

**SAN LUIS OBISPO COUNTY
PENSION TRUST**

**COMMUNITY PROPERTY
and the
PENSION TRUST**

The Impact of Divorce on a Member's Retirement Benefits

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INTRODUCTION & LEGAL DISCLAIMER

This brochure is intended to provide general information to Active Members, Reserve Participants and Retired Participants of the Pension Trust, as well as their spouses, former spouses and attorneys. It discusses the impact a divorce or a legal separation may have on a Member's rights and entitlements under the San Luis Obispo County Employees Retirement Plan (the "Retirement Plan").

This brochure is not intended to provide legal advice to Members and spouses and should not be relied upon for that purpose. Members and spouses are strongly encouraged to seek the advice of their own attorneys regarding the matters discussed in this brochure.

Key terminology used in this brochure:

- Member: Refers to an active employee who is making contributions to the Pension Trust. The term "Member" may also refer to
 - Reserve Participant: A Member who has ceased employment and is no longer making contributions to the Pension Trust, has not retired, but has elected to leave his or her Contributions on deposit with the Pension Trust.
 - Retired Participant: A Member who has retired from employment and has commenced receiving a monthly retirement allowance from the Pension Trust.
- Alternate Payee: The former spouse of a Member who is awarded a share of such Member's retirement benefits in a Domestic Relations Order.
- Domestic Relations Order: A judgment, decree or court order that is issued pursuant to state domestic relations law (including community property law) that directs the division of a Member's retirement benefits between the Member and the Alternate Payee.
- Eligible Surviving Spouse: If the Alternate Payee was married to the Member at least one year prior to and as of the Member's effective date of retirement, the Alternate Payee qualifies as the Member's eligible surviving spouse for purposes of the Retirement Plan even though the marriage of the Alternate Payee and Member was subsequently terminated.
- Retirement Plan: The San Luis Obispo County Retirement Plan.
- Time Rule: A method of determining the community property portion of a Member's retirement benefits, arrived at by dividing the Pension Trust Service Credit the Member earned during the marriage by the Member by the Member's total Pension Trust Service Credit at retirement.

II. THE PENSION TRUST

The Pension Trust was formed under the provisions of California Government Code Section 53215, et seq. The Pension Trust is administered by the Pension Trust Board of Trustees and operates under the provisions of Chapter 2.56 of the San Luis Obispo County Code and under the Pension Trust By-Laws and Retirement Plan. In the event of a conflict between the

information in this brochure and the laws, ordinances and trust documents governing the Pension Trust, the conflict will be resolved by reference to those laws, ordinances and trust documents.

III. THE RETIREMENT PLAN

The following section will discuss certain provisions of the San Luis Obispo County Retirement Plan that are relevant to the discussion of the division of the community property interest of a Member's retirement benefits and entitlements.

The entire Retirement Plan document, including by-laws, is available on the Pension Trust's website at <http://www.slocounty.ca.gov/PensionTrust.htm>.

Membership & Contributions

Under the provisions of the Retirement Plan, every permanent San Luis Obispo County employee, as well as every permanent employee of any contracting agency pursuant to Article 25 of the Retirement Plan, is required to become a Member of the Pension Trust and is required to contribute a percentage of his or her salary to the Pension Trust. These mandatory contributions are maintained as "Normal Contributions" in an accrual account in the Member's name. Some members may have a portion of their required contributions paid for by their employer referred to as a "pick-up". These amounts are also maintained as "Normal Contributions" in the Member's accrual account.

A Member may also have additional contributions credited to their account. These are contributions made above and beyond the required contributions that can include voluntary contributions made by the Member or excess contributions made by the employer on behalf of the Member as would be in the case of a Member's required contribution rate being lower than the employer "pick-up" rate. These contributions are maintained as "Additional Contributions" in an accrual account in the Member's name. These Additional Contributions become payable to the Member when the Member terminates employment or retires. Upon retirement, the Member may elect to receive a cash refund of all or a portion of his or her Additional Contributions plus interest, roll all or a portion of his or her Additional Contributions over into an eligible Individual Retirement Account, or receive his or her Additional Contributions in the form of a lifetime annuity from the Pension Trust to be paid in conjunction with their monthly retirement benefit.

Under the Retirement Plan, the employer is also required to contribute a percentage of each Member's salary to the Pension Trust. These contributions are known as Employer Appropriations. Employer Appropriations to the Pension Trust are not separated into individual Member accounts and are not subject to withdrawal upon the termination of the Member's employment. Employer Appropriations to the Pension Trust go into the reserve that funds the payment of benefits for all Members of the Pension Trust.

Once a Member has accrued five Pension Trust Service Credits, the Member becomes vested and is entitled to receive a retirement allowance upon attaining the minimum retirement age for the Member's tier and membership classification.

Retirement Elections

When a Member retires, the Member may choose among five retirement elections:

- **Unmodified Retirement Allowance** – Pursuant to Article 6 (or, Article 10, in the case of disability retirement) of the Retirement Plan, this election provides the Member with the Member’s maximum monthly retirement allowance. Built into this election, pursuant to Section 7.04(b) of the Retirement Plan, is the provision that, upon the death of the Member during retirement, 50% of the Member’s unmodified retirement allowance shall be payable throughout the life or until the death of the Member’s Eligible Surviving Spouse. [See Appendix D for full text of Section 7.04(b) of the Retirement Plan.]
- **Optional Settlement No. 1** – Pursuant to Article 13 of the Retirement Plan, this election provides the Member with an actuarially-reduced monthly retirement allowance for life with the provision that any remaining balance of the Member’s accrual account will be paid to the Member’s designated beneficiary if the Member dies before he or she receives payments totaling the balance of (or a portion of) the Member’s accrual account at the point of retirement.
- **Optional Settlement No. 2** – Pursuant to Article 13 of the Retirement Plan, this election provides the Member with an actuarially-reduced monthly retirement allowance for life with the provision that upon the Member’s death, the Member’s designated beneficiary will receive 100% of the Member’s monthly retirement allowance for life.
- **Optional Settlement No. 3** – Pursuant to Article 13 of the Retirement Plan, this election provides the Member with an actuarially-reduced monthly retirement allowance for life with the provision that upon the Member’s death, the Member’s designated beneficiary will receive 50% of the Member’s monthly retirement allowance for life.
- **Optional Settlement No. 4** – Pursuant to Article 13 of the Retirement Plan, this election allows the Member to modify existing Options to meet specific needs. In any event, the calculation under this Option will represent the actuarial equivalent of the Member’s monthly retirement allowance and is subject to the approval of the Board of Trustees.

Each of the above methods results in a different retirement allowance for the Member and each method has an impact on the disposition of community property. Moreover, in the event that the Member predeceases the Alternate Payee, each method will result in a different payment to the Alternate Payee. [See Appendix D for the full text of Article 6 and Article 13 of the Retirement Plan.]

Termination of Membership & Refund of Contributions

If a Member ceases to be an employee, the Member may, upon request, withdraw his or her membership and receive a refund of his or her contributions, plus interest. It should be noted, however, that if, at the time of the Member’s termination of employment, the Member has fewer than five Pension Trust Service Credits, or if the Member elects to take a refund of his or her contributions, the individual will cease to be a Member of the Pension Trust and will cease to be eligible to receive any retirement allowance or any benefit entitlements from the Pension Trust.

Once the Member has accrued five Pension Trust Service Credits and is vested, the Member may elect to leave his or her contributions on deposit with the Pension Trust and become a Reserve Participant. If the Member becomes a Reserve Participant, many of the entitlements under the Retirement Plan are preserved.

The refund of the former Member's contributions may be subject to a community property claim. In order for a former spouse to receive his or her community property share of the refund of the Member's contributions, however, there must be a Domestic Relations Order ("DRO") on file with the Pension Trust prior to the Member's request for a refund. Absent a DRO, the Pension Trust has no basis or authority to distribute any portion of the refund to the Member's former spouse.

Death Benefits

Article 7 of the Retirement Plan provides death benefits for both Members and Participants.

Active Members and Reserve Participants

The Basic Death Benefit is a lump-sum benefit payable upon the death of an active Member before retirement. The amount of the death benefit is equal to one-and-a-half months of the Member's compensation for each Pension Trust Service Credit the Member accrued up to the date of death, not to exceed 18 months of the Member's compensation.

The Basic Death Benefit is payable upon the death of a Reserve Participant if the death occurs within four months of termination of employment. If death occurs after four months from the Member's termination of employment, a lump-sum of the Member's total accrual account will be paid to the named beneficiary.

Retired Participants

A post-retirement death benefit in the amount of \$1,000 is payable upon the death of a Retired Participant.

If the Alternate Payee is also the Retired Participant's Eligible Surviving Spouse (i.e., was married to the Retired Participant at least one year prior to the Retired Participant's retirement), and the Retired Participant elected the Unmodified Retirement Allowance, the Alternate Payee may also be entitled to continuing monthly payment of one-half of the Retired Participant's Unmodified Retirement Allowance. If the Retired Participant retired under one of the above-referenced Optional Settlements, however, the terms of the Optional Settlement would apply.

IV. THE CALIFORNIA FAMILY CODE

California Family Code Section 2610 requires the court, in dissolution of marriage or legal separation cases, to issue whatever orders are necessary or appropriate to ensure that each party to the proceedings receives the party's full community property share in any retirement plan. Section 2610 also requires the court, upon the agreement of the non-member spouse, to order the division of accumulated community property contributions and service credit as provided in "enactments" similar to the Public Employee's Retirements System laws and the County Employee's Retirement Law of 1937. Because the Retirement Plan is adopted and amended by the County's Board of Supervisors under the authority granted by Government Code Section 53215 et seq., the court may make similar orders with respect to the San Luis Obispo County Employee's Retirement Plan.

Accordingly, among the orders a court may issue in a Family Code proceeding are:

- An order for the division of any retirement benefits payable upon or after the death of either party in a manner consistent with Section 2550 of the Family Code.
- An order that a party elect a survivor benefit annuity or other similar election for the benefit of the other party, as specified by the court, in any case where the Retirement Plan provides for such an election (and provided that the court does not attempt to make an order which will result in an increase in the amount of benefits provided by the Retirement Plan).
- An order for the division of accumulated community property contributions and Pension Trust Service Credit as provided by the Retirement Plan.
- An order directing the Pension Trust to make payments directly to a non-member former spouse of his or her community property interest in the Member's retirement benefits.

The Pension Trust will apply the community property interest only to the allowances and benefits specifically set forth in the court order. If the court order states that "any" or "all" benefits are payable to one or the other of the parties, then the Pension Trust would interpret the order to mean "all" of the benefits payable under the Retirement Plan, including any lump sum death benefits payable. If the court order provides only for a portion of the Member's monthly retirement allowance to be divided and does not mention one or more of the Retirement Plan's benefits, then the Pension Trust would not consider the order to apply to any of those omitted benefits.

Finally, pursuant to California Family Code §2060, in all cases of marriage dissolution in which division of a Member's Pension Trust retirement benefits may occur, the Pension Trust should be "joined" to the proceedings through a legal joinder.

The Pension Trust will comply with any court order to the extent provided by the Family Code. However, Section 2610 of the Family Code expressly provides that the court may not order the Pension Trust to pay an allowance or benefit not provided for by the Retirement Plan or which is contrary to the Retirement Plan.

V. DIVISION OF THE COMMUNITY PROPERTY INTEREST IN A DRO

Generally, there are two methods by which a DRO may provide for the division of the community property interest in an active Member or Reserve Participant's retirement benefits, and one method by which a DRO may provide for the division of the community property interest in a Retired Participant's retirement benefits. Each method will be discussed in detail below.

METHOD 1:

Distribution of the Alternate Payee's Share at the Time the Member (or Reserve Participant) Retires or Dies

Under this method, the DRO may contain one or more of the following directives:

- The DRO may direct the Pension Trust to pay the Alternate Payee his or her community property share in the Member’s retirement allowance once the Member retires and commences receipt of his or her monthly retirement allowance from the Pension Trust.

