

**WARNING - CAUTION**

This Sample Order is intended to assist attorneys in preparing a Qualified Domestic Relations Order ("QDRO"). The language is acceptable to the Plans as meeting the requirements of a QDRO; however, the language has not been challenged in court, nor has a court definitively stated that such language meets ERISA's standards.

The Plans do **not warrant** that the Order is appropriate in every instance. The parties should consult their own attorneys before using this sample and their attorneys should adopt and revise the language where appropriate. Simply, there are options and language which the parties may want to modify. The Plans take no position on these provisions. There is no requirement that you use this sample, it is furnished as a courtesy.

Future Plan changes and amendments to ERISA could also affect the validity of this sample Order.

**SAMPLE ORDER**

\_\_\_\_\_ SUPERIOR COURT OF THE STATE OF CALIFORNIA

|                        |   |                           |
|------------------------|---|---------------------------|
| In re the Marriage of: | ) | Case No. _____            |
|                        | ) |                           |
| _____                  | ) | QUALIFIED DOMESTIC        |
|                        | ) | RELATIONS ORDER           |
| Petitioner,            | ) |                           |
|                        | ) | [RELATING TO THE NORTHERN |
|                        | ) | CALIFORNIA PIPE TRADES    |
|                        | ) | PENSION TRUST]            |
| _____                  | ) |                           |
|                        | ) |                           |
| Respondent,            | ) |                           |
| _____                  | ) |                           |

Pursuant to the Judgment and agreement of the parties, IT IS ORDERED AS FOLLOWS:

1. QDRO. The parties intend that this Order satisfy the requirements of a Qualified Domestic Relations Order ("QDRO"), as provided in the Employee Retirement Income Security Act, as amended ("ERISA"), and Internal Revenue Code Section 414(p).

2. Name of the Plan. This Order applies to the NORTHERN CALIFORNIA PIPE TRADES PENSION PLAN ("Pension Plan") and the NORTHERN CALIFORNIA

PIPE TRADES SUPPLEMENTAL 401(k) RETIREMENT PLAN (“Supplemental 401(k) Retirement Plan”), both of which comprise the NORTHERN CALIFORNIA PIPE TRADES (“NCPT”) PENSION TRUST. The Order also applies, if applicable, to the Participant's interest in the predecessor Plans, the Bay Area Pipe Trades Pension Plan (the predecessor to the NCPT Pension Plan) and/or the NCPT Supplemental Pension Plan, and/or the UA Local 342 Defined Contribution Plan, and/or the UA Local 444 Defined Contribution Plan (predecessors to the NCPT Supplemental 401(k) Retirement Plan).

3. Parties. The contact information for each party is:

a. Employee (Plan Participant): E-mail: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Social Security No. and Date of Birth (May be provided separately)

b. Former Spouse (Alternate Payee): E-mail: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Social Security No. and Date of Birth (May be provided separately)

The parties agree to notify the Plan of any address change and/or the death of the other party.

4. Period of Marriage. The parties agree that the period of marriage was:

Date of Marriage: \_\_\_\_\_

Date of Separation: \_\_\_\_\_

For purposes of this QDRO: (a) If the marriage was on or before the 15th of a month, the parties will be considered married that month; (b) If the marriage occurred after the 15th of

a month, the parties will not be considered married that month; (c) If the separation was on or before the 15th of a month, the parties will not be considered married that month; (d) If the separation occurred after the 15<sup>th</sup>, the parties will be considered married that month.

5. Vested Status. No benefits are payable to the Former Spouse unless the Participant has a Vested benefit under the applicable Plan as of the Date of Separation under the Pension Plan.

6. Benefit Commencement Date. The Former Spouse's "Benefit Commencement Date" is the effective date as of which Plan benefits commence being paid to the Former Spouse under this Order. The parties understand that retroactive benefits are not paid for periods prior to filing of an Application, except as required by applicable law.

To the extent required by applicable law, benefits shall commence being paid to the Former Spouse by no later than the Participant's "required beginning date" as defined in Internal Revenue Code Section 401(a)(9).

