

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF _____**

Plaintiff

Case No. _____

v

Hon. _____

Defendant

Attorney for Plaintiff:
[If represented]

Attorney for Defendant:
[If represented]

_____/

**ELIGIBLE DOMESTIC RELATIONS ORDER FOR THE
MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM OF MICHIGAN**

HYBRID PLAN

At a session of said Court, held in the Courthouse, in the City of
_____, County of _____, State of
Michigan, on the ____ day of _____, 2020.

This Order is intended to serve as an Eligible Domestic Relations Order (EDRO) by which [Plaintiff/ Defendant] ("Participant") assigns a portion of his/her retirement benefits to the [Plaintiff/ Defendant] ("Alternate Payee"). This Order is intended to be in conformance with the Eligible Domestic Relations Order Act, 1991 PA 46, MCL 38.1701 *et seq.*, the Municipal Employees' Retirement Act, 1984 PA 427, as amended; and the MERS Plan Document, as revised. It is further intended that this Order be incorporated in the Judgment of Divorce entered on _____, and made a part thereof.

1. This Order applies to the Municipal Employees Retirement System of Michigan (MERS). The MERS Hybrid Plan consists of a defined benefit plan and a defined contribution plan. Within 7 days after entry of this Order, the party securing the signing of the Order shall file a true copy with MERS at the following address:

Municipal Employees' Retirement System of Michigan
1134 Municipal Way
Lansing, MI 48917

Tel: (800) 767-MERS (6377)
Fax: (517) 703-9706

2. The Participant is: _____; Date of Birth _____;
whose last known address is: _____
_____.
3. The Alternate Payee is: _____; Date of Birth _____;
whose last known address is: _____
_____.
4. The social security numbers of the Participant and the Alternate Payee shall be sent to MERS in an attachment to this Order. The attachment shall not be filed with the Court, but shall be attached to the Order when it is sent to MERS for approval.
5. The Participant and the Alternate Payee were married on _____,
and divorced on _____.

SECTION I

ELIGIBLE DOMESTIC RELATIONS ORDER FOR THE DEFINED BENEFIT PORTION

6. The Participant assigns to the Alternate Payee a portion of the Participant's benefits payable by MERS according to the following terms and conditions:
 - A. It is the parties' intention, and the order of this Court, that the Alternate Payee receive a monthly benefit from MERS of _____% of the Participant's regular straight life retirement allowance,
[Select Only ONE of the Following.]
 - which accrued during the dates of marriage.
 - which accrued as of _____, including any years of service rendered prior to the date of marriage.
 - which accrued between the dates _____ and _____.

B. Final Average Compensation for Alternate Payee Benefit

The Alternate Payee's share of benefits awarded and to be paid to the Alternate Payee shall be based on:

[Select Only ONE of the Following.]

- The Participant's Final Average Compensation determined as of the end of the assigned benefit accrual period reflected in Paragraph 6.A. above.

- The Participant's Final Average Compensation determined as of Participant's benefit commencement date, or the Alternate Payee's benefit commencement date, if earlier.
- C. Subject to Paragraph 6.D., the Plan shall pay the Alternate Payee's share of the Participant's retirement allowance, the percentage specified in Paragraph 6.A., under the following form of payment. If a joint and survivor form of payment (Option II, IIA or III) is selected, and the Alternate Payee is permitted and elects to commence receiving benefits prior to the Participant's commencement of benefits, the Alternate Payee shall be paid only in the form of a Straight Life Annuity.

[Select Only ONE of the Following.]

