



Joinder of the Deferred Compensation Plan in Marital Dissolution Matters and Requirements for Conforming Domestic Relations Orders

The purpose of this document is to provide participants with information about the Deferred Compensation Plan ("the Plan") and to help the parties in a dissolution matter understand certain requirements related to their community property interest in the Plan. If the parties are represented by legal counsel, please provide the information contained in this document to your attorneys.

Joinder of the Deferred Compensation Plan

California Family Code Section 2060 requires that the parties "join" deferred compensation plans in marital dissolution matters so that the court has authority to enforce its order related to the plan. We suggest that you seek assistance from your local family court's self-help center or a lawyer to identify the forms you must file for "joinder" of this employee benefits plan. Family Court forms can be obtained online at: <http://www.courtinfo.ca.gov/cgi-bin/forms.cgi>.

Special Requirements for Conforming Domestic Relations Order (DRO)

The Deferred Compensation Plan is established and maintained pursuant to Internal Revenue Code Section 457. It is an eligible deferred compensation plan that is *not* covered by the Employee Retirement Income Security Act ("ERISA") or by the Retirement Equity Act ("REA") of 1984. The Plan will object to any order which purports to be a Qualified Domestic Relations Order or ("QDRO") under the REA or which requests the Court to qualify the Order under federal law.

The provisions of the Plan are set out in Chapter 3.48 of the San José Municipal Code. Section 3.48.181 describes conforming Domestic Relations Orders ("DROs") that are acceptable to the Plan. The provisions of the Municipal Code can be obtained from the City Clerk's Office at City Hall, 200 E. Santa Clara Street, San José, CA 95113, or online at www.sanjoseca.gov/clerk.

Sample Conforming DRO

Enclosed for your convenience is a Conforming Domestic Relations Order. Parties are strongly urged to use this sample when preparing the DRO in this matter.

The sample addresses establishing a separate account for the Nonparticipant Spouse and the rights the Nonparticipant Spouse would have with respect to the separate account.

Sometimes the parties prefer not to include Social Security Numbers in the Order, and the Plan can accommodate that omission so long as the information has been provided to the Plan in other documents.

Important note about annuities: If the Participant has separated from City service and has elected to take a distribution in the form of annuity, the distribution is subject to the terms of the annuity contract. Under those circumstances, the Plan can not establish a separate account for the Nonparticipant; the parties must make arrangements between them for the division of the benefits.

Review of Proposed DRO by ING

Before you file a DRO with the court, we strongly recommend that you request review of your proposed DRO by ING. This will allow ING to determine in advance whether the Plan will be able to comply and, if necessary, to recommend any adjustments to the DRO. This will also help you avoid unnecessary court proceedings, because the Plan must object to any DRO filed with the court that does not conform to Plan requirements.

Please send your DRAFT order to the address below. ING will notify you if the proposed DRO conforms to Plan requirements. ING will not act on the DRO until it is finalized by the court and we have received an endorsed-filed copy of your Judgment of Dissolution or Legal Separation.

Once the court has entered your Plan-approved DRO, please send court-endorsed copy of the DRO and a court-endorsed copy of your Judgment of Dissolution or Legal Separation to ING at the address below.

Contact Information for ING

ING

**Attention: Complex Transactions Unit
P.O. Box 990063
Hartford, CT 06199-0063**

If you have any questions or require additional information regarding the procedures for Joinder of the Deferred Compensation Plan in Marital Dissolution Matters and Requirements for Conforming Domestic Relations Orders process, please contact the ING Local Office at **(408) 881-0110**.

Note: Advice on how to complete or file the forms cannot be provided to plan participants, so it is recommended that the parties' obtain assistance from a licensed attorney or, at the very least, contact the local Family Court's "self-help center": <http://www.scservice.org>.

Joinder Process for the City of San José Deferred Compensation Plan		
	Responsibility	Action
1.	Plan participants and/or their representatives	<ul style="list-style-type: none">• Submits the file-endorsed joinder pleadings to the City Attorney's Office.• Submits Judgments of Dissolution or Separation awarding 100% of the Deferred Compensation Plan account to one party as that party's sole and separate property <i>(if applicable)</i>.
2.	City Attorney's Office	<ul style="list-style-type: none">• Notifies ING (Deferred Compensation Service Provider/Recordkeeper) and Deferred Compensation staff that a hold will be placed on the plan participant's account.• Reviews joinder pleadings and checks for deficiencies. If there are no deficiencies, a letter is sent to the plan participant and/or their representative to address.
3.	Deferred Compensation Service Provider/Recordkeeper (ING)	<ul style="list-style-type: none">• Sends a plan participant a notification letter regarding the hold that is placed on the account.
4.	City Attorney's Office	<ul style="list-style-type: none">• Files and serves Notice of Appearance.• Sends the Notice of Appearance/Response and ING form letter to plan participant and/or their representative advising of DRO process.• Once the Notice of Appearance is filed with the Court, the Joinder pleadings and Notice of Appearance will be submitted to ING (Deferred Compensation Provider/Recordkeeper).
5.	Plan participants and/or their representatives	<ul style="list-style-type: none">• Sends court endorsed copy of DRO to ING.
6.	Deferred Compensation Service Provider/Recordkeeper (ING)	<ul style="list-style-type: none">• Processes DRO through completion.