7. Former Spouse's Benefit. The Former Spouse is awarded a benefit as provided herein and is an "Alternate Payee" as defined in ERISA. (The term "Former Spouse" is used throughout this Order.) The Former Spouse's benefit shall be one-half of the community property of the Participant's benefit as follows:

a. Northern California Pipe Trades Pension Plan. During the marriage, the Participant earned Retirement Benefits under the NCPT Pension Plan (and/or its predecessor Plan, the Bay Area Pipe Trades Pension Plan) that are considered community property of the parties. The parties agree that the Former Spouse has a one-half share of the community property of the Participant's pension benefits from the Date of Marriage through the Date of Separation. For purposes of this Order, the value of such credits will be based on the benefit rate for the particular years when the credit was earned.

The parties recognize that the Former Spouse's benefit is reduced to account for: (a) actuarial adjustments as required by the Plan (such as accounting for the Former Spouse's age); (b) Early Retirement; and/or (c) the benefit option elected by the Former Spouse.

b. Northern California Pipe Trades Supplemental 401(k) Retirement Plan. This Order also creates and recognizes the Former Spouse's right to one-half of the community property of the Participant's NCPT Supplemental 401(k) Retirement Plan (which encompasses the predecessor entity, the NCPT Supplemental Pension Plan, and/or the UA Local 342 Defined Contribution Plan, and/or the UA Local 444 Defined Contribution Plan; whichever is applicable, if such benefits have been transferred to this Plan). The community value is determined by adding the contributions made on the Participant's behalf from the Date of Marriage through the Date of Separation, plus any asset appreciation, minus any asset depreciation, minus Plan expenses (including earnings minus losses and expenses since the separation date).

The Former Spouse's community property will be segregated and an Account established in the Former Spouse's name within a reasonable period of time upon the receipt of an approved court filed QDRO. The parties acknowledge that the value of such Account or amount will vary depending upon the date the transfer occurs. At that time, the administrative fee of \$250 will be deducted from the Participant's Account and \$250 will be deducted from the Former Spouse's Account. Former Spouse shall be entitled to future earnings and asset appreciation minus any asset depreciation and Plan expenses, based on their Account balance. Former Spouse's Account balance will be calculated in the same manner for any Market Value Adjustments as every other Participant in the Plan.

The Former Spouse shall have total control over his or her Individual Account to the extent allowed by the Plan including the right to designate a Beneficiary(ies) to receive benefits upon his or her death. Similarly, the Participant will have total control over their

remaining benefits in the Plan. The Former Spouse will not have any right, title, or interest in the Participant's remaining balance, including being designated as a Beneficiary for any death or other benefits provided by the Plan.

c. Reduction of Benefits. The benefits payable to the Participant shall be reduced by the amount of the Former Spouse's benefits as provided herein for each Plan.

8. Former Spouse's Election to Start Payments Early. The Former Spouse may elect to commence receiving benefits prior to the Participant.

a. Pension Plan. The Former Spouse may elect to commence receiving benefits at any time after the earliest date that the Participant could elect to retire under the Plan or otherwise commence receiving benefits under the Plan. Notwithstanding any provision herein to the contrary, the Former Spouse's entitlement to Early Retirement Benefits is not intended to and will not adversely affect the Participant's remaining benefits.

By selecting a benefit commencement date earlier than the date the Participant commences receiving benefits under the Plan, the Former Spouse acknowledges that he or she will not be entitled to share in any benefit increase adopted after the benefits commence being paid and that he or she will not be entitled to any retirement subsidy provided in the Plan prior to the date the Participant retires or otherwise commences receiving benefits. Former Spouse acknowledges that the Plan's Early Retirement reduction factors and actuarial factors, based on the Participant's age on the Former Spouse's Date of Retirement, shall apply to the Former Spouse's benefit.

b. Supplemental 401 (k) Retirement Plan. A Former Spouse may elect to receive his or her benefits under the Plan regardless of the Participant's entitlement to receive benefits.

