INSTRUCTIONS AND EXPLANATIONS OF:

Model Provisions For Awarding Alternate Payee
A SEPARATE Interest In Participant's Retirement Benefits Under The
WESTERN CONFERENCE OF TEAMSTERS PENSION PLAN

IMPORTANT NOTE

These Model Provisions apply only if:

1) **PARTICIPANT HAS NOT BEGUN RECEIVING PAYMENTS, or**

2) **PLAN HAS BEEN WITHHOLDING BENEFITS ON BEHALF OF ALTERNATE PAYEE SINCE PARTICIPANT'S PENSION EFFECTIVE DATE.**

If these Model Provisions do not apply, please contact one of the Plan's Area Administrative Offices for the appropriate Model Provisions.

CAUTION: YOU MUST READ THE FOLLOWING BEFORE USING THESE MODEL PROVISIONS

THE DISPOSITION OF RETIREMENT BENEFITS IN DOMESTIC RELATIONS PROCEEDINGS INVOLVES COMPLEX MARITAL RIGHTS AND TAX ISSUES. THE FOLLOWING MODEL PROVISIONS DEMONSTRATE ONE METHOD OF DIVIDING RETIREMENT BENEFITS. OTHER METHODS OF DIVIDING RETIREMENT BENEFITS MAY BE AVAILABLE AND THESE MODEL PROVISIONS MAY BE INAPPROPRIATE FOR YOUR CIRCUMSTANCES.

THIS SAMPLE IS PROVIDED AS A COURTESY ONLY, AS NEITHER THE WESTERN CONFERENCE OF TEAMSTERS PENSION PLAN (THE "PLAN"), NOR ITS AGENTS OR CONSULTANTS ARE AUTHORIZED TO GIVE LEGAL ADVICE AND THEY MAKE NO REPRESENTATION AS TO ITS SUFFICIENCY OR AS TO ITS LEGAL CONSEQUENCES. MOREOVER, THE PLAN, ITS AGENTS AND CONSULTANTS MAKE NO REPRESENTATION AS TO WHETHER THESE MODEL PROVISIONS COMPLY WITH STATE LAW REQUIREMENTS REGARDING THE DIVISION OF MARITAL OR COMMUNITY PROPERTY IN CONNECTION WITH A MARRIAGE DISSOLUTION.

THESE MODEL PROVISIONS WERE DESIGNED SPECIFICALLY TO COMPORT WITH THE COMPLEX STRUCTURE OF THE PLAN. ACCORDINGLY, ANY MODIFICATION OF THESE MODEL PROVISIONS MAY RESULT IN A CONFLICT WITH THE PLAN'S TERMS OR CREATE AMBIGUITIES WITHIN THE ORDER. SUCH MODIFICATION MAY LEAD TO UNINTENDED CONSEQUENCES REGARDING THE PAYMENT OF PLAN BENEFITS OR PREVENT THE ORDER FROM BEING QUALIFIED.

Introduction

The enclosed Model Qualified Domestic Relations Order Provisions ("Model Provisions") have been prepared by legal counsel to the Western Conference of Teamsters Pension Plan (the "Plan"). The Model Provisions are designed to assist you or your attorney (or other practitioner) in formulating language qualified under federal law for judgments in marital dissolution proceedings where a determination and division of the community or marital property portion of a participant's retirement benefits under the Plan is to be made.[1] This memorandum explains how the Model Provisions work and provides instructions where necessary. In the

[1] These Model Provisions ONLY apply to the division of community or marital property. The Model Provisions should not be used to award family or child support. If you are seeking a support order, please contact one of the Plan's Area Administrative Offices (listed on p. 10) for further information.

event there is any inconsistency between the Model Provisions and these explanations, the terms of the Model Provisions will control.