MODEL QDRO LANGUAGE

The division of retirement benefits involves many complex tax and legal issues. It is strongly recommended that individuals seek the advice of legal counsel or other qualified experts before the division of retirement plan benefits upon divorce.

This model language is available to assist in the drafting of a QDRO and is for informational purposes only and is not intended as legal advice. The model language is designed solely as a guide and may be modified as necessary. It should not be relied upon to satisfy the laws of any particular state. It is strongly recommended that the drafter thoroughly familiarize themselves with the applicable law and the model language before deciding whether to utilize the model language.

The plan document dictates how administrative matters are handled under the plan. It is therefore extremely important to confirm with the Plan Administrator what additional steps under the plan document are required to ensure the outcome contemplated in the divorce settlement.

SUPERIOR COURT, STATE OF CALIFORNIA

COUNTY OF _____

QUALIFIED DOMESTIC RELATIONS ORDER

WHEREAS, the parties were married to each other on **[insert marriage date]** and were separated on **[insert separation 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 under Section 414(p) of the "Code";

WHEREAS, this QDRO is granted in accordance with **California Family Code**, which relate to marital property rights, child support, and/or spousal support between spouses and former spouses in matrimonial actions; and

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

NOW IT IS ORDERED AND ADJUDGED AS FOLLOWS:

1. **Definitions.**

For the purposes of this Order, each term below has the meaning stated by this part.

"Order" means this document when properly entered as an Order of a court having jurisdiction over both the Participant and the Alternate Payee.

"Plan" means

City of San Jose Deferred Compensation Plan

Any successor to this Plan shall also be subject to the terms of the Order.

"Plan Administrator" means the Administrator as defined in the Plan.

"Plan Agent" means ING Life Insurance and Annuity Company ("ING") or any other person/entity contracted by the Plan Administrator to provide administrative services to the Plan.

“Segregated Amount” means the benefit amount from the Participant’s Plan account that is assigned to the Alternate Payee consistent with this Order.

“Separate Plan Account” means the sub-account of the Participant’s Plan account that the Plan Administrator or Plan Agent causes to be maintained for the benefit of the Alternate Payee consistent with this Order.

This Order hereby creates and recognizes the existence of the Alternate Payee’s right to receive all or a portion of the benefits payable to the Participant from the Plan as set forth below.

2. IDENTIFICATION OF THE PARTICIPANT

The name and last known mailing address of the Participant are as follows.

Name:
Complete Address:
Date of Birth:
Social Security No.

If state or local law prevents the inclusion of such information in the court order, this data must be provided in writing in a letter. The letter must be signed by the attorney(s) representing the Participant and the Alternate Payee, or by each of the parties themselves in the presence of a Notary Public (as evidenced by a notary affidavit and seal).

3. IDENTIFICATION OF THE ALTERNATE PAYEE *{For more than one Alternate Payee, repeat this section 3 as often as necessary.}*

The name and last known mailing address of the Alternate Payee are as follows.

Name:
Complete Address:
Date of Birth:
Social Security No.

If state or local law prevents the inclusion of such information in the court order, this data must be provided in writing in a letter. The letter must be signed by the attorney(s) representing the Participant and the Alternate Payee, or by each of the parties themselves in the presence of a Notary Public (as evidenced by a notary affidavit and seal).

The Alternate Payee is the **[spouse, former spouse, domestic partner or former domestic partner]** of the Participant.

4. BENEFIT AWARDED TO THE ALTERNATE PAYEE

This amount shall be separately accounted for under the Plan for the exclusive benefit of the Alternate Payee. The investment allocation of the Alternate Payee’s account will be the same as the investment allocation of the Participant’s account at the time of the transfer. After the Alternate Payee’s account is established, the Alternate Payee can change the investment allocation to any of the investment options available under the Plan.

[Select the appropriate benefit assignment and delete any option that does not apply.]

The Plan shall assign to the Alternate Payee an amount equal to **[insert percent or dollar amount]** of the Participant’s total vested account balance as of **[insert valuation date]**.

The Alternate Payee’s benefit **[will be/will not be]** adjusted for investment earnings and losses from the valuation date to the date a separate account is established for the Alternate Payee.

The Alternate Payee’s benefit will be based upon the Participant’s vested account balance

[including/excluding] any outstanding loan balance.