The community property share of a Members retirement benefit (i.e., the value of the Member’s retirement allowance that was earned during the marriage), is typically calculated using the “Time Rule” formula, wherein the community property value of the Member’s retirement allowance is represented by a fraction, the numerator of which is the Pension Trust Service Credits the Member earned during the marriage, and the denominator is the total Pension Trust Service Credits the Member has accrued in the Pension Trust at the point of retirement. Typically, the term of the “marriage” runs from the date of the marriage up to the date of the separation. The fraction is then converted to a percentage, which is applied to the total benefit to determine the portion that constitutes community property portion. The Time Rule formula is illustrated as follows:

<u>Example of “Time Rule” Formula</u>	
Member’s Pension Trust Service Credit Earned During Marriage:	15 years
Member’s Total Pension Trust Service Credit:	30 years
Time Rule Formula:	
$\frac{15 \text{ years}}{30 \text{ years}} = \frac{1}{2}$	= 50% (50% of the Member’s benefit constitutes community property to be split between the parties)
Typically, the Alternate Payee is awarded 50% of the community interest in the Member’s benefit, which, in this case, would equal 25% of the Member’s monthly retirement benefit. (50% of 50% = 25%)	

- The DRO may direct that the Alternate Payee receive all or a proportionate share of the Member’s Basic Death Benefit, payable if the Member were to die prior to retirement.
- The DRO may direct that the Alternate Payee is to receive a proportionate share of the Member’s Normal Contributions and Additional Contributions, if any, in the event the Member were to terminate his or her employment, withdraw his or her membership and request a refund of such contributions.
- The DRO may direct that the Member elect a survivor Option at retirement and name the Alternate Payee as beneficiary of the Option.

Section 2610(a)(2) of the California Family Code provides that the Court may order the Member to “. . . elect a survivor benefit annuity **or other similar election** for the benefit

of the other party” (emphasis added). The Pension Trust’s Retirement Plan does not use the language “survivor benefit annuity.” As mentioned above, however, the Retirement Plan does have “other similar elections” which are set forth in Article 13 of the Retirement Plan and which are known as “Optional Settlements.” If the Member is required by the court to elect an Optional Settlement for the Alternate Payee upon retirement, the order must specifically state which of the Article 13 Optional Settlements is to be elected by the Member. (See Appendix D for the text of Article 13 of the Retirement Plan)

If the Alternate Payee Were to Predecease the Member: Under §24.05(2) of the Retirement Plan, the DRO must expressly describe any rights the Alternate Payee is to have to name a beneficiary to receive any unpaid portion of the community property interest awarded to the Alternate Payee. If no such right is set forth in the DRO, and the Alternate Payee predeceases the Member, payment of the Alternate Payee’s community property share of the Member’s retirement benefit will cease as of the date of the Alternate Payee’s death and the monies will revert to the Member.

An example of a “Domestic Relations Order” under Method 1 is provided in Appendix A.

METHOD 2:

Division of the Alternate Payee’s Share into a Separate Account Pursuant to Sections 24.01, 24.02, 24.03 and 24.04 of the Retirement Plan

A DRO may direct that an Alternate Payee’s community property share of the Member’s accumulated Normal Contributions, Pension Trust Service Credits and Additional Contributions, if any, be set aside in a *separate account* for the Alternate Payee.

The primary advantage of Method 2 to the Alternate Payee is that the Alternate Payee need not rely on the Member for deciding which retirement option to select or when the payment to the Alternate Payee of a retirement allowance will commence. For example, under Method 2, in lieu of a lifetime monthly benefit, the Alternate Payee is able to apply for and receive a refund of the Alternate Payee’s share of the accumulated Normal Contributions and any Additional Contributions which were set aside to the Alternate Payee in the DRO. This can be done even though the Member continues to work.

If the Member was vested with the Pension Trust at the time of the separation, the Alternate Payee may retire and receive a monthly service retirement allowance when the Alternate Payee becomes eligible under the Retirement Plan regardless of whether the Member retires, dies, continues to work, or ceases employment and receives a refund of the Member’s contributions. The Alternate Payee becomes eligible to retire under this method when the Member attains the minimum age for retirement for his or her Tier, and the Alternate Payee has also attained such minimum age.

The disadvantage of Method 2 to the Alternate Payee is that the Alternate Payee does not share in any increased value of the Member’s ultimate retirement allowance attributable to increases in the Member’s compensation. This is because the final compensation factor for the Alternate Payee’s separate account is “frozen” as of the date the court determines that the community interest ceased to exist (i.e., the date of separation of the parties).

Under Method 2, the DRO must contain the following directives:

- The DRO must specifically direct that the accumulated contributions and Pension Trust Service Credits earned during the marriage be divided into two separate and distinct accounts in the name of the Member and the Alternate Payee.
- The DRO must contain the date of marriage and the date on which the parties separated.
- The DRO must address the specific rights to be given to the Alternate Payee as provided by Sections 24.01, 24.02, 24.02 and 24.04 of the Retirement Plan. (See text of Article 24 in Appendix No. 2.)

Based on the directives provided in the DRO, the Pension Trust will determine the amount of the Member's Normal and Additional Contributions, interest and Pension Trust Service Credits accumulated during the marriage. The Pension Trust will then establish a separate account under the Alternate Payee's name with his or her community property share of the Member's contributions, interest and service credit.

The Pension Trust is unable to administer a DRO which directs that a specific dollar amount be used to establish the Alternate Payee's account. Moreover, the division of the Member's accrual account and Pension Trust service Credits is applicable only to Pension Trust Members who are not yet retired. Once a Member has retired, the Pension Trust Service Credits and the Member's contributions cannot be divided into two separate accounts.

An example of a "Domestic Relations Order" under Method 2 is provided in Appendix B.

Rights of the Alternate Payee Under Method 2:

Under Method Number 2 the Alternate Payee has the right to an "unmodified" retirement allowance under Article 6 of the Retirement Plan. The Alternate Payee also has the right to forego the "unmodified" retirement allowance and elect, instead, an Optional Settlement under Article 13 of the Retirement Plan. The Optional Settlements provide the Alternate Payee with an actuarially reduced monthly retirement allowance for life with a continuation of all or a percentage of the monthly retirement allowance to the Alternate Payee's designated beneficiary after the death of the Alternate Payee.

The Alternate Payee will be eligible for a retirement allowance only if the Member accrued at least five Pension Trust Service Credits as of the date of the parties' separation. The Alternate Payee may commence receiving a monthly retirement allowance from the Pension Trust only when both the Member and the Alternate Payee have reached the minimum retirement age applicable to the Member's tier and membership class (see Retirement Plan Section 24.04(e)).

If the Member has not accrued at least five Pension Trust Service Credits as of the date of the parties' separation, the Alternate Payee will receive a refund of the Alternate Payee's community property share of the Member's contributions, if any.

The Alternate Payee is entitled to a refund of the Alternate Payee's Share of the accumulated Normal Contributions and Additional Contributions, if any, in the Alternate Payee's account. This includes interest which has accrued on such contributions through the date of refund at the annual rate of interest established by the Board of Trustees. If the Alternate Payee elects a refund, the Alternate Payee loses the right to receive a monthly retirement allowance. Furthermore, the Alternate Payee may not redeposit the contributions at a later date in order to

receive Pension Trust Service Credits and reestablish the right to a monthly retirement allowance.

If a Member has Pension Trust Service Credits eligible for purchase and it is also determined to be community property, the Alternate Payee may purchase his or her community property share of this Pension Trust Service Credits in the Alternate Payee's name. However, this can be done only if the court order states that those contributions and Pension Trust Service Credits were community property and specifically states that the Alternate Payee has the right to redeposit contributions and to purchase the Pension Trust Service Credits in the Alternate Payee's name. Once the court has set off these "purchase" rights to the Alternate Payee, the Member cannot regain those rights even if the Alternate Payee does not exercise the rights awarded to the Alternate Payee by the court order.

The Alternate Payee has the right to designate a beneficiary to receive a refund of his or her community property share of the Member's contributions in the event of death of the Alternate Payee prior to the retirement of the Alternate Payee or the election of the Alternate Payee to take a refund.

The Alternate Payee has the right to designate a beneficiary for any unpaid monthly retirement allowance payable to the Alternate Payee at the date of the Alternate Payee's death.

METHOD 3:

Division of the Community Property Interest of a Retired Participant's Benefit Entitlements

Once a Member is retired and has commenced receiving a monthly retirement allowance from the Pension Trust, the terms of the Retired Participant's retirement are fixed; therefore the benefit entitlements that may be split between the parties are limited. Consequently, the DRO can neither direct the Member to elect a particular Optional Settlement in favor of the Alternate Payee nor change his or her Option election. Under Method 3, the DRO may contain one or more of the following directives:

- The DRO may direct the Pension Trust to pay the Alternate Payee his or her community property share of the Retired Participant's monthly retirement allowance.

The calculation of the Alternate Payee's share is done according to the "Time Rule Formula," discussed above. Under this method, the Alternate Payee will receive a monthly payment representing his or her community property share of the Retired Participant's retirement allowance until the death of the Retired Participant.

- The DRO may direct that the Alternate Payee receive all or a proportionate share of the Member's \$1,000 post-retirement Death Benefit, pursuant to §7.04 (a) of the Retirement Plan.

If, at the time of his or her retirement, the Member had selected the Unmodified retirement allowance, and if the Member predeceases the Alternate Payee, the Alternate Payee would cease receiving his or her community property share of the Member's monthly retirement allowance.

If the Member and the Alternate Payee were married at least one year prior to and as of the Member's retirement, then the Alternate Payee will qualify as an "Eligible Surviving

Spouse” and, upon the death of the Member, will be eligible to receive the death benefit provided for under Section 7.04(b) of the Retirement Plan. The death benefit payable to an Eligible Surviving Spouse consists of one-half of the Member’s Unmodified service or disability monthly retirement allowance, as it was at the Member’s date of death. This death benefit will continue until the death of the Eligible Surviving Spouse.

If the Member selected an Optional Settlement and named the Alternate Payee as the beneficiary of such Option, in the event the Member predeceases the Alternate Payee, the Alternate Payee will cease receiving his or her community property share of the Member’s monthly retirement allowance, but will begin to receive the benefit provided for under the Option.

If the Alternate Payee Were to Predecease the Member: Under §24.05(2) of the Retirement Plan, the DRO must expressly describe any rights the Alternate Payee is to have to name a beneficiary to receive any unpaid portion of the community property interest awarded to the Alternate Payee. If no such right is set forth in the DRO, and the Alternate Payee predeceases the Member, payment of the Alternate Payee’s community property share of the Member’s retirement benefit will cease as of the date of the Alternate Payee’s death and the monies will revert to the Member.

An example of a “Domestic Relations Order” under Method 3 is provided in Appendix C.

VI. FORMER SPOUSE’S WAIVER OF SHARE OF RETIREMENT BENEFITS

It is not always necessary that a divorce result in division of a Member’s retirement benefits. Although a Member’s former spouse may be entitled to a community property interest in the Member’s retirement benefits, the parties could conceivably agree to divide their community property estate in another way that does not involve dividing the Member’s retirement benefits.

In such cases, the former spouse may agree to waive his or her community property share of the Member’s retirement benefits, or the court may award the Member his or her pension as his or her sole and separate property. If so, such waiver or award must be expressly stated in the judgment of divorce, marital settlement agreement, or other document duly executed by the parties and/or ordered by the court, a copy of which must be provided to the Pension Trust.

VII. DEFERRED RETIREMENT OPTION PROGRAM (DROP)

DROP is an alternative method by which a service retirement allowance is paid to a Member. DROP allows the eligible Member to retire and have his or her monthly retirement allowance deposited into a special investment account while the Member continues to work for the County (or contracting agency). DROP, governed by Article 26 of the Retirement Plan, is only available to Members in certain Tiers and bargaining units.

If a Member with a time-rule formula DRO enters DROP, the Alternate Payee’s community property share of the Member’s monthly retirement benefit will be calculated and set aside in a special investment account, like the Member’s, but the Alternate Payee will not actually receive the monies until the Member elects to cease participation in DROP. At that point, the Member and the Alternate payee will receive the amounts credited to their respective DROP accounts,

including any earnings or losses thereon. [See Appendix D for the text of Article 26 of the Retirement Plan]

VIII. QUALIFIED DOMESTIC RELATIONS ORDER (QDRO)

The Retirement Equity Act of 1984 governs the distributions of community property assets of private sector pension plans. Qualified Domestic Relations Orders (“QDRO”) are issued in relation to private sector pension plans. Because QDROs contain provisions which are contrary to the Retirement Plan, the Pension Trust cannot administer QDROs. Please refer to one of the methods described in this document for dividing the community property interest in the Pension Trust.

IX. REQUESTS FOR INFORMATION / CONFIDENTIALITY POLICY

Information and records pertaining to a Member’s Pension Trust file are maintained confidentially.

A Member may request and authorize access to information and records contained in his or her own Pension Trust file. Third parties, such as the Member’s spouse and/or the parties’ respective attorneys or other authorized representatives, in order to facilitate the determination of the community property interests of the parties, may obtain information contained in a Member’s file solely through one of the following methods of authorization:

- (A) A Subpoena Duces Tecum. Upon receipt of a subpoena duces tecum, the Pension Trust will provide photocopies of the requested records from the Member’s file and will provide the requested calculations. Pursuant to California Evidence Code Section 1563, the Pension Trust will charge an hourly rate for clerical costs plus 10¢ per page for photocopies. The Pension Trust will accept the service of the subpoena by mail.
- (B) A written request from the Member stating the specific data or records to be provided. The Pension Trust will supply an “Authorization to Release Personal Information” upon request of the Member.

Upon receipt of proper authorization, as referenced above, the Pension Trust will provide the following information regarding Member’s Pension Trust file:

- A statement as to the Member’s accumulated Normal Contributions, Additional Contributions, if any, and interest earned on such contributions for a specified period.
- A statement of the Member’s Pension Trust Service Credits earned during a specified period.
- A statement as to the Member’s past and current Membership Classification (i.e., Miscellaneous, Safety or Probation).

The Pension Trust is unable to provide:

- Actuarial valuation of retirement allowances. A private actuary should be retained for this information.

- Employment data, salary, payroll, and earnings or personnel records. The employer must be contacted for this information.

X. TAX LIABILITY

Both the Member and the Alternate Payee are responsible for any tax liability resulting from their receipt of payment from the Pension Trust. Therefore, the Alternate Payee's social security number must be provided to the Pension Trust before it can disburse any payments to or create a separate account for the Alternate Payee.

XI. REMARRIAGE

The community property interest in the allowances and benefits set forth in the court order does not terminate upon the remarriage of either party, unless otherwise stated in the DRO.

XII. CONCLUSION

The staff of the Pension Trust will gladly answer general questions regarding Pension Trust benefits, the impact of a divorce on a Member's benefit entitlements and required documentation. Please be advised, however, Pension Trust staff is neither qualified nor authorized to provide legal advice to Members or former spouses. It is strongly suggested that the each party to a domestic relations action seek the advice of a competent attorney who can represent their best interests in marriage dissolution matters.

APPENDIX A

EXAMPLE OF

DOMESTIC RELATIONS ORDER

METHOD 1

**Distribution of the Alternate Payee's Share at the Time
the Member (Or Reserve Participant) Retires or Dies**

[NAME OF COUNSEL]
 [ADDRESS OF COUNSEL]
 [CITY, STATE]
 [PHONE NUMBER]
 ATTORNEY FOR [PETITIONER/RESPONDENT]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF _____

In Re the Marriage of _____) Case No. _____
)
 Petitioner: _____)
)
) and _____)
) DOMESTIC RELATIONS)
)
 Respondent: _____) ORDER RE: DIVISION OF)
) SAN LUIS OBISPO)
) COUNTY)
) PENSION TRUST)
) RETIREMENT PLAN BENEFITS)
) AND ALLOWANCES)
 _____)

Petitioner, _____, and Respondent, _____, hereby stipulate
 as follows:

RECITALS

1. Petitioner and Respondent were married to each other on _____. They
 separated on _____, and this Court entered a judgment of dissolution of marriage in
 the action on _____.

2. This Court has personal jurisdiction over both Petitioner and Respondent and

jurisdiction over the subject matter of this Order and the dissolution of marriage action. The Pension Trust was properly joined as a party claimant to this action pursuant to sections 2060 through 2065 of the California Family Code.

3. The San Luis Obispo County Pension Trust (“Pension Trust”) was formed, exists and is administered under section 53215, et seq., of the Government Code and Chapter 2.56 of the San Luis Obispo County Code and the Pension Trust By-Laws and Pension Trust Retirement Plan (“Retirement Plan”).

IT IS HEREBY ORDERED BY THE COURT THAT:

1. This Order is entered pursuant to the California Family Code.

2. **[Respondent or Petitioner]** (“Member”) and **[Respondent or Petitioner]** (“Alternate Payee”) have acquired a community interest in the Member’s rights under the Retirement Plan and attributable the Member’s Pension Trust Service Credit from the date of marriage up to the date of separation of the parties.

3. Surviving Spouse. The Court finds that:

a. As of the date of separation of the parties, the Member had not retired from employment and that, therefore, the Alternate Payee is not qualified as, and will not qualify to become the Member’s “Eligible Surviving Spouse” under Section 7.04(b) of the Retirement Plan, and

b. In the event that at the date of the Member’s retirement the Member has acquired a new spouse by a marriage occurring and continuing one year immediately prior to the Member’s retirement, the rights of the new spouse as an “Eligible Surviving Spouse” under Section

7.04 (b) of the Retirement Plan and the death benefits payable to said “Eligible Surviving Spouse,” will reduce the amounts payable to the Alternate Payee hereunder.

4. Calculation of the Community Property Interest. The parties’ community property interest in the Member’s rights under the Retirement Plan shall be a fraction, the numerator of which is the number of years and fractional parts thereof of the Member’s Pension Trust Service Credit accrued between the date of the parties’ marriage and the date of the parties’ separation. The denominator of the fraction is the Member’s total Pension Trust Service Credit accrued from the Member’s entry into the Pension Trust until the Member’s effective date of retirement.

The resulting fraction shall be converted into a percentage interest which shall be the Community Property Interest.

5. Calculation of Alternate Payee’s Share. The Alternate Payee’s Share of the Community Property Interest shall be determined by multiplying the Community Property Interest by one-half.

6. Award of the Alternate Payee’s Share. The Court allocates and awards to the Alternate Payee, as the Alternate Payee’s sole and separate property, the Alternate Payee’s Share of the of the Community Property Interest in the Member’s rights under the Retirement Plan.

The Alternate Payee’s Share of the Member’s plan allowances and benefits under the Retirement Plan shall apply to, but not be limited to, the Monthly Retirement Allowances paid to the Member during the Member’s lifetime, the Alternate Payee’s interest in the Retirement Plan as a beneficiary of the Member and the Alternate Payee’s share of any Employee Additional Contribution account in the name of Member. All Retirement Plan allowances and benefits

which are not awarded to the Alternate Payee pursuant to this Order shall be the Member's sole and separate property.

7. Member's Additional Contributions. In the event that the Member has an Employee Additional Contribution account with the Retirement Plan, the Alternate Payee's Share of that account shall be paid to the Alternate Payee in accordance with Section 5.07 of the Retirement Plan.

8. Election of Retirement Allowance Method. At such time as the Member applies to the Pension Trust for a Monthly Retirement Allowance, the Member shall elect [**choose one**]: Optional Settlement No. ___ as provided for under Article 13 of the Retirement Plan, and shall name the Alternate Payee as Member's beneficiary under said Optional Settlement.

OR

the Unmodified Retirement Allowance as provided for under Article 6 of the Retirement Plan.

9. Payment of Retirement Allowance to the Alternate Payee if the Member Retires. At such time as the Member retires and commences receiving a monthly retirement allowance from the Pension Trust, the Alternate Payee shall commence receiving the Alternate Payee's community property share of the Member's monthly retirement allowance by separate warrant directly from the Pension Trust.

10. Payments to the Alternate Payee in the event of the Member's Death Prior to Retirement. If the Member dies before the Member is qualified to retire, then the Alternate Payee shall be paid the Alternate Payee's proportionate share of the death benefit provided for by Section 7.01 of the Retirement Plan.

11. Responsibility for Taxes. The Member and the Alternate Payee shall be responsible for any taxes due in connection with his or her receipt of distributions from the

Pension Trust. Accordingly, the share of the Member's monthly retirement allowance paid to the Alternate Payee pursuant to this Order will be reported to the Internal Revenue Service as income paid to the Alternate Payee.

12. Member Information. For the purpose of making any retirement allowance or benefit payments provided by the terms of this Order or providing any notice required by the terms of this Order, Member's name, current mailing address, telephone number, Social Security number and date of birth are as follows:

Name: _____

Address: _____

Telephone No.: _____

Social Security Number: _____

Date of Birth: _____

13. Alternate Payee Information. For the purpose of making any retirement allowance or benefit payments provided by the terms of this Order or providing any notice required by the terms of this Order, Alternate Payee's name, current mailing address, telephone number, Social Security number and date of birth are as follows:

Name: _____

Address: _____

Telephone No.: _____

Social Security Number: _____

Date of Birth: _____

14. Notice of change of address or telephone number of the Member or Alternate Payee shall be made in writing to the Pension Trust at the following address:

San Luis Obispo County Pension Trust
1000 Mill Street
San Luis Obispo, CA 93408

15. The Member and the Alternate Payee shall duly execute all documents required to effect the distribution(s) described herein and the intent of this Order.

16. The Alternate Payee and the Alternate Payee's agents and attorneys are authorized to receive information from the Pension Trust concerning the Member's allowances and benefits as may be needed to verify the Alternate Payee's allowance.

17. The Member shall act as constructive trustee of any benefits assigned to the Alternate Payee under this Order which may be paid to or received by the Member. The Member, as trustee, shall promptly pay or transmit any such benefits to the Alternate Payee at the Alternate Payee's last known address. The Alternate Payee shall act as constructive trustee of any benefits assigned to the Member under this Order which may be paid to or received by the Alternate Payee. The Alternate Payee, as trustee, shall promptly pay or transmit any such benefits to the Member at the Member's last known address.

18. This Order shall be administered and interpreted in conformity with the laws governing the Pension Trust, the By-Laws and Retirement Plan and other applicable law. If such laws, By-Laws, or Retirement Plan are amended, then the Member and the Alternate Payee shall immediately take the steps necessary to amend this Order to comply with any such amendments, changes or modifications. The Member and the Alternate Payee shall be responsible for any of the costs or expenses associated with such amendment to this Order.

19. The Member, the Alternate Payee, and the Court intend that this Order meet all requirements of a domestic relations order under the laws governing the Pension Trust and other applicable laws of the State of California. The Court shall reserve jurisdiction to modify this

Order and to resolve any disputes that may arise among the parties relative to benefit payments or any other aspect of this Order. If any portion of this Order is rendered invalid or otherwise unenforceable, the Court reserves jurisdiction to modify the Order as necessary in accordance with the intent of the parties.

20. This Stipulation and Order shall not expand the contractual or statutory obligations, whether substantive or procedural, of the Pension Trust with respect to paying the above allowances and/or benefits.

IT IS SO STIPULATED:

Dated: _____
[NAME]
Petitioner

Dated: _____
[NAME]
Attorney for Petitioner

Dated: _____
[NAME]
Respondent

Dated: _____
[NAME]
Attorney for Respondent

APPROVED AS TO FORM:

Dated: _____

Executive Secretary
San Luis Obispo County Pension Trust

ORDER

The parties having stipulated thereto and good cause appearing therefore.

IT IS SO ORDERED.

Dated: _____

Judge of the Superior Court

APPENDIX B

**EXAMPLE OF
DOMESTIC RELATIONS ORDER**

METHOD 2

**Division of the Alternate Payee's Share
into a Separate Account**

[NAME OF COUNSEL]
[ADDRESS OF COUNSEL]
[CITY, STATE]
[PHONE NUMBER]
ATTORNEY FOR [PETITIONER/RESPONDENT]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF _____

In Re the Marriage of _____) Case No.

Petitioner: _____)
_____)

and _____)

Respondent: _____)
DOMESTIC RELATIONS)
ORDER RE: DIVISION OF)
SAN LUIS OBISPO)
COUNTY)

PENSION TRUST)

RETIREMENT PLAN BENEFITS)

AND ALLOWANCES)

_____)

Petitioner, _____, and Respondent, _____, hereby stipulate
as follows:

RECITALS

1. Petitioner and Respondent were married to each other on _____. They
separated on _____, and this Court entered a judgment of dissolution of marriage in

the action on _____.

2. This Court has personal jurisdiction over both Petitioner and Respondent and jurisdiction over the subject matter of this Order and the dissolution of marriage action. The Pension Trust was properly joined as a party claimant to this action pursuant to sections 2060 through 2065 of the California Family Code.

3. The San Luis Obispo County Pension Trust (“Pension Trust”) was formed, exists and is administered under section 53215, et seq., of the Government Code and Chapter 2.56 of the San Luis Obispo County Code and the Pension Trust By-Laws and Pension Trust Retirement Plan (Retirement Plan).

IT IS HEREBY ORDERED BY THE COURT THAT:

1. This Order is entered pursuant to the California Family Code.
2. **[Respondent or Petitioner]** (“Member”) and **[Respondent or Petitioner]** (“Alternate Payee”) have acquired a community interest in the Member’s rights under the Retirement Plan and attributable the Member’s Pension Trust Service Credit from the date of marriage up to the date of separation of the parties.
3. Calculation of the Community Property Interest. The parties’ community property interest in the Member’s benefits under the Retirement Plan shall be those attributable to the Member’s Pension Trust Service Credit from the date of marriage through the date of separation.
4. Calculation of the Alternate Payee’s Share. The Alternate Payee’s share of the community property interest shall be determined by multiplying the community property interest by one-half.
5. Award of the Alternate Payee’s Share. The Court allocates and awards to the Alternate Payee, as the Alternate Payee’s sole and separate property, the Alternate Payee’s share

of the of the community property interest in the Member's benefits under the Retirement Plan. The Alternate Payee's share of the Member's benefits under the Retirement Plan shall apply to, but not be limited to, the rights of an Alternate Payee pursuant to Article 24 of the Retirement Plan and the Alternate Payee's share of any Member Additional Contribution account in the name of Member.

6. Alternate Payee's Share of Member's Accumulated Normal Contributions and Pension Trust Service Credit. The Alternate Payee's Share of:

- a. the Member's Accumulated Normal Contributions and,
- b. the Members Pension Trust Service Credit,

shall be set aside for the Alternate Payee in a Pension Trust account in the Alternate Payee's name in accordance with Section 24.01(a) of the Retirement Plan and the Alternate Payee shall be entitled to those rights described for an Alternate Payee under Sections 24.01(b), Section 24.02, Section 24.03 and Section 24.04 of the Retirement Plan.

7. Alternate Payee's Share of Member's Additional Contributions. In the event that the Member has an Employee Additional Contribution account with the Retirement Plan, the Alternate Payee's share of that account shall be set aside to the Alternate Payee in accordance with Section 24.01(a) of the Retirement Plan and be held for payment to the Alternate Payee in accordance with Section 5.07 of the Retirement Plan.

8. Alternate Payee's Share of Member's Right to "Purchase" Additional Pension Trust Service Credit. To the extent that, as of the date of separation of the parties, the Member had and continues to have, any rights under the Retirement Plan to make deposits to the Member's Normal Contributions account and thereby acquire additional Pension Trust Services Credit, the Alternate Payee shall succeed to such rights of the Member proportionally to the

Alternate Payee's community property share.

9. Balance of Rights under Retirement Plan Awarded to Member.

All Retirement Plan allowances, benefits and other rights which are not awarded and set aside to the Alternate Payee pursuant to this Order shall be the Member's sole and separate property.

10. Responsibility for Taxes. The Member and the Alternate Payee shall be responsible for, and pay, any taxes due in connection with his or her receipt of distributions from the Pension Trust. Accordingly, any benefit payments disbursed to the Alternate Payee pursuant to this Order will be reported to the Internal Revenue Service as income paid to the Alternate Payee.

11. Member Information. For the purpose of making any retirement allowance or benefit payments provided by the terms of this Order or providing any notice required by the terms of this Order, Member's name, current mailing address, telephone number, social security number and date of birth are as follows:

Name: _____

Address: _____

Telephone No.: _____

Social Security Number: _____

Date of Birth: _____

12. Alternate Payee Information. For the purpose of making any retirement allowance or benefit payments provided by the terms of this Order or providing any notice required by the terms of this Order, Alternate Payee's name, current mailing address, telephone number, social security number and date of birth are as follows:

Name: _____

Address: _____

Telephone No.: _____

Social Security Number: _____

Date of Birth: _____

13. Notice of change of address or telephone number of the Member or Alternate

Payee shall be made in writing to the Pension Trust at the following address:

San Luis Obispo County Pension Trust
1000 Mill Street
San Luis Obispo, CA 93408

14. The Member and the Alternate Payee shall duly execute all documents required to effect the distribution(s) described herein and the intent of this Order.

15. The Member shall act as constructive trustee of any benefits assigned to the Alternate Payee under this Order which may be paid to or received by the Member. The Member, as trustee, shall promptly pay or transmit any such benefits to the Alternate Payee at the Alternate Payee's last known address. The Alternate Payee shall act as constructive trustee of any benefits assigned to the Member under this Order which may be paid to or received by the Alternate Payee. The Alternate Payee, as trustee, shall promptly pay or transmit any such benefits to the Member at the Member's last known address.

16. This Order shall be administered and interpreted in conformity with the laws governing the Pension Trust, the By-Laws and Retirement Plan and other applicable law. If such laws, By-Laws, or Retirement Plan are amended, then the Member and the Alternate Payee shall immediately take the steps necessary to amend this Order to comply with any such amendments, changes or modifications.

17. The Member, the Alternate Payee, and the Court intend that this Order meet all requirements of a domestic relations order under the laws governing the Pension Trust and other applicable laws of the State of California. The Court shall reserve jurisdiction to modify this Order and to resolve any disputes that may arise among the parties relative to benefit payments or any other aspect of this Order. If any portion of this Order is rendered invalid or otherwise unenforceable, the Court reserves jurisdiction to modify the Order as necessary in accordance with the intent of the parties.

18. This Stipulation and Order shall not expand the contractual or statutory obligations, whether substantive or procedural, of the Pension Trust with respect to paying the above allowances and/or benefits.

IT IS SO STIPULATED:

Dated: _____
[NAME]
Petitioner

Dated: _____
[NAME]
Attorney for Petitioner

Dated: _____
[NAME]
Respondent

Dated: _____
[NAME]
Attorney for Respondent

APPROVED AS TO FORM:

Dated: _____

Executive Secretary
San Luis Obispo County Pension Trust

ORDER

The parties having stipulated thereto and good cause appearing therefore.

IT IS SO ORDERED.

Dated: _____

Judge of the Superior Court

APPENDIX C

EXAMPLE OF

DOMESTIC RELATIONS ORDER

METHOD 3

**Division of the Community Property Interest
of a Retired Participant's Benefit Entitlements**

[NAME OF COUNSEL]
[ADDRESS OF COUNSEL]
[CITY, STATE]
[PHONE NUMBER]
ATTORNEY FOR [PETITIONER/RESPONDENT]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF _____

In Re the Marriage of _____) Case No.

Petitioner: _____)
_____)

and)
DOMESTIC RELATIONS)

Respondent: _____)
ORDER RE: DIVISION OF)
SAN LUIS OBISPO)
COUNTY)

PENSION TRUST)

RETIREMENT PLAN BENEFITS)

AND ALLOWANCES)
_____)

Petitioner, _____, and Respondent, _____, hereby stipulate
as follows:

RECITALS

1. Petitioner and Respondent were married to each other on _____. They

separated on _____, and this Court entered a judgment of dissolution of marriage in the action on _____.

2. This Court has personal jurisdiction over both Petitioner and Respondent and jurisdiction over the subject matter of this Order and the dissolution of marriage action. The Pension Trust was properly joined as a party claimant to this action pursuant to sections 2060 through 2065 of the California Family Code.

3. The San Luis Obispo County Pension Trust (“Pension Trust”) was formed, exists and is administered under section 53215, et seq., of the Government Code and Chapter 2.56 of the San Luis Obispo County Code and the Pension Trust By-Laws and Pension Trust Retirement Plan (Retirement Plan).

IT IS HEREBY ORDERED BY THE COURT THAT:

1. This Order is entered pursuant to the California Family Code.

2. **[Respondent or Petitioner]** (“Retired Participant”) and **[Respondent or Petitioner]** (“Alternate Payee”) have acquired a community interest in the Retired Participant’s monthly retirement allowance and other benefits set forth in the Retirement Plan and attributable the Retired Participant’s Pension Trust Service Credit accrued from the date of marriage up to the date of separation, or effective date of retirement, whichever occurred first.

3. The Court finds that the Alternate Payee was [or was not] married to the Retired Participant for at least one year prior the effective date of retirement of the Retired Participant. Pursuant to Section 24.05(4) of the Retirement Plan, after the dissolution of the marriage of the parties, the Alternate Payee will [or will not] continue to qualify for Surviving Spouse death benefits under Section 7.04(b) of the Retirement Plan.

4. The Retired Participant is currently receiving a monthly retirement allowance

from the Pension Trust.

5. Calculation of the Community Property Interest. The parties' community property interest in the Retired Participant's Monthly Retirement Allowance and other benefits set forth in the Retirement Plan shall be a fraction, the numerator of which is number of years and fractional parts thereof of the Retired Participant's Pension Trust Service Credit accrued between the date of the parties' marriage and the date of the parties' separation, or the effective date of retirement, whichever is earlier. The denominator of the fraction is the Retired Participant's total Pension Trust Service Credit used in the calculation of his or her retirement allowance. The resulting fraction shall be converted into a percentage interest which shall constitute the parties' community property interest.

6. Calculation of Alternate Payee's Share. The Alternate Payee's share of the Community Property Interest shall be determined by multiplying the community property interest by one-half.

7. Award of the Alternate Payee's Share. The Court allocates and awards to the Alternate Payee, as the Alternate Payee's sole and separate property, the Alternate Payee's share of the of the community property interest in the Retired Participant's benefits under the Retirement Plan.

The Alternate Payee's Share of the Retired Participant's benefits under the Retirement Plan shall apply to, but not be limited to, the monthly retirement allowances paid to the Retired Participant during the Retired Participant's lifetime, and the Alternate Payee's interest in the Retirement Plan as a beneficiary of the Retired Participant. All Retirement Plan allowances and benefits which are not awarded to the Alternate Payee pursuant to this Order shall be the Retired Participant's sole and separate property.

8. Payment of Monthly Retirement Allowance to the Alternate Payee. The Alternate Payee shall be paid the Alternate Payee's Share of the Retired Participant's Monthly Retirement Allowance by separate warrant directly from the Pension Trust. Payments shall commence as soon as administratively practicable following the date the Pension Trust receives and accepts a certified copy of this Order.

9. Retired Participant's Death.

(a) Upon the death of the Retired Participant, the Alternate Payee shall receive [his or her] community property share of the \$1,000 death benefit provided for under Section 7.04(a) of the Retirement Plan. The balance of the Section 7.04(a) death benefit shall be payable to the beneficiary designated by the Retired Participant, on forms provided by the Pension Trust, or to the Estate of the Retired Participant if no such designation is made by the Retired Participant.

(b) **["Unmodified" Alternate - To be used when the Retired Participant retired under the Unmodified Retirement Allowance of Article 6 or Article 10 of the Retirement Plan and the Alternate Payee is the Retired Participant's eligible surviving spouse.]** Insofar as the Retired Participant retired under the provisions of Article 6 [or 10] of the Retirement Plan and elected to receive an Unmodified Monthly Retirement Allowance from the Pension Trust, and insofar as the Alternate Payee is the Retired Participant's eligible surviving spouse pursuant to Section 24.05(4) of the Retirement Plan, in the event the Retired Participant were to predecease the Alternate Payee, the Alternate Payee shall cease receiving [his or her] community property share of the Retired Participant's monthly retirement allowance provided under paragraph 8 of this Order, and the death benefit provided for a under Section 7.04(b) of the Retirement Plan shall be payable to the Alternate Payee.

(b) **Alternate Paragraph 1 - To be used when the Retired Participant retired under “Optional Settlement No. 1” of Section 13.02 of the Retirement Plan.** The Retired Participant elected to retire under the provisions of “Optional Settlement No.1” of Article 13 of the Retirement Plan and has been receiving a monthly retirement allowance from the Pension Trust under “Optional Settlement No. 1.” Because the Alternate Payee was married to the Retired Participant for more than one year prior to the effective date of retirement, the Alternate Payee is the eligible surviving spouse of the Retired Participant. Under section 13.01 of the Retirement Plan, only one-half of the Article 6 **[or 10]** Retirement Allowance shall be subject to actuarial reduction under “Optional Settlement No. 1. Therefore, if the Retired Participant dies and is survived by the Alternate Payee:

(i) the death benefit provided for under Section 7.04(b), Section 13.01, and Section 13.02 of the Pension Trust Retirement Plan shall be payable, on the death of the Retired Participant, to the Alternate Payee, and

(ii) the payment to the Alternate Payee of the Alternate Payee’s community property share of the Retired Participant’s monthly retirement allowance provided for by paragraph 8 of this Order shall cease, and

(iii) only one-half of the balance of the Retired Participant’s Accumulated Normal Contributions shall be paid, on the death of the Retired Participant, to the beneficiary designated by the Retired Participant on forms provided by the Pension Trust, or the estate of the Retired Participant if no such designation is made by the Retired Participant.

(b) **Alternate Paragraph 2 - To be used when the Retired Participant retired under “Optional Settlement No. 2” of Section 13.02 of the Retirement Plan.** The Retired Participant elected to retire under the provisions of “Optional Settlement No.2” of Article

13 of the Retirement Plan and has been receiving a monthly retirement allowance from the Pension Trust under "Optional Settlement No. 2." Because the Alternate Payee was married to the Retired Participant for more than one year prior to the effective date of retirement, the Alternate Payee is the eligible surviving spouse of the Retired Participant. Under section 13.01 of the Retirement Plan, only one-half of the Article 6 **[or 10]** Retirement Allowance shall be subject to actuarial reduction under "Optional Settlement No. 2." Therefore, if the Retired Participant dies and is survived by the Alternate Payee:

(i) the payment to the Alternate Payee of the Alternate Payee's community property share of the Retired Participant's Monthly Retirement Allowance provided for by paragraph 8 of this Order shall cease, and

(ii) the Alternate Payee shall receive, for the balance of the Alternate Payee's life, a continuation of 100% the Retired Participant's actuarially-reduced monthly retirement allowance pursuant to the terms of the "Optional Settlement No. 2."

(b) **Alternate Paragraph 3 - To be used when the Retired Participant retired under "Optional Settlement No. 3" of Section 13.02 of the Retirement Plan.** The Retired Participant elected to retire under the provisions of "Optional Settlement No.3" of Article 13 of the Retirement Plan and has been receiving a monthly retirement allowance from the Pension Trust under "Optional Settlement No. 3." Because the Alternate Payee was married to the Retired Participant for more than one year prior to the effective date of retirement, the Alternate Payee is the eligible surviving spouse of the Retired Participant. Under section 13.01 of the Retirement Plan, only one-half of the Article 6 **[or 10]** Retirement Allowance shall be subject to actuarial reduction under "Optional Settlement No. 3." Therefore, if the Retired Participant dies and is survived by the Alternate Payee:

(i) the payment to the Alternate Payee of the Alternate Payee's community property share of the Retired Participant's Monthly Retirement Allowance provided for by paragraph 8 of this Order shall cease, and

(ii) the Alternate Payee shall receive, for the balance of the Alternate Payee's life, a continuation of 50% of the Retired Participant's actuarially-reduced monthly retirement allowance under the terms of the "Optional Settlement No. 3."

10. The Retired Participant and the Alternate Payee shall be responsible for, and pay, any taxes due in connection with his or her receipt of distributions from the Pension Trust. Accordingly, any benefit payments disbursed to the Alternate Payee pursuant to this Order will be reported to the Internal Revenue Service as income paid to the Alternate Payee.

11. Retired Participant Information. For the purpose of making any retirement allowance payments provided by the terms of this Order or providing any notice required by the terms of this Order, Retired Participant's name, current mailing address, telephone number, Social Security number and date of birth are as follows:

Name: _____

Address: _____

Telephone No.: _____

Social Security Number: _____

Date of Birth: _____

12. Alternate Payee Information. For the purpose of making any retirement allowance payments provided by the terms of this Order or providing any notice required by the terms of this Order, Alternate Payee's name, current mailing address, telephone number, Social Security number and date of birth are as follows:

Name: _____

Address: _____

Telephone No.: _____

Social Security Number: _____

Date of Birth: _____

13. Notice of change of address or telephone number of the Retired Participant or the Alternate Payee shall be made in writing to the Pension Trust to the following address:

San Luis Obispo County Pension Trust
1000 Mill Street
San Luis Obispo, CA 93408

14. The Retired Participant and the Alternate Payee shall duly execute all documents required to effect the distribution(s) described herein and the intent of this Order.

15. The Retired Participant shall act as constructive trustee of any benefits assigned to the Alternate Payee under this Order which may be paid to or received by the Retired Participant. The Retired Participant, as trustee, shall promptly pay or transmit any such benefits to the Alternate Payee at the Alternate Payee's last known address.

16. The Alternate Payee shall act as constructive trustee of any benefits assigned to the Retired Participant under this Order which may be paid to or received by the Alternate Payee. The Alternate Payee, as trustee, shall promptly pay or transmit any such benefits to the Retired Participant at the Retired Participant's last known address.

17. This Order shall be administered and interpreted in conformity with the laws governing the Pension Trust, By-laws, Retirement Plan, and other applicable law. If the Pension Trust Laws are amended, then the Retired Participant and the Alternate Payee shall immediately take the steps necessary to amend this Order to comply with any such amendments, changes or

modifications.

18. The Retired Participant, the Alternate Payee, and the Court intend that this Order meet all requirements of a domestic relations order under the laws governing the Pension Trust and other applicable laws of the State of California. The Court shall reserve jurisdiction to modify this Order and to resolve any disputes that may arise among the parties and the Executive Secretary concerning benefit payments or any other aspect of this Order. If any portion of this Order is rendered invalid or otherwise unenforceable, the Court reserves jurisdiction to modify the Order as necessary in accordance with the intent of the parties.

19. This Stipulation and Order shall not expand the contractual or statutory obligations, whether substantive or procedural, of the Pension Trust with respect to paying the above allowances and/or benefits.

IT IS SO STIPULATED:

Dated: _____
_____ [NAME]
Petitioner

Dated: _____
_____ [NAME]
Attorney for Petitioner

Dated: _____
_____ [NAME]
Respondent

Dated: _____
_____ [NAME]
Attorney for Respondent

APPROVED AS TO FORM:

Dated: _____

Executive Secretary
San Luis Obispo County Pension Trust

ORDER

The parties having stipulated thereto and good cause appearing therefore.

IT IS SO ORDERED.

Dated: _____

Judge of the Superior Court

APPENDIX D

RELEVANT SECTIONS

FROM THE

SAN LUIS OBISPO COUNTY
EMPLOYEES RETIREMENT PLAN

Section 1.13.5: “Alternate Payee” means the spouse or former spouse of a Member or Reserve Participant who as a result of petitioning a court of competent jurisdiction for the division of community property, has been awarded a distinct and separate account reflecting specific credited Pension Trust Service Credit and Accumulated Normal Contributions and any Accumulated Additional Contributions pursuant to Section 24.01:Division of Community Property before Retirement - Members and Reserve Participants. Alternate Payee shall also mean the spouse or former spouse of a Retired Participant who as a result of petitioning a court of competent jurisdiction for the division of community property, has been awarded a benefit or settlement allowance pursuant to Section 24.05 Division of Community Property of a Retired Participant. (09-12-2000)

ARTICLE 7: DEATH BENEFITS

Section 7.01: Basic Death Benefit.

- (a) Upon the death of a Member before retirement, a Basic Death Benefit equal to:
- (1) the Member's Accumulated Contributions to date of death, plus
 - (2) an amount equal to one and one-half months of the Member's compensation for each completed year of Pension Trust service credit earned by the Member up to the date of the Member's death (provided that in no event shall the portion of the death benefit payable under this subsection (2) exceed eighteen months of the Member's compensation) shall be paid to the Member's named beneficiary or to the Member's estate if there is no beneficiary record on file. The compensation to be used in computing this Basic Death Benefit shall be the compensation payable to the Member as of the Member's date of death.
- (b) For the purposes of this Section 7.01, the "death of a Member before retirement" shall mean the following:
- (1) Death of a Member before the effective date of retirement, and
 - a) While the Member is a County Employee, or
 - b) While the Member is absent on military service as defined in Section 2.12 hereof, or
 - c) While the Member is on a leave of absence approved by the County Employer; or
 - d) While the Member is physically or mentally incapacitated for the performance of duty, if such incapacity has been continuous from the date that the Member became unable to perform the usual duties of the Member's position with the County Employer; or
 - (2) Death of a Member on or after the effective date of retirement, and before the mailing of the first retirement allowance payment to the Member, provided the Member has not elected Optional Settlement No.2, or No.3, or No.4 involving payment of an allowance throughout the life of the Member's beneficiary under Article 13 of this Plan, and provided further that no benefit is payable under Sections 7.02, 7.03, 7.04 or 7.05 of this Plan, and death occurs:
 - a) Within four months of the termination of County Employment, or
 - b) While the Member is physically or mentally incapacitated for the performance of duty and such incapacity has been continuous from the date the Member became unable to perform the duties of the Member's position with the County Employer; or

(3) Death of a Reserve Participant within four months of termination of County Employment, provided said Reserve Participant is not a Member of a reciprocal system pursuant to the provisions of Article 20 of this Retirement Plan.(9-22-73) (12-13-88) (11-13-90)

(c) If a Member dies on or after the effective date of retirement and prior to the mailing of the first retirement allowance payment and if the Member has elected Optional Settlement No.2, No.3, or No.4 involving payment of an allowance throughout the life of the Member's beneficiary or if a benefit is payable under Section 7.04 of this Plan, the death shall be considered to be a death occurring after retirement and the applicable benefits under Article 13 of this Plan shall be payable.

Section 7.02: Death Benefit Where Death Occurs Before Retirement But After Qualification for Retirement. Upon the death of a Member who has attained the minimum age for service retirement, applicable to him or her in the Member's last County Employment preceding death, and who is credited with five or more years of Pension Trust service credit, the death benefit provided by this Section 7.02 shall be paid in lieu of the Basic Death Benefit provided in Section 7.01 above. The death benefit provided by this Section shall be a monthly allowance equal to one-half of the Unmodified service retirement allowance to which the Member would have been entitled if the Member had retired for service on the date of the Member's death, payable:

- (a) To the surviving spouse of the Member, for life, or until remarriage; or
- (b) To the children of such Member under eighteen (18) years of age, collectively, if there is no eligible surviving spouse or if such spouse dies or remarries before all children of the deceased Member attain age eighteen (18), until every such child dies or attains age eighteen (18), provided, that no child shall receive any allowance after marrying or after attaining eighteen (18) years of age.

If payment under this Section 7.02 is stopped because of the occurrence of any of the conditions set forth in this Section and before the sum of the monthly allowance payments actually made hereunder equals the Basic Death Benefit, a lump sum equal to the difference shall be paid as follows:

- (a) If the person last entitled to the allowance is the married spouse of the Member, to such spouse;
- (b) Otherwise, to the surviving children of the Member, share and share alike, if there be such;
- (c) Otherwise, to the estate of the person last entitled to receive the allowance.

As used in this Section 7.02, a "surviving spouse" means a person who was married to the Member for at least one year prior to the death of the Member. If the Member does not have a surviving spouse nor any children under age eighteen (18) at the time of death, no death benefit shall be payable under this Section 7.02.

Any person qualifying for the death benefit provided under this Section 7.02, or the guardian of that person, may elect to receive, in lieu of the allowance provided by this Section, the Basic Death Benefit provided for in Section 7.01 of the Retirement Plan. Notice of such election shall be in writing and must be delivered to the Board of Trustees before the first payment under this Section 7.02 is made.(9-22-73)

Section 7.02.10: Death Benefit Where Death Occurs Before Retirement But After Qualification for Retirement – Election By Spouse.