The Employee Retirement Income Security Act of 1974, as amended ("ERISA") (29 U.S.C. 1001, et seq.) and the Internal Revenue Code of 1986, as amended (the "Code") provide that a qualified pension plan may make distributions of retirement benefits to someone other than a participant, known as the "alternate payee" (e.g., a former spouse) but only pursuant to a state domestic relations order (an "Order") which meets the requirements of a Qualified Domestic Relations Order ("QDRO"). To be a QDRO, an Order must include:

1. The names and last known mailing addresses of the participant and alternate payee;
2. The amount or percentage (or the manner in which such amount or percentage is to be determined) of the participant's benefits to be paid by the plan to the alternate payee;
3. The number of payments or period to which the Order applies; and
4. The name of each plan to which the Order applies.
   (29 U.S.C. §1056(d)(3)(C); Code §414(p)(2)).

The Order may not require a plan to (1) provide an alternate payee any type or form of benefit or option not otherwise provided under the plan, (2) provide increased benefits (determined on the basis of actuarial value) or (3) pay benefits to an alternate payee which are already subject to an Order previously determined to be a QDRO (29 U.S.C. §1056(d)(3)(D); Code §414(p)(3)). The Order may (1) provide for payment of benefits to an alternate payee on or after the participant's earliest retirement age, whether or not the participant actually retires on that date, and (2) require the plan to treat an alternate payee who is a participant's former spouse as a "surviving spouse" as to all or some portion of the participant's accrued benefit for purposes of the federally mandated survivor annuity benefit, as if the marriage had not been dissolved (29 U.S.C. §1056(d)(3)(E) and (F); Code §414(p)(4) and (5)).

Explanations And Instructions

Under a QDRO, an alternate payee may be entitled to either a *shared interest* or a *separate interest* in the participant's benefit. Under a *shared interest* QDRO, the participant and alternate payee "share" each benefit payment. Because payments to the participant from the Plan end upon the participant's death, payments to the alternate payee also stop when the participant dies unless the QDRO provides that the alternate payee is to receive a portion of any death or survivor benefits that may be payable. Under a *separate interest* QDRO, the participant's accrued benefit is divided into two separate parts – one for the participant and one for the alternate payee. As a result, the alternate payee is given options over the timing and form of his or her benefit payments.

Specifically, under a *separate interest* QDRO, the alternate payee can elect to begin receiving benefit payments over his or her lifetime at any time following the participant's Earliest Retirement Age under the Plan (generally age 55) — even if the participant has not begun receiving benefits.

These Model Provisions provide language for a *separate interest* QDRO because family law practitioners and their clients generally prefer lifetime payments to the alternate payee and the flexibility of benefit options over the restrictions of a *shared interest* QDRO.

The alternate payee is entitled to a *separate interest* only if the participant has not begun receiving Plan benefits or if the Plan has been withholding a portion of the participant's benefits on behalf of the alternate payee beginning with the participant's first payment. If the participant has begun receiving Plan benefits (without any withholding), these Model Provisions do not apply to you, and you should contact one of the Plan's Area Administrative Offices (listed on p. 10) for the appropriate *shared interest* model provisions.

The explanation for each section of the Model Provisions follows.

Section 1 of the Model Provisions contains certain information necessary for the Plan to administer the order. Each party's name and last known address must be entered as required by ERISA and the Code. Their dates of birth, marriage, and separation/dissolution must be entered in order for the Plan to calculate their benefits using the formula in Section 3.C.

Section 1.D requires information for the designation of the alternate payee's beneficiary (see Section 6 regarding the possible benefits payable to the beneficiary). Such beneficiary designation and any subsequent changes to that designation are subject to the Plan's rules and procedures regarding a participant's beneficiary designation. Forms for changing a beneficiary may be obtained from the Plan's website (www.wctpension.org) or one of the Plan's Area Administrative Offices (listed on p. 10).

Section 1.E, for confidentiality reasons, requires that the parties' social security numbers be submitted to the Plan on a separate form as opposed to including them in the Order. The form, entitled "Statement of Confidential Information", is attached to the back of the Model Provisions. Please do not submit the form to the court; rather the form must be submitted directly to one of the Plan's Area Administrative Offices (listed on p. 10) with a file-marked copy of the Order.

Section 2 of the Model Provisions addresses the circumstance under which an Order is enforceable against the Plan. These are the conditions that are necessary under federal law for an alternate payee to receive payments each month during the alternate payee's lifetime as opposed to the payments ending upon the participant's death.

Sections 3.A and 3.B of the Model Provisions award the alternate payee a percentage of the community or marital property interest in the participant's Plan benefits (defined in the Model Provisions as the *Alternate Payee's Separate Percentage Interest*).

Section 3.C of the Model Provisions contains the formula for determining the *Alternate Payee's Separate Percentage Interest*. This formula uses what is commonly referred to as the "time rule". This is the rule that family law judges in many jurisdictions typically use to divide retirement benefits from a defined benefit plan. Under this formula, the alternate payee is awarded 50% of the community/marital property portion of the participant's benefits. However, if the alternate payee is to be awarded less than 50% of the community/marital property, then the "50%" should be replaced with the appropriate percentage.

<u>Section 3.D</u> of the Model Provisions requires that for purposes of the formula in Section 3.C (the calculation of *Alternate Payee's Separate Percentage Interest*), the participant's hours of service will be determined under the Plan's terms and procedures.

<u>Section 3.E</u> of the Model Provisions provides that if the alternate payee dies before his or her benefits begin, the alternate payee's interest in the participant's benefits is extinguished (except for any pre-retirement death benefit that may be payable to the alternate payee's beneficiary under Section 6 of the Model Provisions).

<u>Section 4</u> of the Model Provisions applies only if the conditions exist that are necessary under federal law for the alternate payee to <u>begin</u> receiving a *separate interest* in the participant's benefit. Accordingly, Section 4 applies only (i) if the participant has reached his or her Earliest Retirement Age under the Plan (generally age 55) and (ii) if the alternate payee is then alive. Section 4 would not apply if the participant began receiving Disability Retirement Benefits before his or her Earliest Retirement Age. Instead, Section 8 would apply.

<u>Section 4.A</u> of the Model Provisions describes how the alternate payee's monthly benefit is calculated. The alternate payee's benefit is determined by multiplying the *Alternate Payee's Separate Percentage Interest* by the participant's *normal retirement benefit* (the *normal retirement benefit* is the basic unit of retirement benefit under the Plan and is defined as a monthly benefit beginning when the participant turns 65 and payable for the participant's life). This amount is then actuarially adjusted to reflect two factors: First, that payments are to begin before the participant reaches age 65, and second, that the payments are to be made over alternate payee's lifetime instead of the participant's. The following provides more details on the Plan's calculation of the alternate payee's benefit:

i. The Plan first figures the amount of the participant's *normal retirement benefit* accrued to the date the alternate payee first becomes entitled to receive monthly payments (this is referred to in the Model Provisions as the alternate payee's Benefit Commencement Date or in the Code as the *annuity starting date*).

ii. The Plan next calculates the alternate payee's interest in the participant's *normal retirement benefit*. To do this, the Plan multiplies the participant's *normal retirement benefit* from step i. above by the *Alternate Payee's Separate Percentage Interest*.

iii. Then, the resulting amount from step ii. is actuarial reduced to reflect that the participant has not reached age 65 by the alternate payee's Benefit Commencement Date (if the participant has reached age 65, then this amount would not be reduced).

iv. Finally, the Plan converts the resulting amount from step iii. into an actuarially equivalent benefit payable in the form of a single-life annuity for the alternate payee's life. (This amount may further be adjusted in accordance with the alternate payee's form of benefit election.)

<u>Section 4.B</u> of the Model Provisions provides that the alternate payee may elect any form of benefit available to the participant under the Plan except for a disability retirement pension or a joint and survivor pension with his or her spouse. A disability retirement pension is available under the Plan only to a participant with respect to the participant's disability, and federal law prohibits an alternate payee from receiving a joint and survivor pension with his or her spouse.