9. Provisions Applicable to Pension Plan.

a. Former Spouse's Benefit Options. The Former Spouse's benefit in the Plan shall be actuarially adjusted so that the benefit will be paid as a life annuity. The Former Spouse may then elect any optional form of payment available under the Pension Plan for his or her community property, including a life annuity based on the Former Spouse's life. The form elected must comply with the minimum distribution requirements of Section 401(a)(9) of the Internal Revenue Code. The Former Spouse shall have the right to designate a Beneficiary(ies) only to the extent that death benefits are/or may be available under the form of benefit option elected. If, for example, the Former Spouse elects a life annuity based on his or her life, the benefits cease upon the later of the Former Spouse's death or guaranteed months of payments. If the Former Spouse dies before the guaranteed months of payments have been made, the remaining payments shall be made to the designated Beneficiary(ies). If no Beneficiary(ies) has been designated, payments shall be made to the Former Spouse's children in equal shares and, if no children, then in accordance with the Plan Document.

b. Participant's Death After Former Spouse's Benefit Has Commenced. The Former Spouse's benefits will not be affected (unless the Former Spouse's benefit is based on the Participant's lifetime). Furthermore, the Former Spouse will not be entitled to any death benefits payable as a result of the death of the Participant and the Participant's benefit will be paid to his or her designated Beneficiary(ies). If no Beneficiary(ies) has been designated, payments shall be made in accordance with the Plan Document.

c. Participant's Death Before Former Spouse's Benefit Has Commenced. If the Former Spouse survives the Participant, the Former Spouse will be considered the Surviving Former Spouse for purposes of Internal Revenue Codes sections 401(a)(11) and 417 as to their one-half interest in the community property of any death benefit or Pre-Retirement Survivor Benefit that is payable under the Plan. The Former Spouse may elect any form of payment available under the Plan for their community property.

d. Former Spouse's Death Before Participant's and Former Spouse's Benefits Have Commenced. If the Participant survives the Former Spouse, before benefits commence, all benefits shall be paid to the Participant or the Participant's Beneficiary(ies) and no benefits will be payable to the Former Spouse or the Former Spouse's Beneficiary(ies) regardless of the Former Spouse's community property.

e. Former Spouse's Death After Participant's and Former Spouse's Benefits Have Commenced. Any community property awarded to the Former Spouse reverts back to the Participant.

f. Former Spouse is Older than the Participant. The Former Spouse is not entitled to commence receiving benefits until the Participant is entitled to commence receiving benefits, regardless of the Former Spouse's age.

g. Disability Benefits. The Former Spouse is not entitled to any portion of Disability Pension benefits that are payable to the Participant prior to the date that the Participant would be eligible for Early Retirement benefits.

Upon the date that the Participant would have qualified for Early Retirement, subject to the Plan's age reduction factors based on the Participant's age, if applicable, or Normal Retirement, the Former Spouse may elect to commence receiving benefits. As of the Former Spouse's benefit commencement date, the Participant's Disability Pension benefit will be reduced by the full amount of the Former Spouse's community property.

h. Additional Payments. The Former Spouse shall not share in any additional payments, 13<sup>th</sup> checks, or cost of living adjustments issued to Retirees.

10. Form of Benefit – Supplemental 401(k) Retirement Plan. The Former Spouse may elect any form of payment available under the Plan. If the Former Spouse predeceases the Participant after benefits have commenced being paid, there will be no reversion of benefits to the Participant. Benefits will be paid pursuant to the Former Spouse's Beneficiary

designation. If the Participant predeceases the Former Spouse after benefits have commenced, there will be no effect to the Former Spouse's benefit. The Former Spouse will not be entitled to any death benefits payable as a result of the Participant's death, unless the Participant named the Former Spouse as a designated Beneficiary after the Final Judgment is entered.

11. Overpayments. Both parties agree that if an overpayment exists under the NCPT Pension Plan, NCPT Supplemental 401(k) Retirement Plan, or NCPT Health and Welfare Plan, full repayment and/or an approved re-payment plan must be on file with the Trust Fund Office in order for any benefits to commence from either Plan.

12. Participant's Residual Benefits. Any benefits under either Plan not specifically given to the Former Spouse under this Order shall be the Participant's sole and separate property. The Former Spouse waives the right to any additional benefits.

