

**KANSAS CONSTRUCTION TRADES
OPEN END PENSION TRUST FUND
SAMPLE QDRO
WITH RESPECT TO A PARTICIPANT WHO IS
NOT YET IN RECEIPT OF BENEFIT PAYMENTS FROM THE PLAN**

THE DIVISION OF RETIREMENT BENEFITS INVOLVES MANY COMPLEX TAX AND LEGAL ISSUES. THE PLAN STRONGLY RECOMMENDS THAT INDIVIDUALS SEEK THE ADVICE OF LEGAL COUNSEL AND/OR OTHER QUALIFIED EXPERTS PRIOR TO THE DIVISION OF RETIREMENT PLAN BENEFITS AT DIVORCE.

THE FOLLOWING IS INTENDED AS GENERAL INFORMATION; IT SHOULD NOT BE RELIED ON BY ANY PARTY AS THE SOLE METHOD OF DIVIDING RETIREMENT BENEFITS. THIS SAMPLE DOES NOT INCLUDE ALL THE POSSIBLE PROVISIONS RELATING TO A DIVISION OF BENEFITS NOR DOES IT ILLUSTRATE A DIVISION OF BENEFITS IN THE MOST FAVORABLE MANNER FOR EITHER A PARTICIPANT OR ALTERNATE PAYEE. IT IS THE RESPONSIBILITY OF THE PARTIES AND THEIR ATTORNEYS TO KNOW THE LAW AND THE BENEFITS AVAILABLE UNDER THE PENSION TRUST AND TO PREPARE AND SUBMIT A QUALIFIED DOMESTIC RELATIONS ORDER THAT MEETS THE PARTIES' OBJECTIVES.

THE ADMINISTRATOR OF A PLAN ALWAYS RESERVES THE RIGHT TO DETERMINE WHETHER ANY SUBMITTED DOMESTIC RELATIONS ORDER IS A QUALIFIED DOMESTIC RELATIONS ORDER. THIS SAMPLE QDRO IS NOT INTENDED AS LEGAL ADVICE.

[*COURT CAPTION*]

WHEREAS, the parties were married to each other on (*insert: date*) and were separated on (*insert: date*); and

WHEREAS, this Court has personal jurisdiction over both parties and jurisdiction over the subject matter of this Order and this dissolution of marriage action; and

WHEREAS, the parties and the Court intend that this Order shall be a Qualified Domestic Relations Order ("QDRO") as defined in Section 414(p) of the Internal Revenue Code of 1986, as amended (the "Code") and Section 206(d) of the Employee Retirement Income Security Act of 1974, as amended, ("ERISA"); and

WHEREAS, the parties have stipulated that the Court shall enter this Order;

NOW IT IS ORDERED AND ADJUDGED BY THE COURT as follows:

1. DEFINITIONS

As used in this Order, the following terms shall apply:

- (a) "Participant" shall mean (*insert: complete name*), whose current mailing address is: (*insert: complete mailing address*), who was born on: (*insert: complete date*), and whose Social Security number is (*insert: complete number*).
- (b) "Alternate Payee" shall mean (*insert: complete name*), former spouse of the participant, whose current mailing address is (*insert: complete mailing address*), who was born on: (*insert: complete date*), and whose Social Security number is: (*insert: complete number*).
- (c) "Plan" shall mean the Kansas Construction Trades Open End Pension Trust Fund, which is a defined benefit pension plan.
- (d) "Plan Administrator" shall mean the Board of Trustees of the Plan.

2. BENEFITS ASSIGNED TO ALTERNATE PAYEE

The order hereby creates and assigns to the Alternate Payee, and the Alternate Payee is entitled to receive (provided the Participant and alternate Payee are alive on the commencement date of such assigned benefit) a portion of the Participant's vested accrued benefit under the Plan, which portion shall be calculated as follows:

(Choose One)

OPTION 1

- The "Alternate Payee's Share" shall equal _____% of the Participant's "Vested Accrued Benefit" under the Plan as defined below.

For purposes of determining the Alternate Payee's share, "Vested Accrued Benefit" shall mean the vested monthly retirement benefit determined under the Plan with respect to the Participant, based on the Participant's benefit accrual account and credited service accrued to _____ (*insert one: date of separation or divorce*) in accordance with the terms of the Plan in effect on such date which is payable on the first day of the month

coincident with or next following the Participant's Normal Retirement Date in the form of a single life annuity with three-year certain for the Participant's life.

OPTION 2

- The "Alternate Payee's Share" shall equal _____% of the Participant's "Vested Accrued Benefit" under the Plan as defined below multiplied by a fraction, the numerator of which is the number of months of Participant's credited service accrued under the Plan from the date of marriage which is (*insert: date of marriage*) up to the date of (*insert one: date of separation or date of divorce*) which is (*insert: date*) and the denominator of which is the total number of months of the Participant's credited service accrued under the Plan from the date the Participant is first credited with service under the Plan to (*insert one: date of separation or date of divorce*).