The form of benefit that alternate payee elects can affect the amount of the monthly payments and the availability and amount of any lump sum death benefits payable upon his or her death. You can obtain more information about the forms of benefit available to the alternate payee by contacting one of the Plan's Area Administrative Offices (listed on p. 10) or by referring to the Plan document, the Summary Plan Booklet, or the Plan's website (www.wctpension.org).

Section 4.C of the Model Provisions sets forth the conditions under which the alternate payee can begin receiving benefits once the participant has reached his or her Earliest Retirement Date under the Plan (generally, the first day of the month following the date the participant reaches age 55).[2] The alternate payee must apply to the Plan for benefits and provide the Plan with whatever information it may reasonably need to administer the payments, including alternate payee's choice for a Benefit Commencement Date. The alternate payee's Benefit Commencement Date cannot be more than three months before the Plan receives the alternate payee's application for benefits. However, in no event can the alternate payee's Benefit Commencement Date be later than the earlier of (1) the participant's Benefit Commencement Date, or (2) the participant's date of death.

Section 4.D of the Model Provisions provides that the alternate payee is entitled to share in any early retirement subsidy in which the participant may become entitled, but only if the Plan begins payments to the participant which include a subsidy for early retirement. Until the participant begins receiving benefits, the alternate payee's benefit will be calculated under Section 4.A as described above. Only when the participant begins receiving a retirement benefit that includes an early retirement subsidy will the alternate payee begin receiving the *Alternate Payee's Separate Percentage Interest* in that subsidy.

Background on Sections 5 and 6: Sections 5 and 6 of the Model Provisions provide for the disposition of certain benefits under current Plan provisions that may become payable upon the death of the participant prior to his or her Benefit Commencement Date. These death benefits are:

i. Before Retirement Spouse Lifetime Pension: If a vested participant dies before retiring, leaving a surviving spouse, the Plan provides a monthly lifetime benefit to the surviving spouse.

ii. Before Retirement Basic Lump Sum Death Benefit: If a vested participant dies before retiring, the Plan pays a death benefit equal to 50% of the total basic contribution paid into the Plan on the participant's behalf up to a maximum of $10,000.

iii. Before Retirement 48 Month Death Benefit: If a vested unmarried participant with recent coverage dies before retiring, the Plan pays a death benefit that is generally equal to 48 times the monthly Life Only Pension the participant would have received if he or she retired the day before dying.

[2] Before age 55, the participant's Earliest Retirement Date under the Plan can be as early as the earliest date the participant could elect to begin benefits under either a PEER program or the Rule of 84 if the participant were to terminate employment and apply for benefits. You can obtain more information about PEER and the Rule of 84 by contacting one of the Plan's Area Administrative Offices (listed on p. 10) or by referring to the Plan document, the Summary Plan Booklet, or the Plan's website (www.wctpension.org).

You can obtain more information on these benefits by contacting one of the Plan's Area Administrative Offices (listed on p. 10) or by referring to the Plan document, the Summary Plan Booklet, or the Plan's website (www.wctpension.org).

Note, Sections 5 and 6 would not apply if the participant began receiving a Disability Retirement Benefit before his or her Earliest Retirement Age. Instead, Section 8 would apply.

Section 5.A of the Model Provisions provides that the alternate payee will be considered the surviving spouse of the participant for purposes of the qualified pre-retirement surviving spouse annuity pension benefit mandated by federal law. This annuity is payable to the alternate payee if the participant dies before the alternate payee and before the participant's Earliest Retirement Date under the Plan (generally, age 55).[3] The calculation of this annuity is based on the *Alternate Payee's Separate Percentage Interest* in the participant's *normal retirement benefit*. If the participant is married on the date of his or her death, the participant's current spouse would be entitled to a pre-retirement surviving spouse annuity based on the remaining portion of the participant's *normal retirement benefit*.