13. Statutory Limits. Notwithstanding any provision to the contrary, in no event shall this Order be interpreted as requiring either of the Plans to do any of the following:

a. Require payment of benefits to the Former Spouse which are already required to be paid to another Former Spouse, Child, or other person under a prior QDRO.

b. Require the Plan(s) to provide benefits with a greater actuarial value than it would otherwise pay were there no QDRO.

c. Require the Plan(s) to provide any type or form of benefit or any option not otherwise provided under the Plan(s).

14. Lump Sum Distribution. If the present actuarial value of a benefit from either Plan is \$5,000 or less, the Plan(s) may distribute such benefit in a lump sum.

15. Pension Plan Requirements for Commencement of Benefits.

a. The Former Spouse is required to file the applicable Application with the Trust Fund Office.



b. The Former Spouse must provide the Trust Fund Office with any information or documents needed to determine the Former Spouse's benefits.

c. The Former Spouse agrees to comply with the Trust Fund Office and all requirements needed to effectuate this Order.

d. The Former Spouse agrees to notify the Trust Fund Office of any address and/or name change. Furthermore, the Former Spouse acknowledges that failure to notify the Trust Fund Office of a change of address, may result in the Trust Fund Office not being able to notify the Former Spouse when the Participant applies for Retirement Benefits. Should the Former Spouse wish to apply for benefits prior to the Participant, they would need to contact the Trust Fund Office.

e. The Former Spouse acknowledges that the commencement date of benefits will be determined by the Trust Fund Office upon receipt of the Application.

f. If the Former Spouse fails to comply with the Plan and/or Trust Fund Office requirements, including but not limited to, submission of the applicable Application, within 90 days from the date of the request, the Former Spouse's Community Property Interest shall revert back to the Participant until the Former Spouse submits the required documents. The Former Spouse's Retirement Benefit will be effective as soon as administratively feasible, but no later than 60 days, after the required documents are received at the Trust Fund Office.

16. Savings Clause. It is the intention of the Former Spouse and Participant that this Order shall qualify as a QDRO. If any provision is determined to be inconsistent with the definition of a QDRO or applicable law, this Order shall be amended as may be necessary to comply with such requirements. If required by applicable law, the parties agree that they shall enter into a stipulation (which may be a letter of agreement) as may be reasonably

required to amend this Order (without the necessity of having to return to Court). The Parties release the Plan from any liability for accepting such a Stipulation or letter agreement.

17. No Prior Order. The parties certify that they are not aware of prior Orders which dispense of benefits hereunder.

18. Definitions. Terms not specifically defined in this QDRO shall have the meanings defined in the applicable Plan.

19. Limited Approval. Approval of a QDRO indicates only that the Plans find the Order to meet the basic requirements of ERISA and does not violate either or both Plans. Approval of the Order is not a determination by the Plan(s) that the Order makes a legally proper division of marital property. Plan Representatives, Trust Legal Counsel, Trustees, and the Plan assume no responsibility to the parties for the correctness or fairness of such division.

20. Plan Interpretation. The parties recognize and understand that under the Plans, the Trustees have total discretion in the interpretation of the Plans and this Order.

21. Amendment. The Court retains jurisdiction to enforce or amend this Order insofar as is necessary to establish or maintain its qualifications as a QDRO, or as is necessary. If, however, a disagreement arises as to the interpretation of the Order, the parties may agree or stipulate as to the proper interpretation without having to return to Court for approval. The Parties release the Plan(s) from any liability for complying with any such Stipulation or letter agreement.

22. Copy of Order to Trust Legal Counsel. Petitioner shall furnish the Trust's Legal Counsel with a copy of the Order filed and approved by the Court within 30 days of obtaining Court approval.

Dated: \_\_\_\_\_, 20\_\_\_\_  
\_\_\_\_\_  
Attorney for Participant

Dated: \_\_\_\_\_, 20\_\_\_\_  
\_\_\_\_\_  
Attorney for Former Spouse

Dated: \_\_\_\_\_, 20\_\_\_\_  
\_\_\_\_\_  
Participant

Dated: \_\_\_\_\_, 20\_\_\_\_  
\_\_\_\_\_  
Former Spouse

Dated: \_\_\_\_\_, 20\_\_\_\_  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT