

MODEL DOMESTIC RELATIONS ORDER
CITY OF IRVING SUPPLEMENTAL BENEFIT PLAN

THE SUPPLEMENTAL BENEFIT PLAN AT SECTION 17.01(A) PROVIDES-

“A DOMESTIC RELATIONS ORDER WILL NOT BE A QUALIFIED DOMESTIC RELATIONS ORDER UNLESS IT IS SUBMITTED TO THE PLAN ON THE MODEL DOMESTIC RELATIONS ORDER FORM REQUIRED BY THE ADMINISTRATIVE BOARD AND COMPLIES WITH ALL APPLICABLE REQUIREMENTS OF CHAPTER 804 OF THE TEXAS GOVERNMENT CODE, INCLUDING SECTION 804.003(F) AND (G).”

THIS MODEL FORM MAY BE INSERTED INTO OR USED AS A DIVORCE DECREE OR A COURT ORDER FOR A PARTICIPANT AND SPOUSE WHO IS OR MAY BECOME ENTITLED TO RECEIVE BENEFITS UNDER THE CITY OF IRVING SUPPLEMENTAL BENEFIT PLAN (“PLAN”).

INSTRUCTIONS ABOUT USE OF THIS MODEL AND ABOUT QUALIFIED DOMESTIC RELATIONS ORDERS (“QDRO”).

1. The Supplemental Benefit Plan covers City of Irving civilian and police officer employees. These people are called “Participants” in the Plan. Firefighters are covered under a separate plan and are not Participants in the Supplemental Benefit Plan.
2. Both the City and Participants make contributions to the Plan. Participant contributions are made on a “before tax” basis, that is, there is no income tax taken out of the employee contributions when it goes into the Plan. Therefore, whether the Participant, their spouse or beneficiary gets either a pension or a return of contributions, the benefits or return of contributions will be reported as taxable income for Federal Income Tax purposes and the recipient will be obligated to report that income on their Federal Individual Income Tax Return.
3. Normal Retirement. Ordinarily, when a Participant retires at or after the later of age 65 or a five (5) year Period of Service under the Plan she/he would receive a monthly pension payment (annuity) for life based on a benefit formula in the Plan.
4. Early Retirement. A Participant can retire early with a reduced benefit under the Plan, after at least a 20 year Period of Service, or at or over age 60 with at least a five (5) year Period of Service.
5. Disability Retirement. If a Participant becomes disabled and meets the terms of the Plan while working for the City of Irving, he or she may become eligible for a Disability Benefit.

6. If a Participant's employment ends prior to having completed at least a five (5) year Period of Service he or she is only entitled to receive a refund of his/her Employee contributions. If a Participant's employment ends after having completed at least a five (5) year Period of Service, she/he becomes fully vested in whatever is her/his then Accrued Benefit as of the date of termination, but that benefit cannot be paid out to the Participant or any alternate payee under a QDRO until the Participant becomes eligible by age and or years of service to, and elects to start receipt of her/his benefit, at his/ her Normal or Early Retirement Date. And no domestic relations order under Texas law can order payment to the spouse (the law calls such person under a QDRO an "Alternate Payee") any sooner.

Thus, if at the time of the entry of the decree the Participant does not have at least a five (5) year Period of Service the only right that Participant and the Alternate Payee may have is to a refund of Participant's contributions. However, even though an Alternate Payee cannot obtain a right to a share of any benefits the Participant may accrue after the date of the divorce, if the Participant earns sufficient service to later become entitled to a pension benefit based on his or her earlier accrued benefit the Alternate Payee may become entitled to a portion of the pension benefit accrued (earned) prior to the divorce and therefore lawyers using this form may wish to consider completing information both for a Refund of Contribution and the Retirement/Disability Monthly Benefit sections below.

7. Again, the Supplemental Benefit Plan at Section 17.01(a) contains the following provision:

"A Domestic Relations Order will not be a Qualified Domestic Relations Order unless it is submitted to the Plan on the model Domestic Relations Order form required by the Administrative Board and complies with all applicable requirements of Chapter 804 of the Texas Government Code, including Section 804.003(f) and (g)."

8. In particular, it is very important that the Participant and spouse (Alternate Payee's) counsel realize that the Texas Govt. Code Section 804.003(g)(5) provides,

"(g) A public retirement system may reject a domestic relations order as a qualified domestic relations order unless the order:

(5) does not require any action on the part of the retirement system contrary to its governing statutes or plan provision other than the direct payment of the benefit awarded to an alternate payee;"

9. Before going any further, we recommend that counsel carefully review the provisions of Chapter 804 of the Texas Government Code so that with the help of this Model QDRO and an understanding of Chapter 804 of the Texas Government Code he or she can prepare a domestic relations order that will comply with the terms of the Supplemental Benefit Plan and the law, otherwise benefit payment may be delayed and additional costs incurred before the Plan can determine if the domestic relations order submitted is in fact in compliance and can be treated as a QDRO. For example, once a Participant dies, under the

Plan and the law there are NO further benefits that are permitted to be paid to the Alternate Payee, except if the Plan hasn't yet paid an amount equal to the accumulated Participant contributions paid into the Plan. In other words, benefit payments stop on the death of the Participant or the Alternate Payee, whoever dies first.

BY PROVIDING THIS FORM AND INSTRUCTIONS THE CITY AND THE PLAN ARE NOT PROVIDING ANY LEGAL ADVICE to the Participant, the spouse or their lawyers.

If at the time of the entry of the decree the Participant in the City of Irving Supplemental Benefit Plan does not have at least five (5) years of service to have a right to pension the only right that Participant and the Alternate Payee may have is to a refund of Participant's contributions.