If the participant had recent coverage under the Plan on the date of his or her death, this annuity will be payable beginning on the first of the month following the participant's death. Otherwise, this annuity is payable beginning on the first of the month following the date the participant would have reached age 55. You can obtain more information regarding the requirements for recent coverage by contacting one of the Plan's Area Administrative Offices (listed on p. 10) or by referring to the Plan document, the Summary Plan Booklet, or the Plan's website (www.wctpension.org).

Section 5.B of the Model Provisions directs the Plan to pay the alternate payee an amount equal to the *Alternate Payee's Separate Percentage Interest* in any Basic Lump Sum Death Benefit that become payable upon the participant's death provided that the participant dies before his or her Earliest Retirement Date under the Plan and the alternate payee is then alive. (See Section 6 for how this benefit will be paid if the alternate payee dies before the participant.)

Section 6 of the Model Provisions directs the Plan to pay the alternate payee's beneficiary an amount equal to the *Alternate Payee's Separate Percentage Interest* in any lump sum death benefits that become payable upon the participant's death provided that (i) both the alternate payee and participant die before their respective Benefit Commencement Dates, and (ii) the alternate payee dies before the participant.

Section 7 of the Model Provisions describes how the benefits to the participant or the participant's beneficiary are to be calculated under the Order.

Section 7.A of the Model Provisions provides that the participant's *normal retirement benefit* will be reduced by the amount awarded to the alternate payee in satisfaction of his or her community/marital property interest. Accordingly, the Plan will use this reduced amount to calculate the participant's benefit and any benefits calculated by reference to the participant's *normal retirement benefit* (e.g., the share of the Before Retirement 48 Month Death Benefit, if any, payable to participant's beneficiary).

[3] See footnote 2.

<u>Section 7.B</u> of the Model Provisions provides that the amount of any Before Retirement Basic Lump Sum Death Benefit (which is a benefit not based on the participant's *normal retirement benefit*) payable to the participant's beneficiary must be reduced by the amount of that benefit that becomes payable to the alternate payee under Section 5 or the alternate payee's beneficiary under Section 6.

<u>Section 7.C</u> of the Model Provisions awards to the participant any benefits that have not been awarded to the alternate payee or the alternate payee's beneficiary.

<u>Background on Section 8</u>: Section 8 of the Model Provisions applies in the event the participant becomes entitled to Disability Retirement Benefits before the participant's Earliest Retirement Date under the Plan and the alternate payee is alive[4] and has not yet begun receiving payments under Section 4.[5] Section 8 generally provides that payment of alternate payee's interest must be determined under the terms of a new QDRO. By postponing the determination of the alternate payee's payments until after the participant becomes entitled to Disability Retirement Benefits, the new QDRO may take into account those currently unknown future circumstances that could impact how you divide the benefits, such as the participant's marital status (this may affect how much, if any, surviving spouse protection will be provided to the alternate payee). Other considerations for drafting the new QDRO include the following:

- Although the Plan includes a subsidy in a participant's Disability Retirement Benefits, neither federal law nor the Plan entitles an alternate payee to a *separate interest* in that disability subsidy. Accordingly, a *shared interest* arrangement may be more beneficial to an alternate payee.
- State laws may vary as to (i) whether disability benefits are subject to division upon divorce or separation, and (ii) how to calculate the portion of the participant's retirement benefit attributable to disability benefits.

If you would prefer to establish the method of paying the alternate payee's interest in the participant's potential Disability Retirement Benefits at the time the initial QDRO is entered, please contact one of the Plan's Area Administrative Offices (listed on p. 10) for some sample optional provisions the Plan has developed to replace this Section 8. One of the samples is a *shared interest* style arrangement and the other is a *separate interest* arrangement. Please note, however, that (i) if you use one of these sample arrangements, modifications may not be made after the participant qualifies for Disability Benefits, and (ii) once payments to the participant begin under this Section 8, you cannot later amend the Order to divide the Disability Benefits as provided in the *shared interest* sample provisions.

<u>Section 8.A</u> of the Model Provisions requires that the Plan notify the alternate payee (at the alternate payee's last reported address to the Plan) that the participant has applied for disability benefits. This provides the alternate payee with an opportunity to obtain a new QDRO promptly.