- Straight Life Annuity. A straight life annuity equal to the actuarial equivalent of the Alternate Payee's share of the benefit payable throughout the life of the Alternate Payee.
- MERS Option III – 50% to Survivor. A joint and survivor annuity equal to the actuarial equivalent of the total benefit being divided payable throughout the lives of the Participant and the Alternate Payee. While both parties are alive, the reduced benefit shall be divided pursuant to the percentage specified in Paragraph 6.A. If the Participant predeceases the Alternate Payee while the reduced benefit is being paid, one-half (50%) of the total reduced benefit shall become payable to the Alternate Payee.
- MERS Option IIA – 75% to Survivor. A joint and survivor annuity equal to the actuarial equivalent of the total benefit being divided payable throughout the lives of the Participant and the Alternate Payee. While both parties are alive, the total reduced benefit shall be divided pursuant to the percentage specified in Paragraph 6.A. If the Participant predeceases the Alternate Payee while the reduced benefit is being paid, three-quarters (75%) of the total reduced benefit shall become payable to the Alternate Payee.
- MERS Option II – 100% to Survivor. A joint and survivor annuity equal to the actuarial equivalent of the total benefit being divided payable throughout the lives of the Participant and the Alternate Payee. While both parties are alive, the total reduced benefit shall be divided pursuant to the percentage specified in Paragraph 6.A. If the Participant predeceases the Alternate Payee while the reduced benefit is being paid, the full amount (100%) of the total reduced benefit shall become payable to the Alternate Payee.

D. Alternate Payee Commencement of Benefits

[Select Only ONE of the Following.]

The parties agree that the Alternate Payee will have the right to elect to receive benefit payments under the Defined Benefit Plan at any time beginning after the Participant reaches the “earliest retirement date” as defined under MCL 38.1702(d). If the Alternate Payee elects to receive benefits after the Participant’s earliest retirement date but before the Participant commences, the Alternate Payee’s benefits will be calculated in accordance with MCL 38.1705(2), and will be paid in the Straight Life Retirement Allowance form determined using the alternate payee’s life expectancy, and based on the actuarial equivalent of the Participant’s benefit payable when the Participant reaches normal retirement age.

(1) If the Participant elects to retire with a reduced early retirement allowance, the Alternate Payee’s benefit shall be reduced by the same early retirement factor.

(2) If the Alternate Payee elects to commence receiving benefits prior to the Participant, and the Participant subsequently retires before Participant’s normal retirement age, MERS shall recalculate the Alternate Payee’s benefit based on the Participant’s actual retirement date.

(3) The benefits to the Alternate Payee shall begin no later than the Participant’s benefit commencement date.

The benefits to the Alternate Payee shall begin upon the Participant’s benefit commencement date. The Alternate Payee shall not have the option of commencing benefits prior to the Participant’s commencement date.

E. The Alternate Payee shall receive a prorata share of any post-retirement subsidy, MERS Benefit Programs E, E-1, or E-2, payable to the Participant on or after the Participant’s retirement allowance effective date. If the Alternate Payee elects to receive benefits after the Participant’s earliest retirement date but before the Participant commences, the Alternate Payee shall receive MERS Benefit Program E-2 increases based on the Alternate Payee’s benefit, if Benefit Program E-2 is in effect on or after the Alternate Payee’s initial commencement of benefits.

F. Pre-Retirement Surviving Spouse Rights

[Select Only ONE of the Following.]

If the Participant predeceases the Alternate Payee prior to the Alternate Payee’s commencement of benefits, the Alternate Payee shall be designated as the Participant’s surviving spouse under Section 33 and 34 of the MERS Plan Document for purposes of the **total amount** of the Participant’s retirement allowance that is being divided under Paragraph 6.A.