The surviving spouse of a Member who has attained the minimum age for service retirement applicable to him or her in the Member's last County Employment preceding death and who is credited with five or more years of Pension Trust service credit, and who is eligible to receive the benefit payable pursuant to Section 7.02: Death Benefit Where Death Occurs Before Retirement But After Qualification for Retirement, may elect to instead receive a death benefit that is equal to the amount of the Service Retirement allowance that the Member would have received if the Member had been retired from service on the date of death and had elected to receive the allowance set forth in Section 13.03: Optional Settlement 2 of the Retirement Plan.

The benefit payable by this Section 7.02.10 shall be paid in lieu of the Basic Death Benefit under Section 7.01 or the benefit payable pursuant to Section 7.02 of this Retirement Plan. (12-17-2002)

Section 7.03: Safety Member Death Benefit - Death of Safety Member Before Retirement.

If the death of a Safety Member is Service-Connected, a monthly income benefit will be paid to the Safety Member's surviving spouse until the death or remarriage of the surviving spouse. This monthly income benefit shall be in lieu of the death benefit provided in Sections 7.01 or 7.02 above. The monthly income benefit under this Section will equal fifty per cent of the final compensation of the Safety Member (as defined in Section 1.16), less all benefits the surviving spouse is entitled to receive from Social Security because of the death of the Safety Member; provided, however, that the amount of the benefit payable under this Section 7.03 shall be not less than the benefit provided under Section 7.02 above.

If the said service-connected death of the Safety Member is also found to have been caused by external violent or physical force, the monthly income benefit (including Social Security) shall be increased to the following maximum percentages of final compensation of the safety Member:

- (a) Surviving spouse with three or more children under eighteen.....75%
- (b) Surviving spouse with two children under eighteen.....70%
- (c) Surviving spouse with one child under eighteen.....62 1/2%

If there be no surviving spouse entitled to a benefit hereunder, or if such spouse should die or remarry before every child of such deceased Safety Member attains the age of eighteen years, then a monthly income benefit, equal to 50% of the Safety Member's final compensation less all benefits payable to the Safety Member's children from Social Security because of the death of the Safety Member, shall be paid to the Safety Member's unmarried child or children under the age of eighteen years, collectively, until every such child attains said age; provided, that no child shall receive any monthly income benefit after marrying or attaining the age of eighteen years.

If payment under this Section 7.03 is stopped because of the occurrence of any of the conditions set forth in this Section and before the sum of the monthly income benefit payments actually made hereunder equals the Basic Death Benefit under Section 7.01, a lump sum equal to the difference shall be paid as follows:

- (a) If the person last entitled to the monthly income benefit is the married spouse of the Safety Member, to such spouse;
- (b) Otherwise, to the surviving children of the Safety Member, share and share alike, if there be such;
- (c) Otherwise, to the estate of the person last entitled to receive the monthly income benefit.

No monthly income benefit shall be paid under this Section to a surviving spouse unless such spouse was married to the Safety Member prior to the Safety Member sustaining the injury or contracting the disease resulting in the Safety Member's death. If the Safety Member does not have a surviving spouse nor any children under age eighteen (18) at the time of death, no allowance shall be payable under this Section. (9-22-73)

Section 7.03.10: Safety Member Death Benefit Where Death Occurs Before Retirement But After Qualification for Retirement – Election By Spouse. The surviving spouse of a Safety Member who has attained the minimum age for service retirement applicable to him or her in the Safety Member's last County Employment preceding death and who is credited with five or more years of Pension Trust service credit, and who is eligible to receive the benefit payable pursuant to Section 7.03: Safety Member Death Benefit - Death of Safety Member Before Retirement, may elect to receive instead a death benefit that is equal to the amount the Safety Member would have received if the Safety Member had been retired from service on the date of death and had elected to receive the allowance set forth in Section 13.03: Optional Settlement 2 of the Retirement Plan. (12-17-2002)

Section 7.04: Death Benefit Where Death Occurs After Retirement.

- (a) Upon the death of a Retired Participant, a death benefit of \$1,000.00 will be paid to the Retired Participant's named beneficiary or to the Retired Participant's estate if he or she has no beneficiary record on file with the Pension Trust.
- (b) Upon the death of a Retired Participant, who had five years or more of Pension Trust service, and who retired under this Retirement Plan on or after September 22, 1973, one-half of the Retired Participant's unmodified service or disability retirement allowance, as it was at the Retired Participant's date of death, shall be continued throughout the life or until the remarriage of the Retired Participant's eligible surviving spouse. If there be no such eligible surviving spouse, or if the eligible surviving spouse dies or remarries before every child of such deceased Retired Participant attains the age of eighteen years, then the death benefit which the eligible surviving spouse would have received had the said surviving spouse lived and not remarried shall be paid to the child or children under said age, collectively, to continue until every such child dies or attains said age; provided, that no child should

receive any death benefit after marrying or attaining the age of eighteen years. Should the said deceased Retired Participant leave no eligible surviving spouse and no children under the age of eighteen years, but leave a parent or parents who were dependent for support upon the said retired Participant at the time of the Retired Participant's death, the said parents shall collectively receive a monthly death benefit equal to that which an eligible surviving spouse otherwise would have received, during such dependency. If at the effective date of said retirement, said Retired Participant has no such eligible surviving spouse, children or dependent parents, who would so qualify, no monthly death benefit shall be paid under this Section 7.04(b).

No death benefit, however, shall be paid under this Section 7.04(b) to a surviving spouse unless the said surviving spouse was married to the said Retired Participant at least one year prior to the Retired Participant's retirement. (9-22-73)(3-17-87)

Section 7.05: Benefits Payable to Surviving Spouse. Notwithstanding any other provision of this Article 7, the death benefits payable to a Surviving Spouse pursuant to Section 7.02, Section 7.02.10, Section 7.03, Section 7.03.10, or Section 7.04 shall be paid as follows:

- (a) Any Surviving Spouse who is receiving said death benefit and remarries on or after September 12, 2000, shall continue to receive the said death benefit without reduction.
- (b) The death benefit provided pursuant to Section 7.02, Section 7.03, or Section 7.04, paid to the Surviving Spouse of any deceased Member or Retired Participant, which death benefit has been reduced or discontinued as a result of the remarriage of the Surviving Spouse shall be restored on the effective date of this Section, or the first of the month following receipt by the Pension Trust of a written application from the Surviving Spouse for restoration of the death benefit, whichever is later.
- (c) The amount of the death benefit payable shall be determined as though the death benefit had never been reduced or discontinued because of remarriage, and shall not be payable for the period between the date of reduction or discontinuance and the effective date of resumption.
- (d) The Pension Trust has no duty to identify, locate, or notify a spouse who previously had his or her death benefit reduced or discontinued because of remarriage. (12-17-2002)

ARTICLE 13: OPTIONS AVAILABLE UPON RETIREMENT

Section 13.01: Election of Options. A Member or Reserve Participant who is eligible for retirement under this Plan may elect to have the actuarial equivalent of his or her retirement allowance, as computed in accordance with Article 6 or Article 10 of this Plan, applied to a lesser retirement allowance, in accordance with one of the optional settlements specified in this Article 13, in lieu of the retirement provided for in said Article 6 or said Article 10. Such election shall be made prior to the making of the first payment on account of any retirement allowance. Such election shall become irrevocable as of the date of the first payment on account of any retirement allowance except as provided for in Section 13.07.

The foregoing notwithstanding, if the Member or Reserve Participant who is eligible for retirement under this Plan has any eligible surviving spouse, child or dependent parent as set forth in Section 7.04(b) hereof, then only one-half of the applicable retirement allowance payable under Article 6 or Article 10 of this Plan shall be eligible for and subject to actuarial reduction under the optional settlements specified in this Article 13, and only one-half of the accumulated normal contributions of the Member or Reserve Participant shall be subject to return under Optional Settlement No. 1.(9-22-73)

Section 13.02: Optional Settlement No. 1 consists of the right to have an actuarially-reduced retirement allowance paid to the Retired Participant until his or her death and if the Retired Participant dies before he or she receives in annuity payments the amount of his or her accumulated contributions at retirement, to have the balance of said accumulated contributions remaining as of the date of death of the Retired Participant paid to the Retired Participant's beneficiary or estate.

Section 13.03: Optional Settlement No. 2 consists of the right to have an actuarially-reduced retirement allowance paid to the Retired Participant until his or her death and thereafter the service retirement allowance payable at the Retired Participant's death shall continue during the life of his or her beneficiary. The amount of the said retirement allowance received by the beneficiary after the death of the Retired Participant shall be increased in the same manner and at same time that the service retirement allowances for all Retired Participants are increased pursuant to Article 19 of this Retirement Plan.(3-17-87)

Section 13.04: Optional Settlement No. 3 consists of the right to have an actuarially-reduced retirement allowance paid to the Retired Participant until his or her death and thereafter one-half (1/2) of such retirement allowance payable at the Retired Participant's death shall be paid during the life of his or her beneficiary. The amount of the said retirement allowance received by the beneficiary after the death of the Retired Participant shall be increased in the same manner and at same time that the retirement allowances for all Retired Participants are increased pursuant to Article 19 of this Retirement Plan. (3-17-87)

Section 13.05: Optional Settlement No. 4 consists of such other benefits as are the actuarial equivalent of a Member's or Reserve Participant's retirement allowance computed in accordance with Article 6 of this Plan, that the Member or Retired Participant may select, subject to the

approval of the Board of Trustees. However, the actuarial equivalent of benefits under this optional settlement payable to the Member's or Reserve Participant's beneficiary shall not exceed the actuarial equivalent of the benefits which would be payable to that beneficiary if the Member or Reserve Participant had elected Optional Settlement No. 2.

Section 13.06: Modification to Coordinate Retired Participant's Retirement Allowance with Estimated Benefits Receivable from Federal Social Security System.

- (a) A Member or Reserve Participant who retires for service prior to the age of becoming eligible for retirement payments under the Federal Social Security System may elect to have that portion of his or her service retirement allowance which is payable to him or her during his or her life only, increased prior to such eligible age and reduced after such age by amounts which have equivalent actuarial values, provided the subsequent decrease in his or her service retirement allowance does not exceed the pension portion of his service retirement allowance.
- (b) If a Retired Participant who has elected the provisions under subsection (a) of this Section 13.06 dies leaving a beneficiary entitled to an allowance, the beneficiary's allowance shall be the same as the beneficiary would have received had the Member not elected the provision under said subsection (a).(2-7-72)

Section 13.07: Actuarial Equivalent. Notwithstanding the provisions of Section 13.01 above, the monthly service retirement allowance payable, under any of the Optional Settlements above, to a Retired Participant who terminated employment at or after age of 65 years, shall be not less than the Optional Settlements service retirement allowance which would have been payable to the Retired Participant as of the date of termination of his or her County Employment.(2-7-72)

Section 13.08: Retired Participant Change of Beneficiary Designation.

- (a) A Retired Participant who elected to receive an optional settlement pursuant to Section 13.03, 13.04 or 13.05 of this Retirement Plan may change the Retired Participant's Beneficiary designation so as to delete the original Beneficiary and substitute a new Beneficiary if one of the following occurs:
 - (1) The Beneficiary originally designated by the Retired Participant dies. Proof of the original Beneficiary's death shall be presented to the Pension Trust in the form of a certified copy of the death certificate of the original Beneficiary.
 - (2) The Beneficiary originally designated by the Retired Participant freely and knowingly waives all rights to any benefit provided by the Optional Settlement elected by the Retired Participant pursuant to Section 15.03 Waiver of Beneficiary Benefits.
- (b) Upon fulfillment of either of the conditions set forth above in this Section, a Retired Participant may designate a new Beneficiary under the optional settlement formerly selected by the Retired Participant. If the Retired Participant designates a new Beneficiary pursuant to this Section, the retirement allowance being paid to the Retired Participant as of the date of the new Beneficiary designation shall be

actuarially adjusted to account for the attained age of the Retired Participant and the attained age of the newly designated Beneficiary as of the date of the new Beneficiary designation. The actuarial adjustment to the Retired Participant's retirement allowance shall be determined as of the date that the new Beneficiary designation becomes effective. The actuarially adjusted retirement allowance payable pursuant to this Section shall be paid to the Retired Participant until his or her death, and thereafter to the Retired Participant's designated new Beneficiary. Nothing in this Section shall be construed to permit a Retired Participant to designate more than one Beneficiary at any given time for benefits payable under Section 13.03, 13.04 or 13.05 of the Retirement Plan.