Further, even though an Alternate Payee cannot obtain a right to a share of any benefits the Participant may accrue after the date of the divorce, if the Participant earns sufficient service to later become entitled to a pension benefit based on his or her earlier pre-divorce accrued benefit, the Alternate Payee may become entitled to a portion of the pension benefit accrued (earned) prior to the divorce. Therefore, lawyers using this form may wish to consider completing information both as to a refund of contribution and the retirement/disability monthly benefit below.

IN THE MATTER OF
THE MARRIAGE OF

AAAA
AND
BBBB

AND IN THE INTEREST OF
CCCCC & DDDDD,
CHILDREN

§ IN THE ____ JUDICIAL
§
§
§
§ DISTRICT COURT OF
§
§
§
§
§ EEEEEEE COUNTY, TEXAS
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DOMESTIC RELATIONS ORDER
City of Irving Supplemental Benefit Plan

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this Order shall be incorporated into and shall become an integral part of the Agreed Final Decree of Divorce signed and entered by the Court in this cause on _____, 20____.

The Court having examined the pleadings and heard the evidence and argument of counsel finds that all necessary prerequisites of law have been satisfied and that this Court has jurisdiction of all parties and the subject matter of this cause, and the Court further finds that certain interests and rights under that certain employee benefit plan sponsored by the City of Irving, Texas, hereinafter described, are part of the community estate of the parties and should be partitioned and paid out in accordance with this Order.

The Court further finds and it is ORDERED AND DECREED as follows:

1. This Order assigns a portion of the benefits payable from the City of Irving Supplemental Benefit Plan (the “Plan”) to BBBB, (“Alternate Payee”) in recognition of the existence of Alternate Payee’s marital right in the Participant’s (AAAA’s) retirement benefits under the Plan.
2. AAAA and BBBB were married on _____, 20____
3. AAAA, a Participant in the Plan whose last known mailing address is _____, Texas _____, whose birth date is _____ and whose Social Security Number will be provided separately.
4. BBBB is the Alternate Payee, whose mailing address is _____, Texas _____ whose birth date is _____ and whose Social Security Number will be provided separately.

5. As a part of the just and right division of the estate of the parties, the Court awards, assigns and grants to Alternate Payee [ZZ percent (YY%) of Participant's monthly pension benefit accrued as of ____ 20__.(date of divorce)] [*Alternative*: None of the Participant's monthly benefits.]

6. Payment of the monthly pension benefit to Alternate Payee shall commence at the same time Participant's monthly pension benefit commence to the Participant under the Plan. In the event that Participant's monthly pension benefit commences prior to the Participant's Normal Retirement Date under the Plan and is subject to reduction for Early Retirement, Alternate Payee's monthly pension benefit shall also be proportionately reduced for that early commencement. Alternate Payee's monthly pension benefit shall continue until the earlier of the death of Alternate Payee, or the death of the Participant.

7. If the Participant predeceases the Alternate Payee, no further monthly pension benefit shall be paid to the Alternate Payee. In such event, if the Participant and the Alternate Payee have not yet received total distributions from the Plan equal to or greater than the Participant's contributions to the Plan, if any, then Alternate Payee shall receive the same percentage of the remaining Participant contributions as was the percentage of the monthly pension benefit herein ordered to be paid to the Alternate Payee.

8. If the Participant terminates employment with the City of Irving before having at least a 5 year Period of Service and thus only receives a return of contributions from the Plan, Alternate Payee shall not receive a monthly pension benefit from the Plan, but rather shall receive [__ percent (__%) of the Participant's contributions to the Plan as of ____, 20__. (date of divorce)] [*Possible alternative*: none of the Participant's refunded contributions, if any].

9. **This Order is not intended to and shall not require the Plan to:**

a provide any type or form of benefit or any option not otherwise provided by the Plan, nor shall this Order require the Plan to provide for increased benefits,

b provide benefits to Alternate Payee that are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order,

c pay benefits to an Alternate Payee before the retirement of the Participant, or the distribution of a refund of contributions to the Participant,

d require the designation of a particular person as the recipient of benefits in the event of Participant's death, or

e require the selection of a particular benefit payment plan or option.

10. All benefits payable under the Plan, other than those payable to Alternate Payee under this Order and those payable to an alternate payee under any other order previously determined to be a qualified domestic relations order, shall be paid to Participant.

11. Alternate Payee is ordered to report any payments received hereunder on any applicable income tax return of Alternate Payee. The Plan is authorized to issue a Form 1099R or W-2P (or any successor thereto) to Alternate Payee on any direct payments made to Alternate Payee.

12. While it is anticipated that the Plan will pay directly to Alternate Payee the benefits that are awarded to Alternate Payee, the Participant is designated a constructive trustee to the extent the Participant receives any payments under the Plan that are due to Alternate Payee but are paid to Participant. the Participant is ordered and decreed to pay such benefits to the Alternate Payee within three days of receipt by the Participant.

13. It is intended that this Order meet all requirements of a qualified domestic relations order under Chapter 804 of the Texas Government Code and the Court retains jurisdiction to modify the Order for the purpose of meeting or monitoring its qualification as a qualified domestic relations order.

14. Participant and Alternate Payee shall advise each other and the administrator of the Plan of any changes in mailing address. All communications with the Plan or Executive Director shall be addressed to:

Attn: Supplemental Benefit Plan Administrator

City of Irving
825 W. Irving Blvd.
Irving, TX 75056

15. If any provision of this Order is contradicted and/or invalidated by any provision in any valid and legal provision in Chapter 804 of the Texas Government Code or the City of Irving Supplemental Benefit Plan, then the provisions contained in such statute and Plan shall control over and be substituted for each provision in this Order which is so contradicted and/or invalidated.

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 or proceeding have been fully and finally adjudicated.

SIGNED THIS _____ DAY OF _____, 20__.

JUDGE PRESIDING