant: _____

Nonmember: _____

Participant and Nonmember shall keep the Plan notified in writing of any change of address.

SECTION 11. Miscellaneous Provisions.

A. To the extent that either party receives the other party's share of any Plan benefits, for example as a result of a processing delay or error by the Plan, the party receiving sums properly due to the other shall promptly pay the other party such sums that may be due to him or her. Each party shall be under a duty of inquiry to ascertain that the payment he or she receives is the correct amount and does not contain the other party's share. This Order is without prejudice to the Plan's right to offset any payments made by the Plan to either party for any amounts to which the other party was entitled, but which were erroneously paid to the party against whom the offset is made.

B. The Plan shall not be required by the terms of this Order to provide any type or form of benefit or any option not otherwise provided under the Plan, to increase the amount of benefits provided by the Plan, to commit any violation of ordinances of the City of San José or the statutes of the State of California, nor to take any action that would jeopardize the Plan's tax qualification status under the Internal Revenue Code of 1986, as amended.

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3 **SECTION 12. Reservation of Jurisdiction.**

4 Should any portion of this order be rendered invalid, illegal, unconstitutional, or
5 otherwise incapable of enforcement, the court reserves jurisdiction to make such
6 adjustment in this Order as will effect the intent of the parties as to the benefits payable
7 from the Plan. The court reserves jurisdiction to interpret and enforce this Order.

8 **THE FOREGOING IS AGREED TO BY:**

9 Participant

Nonmember:

10

11

12

13 [Name]

[Name]

14

15 Dated: _____

Dated: _____

16

17 [Name]

[Name]

18

19 Attorney for Participant

Attorney for Nonmember

20

ORDER

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IT IS SO ORDERED:

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23 Dated: _____

JUDGE OF THE SUPERIOR COURT

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