

Houston Municipal Employees Pension System

MODEL ORDER for DOMESTIC RELATIONS ORDER (SPOUSE)

This document is provided by the Houston Municipal Employees Pension System as a model order under Section 804.003(g)(9), Tex. Gov't Code, which states, "A public retirement system may reject a domestic relations order as a qualified domestic relations order unless the order . . . (9) if required by the retirement system, conforms to a model order adopted by the retirement system."

THIS IS A MODEL ORDER FOR A COURT ORDER FOR A PARTICIPANT OF THE HOUSTON MUNICIPAL EMPLOYEES PENSION SYSTEM WHO IS ELIGIBLE TO RECEIVE OR CURRENTLY IS RECEIVING BENEFITS UNDER ARTICLE 6243h, TEXAS REVISED CIVIL STATUTES, AS AMENDED.

CASE NO. _____

IN THE MATTER OF
THE MARRIAGE OF

AND

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IN THE DISTRICT COURT

OF _____ COUNTY

_____ JUDICIAL DISTRICT

DOMESTIC RELATIONS ORDER

This Order is intended to be a qualified domestic relations order ("QDRO"), as that term is defined in Chapter 804, Texas Government Code. This Order assigns to the Alternate Payee identified in Section 2 below ("Alternate Payee") a portion of the benefits payable in accordance with Article 6243h of the Civil Statutes of Texas, as amended, and any plan or plans created thereunder or by a predecessor statute, and other applicable law, as part of a division between the parties in respect of the Participant identified in Section 2 below ("Participant") in recognition of Alternate Payee's marital property rights in such benefits.

SECTION 1. IDENTIFICATION OF PLAN

This Order applies to benefits under the Houston Municipal Employees Pension System Pension Plan, and the Houston Municipal Employees Pension System Replacement Benefit Plan, if applicable ("the Plan").

SECTION 2. IDENTIFICATION OF PARTICIPANT AND ALTERNATE PAYEE

The Court finds that omission of the Social Security numbers of the parties is necessary to reduce the risk of identity theft and authorizes the parties to use an alternative method acceptable to the Plan to verify the Social Security numbers of Participant and Alternate Payee.

The name, last known address and social security number of the Plan Participant are:

Name: _____

Address: _____

Social Security Number: **Statement of Confidential Information attached**

The name, mailing address, and social security number of the "Alternate Payee" (as defined in §804.001, Tex. Gov't Code) are:

Name: _____

Address: _____

Social Security Number: **Statement of Confidential Information attached**

SECTION 3. AMOUNT OF BENEFIT TO BE PAID TO ALTERNATE PAYEE

As part of a just and right division of the community marital estate of the parties, the Court orders that the benefits accrued under the Plan in respect of Participant be divided as follows:

(a) Award to Alternate Payee:

(i) Retirement or Disability Pension: (Check one option under (i))

- Percentage of Participant's Normal Retirement Pension** (Select only if Participant is Active or Terminated Vested and not receiving a monthly pension as of the date of this Order.)

Alternate Payee is hereby awarded _____% of the normal retirement pension accrued on behalf of the Participant in the Plan (**check one**):

- as of _____ (**date of divorce**) based on average monthly salary calculated as of _____ (**date of divorce**).
- during the marriage of the parties, from _____ (**date of marriage**) to _____ (**date of divorce**) based on average monthly salary calculated as of _____ (**date of divorce**).

OR

- Percentage of Participant's Retirement Pension** (Select only if Participant is retired as of the date of this Order and is currently receiving a monthly pension.)

Alternate Payee is hereby awarded a portion of Participant's retirement pension in the Plan equal to _____% of the pension as of _____ (**date of divorce**).

If the Participant and Alternate Payee were not married during the entirety of Participant's service, then the following formula may be used to calculate the portion of Participant's retirement pension awarded to Alternate Payee that is based on the duration of the marriage: (The preparer of the QDRO must perform the calculation, as HMEPS does not perform the calculation.)

Alternate Payee's share of community property × $\frac{\# \text{ of months married to Participant during Participant's service}}{\# \text{ of months of Participant's service}}$

OR

Specific Dollar Amount Award

Alternate Payee is hereby awarded \$_____ from the monthly amount payable to Participant from the Plan.

OR

None of the Participant's monthly benefit is awarded to the Alternate Payee.

(ii) Refund of Contributions: (Available only with respect to Participants who have separated from employment and have not been approved for a benefit covered by the contributions). **(check one)**

_____% of the Participant's refunded member contributions attributable to the Participant's credited service **(check one)**:

as of _____ **(date of divorce)**.

during the marriage of the parties, from _____ **(date of marriage)** to _____ **(date of divorce)**.

None of the Participant's refunded contributions is awarded to the Alternate Payee.