- (c) If the Retired Participant does not elect to name a new beneficiary pursuant to this Section, no adjustment to the current benefit payable shall be made until such time as a new beneficiary designation is made pursuant to this Section.

ARTICLE 24: COMMUNITY PROPERTY

Section 24.01: General Provisions - Division of Community Property before Retirement - Members and Reserve Participants. If a court of competent jurisdiction, upon the legal separation or dissolution of the marriage of a Member or a Reserve Participant and his or her spouse (the “Alternate Payee”), and after joining the Pension Trust as a party to the proceeding pursuant to Chapter 6 (commencing with section 2060) of Part 1 of Division 6 of the California Family Code, includes in the judgment or a court order the date on which the parties separated, the following shall apply:

- (a) If the court orders the division of the community property interest in the Pension Trust pursuant to Section 2610 of the Family Code, then the Accumulated Normal Contributions, the Accumulated Additional Contributions, and the Pension Trust Service Credit of the Member or Reserve Participant attributable to periods of service during the marriage shall be divided into two separate and distinct accounts in the name of the Member or Reserve Participant and the Alternate Payee, respectively, and in the manner ordered by the court. Any Accumulated Contributions or Pension Trust Service Credit that are not explicitly awarded by the judgment or the court order shall be deemed the exclusive property of the Member or Reserve Participant.
- (b) Once an account has been established in the name of an Alternate Payee pursuant to this Section 24.01, the Alternate Payee shall have the following rights:
 - (1) The right to a retirement allowance calculated in accordance with Article 6 of the Retirement Plan consistent with the exceptions and limitations set forth in Section 24.01(c) of the Retirement Plan.
 - (2) The right to a refund of Accumulated Contributions pursuant to Section 24.02 of the Retirement Plan.
 - (3) The right to purchase Pension Trust Service Credit that is eligible for purchase by the Member provided such Pension Trust Service Credit is explicitly awarded to the Alternate Payee by the court.
 - (4) The right to designate a beneficiary to receive the Alternate Payee’s Accumulated Contributions payable where Alternate Payee’s death occurs prior to retirement.
 - (5) The right to designate a beneficiary to receive the balance of any unpaid benefit awarded to the Alternate Payee pursuant to this Article, that is payable at the time of the Alternate Payee’s death.
- (c) The Alternate Payee shall not be entitled to any Disability Retirement benefit payable pursuant to Article 10: Disability Retirement Allowance, of the Retirement Plan. In addition, the Alternate Payee shall not be entitled to any Basic Death benefit, Special Death benefit, or any monthly allowance payable pursuant to Section 7.02, Section 7.03 or Section 7.04 of the Retirement Plan.

Section 24.02: Alternate Payee Right to Refund of Accumulated Contributions.

- (a) Once a separate account has been established for an Alternate Payee under Section 24.01, the Alternate Payee shall have the right to a refund of the Accumulated Contributions and Interest credited in the account of the Alternate Payee.
- (b) The Alternate Payee shall file an application for said refund on a form provided by the Pension Trust to obtain the refund.
- (c) The refund shall be effective when the Pension Trust deposits in the United States mail an initial check payable to the Alternate Payee and addressed to the latest address for the Alternate Payee on file with the Pension Trust.
- (d) The Alternate Payee is deemed to have permanently waived all rights in the Pension Trust and the Retirement Plan and all rights to future retirement benefits pertaining to the Pension Trust Service Credit, and to any and all Accumulated Contributions, when the refund becomes effective.
- (e) The Alternate Payee may not cancel a refund once it has become effective.
- (f) The Alternate Payee shall have no right to elect to redeposit the refunded Accumulated Contributions from the Alternate Payee's account after the refund is effective, and shall have no right to redeposit or to purchase service credit after the refund becomes effective.
- (g) If at the time of the dissolution of marriage or legal separation, the Member or Reserve Participant does not have the necessary minimum Pension Trust Service Credit to elect deferred retirement, the Alternate Payee shall receive a refund of all of the Accumulated Contributions and interest credited to the Alternate Payee's account.
- (h) If the Alternate Payee receives a refund under this Section, the Member or Reserve Participant may elect to redeposit an amount of money equal to the Accumulated Contributions and interest refunded to the Alternate Payee and, upon redepositing said money the Member or Reserve Participant shall receive credit for the Pension Trust Service Credit that had been forfeited by the Alternate Payee. The election to redeposit shall be made by the Member or Reserve Participant within five (5) years of the date on which the refund to the Alternate Payee became effective. The Board of Trustees shall establish the manner of payment and time period within which the redeposit by a Member or Reserve Participant under this Section shall be made. The interest rate for redeposits by Members or Reserve Participants who elect to redeposit under this Section shall be the same as that charged to Members on all other redeposits.

Section 24.03: Alternate Payee's Right to Purchase Service Credit

Once a separate account has been established for an Alternate Payee under Section 24.01, the Alternate Payee may redeposit Accumulated Normal Contributions and Interest previously refunded to the Member or Reserve Participant provided the court has awarded such a right under Section 24.01(b)(3). Such redeposit by the Alternate Payee shall conform to the following:

- (a) The Alternate Payee may redeposit only those Accumulated Contributions and interest which were previously refunded to the Member or the Reserve Participant

- and which the court has determined to be the community property interest of the Alternate Payee in the Accumulated Contributions.
- (b) If the Alternate Payee elects to redeposit, he or she shall repay the Accumulated Contributions, with interest, which were previously refunded to the Member or the Reserve Participant.
 - (c) An election to redeposit shall be considered an election to repay all Accumulated Contributions and interest previously refunded to the Member or Reserve Participant and which Alternate Payee is entitled to redeposit.
 - (d) The right of the Alternate Payee to redeposit under this Section is subject to the regulations, policies and procedures established and adopted by the Board of Trustees.
 - (e) The Member or Reserve Participant has no right to any court-determined Alternate Payee share of any previously refunded Accumulated Contributions and interest, whether or not the Alternate Payee elects to redeposit, until the effective date of any refund requested by the Alternate Payee pursuant to Section 24.02, or the Alternate Payee dies before redeposit is completed. However, the right to redeposit any previously refunded Accumulated Contributions and Interest not explicitly awarded to the Alternate Payee by the judgment or court order shall be deemed to be the exclusive property of the Member or Reserve Participant.
 - (f) Any redeposit by the Alternate Payee shall be made by lump sum before retirement.

Section 24.04: Alternate Payee Application for Retirement

An Alternate Payee for whom a separate account has been established under section 24.01 shall be entitled to a Service Retirement allowance under Article 6: Service Retirement Allowance of the Retirement Plan, upon his or her written Application provided all of the following conditions are met:

- (a) The Alternate Payee has attained the minimum age for Service Retirement Allowance prescribed by the service retirement formula which would have applied to the Alternate Payee's former spouse.
- (b) On the date of marriage dissolution or legal separation, the Member or Reserve Participant had accrued sufficient Pension Trust Service Credit to qualify for Service Retirement.
- (c) The Alternate Payee's Service Retirement allowance shall be calculated based on the service retirement formula applicable to the Pension Trust Service credited to the Alternate Payee.
- (d) For purposes of this Section, the "Final Compensation" attributable to the Alternate Payee shall mean the average monthly Compensation Earnable by the Member or Reserve Participant during the three consecutive years prior to the date of separation of the Alternate Payee and the Member or Reserve Participant. The Alternate Payee may elect an earlier three consecutive year period to be used where the time period of the Alternate Payee's marriage to the Member or Reserve Participant and participation in the Retirement Plan by the Member or Reserve Participant correspond.

- (e) As of the Effective Date of Retirement of the Alternate Payee, the Member or Reserve Participant has attained the minimum retirement age to receive a Service Retirement allowance.

Section 24.05: Division of Community Property of a Retired Participant.

If a court of competent jurisdiction, upon the legal separation or dissolution of marriage of a Retired Participant and his or her spouse (the “Alternate Payee”), and after joining the Pension Trust as a party to the proceeding pursuant to Chapter 6 of the California Family Code, issues an order dividing the Retired Participant’s community property interest in the Pension Trust Retirement Plan, the Pension Trust shall carry out the terms of the court order provided:

- (1) The order sets forth date on which the parties separated and the method by which the Retired Participant’s community property interest is to be divided between the Retired Participant and the Alternate Payee.
- (2) The order describes any rights the Alternate Payee is to have to name a beneficiary for any unpaid portion of the community property interest awarded to the Alternate Payee. If no such right is set forth in the order, and the Alternate Payee predeceases the Retired Participant, the Alternate Payee’s community property retirement allowance shall cease as of the date of the Alternate Payee’s death and shall revert to the Retired Participant.
- (3) The order specifies the length of time that said Alternate Payee is entitled to receive the community property interest. If the order does not specify such length of time then the community property interest shall be deemed to be payable to the Alternate Payee for his or her life unless, for the particular benefit in question, the Retirement Plan provides for an earlier termination.
- (4) If the Alternate Payee was married to the Retired Participant at least one year prior to the Retired Participant’s Effective Date of Retirement under this Retirement Plan and is eligible to qualify as a surviving spouse under Section 7.04(b) at the time of the dissolution of the marriage with the Retired Participant, then the Alternate Payee shall continue to be eligible for the death benefit provided for by Section 7.04(b) even though the marriage of the Alternate Payee and Retired Participant is terminated by order or judgment of a court of competent jurisdiction.

ARTICLE 26: DEFERRED RETIREMENT OPTION PROGRAM (DROP)

Section 26.01: Deferred Retirement Option Program. It is the intent of this Article to provide a voluntary Deferred Retirement Option Program (“DROP”) for Miscellaneous Members employed in County Bargaining Units 01, 02, 04, 05, 07, 08, 09, 10, 11, 12, 13, 14, 17, 21 or 22 or by the Pension Trust or the Air Pollution Control District, and for Safety Members employed in County Bargaining Units 03, 06, 07, 10, 14, 15, 16, 28 or 28 and for Probation Officer Members employed in County Bargaining Units 07,08 or 09. (07-25-2006)(10-03-2006)(12-5-06)

- (a) DROP is an alternative method by which a Service Retirement Allowance is paid to a Retired Participant.
- (b) DROP is intended to be cost-neutral to the Pension Trust and to the Pension Trust Fund. All costs and expenses incurred in the administration and operation of DROP shall not be paid from the Pension Trust Fund, but, instead shall be paid, in equal shares, by the County Employer and the participants in DROP. To this end (i) the share of said costs and expenses to be paid or reimbursed by the County Employer shall be included in County Appropriations pursuant to Section 16.05 of the Retirement Plan, and (ii) the share of said costs and expenses to be paid or reimbursed by the participants in DROP shall be deducted, from time to time, from the DROP Account of each DROP participant on a proportional basis based upon such DROP participant’s DROP account balance.

Section 26.02: Conformance with the Internal Revenue Code. DROP shall conform to those parts of the Internal Revenue Code and Regulations which provide for the tax qualified status of governmental pension trusts and retirement plans, including those provisions reflected in Section 4.02(b) and Articles 21 and 22. DROP shall not jeopardize, in any way, the tax qualified status of the Pension Trust or this Retirement Plan under the Internal Revenue Code. Notwithstanding any other provision of the Retirement Plan, the provisions of this Article 26 shall at any time be modified, with such modifications being given retroactive effect, if necessary to maintain the tax qualified status of the Pension Trust or the Retirement Plan.

Section 26.03: Severability. If any provision of this Article or the application thereof to any person or circumstance is held to be invalid, that invalidity will not affect other provisions of this Article or of this Retirement Plan that can be given effect without the invalid provisions or application, and to this end the provisions of this Article are severable.

Section 26.04: Eligibility.