For purposes of determining the Alternate Payee's share, "Vested Accrued Benefit" shall mean the vested monthly retirement benefit determined under the Plan with respect to the Participant, based on the Participant's benefit accrual account and credited service accrued to (*insert one: date of separation or divorce*) in accordance with the terms of the Plan in effect on such date which is payable on the first day of the month coincident with or next following the Participant's Normal Retirement Date in the form of a single life annuity with three-year certain for the Participant's life.

OPTION 3

- The "Alternate Payee's Share" shall equal _____% of the Participant's "Vested Accrued Benefit" as defined below multiplied by a fraction, the numerator of which equals the portion of the Participant's credited service accrued under the Plan during the marriage from (*insert: date of marriage*) to (*insert: date of divorce or separation*) and the denominator of which equals the Participant's credited service accrued under the Plan from the date the Participant is first credited with service under the Plan to the date of the Participant's actual termination of employment, or the date payments to the Alternate Payee commence, if earlier.

For purposes of determining the Alternate Payee's share, "Vested Accrued Benefit" shall mean the value of the vested monthly retirement benefit under the Plan determined with respect to the Participant as of the date of the Participant's actual retirement or the date payments to the Alternate Payee commence, if earlier, in accordance with the terms of

the Plan in effect on such date, which is payable on the first day of the month coincident with or next following the Participant's Normal Retirement Date (or actual retirement date, if later) in the form of a single life annuity with three-year certain for the Participant's life.

Notwithstanding the language set forth above in this Section 2, in the event that the Alternate Payee becomes entitled to a qualified preretirement survivor annuity under Section 5 of this Order, then the Alternate Payee's right to a share of the Participant's benefits as called for under this Section 2 shall be terminated as of the date of such Participant's death, and such preretirement survivor benefit shall be payable to the Alternate Payee in lieu of any other benefits to which he or she may be entitled under the terms of this Order.

3. TIME OF BENEFIT PAYMENT

- (a) Payment of the Alternate Payee's share shall commence to the Alternate Payee when payments to the Participant begin. However, the Alternate Payee may elect, by written advance application to the administrator of the Plan made in accordance with Plan procedures, to commence payment as of the first day of any month on or after the date the Participant reaches his or her Earliest Retirement Age, as determined in accordance with IRC Section 414(p)(4)(B), and prior to the date payments to the Participant begin.
- (b) The Alternate Payee's share shall be reduced to reflect the commencement of benefit payments prior to the Participant's Normal Retirement Date under the same terms and conditions as are applicable to the Participant; provided, however, that if the Alternate Payee elects to commence payment of the Alternate Payee's share prior to the Participant's termination of employment, the Alternate Payee's share shall be actuarially reduced in accordance with the provisions of the Plan and IRC Section 414(p) to reflect the earlier commencement date.

4. FORM OF BENEFIT PAYMENT

The Plan is hereby ordered to pay directly to Alternate Payee the benefit in the Plan as set forth in accordance with one of the options provided in the Plan and as the Alternate Payee shall elect (except in the form of a joint and survivor annuity payable to the Alternate Payee and the Alternate Payee's subsequent spouse).

The Alternate Payee's election shall be limited to those forms of payment provided under the Plan and applicable law and available to the Participant (as though he had terminated employment at the time of the election). Any application by the Alternate Payee selecting an optional form of payment shall be made in accordance with the Plan's administrative procedures.

- (a) The payments to the Alternate Payee are to be based on the life expectancy of the:
(Choose One)
- Alternate Payee/Participant
 - Participant
- (b) The amount payable to the Alternate Payee shall be actuarially adjusted to reflect the form of payment chosen by the Alternate Payee and to take into account the different life expectancies of the Participant and the Alternate Payee.

5. PRE-RETIREMENT DEATH BENEFITS

(Choose One)

OPTION 1

- If the Participant's death occurs prior to the date payments to either the Alternate Payee or the Participant commence, the Alternate Payee will be considered the surviving spouse pursuant to the provisions of Section 401(a)(11) and 417 of the Internal Revenue Code for purposes of establishing the Alternate Payee's entitlement to a pre-retirement survivor benefit with respect to the portion of the Participant's Plan benefit which is considered Marital Property as defined below:

For purposes of this Section 5, Marital Property shall mean the Alternate Payee's Share (as defined in Section 2) of the Participant's retirement benefit under the Plan.

OPTION 2

- The Alternate Payee shall NOT be named as the Participant's surviving spouse for any purpose. Therefore, should the Participant's death occur prior to the date payments to either the Alternate Payee or the Participant commence, the Alternate Payee will NOT be eligible to receive any benefit from the Plan, including the portion of the benefit he/she is awarded in Provision 2(a) of this QDRO.

The Participant shall make any elections and designations under the Plan which are necessary to provide the Alternate Payee with the above pre-retirement survivor benefit coverage.

If the Participant dies after payments to the Alternate Payee commence hereunder, the form of payment under which the payments to the Alternate Payee are being made and the election under Section 4(a) above shall determine whether any amounts are continued to be paid hereunder.

6. DEATH OF ALTERNATE PAYEE

Except to the extent allowed under the form of payment elected by the Alternate Payee, the Alternate Payee cannot designate a beneficiary to receive any benefits under the Plan after the Alternate Payee's death. If the Alternate Payee's death occurs after commencement of benefits pursuant to this Order, the form of payment elected by the Alternate Payee shall determine whether any amounts are owed to any beneficiary on account of the Alternate Payee's death. If the Alternate Payee's death occurs prior to the commencement of benefits to the Alternate Payee pursuant to this Order, the Alternate Payee's interest shall be forfeited and such benefit shall revert to the Participant.

7. NO OTHER INTERESTS

The Alternate Payee shall have no right or interest in the portion of the Participant's accrued benefit under the Plan that is not assigned to the Alternate Payee pursuant to Section 2 above. Nothing in this Order shall restrict the Participant's ability to commence payment under the Plan, to elect an optional form of payment, or designate a beneficiary under the Plan with respect to the portion of the Participant's accrued benefit not assigned to the Alternate Payee.

8. TAX TREATMENT

The Participant and the Alternate Payee shall each be responsible for his or her own federal, state, and local income taxes and/or other taxes attributable to distributions from the Plan which are received by the Participant and Alternate Payee, respectively.

9. NON-ALTERATION OF BENEFITS

Nothing contained in this Order shall be construed to require the Plan or Plan Administrator to:

- (a) Provide to the Alternate Payee any type or form of benefit or any option not otherwise available to the Participant under the Plan;
- (b) To provide to the Alternate Payee increased benefits (determined on the basis of actuarial value) not available to the Participant; and
- (c) To pay any benefits to the Alternate Payee that are required to be paid to another alternate payee under another order previously determined by the Plan Administrator to be a QDRO.

10. CONSTRUCTIVE RECEIPT

While it is anticipated that the Plan will pay the benefit assigned to the Alternate Payee, directly to the Alternate Payee, the Participant is designated a constructive trustee to the extent the Participant receives any benefits from the Plan that have been assigned to the Alternate Payee pursuant to the terms of this Order. Participant is Ordered and Decreed to pay benefits described above which have been assigned to the Alternate Payee but paid to the Participant directly to Alternate Payee within 10 days of receipt by the Participant.

11. MISCELLANEOUS

The parties shall cause a copy of this Order to be served on the Plan Administrator for the Plan forthwith. This Order shall remain in effect until further order of this Court or its terms and/or obligations have been discharged by the distribution of benefits from the Plan.

In the event the Plan Administrator of the Plan does not approve the form of this Order, then each party shall cooperate and do all things reasonably necessary to devise a form of Order acceptable to the Plan Administrator.

12. EFFECT OF PLAN TERMINATION

In the event that the Plan is terminated, whether on a voluntary or involuntary basis, and the Participant's benefits become guaranteed by the Pension Benefit Guaranty Corporation ("PBGC"), the Alternate Payee's benefits, as stipulated herein, shall also be guaranteed to the same extent in accordance with the Plan's termination rules and in the same ratio as the Participant's benefits are guaranteed by the PBGC.

13. IRS SECTION LIMITATIONS

In the event that the Participant's accrued benefit is limited and/or reduced as the result of a benefit limitation imposed under Section 415 of the Internal Revenue Code, as amended from time to time, then the Alternate Payee's share of the benefits shall also be limited and/or reduced in the same proportion and to the same extent as the Participant's benefits.

14. JURISDICTION

The Court retains jurisdiction to enforce, revise, modify or amend this Order insofar as necessary to establish or maintain its qualification as a QDRO or to amend this Order for other reasons, provided, however, neither this Order nor any subsequent revision, modification, or amendment shall require the Plan to provide any benefit not otherwise provided by the Plan.

IT IS HEREBY ORDERED:

Executed on: _____

Judge

APPROVED AS TO FORM AND CONTENT:

By: _____ Date: _____
Participant

By: _____ Date: _____
Attorney for Participant

By: _____ Date: _____
Alternate Payee

By: _____ Date: _____
Attorney for Alternate Payee