- If the Participant predeceases the Alternate Payee prior to the Alternate Payee's commencement of benefits, the Alternate Payee shall be designated as the Participant's surviving spouse under Section 33 and 34 of the MERS Plan Document for purposes of the *portion of* the Participant's retirement allowance that is being awarded to the Alternate Payee under Paragraph 6.A.
 - The Alternate Payee *shall not* be designated as the Participant's surviving spouse for any pre-retirement purpose under the Plan. Accordingly, if the Participant predeceases the Alternate Payee prior to the Alternate Payee's commencement of benefits, all rights of the Alternate Payee to benefits will immediately and permanently terminate.
- G. The Alternate Payee's interest in the Participant's retirement allowance shall revert to the Participant under the following two circumstances: (1) If the Alternate Payee predeceases the Participant before receiving any payment of benefits under this Order, the Alternate Payee's interest shall revert to the Participant pursuant to MCL 38.1707; (2) If the Alternate Payee predeceases the Participant while a joint and survivor annuity is being paid under Paragraph 6.B, the Alternate Payee's share of the benefit shall revert to the Participant pursuant to MCL 38.1704(b) and Section 27(2)(b)-(d) of the MERS Plan Document.
7. All benefits received by the Alternate Payee under this Order will be reported to the IRS by the retirement system through an annual 1099-R Form (and copied to the Alternate Payee) for each tax year of receipt. If any portion of the Participant's retirement allowance being divided under this Order includes non-taxable employee contributions distributable by MERS under IRC Section 72(d), the Alternate Payee shall receive a prorata share of the tax-free distributions.
 8. This Order does not require MERS to: (a) provide a type or form of benefit not provided under the Plan, or a form of payment not provided by the EDRO Act; (b) provide an increased benefit determined on the basis of actuarial value; or, (c) pay a benefit to the Alternate Payee that is required to be paid to another alternate payee under a previously filed order. MCL 38.1702(e)(v)-(vii).
 9. The parties agree that their mutual intent is to provide the Alternate Payee with a retirement payment that fairly represents what they have agreed to be the Alternate Payee's marital share of the Participant's accrued retirement benefit as defined in Paragraph 6.A. In the event that MERS determines that this Order is not a satisfactory EDRO, the Participant and Alternate Payee hereby agree to request a court of competent jurisdiction to enter an order modifying the Order, said order to be entered *nunc pro tunc*, if appropriate, so as to comply with the requirements of the EDRO Act, the Retirement Act, and the MERS Plan Document. This Order is not effective unless filed before the Participant's retirement allowance effective date. MCL 38.1702(e)(viii).

SECTION II

ELIGIBLE DOMESTIC RELATIONS ORDER FOR THE DEFINED CONTRIBUTION PORTION

10. Complete either Option A (straight percentage division) or Option B (dollar amount assignment).

[Select Only ONE of the Following.]

Percentage Assignment

This Order assigns to the Alternate Payee an amount equal to _____ % of the Participant's vested account balance under the Defined Contribution Plan as of _____ (valuation date), plus or minus investment gains or losses attributable to such share from that date to the date of transfer of the Alternate Payee's share to a separate account.

Dollar Amount Assignment

This Order assigns to the Alternate Payee an amount equal to \$ _____ of the Participant's vested account balance under the Defined Contribution Plan as of _____ (valuation date), plus or minus investment gains or losses attributable to such share from that date to the date of transfer of the Alternate Payee's share to a separate account.

For purposes of determining the Alternate Payee's portion of the benefit, the Participant's vested account balance shall be reduced by any outstanding Plan loans before determining the Alternate Payee's portion of the benefit. In no event shall the amount assigned to the Alternate Payee exceed 100% of the Participant's vested account balance reduced by any outstanding Plan loans.

11. As soon as administratively feasible, MERS shall transfer the Alternate Payee's share to a separate account under the Plan in the Alternate Payee's name. Thereafter, with respect to the Alternate Payee's separate account, the Alternate Payee shall be treated as a vested terminated participant as provided under the Plan. The Alternate Payee shall have the right to direct investment of the separate account, determine the time and form of payment of the separate account, and designate beneficiaries under the separate account in the same manner and with the same options that a vested terminated participant could.
12. The Participant shall have all rights to the Participant's benefits under the Plan other than the benefits awarded to the Alternate Payee pursuant to this Order. The Alternate Payee shall have no right to any benefits that accrue to the Participant under the Plan after the date of entry of this Order.
13. Each party shall be responsible for, and shall pay, any taxes which are due on account of any amount received by that party from the Plan.

14. This Order does not require MERS to provide any type or form of benefit or any option not otherwise provided under the Plan. MERS is not required to provide increased benefits, or to pay benefits which are required to be paid to another alternate payee under another order. In the event MERS determines that this Order cannot be administered under the Plan, the parties may request the Court to modify the Order to comply with MERS' requirements.

Date: _____

Circuit Court Judge

Approved as to form:

Attorney for Plaintiff (P _____) or Plaintiff

Date: _____

Attorney for Defendant (P _____) or Defendant

Date: _____

Distribution of Copies: Original to Circuit Court Clerk
 True copy to MERS (address in paragraph 1)