- (a) The Plan Administrator and the Plan Agent and any person subject to the direction of either of them shall not apply any provision of this Order that would require the Plan Administrator or the Plan Agent to calculate the Segregated Amount to be directed to the Alternate Payee's Separate Plan Account in a manner not readily calculable by the Plan Administrator or Plan Agent according to its currently available records.
- (b) When establishing the Alternate Payee's Separate Plan Account, the Plan Agent shall first redeem amounts pro rata from all investment options other than non-core investment options (e.g., life insurance, self directed brokerage account, certificate of deposit, etc.), if applicable, held in the Participant's Plan account, and shall redeem amounts from non-core investment options, if applicable, only if necessary to obtain the Segregated Amount consistent with this Order.
- (c) The Alternate Payee's Separate Plan Account shall bear all fees and expenses as though the Alternate Payee was a Participant

5. COMMENCEMENT OF BENEFITS

Upon determination that the Order constitutes a qualified domestic relations order, the Segregated Amount shall be distributed to the Alternate Payee as soon as administratively feasible after the Plan Agent's acceptance of this Order as a Qualified Domestic Relations Order. Using the Segregated Amount provided in Section 4 above, the Plan will pay to the Alternate Payee benefits in accordance with the benefit distribution provisions of the Plan. The Alternate Payee shall file with the Plan Administrator or Plan Agent a written claim for benefits in a format deemed acceptable by the Plan Administrator and Plan Agent. Notwithstanding the foregoing, the Alternate Payee (who is a spouse or former spouse) may elect, within the applicable period specified in Section 402(c) of the Code, to make an eligible rollover distribution to an eligible retirement plan designated by the Alternate Payee in writing to the Plan Administrator or Plan Agent, or may elect to make a direct rollover to an eligible retirement plan so designated, in accordance with the provisions of Section 402(e)(1)(B) of the Code.

6. DEATH OF PARTICIPANT

Payment of the Alternate Payee's separate interest shall not be affected by the Participant's death. Upon the Participant's death, the Alternate Payee will not be entitled to any survivor benefits attributable to the Participant's share of benefits under the Plan unless the Participant had designated the Alternate Payee as a beneficiary in accordance with the terms of the Plan.

7. DEATH OF THE ALTERNATE PAYEE PRIOR TO DISTRIBUTION

If permitted by the Plan, the Alternate Payee shall designate, on a form provided by the Plan Administrator, a beneficiary (or beneficiaries) to whom the Alternate Payee's separate interest is to be paid in the event of the Alternate Payee's death. If the Alternate Payee fails to designate a Beneficiary, any benefit available upon death of the Alternate Payee's death will be paid according to the terms of the Plan or as directed by the Plan Administrator. Upon the Alternate Payee's death, the Participant will not be entitled to any survivor benefits attributable to the Alternate Payee's share of benefits under the Plan unless the Alternate Payee had designated the Participant as a beneficiary in accordance with the terms of the Plan.

8. COMPLIANCE WITH APPLICABLE LAWS AND THE PLAN

The parties to this Order intend that it comply with the California Family Code and the provisions hereof are to be administered and interpreted in a manner consistent with such provisions.

- (a) The Participant and Alternate Payee shall each be responsible for his or her own federal, state and local income taxes and any other taxes attributable to any and all distributions from the Plan that are received by the Participant or the Alternate Payee, respectively.

If the Alternate Payee is not the spouse or former spouse of the Participant, the preceding paragraph should be replaced by:

The Participant is responsible for all taxes attributable to any and all distributions from the Plan pursuant to

this order.

- (b) The Participant and the Alternate Payee shall notify the Plan Administrator and Plan Agent of any change of address.
- (c) No provision in this Order requires the Plan to make any payment or take any action that is inconsistent with any federal law, rule, regulation or applicable judicial decision.
- (d) Nothing contained in this Order shall be construed to require the Plan, Plan Administrator or Plan Agent to:
 - (i) Provide the Alternate Payee any type or form of benefit or any option not otherwise available to the Participant under the Plan;
 - (ii) Provide to the Alternate Payee increased benefits (determined on the basis of actuarial value) not available to the Participant; or
 - (iii) Pay benefits to an 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.

9. RESERVATION OF JURISDICTION

This Court reserves jurisdiction over the parties and the Plan until such time as the obligations of the Plan to the Alternate Payee under this Order have been fully paid and discharged. Further, this Court reserves jurisdiction to amend this Order to establish or maintain its status as a QDRO, if applicable to the Plan, and the Code; provided, however, that no amendment of this Order is to require the Plan to provide any type or form of benefit, or any option, not otherwise provided under the Plan.

IT IS SO ORDERED:

This date:

By the Court:

Judge's Signature _____

Approved as to form and content:

_____ Date: _____
Print Name: Plaintiff

_____ Date: _____
Print Name: Attorney for Plaintiff

_____ Date: _____
Print Name: Defendant

_____ Date: _____
Print Name: Attorney for Defendant