- (a) On and after July 25, 2006 a Miscellaneous Member currently employed in County Bargaining Units 01, 04, 05, 07, 08, 09, 10, 11, 12, 13, 14, 17, 21 or 22 or by the Pension Trust of the Air Pollution Control District, and a Safety Member employed in County Bargaining Units 03, 07, 10, 14, 15, 16, 27 or 28 and a Probation Officer Member employed in County Bargaining Units 07, 08 or 09, and who has attained

- age 50 and who is credited with five years of Pension Trust Service Credit, shall be eligible to participate in DROP.
- (b) On and after October 3, 2006 a Miscellaneous Member currently employed in County Bargaining Unit 2 who has attained age 50 and who is credited with five years of Pension Trust Service Credit shall be eligible to participate in DROP.
 - (c) On and after December 5, 2006 a Safety Member employed in County Bargaining Unit 6 who has attained age 50 and who is credited with five years of Pension Trust Service Credit shall be eligible to participate in DROP. (10-03-06)(12-05-06).
 - (d) For purposes of this Section, service credit accrued with a retirement system, which service is recognized by this Retirement Plan for purposes of Article 20: Reciprocity, shall be recognized for purposes of establishing eligibility to participate in DROP. A Retired Participant who previously participated in DROP and who reinstates from retirement shall not be eligible to participate in DROP.

Section 26.05: Election to Participate in DROP. The Member's election to participate in DROP shall be voluntary and irrevocable. Any Member who elects to participate in the DROP shall make his or her election on a form prescribed and retained by the Pension Trust. The Member's election shall:

- (a) designate a period of participation in DROP not less than 6 months and not more than 60 months;
- (b) affirm that the Member agrees to terminate employment with the Employer no later than the completion of designated DROP participation period and acknowledge that participation in DROP is not a guarantee of continued employment for any period;
- (c) affirm that the Member, on the date the Member commences participation in DROP, shall cease accruing Pension Trust Service Credit and that the Member's Service Retirement Allowance at the end of the Member's participation in DROP shall be the same as the Member's Service Retirement Allowance at the beginning of the Member's participation in DROP (plus any Cost of Living Adjustments after such date); and the Member's Final Compensation for purposes of establishing the Member's Service Retirement allowance shall be the Final Compensation determined at the beginning of the Member's participation in DROP and any changes in the compensation paid to the Member by the County Employer during the Member's participation in DROP shall have no effect on the Service Retirement Allowance paid to the Member at the time of the Member's cessation of participation in DROP.
- (d) constitute an application for a Service Retirement allowance to commence no later than the end of the designated DROP participation period;
- (e) include the Member's irrevocable election of the Unmodified Allowance (as described in Article 6) or one of the options set forth under Article 13: Options Available After Retirement;
- (f) acknowledge that the Member has read this Article 26 and, particularly, Sections 26.07 (d) and 26.09 (g) which modifies and supersedes the Member's rights to a Disability Retirement Allowance under Article 10: Disability except as provided in Section 26.09(g).

- (g) designate a Beneficiary for the DROP account in the event of the Member's death while a participant in DROP.

Section 26.06: Waiver. A Member making the election to participate in DROP shall execute such waivers with respect to state and federal employment discrimination and related laws, such releases and such covenants as are required by the Employer and/or the Pension Trust.

Section 26.07: Participation in DROP. By electing to participate in DROP:

- (a) the Member becomes subject to all of the provisions of this Article 26;
- (b) the Member's Final Compensation shall be determined pursuant to Section 1.16 as applicable to the Member making the election, provided that the determination of Final Compensation shall be based on Compensation Earnable during periods of Membership preceding the DROP participation period and no compensation paid to the Member by the County Employer during the Member's participation in DROP shall be included in the determination of the Member's Final Compensation;
- (c) the Member shall, on commencement in DROP, cease accruing Pension Trust Service Credit and that the Member's Service Retirement Allowance at the end of the Member's participation in DROP shall be the same as the Member's Service Retirement Allowance at the beginning of the Member's participation in DROP (plus any Cost of Living Adjustments after such date);
- (d) the Member shall not be eligible to receive a refund of Accumulated Contributions upon termination of the Member's employment with the County Employer.
- (e) the Member shall have DROP allowances credited to a DROP account pursuant to Section 26.09 of this Article 26;
- (f) the Member waives the right to disability retirement allowance based on an injury or illness that occurred prior to participation in DROP and/or during the Member's participation in DROP except as provided in Section 26.09(g) below.
- (g) the Member's employment status during participation in DROP shall not be affected by the Member's election to participate in DROP.

Section 26.08: Spousal Consent: If the Member is married or if the Member has a registered domestic partner, the Member's spouse or registered domestic partner shall execute a statement, on a form prescribed by the Pension Trust, acknowledging the spouse's or domestic partner's understanding of, and agreement with, the Member's election to participate in DROP.

Section 26.09: DROP Accounts and DROP Benefits:

- (a) A DROP Account is an account established by the Pension Trust for each participant in DROP.
- (b) A Member's DROP Account shall be credited with an amount equal to the service Retirement Allowance and the annual cost-of-living adjustment the Member would have received if the Member had retired for service under Article 6 of the Retirement Plan on the date the Member commences participation in DROP. In addition, a Member's Additional Contribution Account, which may be an accumulation of pre-

- tax and post – tax contributions, shall be deposited into the Member’s DROP Account. The DROP Account shall accept said pre and post-tax contributions for deposit. If the Member elects to have his or her Additional Contribution Account paid in the form of an annuity, the annuity that is payable based on the contributions reposed in the said Additional Contribution Account shall be deposited into the Member’s DROP Account. Contributions reposed in the Additional Contribution Account which are deposited into the Member’s DROP Account shall be identified by the Pension Trust and by the third party administrator retained by the Board of Trustees for administration of the DROP accounts as to their status as either pre-tax or post-tax contributions. Amounts credited to a Member’s DROP account shall be vested in the Member, except to the extent deemed necessary by the Board in its sole discretion to maintain the Pension Trust’s tax-qualified status under the Internal Revenue Code.
- (c) A Member may direct the investment and reinvestment of the monies in his/her individual DROP Account and any earnings or losses shall be reflected in the Member’s DROP account. The Board of Trustees may select and approve a third party administrator to administer investment selections.
 - (d) The monthly amounts credited to a Member’s DROP account, shall from time to time, include any cost-of-living adjustment otherwise applicable to Retired Participants as determined by the Board of Trustees.
 - (e) The date of a Member’s participation in DROP shall be the first of the month following the date the Board of Trustees considers and approves the Member’s fully completed DROP application.
 - (f) Upon the date of a Member’s participation in DROP, the Member shall cease to make Normal Contributions to the Pension Trust.
 - (g) If a Member becomes disabled while participating in DROP, the Member shall be eligible to apply for Disability Retirement under Article 10: Disability, and shall be subject to the same disability eligibility requirements as if the Member were not in DROP. Notwithstanding the provisions of Article 10: Disability, if the Board approves the Member’s Application for Disability Retirement, the amount of the Disability Retirement Allowance shall be the same as the amount then being credited monthly to the Member’s DROP account. Upon approval by the Board of Trustees of a Member’s Application for Disability Retirement the Member’s participation in DROP shall cease and the DROP account shall be available to the Member for distribution.
 - (h) If a Member dies while participating in DROP, the Member shall be deemed to have died after retirement and the provisions of Section 7.04 of this Retirement Plan shall apply based on the amount of service Retirement Allowance being credited to the DROP account. All the monies credited to the Member’s DROP Account shall be paid to the designated DROP beneficiary, subject to the provisions of Section 7.04 and Article 13 of the Retirement Plan subject to Section 26.10 below.

Section 26.10: Designation of DROP Beneficiary.

- (a) A Member electing to participate in DROP shall designate a beneficiary of the Member's DROP account to whom the balance of the Member's DROP Account shall be paid in the event of the Member's death while participating in DROP.
- (b) If a Member dies while participating in DROP,
 - (1) a designated DROP account beneficiary who is also an eligible surviving spouse of the Member as defined in Section 7.04 (b) of this Retirement Plan shall be entitled to elect to receive a lump sum distribution of the deceased Member's DROP account or may elect a form of distribution payment described under Section 26.12; or
 - (2) a designated DROP account beneficiary who is not an Eligible Survivor pursuant to Section 7.04 (b) shall receive a DROP account distribution in the form of a lump sum; or
 - (3) if the designated DROP account beneficiary is not then living, the balance in the Member's DROP account shall be distributed to the estate of the Member in the form of a lump sum.
- (c) No DROP beneficiary designation shall modify a Member's community property obligations under California Law unless, and only to the extent, that the Member's spouse or registered domestic partner shall consent to in writing.

Section 26.11: Distribution of DROP Account. Upon termination of DROP participation and upon retirement from the County Employer, a Member shall receive the amounts credited to the Member's DROP Account, including any earnings thereon. The Member shall become a Retired Participant and shall begin receiving a monthly retirement allowance equal to the amount that was being credited to the Member's DROP Account at the date of the Member's cessation of participation in DROP.

Section 26.12: Method of Distribution. Upon the completion of the designated DROP participation period a Member shall become a Retired Participant and shall select one of the following forms of distribution of the DROP Account:

- (a) a lump sum; or
- (b) an amount payable monthly in equal monthly installments in accord with applicable provisions of the Internal Revenue Code subject to the following:
 - 1. The Retired Participant shall be entitled to select an installment payment period not to exceed the lesser of ten years or the joint life expectancies of the Retired Participant and the Retired Participant's Spouse.
 - 2. The balance of the Retired Participant's DROP account shall continue to earn interest based on the available account investments selected and directed by the Retired Participant.

3. At the end of the Member's period of participation in DROP no Cost of Living Adjustment shall be made to the Member's DROP account or to the monthly amount being paid to the Retired Participant from the DROP Account.
4. Payments of the monthly amount from the DROP account shall terminate when the balance in the DROP account is reduced to zero (\$0.00).

Section 26.13: Death During Distribution of DROP Account: If the Retired Participant dies before receipt of the entire balance in his or her DROP Account then:

- (a) The Retired Participant's designated DROP beneficiary shall receive the balance of the Retired Participant's DROP Account in a lump sum; or
- (b) The Retired Participant's designated DROP beneficiary may elect to continue to receive the monthly amount elected by the Retired Participant, said amount to be payable until the DROP Account balance is reduced to zero (\$0.00); or
- (c) if the Retired Participant's designated DROP beneficiary is not then living, the balance in the DROP Account shall be distributed to the estate of the Retired Participant.

Section 26.14: Full Distribution. At any time after the cessation of participation in DROP and termination of employment from the County Employer, a Retired Participant may elect to receive the entire remaining balance of his or her DROP Account. No distribution shall be made from a Member's DROP account until the Member has terminated participation in DROP and ceased employment with the County Employer except for employment pursuant to Section 12.02 of this Retirement Plan.

Section 26.15: Execution and Unassignability. The right of a DROP participant to benefits under this Article 26 is not subject to levy or execution or any other process whatsoever, except as to the extent permitted by Section 704.110 of the Code of Civil Procedure and is unassignable except as provided for by the Retirement Plan.

Section 26.16: Dissolution of Marriage. The rights of the DROP participant or his or her spouse under the program shall be subject to any applicable provisions of law or court orders relating to dissolution of marriage, dissolution of domestic partnership, division of community property, and child or spousal support.

Section 26.17: Termination of DROP Participation. A Member's participation in DROP shall automatically terminate upon the earliest occurrence of one of the following events:

- (a) completion of the Member's designated DROP participation period; or
- (b) death of the Member; or
- (c) approval by the Board of Trustees of the Member's Application for Disability Retirement; or
- (d) voluntary termination of the Member's employment; or

- (e) involuntary termination of the Member's employment, whether or not for cause, including layoffs or reductions in force and including the conclusion of any judicial or administrative appeals process.

Section 26.18: General DROP Provisions

- (a) The right is reserved at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part this Article 26 and any or all provisions relating to DROP. Notwithstanding the provisions of this part, no amendment shall be enacted which has the effect of decreasing the amount already credited to a Member's DROP Account.
- (b) The Board of Trustees shall enact such rules and procedures as are necessary or appropriate to administer DROP.
- (c) The Board of Trustees shall issue annually to each DROP participant a statement of that Member's DROP account.

Section 26.19: Compliance with Applicable Provisions of the Internal Revenue Code and other Federal Laws.

- (a) It is intended that DROP shall not jeopardize the tax qualified status of the Pension Trust under the Internal Revenue Code. Full rights are reserved to modify this Article to the extent necessary or appropriate to ensure that DROP complies with applicable federal laws, regulations and administrative rulings.
- (b) The DROP program shall be subject to the section of the Internal Revenue Code applicable to governmental plans, as amended, and the regulations and rulings under those sections.