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[4] If the alternate payee dies before the participant becomes entitled to Disability Retirement Benefits, his or her interest reverts back to the participant under Section 3.E.

[5] If the alternate payee has begun receiving payments under Section 4, his or her interest has already been established and Section 8 will not apply.

<u>Section 8.B</u> of the Model Provisions provides that the payment of benefits pursuant to Sections 4 through 7 will not apply unless the participant later recovers from disability before the participant's Earliest Retirement Date.

<u>Section 8.C</u> of the Model Provisions authorizes and directs the parties to obtain a new QDRO which will implement the division and payment of the participant's benefits in light of the parties' circumstances at that time. This section also makes clear that the participant's disability does not affect the alternate payee's interest in the participant's benefits (just the manner of payment of that interest).

<u>Section 8.D</u> of the Model Provisions directs the Plan to withhold the alternate payee's fractional interest in the participant's Plan benefits until the Plan receives a new QDRO. At that time, the Plan will distribute the withheld benefits in accordance with the terms of the new QDRO.

<u>Section 8.E</u> of the Model Provisions provides that if the participant loses his or her entitlement to Disability Retirement Benefits (that is, if the participant recovers from the disability) before the participant's Earliest Retirement Date, then the terms of this Order, including Sections 4 through 8 will still apply to the participant's Plan benefits that become payable at a later date. This means that the Plan will <u>stop</u> benefit payments to both the alternate payee and participant until either Section 4 applies (which can be no sooner than participant's Earliest Retirement Date) or Section 8 applies again (in which case the Plan will again comply with the terms of the new QDRO that had been previously entered pursuant to Section 8.B).

<u>Section 8.F</u> of the Model Provisions provides that the participant's receipt of his or her share of the Disability Retirement Benefits cannot be impeded by this Order.

<u>Section 9.A</u> of the Model Provisions provides that the Order may not be construed to violate the statutory provisions governing QDROs described in the introduction, above.

<u>Sections 9.B and 9.C</u> of the Model Provisions require that the participant cooperate in the implementation of this Order, and that the alternate payee provide the Plan with whatever information it may reasonably need to administer the payments.

<u>Section 9.D</u> of the Model Provisions recognizes the Plan's right to collect any overpayments.

<u>Section 9.E</u> of the Model Provisions defines Benefit Commencement Date and Disability Retirement Benefits.

<u>Section 9.F</u> of the Model Provisions sets forth that the participant may designate a beneficiary without the consent of the alternate payee or the alternate payee's beneficiary.

<u>Section 9.G</u> of the Model Provisions provides that if a Plan amendment affects any payments under the Order, the Plan may interpret the Order so that it comports with the revised terms of the Plan. Thus, the parties would not be required to return to court to amend the Order.

Section 10 of the Model Provisions provides that the court retains jurisdiction to modify the Order. Notwithstanding any such modification, an order will not be enforceable against the Plan unless it meets the requirements of a QDRO.

If you have any questions concerning these Instructions and Explanations or the Model Provisions, or if you would like to obtain a copy of the Plan document or Summary Plan Booklet, please contact one of the Plan's Area Administrative Offices or refer to the Plan's website. This contact information is located on the following page.

Area Administrative Offices

Northwest/Rocky Mountain Area Administrative Office
Western Conference of Teamsters Pension Plan
2323 Eastlake Avenue East
Seattle, WA 98102-3393
(206) 329-4900 or (800) 531-1489

Northern California Area Administrative Office
Western Conference of Teamsters Pension Plan
1000 Marina Boulevard, Suite 400
Brisbane, CA 94005-1841
(650) 570-7300 or (800) 845-4162

Southwest Area Administrative Office
Western Conference of Teamsters Pension Plan
225 South Lake Avenue, Suite 1200
Pasadena, CA 91101-3000
(626) 463-6100 or (866) 648-6878

Plan's Website Address

www.wctpension.org