(iii) Early Lump-Sum Distribution of a Benefit in Lieu of Any Other Benefit: **(check one)**

_____% of the Participant's early lump-sum distribution attributable to the Participant's credited service **(check one)**:

as of _____ **(date of divorce)**.

during the marriage of the parties, from _____ **(date of marriage)** to _____ **(date of divorce)**.

None of the Participant's early lump-sum distribution is awarded to the Alternate Payee.

(iv) Deferred Retirement Option Plan (DROP): If the Participant has made a DROP election under the terms of the Plan as of the date of this order **(check one)**:

\$_____ of the Participant's DROP account as of _____ **(date of divorce)**.

_____% of the Participant's DROP account **(check one)**:

as of _____ **(date of divorce)**.

during the marriage of the parties, from _____ **(date of marriage)** to _____ **(date of divorce)**.

None of the Participant's deferred retirement option plan (DROP) account is awarded to the Alternate Payee.

A payment to the Alternate Payee under this section 3(iv) (DROP Award) is subject to the provisions of the Plan, and will be made only if there is a balance in the Participant's DROP account as of the date the Plan Administrator receives a certified copy of this order. Such

DROP Award shall be distributed to Alternate Payee in a lump sum distribution within a reasonable time after the Commencement Date, except that all or any portion of the DROP Award that has been paid to or on behalf of the Participant shall not be paid by the Plan to Alternate Payee.

(v) Group D Member Cash Balance Plan: If the Participant has a Cash Balance account under the terms of the Plan as of the date of this order (**check one**):

- \$ _____ of the Participant's Cash Balance account as of _____ (**date of divorce**).
- _____% of the Participant's Cash Balance account (**check one**):
 - as of _____ (**date of divorce**).
 - during the marriage of the parties, from _____ (**date of marriage**) to _____ (**date of divorce**).
- None of the Participant's Cash Balance account is awarded to the Alternate Payee.

A payment to the Alternate Payee under this section 3(v) (Cash Balance Award) is subject to the provisions of the Plan, and will be made only if there is a balance in the Participant's Cash Balance account as of the date the Plan Administrator receives a certified copy of this order. Such Cash Balance Award shall be distributed to Alternate Payee in a lump sum distribution within a reasonable time after the Commencement Date, except that all or any portion of the Cash Balance Award that has been paid to or on behalf of the Participant shall not be paid by the Plan to Alternate Payee.

If no box is checked in any one or more of the items under this Section 3(a), then none of the Participant's applicable benefit, payment, account or distribution is to be divided and paid to Alternate Payee with respect to the item or items in which no box is checked.

(b) Award to Participant: All benefits payable under the Plan other than the Retirement/Disability Award, Refund Award, Early Lump-Sum Award, DROP Award and/or Cash Balance Award are awarded to Participant and shall be payable to Participant in such manner and form as Participant may elect in Participant's sole discretion, subject only to the provisions of the Plan.

Should Alternate Payee die before the Commencement Date (or, in the case of Participant's disability, before the date that a Disability Pension becomes payable to Participant under the Plan), Participant shall, upon written notice to the Plan and evidence to substantiate the death of the Alternate Payee, be entitled to receive Participant's entire benefit(s) (as applicable) accrued under the Plan as if no Retirement/Disability Award, Refund Award, Early Lump-Sum Award, DROP Award, or Cash Balance Award to Alternate Payee had been made under this Qualified Domestic Relations Order. Should Alternate Payee die while receiving Retirement/Disability Award monthly payments from the Plan, the amount of the Retirement Pension or Disability Pension payable to Participant shall, upon written notice to the Plan and evidence to substantiate the death of the Alternate Payee, be restored for future payments to the full amount of the Retirement Pension or the Disability Pension that would have been payable to Participant had Alternate Payee received no Retirement/Disability Award under this Qualified Domestic Relations Order.

Any Award to Alternate Payee under this Section 3 shall begin in accordance with Section 4 below. All such payments are to be made in the form and manner specified in Section 5 hereof. Any Award to the Alternate Payee shall cease as set forth in Section 6 below.

SECTION 4. BENEFITS START

Payment of the portion of the Participant's monthly retirement or disability benefit and/or notional DROP account, Refund of Contributions, Early Lump-Sum Distribution or Cash Balance Award to the Alternate Payee shall commence when payments commence to be paid to the Participant, if such benefits have not commenced as of the date hereof; or as of the first day of the month following the determination by the Plan Administrator that this order is a QDRO, if such benefits have already begun ("Commencement Date").

SECTION 5. FORM OF BENEFIT

The Award to the Alternate Payee shall be paid in the same form and for the same period in which payments are made to the Participant. The Retirement/Disability Award, if any, shall be paid to Alternate Payee in the form of equal monthly installments as a carve-out of Participant's monthly annuity. The Refund Award, Early Lump-Sum Award, DROP Award, and Cash Balance Award, if any, shall be paid in the form of a carve-out of the Participant's refund of contributions, early lump-sum benefit distribution, or available balance of the DROP account or available Cash Balance Account.

SECTION 6. BENEFITS STOP

Any Award otherwise payable, or any obligation to pay any Award, under this Qualified Domestic Relations Order shall cease upon the earlier of (a) the Alternate Payee's death, (b) the Participant's death, (c) as specified in this order, or (d) as specified in a further Order of the Court that the Plan Administrator determines is a QDRO. Disability Award payments to Alternate Payee shall cease on the earlier of Alternate Payee's death or when Disability Pension payments to Participant cease, whether by reason of Participant's death, termination of disability, or otherwise.

SECTION 7. If, after the date of this order, benefits available to the Participant are reduced by law, any amounts awarded to the Alternate Payee shall be proportionally reduced. This order shall be interpreted to require that, in the event Participant elects early retirement, the benefits payable to Alternate Payee shall be reduced in a proportionate amount.

SECTION 8. The Award to Alternate Payee under this Order shall be paid directly to Alternate Payee by the Plan. Participant (or Participant's estate, heir, beneficiary or survivors, as applicable) is, however, designated a constructive trustee for the benefit of Alternate Payee to the extent that Participant or they receive any benefits from the Plan that are due to Alternate Payee under the terms of this Order but paid instead to Participant (or Participant's estate, heir, beneficiary or survivors). Alternate Payee (or Alternate Payee's estate, heir, beneficiary or survivors, as applicable) is designated a constructive trustee for the benefit of Participant to the extent that Alternate Payee or they receive any benefits from the Plan that are due to Participant under the terms of this Order but paid instead to Alternate Payee (or Alternate Payee's estate, heir,

beneficiary or survivors). A constructive trustee shall promptly pay any benefits so received directly to the other party at their last known address.

SECTION 9. Alternate Payee is hereby ordered to report any payments received from the Plan on any applicable income tax return, and shall promptly notify the Plan of any change in Alternate Payee's mailing address or name. The Plan Administrator or other appropriate party is authorized to issue a Form 1099R on any direct payment made to Alternate Payee. The Plan shall report any distribution hereunder in accordance with the Internal Revenue Code.

SECTION 10. Upon the earliest of (a) the death of Alternate Payee, (b) the death of Participant or (c) full payment of the Retirement Award, DROP Award, Cash Balance Award or Disability Award (including, if applicable, the Refund Award and/or Early Lump-Sum Award) to Alternate Payee, the Plan shall be discharged of any obligations to or in respect of Alternate Payee. The term of this Qualified Domestic Relations Order shall not exceed the life of Alternate Payee or the life of the Participant and no further benefit shall be payable in respect of Alternate Payee pursuant hereto upon the first to occur of the Alternate Payee's death or the Participant's death.

SECTION 11. The Court retains jurisdiction to amend this order if necessary so that it will constitute a "qualified domestic relations order" under the rules of the Plan, even though all other matters incident to this action have been fully and finally adjudicated.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT:

This order shall not:

- (a) Require HMEPS to provide any type or form of benefit or any option not otherwise provided under the plan.
- (b) Require HMEPS to provide increased benefits determined on the basis of actuarial value.
- (c) Require HMEPS to pay benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.
- (d) Require HMEPS to pay benefits to an alternate payee before the retirement of a participant, the distribution of a withdrawal of contributions to a participant, or any other distribution to a participant required by law.
- (e) Require the designation of a particular person as the recipient of benefits in the event of a participant's death.
- (f) Require the selection of a particular benefit payment plan or option.
- (g) Require any action by HMEPS contrary to its governing statutes or plan provisions other than the direct payment of the benefit awarded to the alternate payee.
- (h) Make the award of an interest contingent on any condition other than those conditions resulting in the liability of a retirement system for payments under its plan provisions.
- (i) Award any future benefit increases (including cost-of-living adjustments) that are provided or required by the legislature.

A certified copy of this Order shall be served on the Plan Administrator of the above named Plan.

SIGNED THIS ____ day of _____, 20____.

JUDGE PRESIDING

CASE NO. _____

IN THE MATTER OF
THE MARRIAGE OF

AND

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IN THE DISTRICT COURT

OF _____ COUNTY

_____ JUDICIAL DISTRICT

Statement of Confidential Information

THIS FORM SHOULD NOT BE FILED WITH THE QDRO IN THE COURT FILES.
HOWEVER, THIS PAGE MUST BE SUBMITTED ALONG WITH A CERTIFIED COURT
COPY OF THE ORDER TO THE PLAN FOR ACCEPTANCE.

The information below was not included in the attached Order for the purpose of securing
the parties' confidential information:

Parties' Information:

<u>Name</u>	<u>Date of Birth</u>	<u>Social Security No.</u>
_____	_____	_____
Name of Participant		
_____	_____	_____
Name of Alternate Payee		

**DO NOT FILE THIS DOCUMENT
WITH THE DISTRICT CLERK'S
OFFICE.**