STATE OF \*

COUNTY OF \*

NAME OF COURT

NAME OF PARTY

 Petitioner,

vs.

NAME OF PARTY Case No. \*

 Respondent.

ORDER DIVIDING ERB BENEFITS POST-RETIREMENT

1. Pursuant to NMSA 1978, §22-11-42, this Order adjudicates retirement benefits accrued under the Educational Retirement Act, NMSA 1978, §22-11-1, et seq. Any payments pursuant to this order shall only be made when contributions are refunded or a pension is payable in accordance with the Educational Retirement Act.
2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, last four digits of Social Security No. \_\_\_\_\_\_, is a member (hereinafter “the member”) of the Educational Retirement Board (ERB). The member’s current address is: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
3. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, last four digits of Social Security No. \_\_\_\_\_\_\_, the non-member spouse is the co-payee (hereinafter “the co-payee”) of the ERB retirement benefits. Co-payee’s current address is: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
4. The information in paragraphs 2 and 3 above regarding the parties’ addresses or names may be modified if a party changes his or her address or name by that party notifying ERB in writing, with a notarized signature, of the change of address or name, or Social Security number, should that be necessary.
5. The parties were married on \_\_\_\_\_\_\_\_\_\_\_\_\_ and were divorced on \_\_\_\_\_\_\_\_\_\_\_\_.
6. The member spouse, who has already retired, had \_\_\_\_\_\_ months of service during the marriage and \_\_\_\_\_ months of total service at retirement. \_\_\_\_\_\_\_ % of the retirement benefits or contributions accrued in member spouse’s name is community property.
7. This Order determines and divides the parties’ rights of the community interest in retirement benefits or contributions identified above as follows:

## Alternative 1

## Each party is entitled to 50% of the community interest in the benefits or contributions and the member spouse is entitled to the balance.

## Alternative 2

## The member is entitled to \_\_\_\_\_\_% and the co-payee is entitled to \_\_\_\_\_% of the

## community interest in the benefits or contributions accrued in the member’s name.

# Alternative 3

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is entitled to $\_\_\_\_\_\_\_\_\_\_\_\_\_\_per month, and

## \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is entitled to the balance.

## The parties agree and understand that the party receiving the flat rate is not entitled to any Cost of Living Adjustments (“COLA’s”).

## If the member retired under Option A as specified under NMSA 1978, §22-11-30 and dies before there is paid an aggregate amount equal to his or her accumulated contributions at the time of retirement, the member is entitled to \_\_\_\_\_\_% and the co-payee is entitled to \_\_\_\_\_% of the community interest in the benefits or contributions accrued in the member’s name and the member spouse is entitled to the balance.

# Alternative 4

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is entitled to $\_\_\_\_\_\_\_\_\_\_\_\_\_\_per month, and

## \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is entitled to the balance.

## Co-payee is entitled to all Cost of Living Adjustments (“COLA’s”) based on co-payee’s percentage of the entire benefit at the time of ERB’s receipt and approval of this order.

## If the member retired under Option A as specified under NMSA 1978, §22-11-30 and dies before there is paid an aggregate amount equal to his or her accumulated contributions at the time of retirement, the member is entitled to \_\_\_\_\_\_% and the co-payee is entitled to \_\_\_\_\_% of the community interest in the benefits or contributions accrued in the member’s name and the member spouse is entitled to the balance.

1. **Alternative 1**

At retirement the member elected a form of payment under NMSA 1978, § 22-11-30 and designated \*(name of ex-spouse) as the refund beneficiary in the event the member’s death occurs before the accumulated contributions plus interest are paid out. This selection of beneficiary is to remain the same.

**Alternative 2**

At retirement the member elected a form of payment under NMSA 1978, § 22-11-30 and designated \*(name of ex-spouse) as the refund beneficiary in the event the member’s death occurs before the accumulated contributions plus interest are paid out. The member may name anyone as the refund beneficiary, however the refund, if any, is to be divided between the co-payee and the named refund beneficiary as calculated in Paragraph 7.

**Alternative 3**

At retirement the member elected a form of payment under NMSA 1978, § 22-11-30 and designated \*(name of ex-spouse) as the refund beneficiary in the event the member’s death occurs before the accumulated contributions plus interest are paid out. The member may now name anyone as the refund beneficiary.

# Alternative 4

At retirement, the member elected a form of payment under Option \*(B or C) as specified in NMSA 1978, § 22-11-29 and designated \* (name of ex-spouse) as survivor pension beneficiary. The selection of beneficiary is to remain the same.

# Alternative 5

At retirement, the member elected a form of payment under Option \*(B or C) as specified in NMSA 1978, § 22-11-29 and designated \* (name of ex-spouse) as survivor pension beneficiary. This selection of beneficiary is to remain the same; however, the survivor pension benefit is to be divided between the co-payee and the member’s estate as calculated in Paragraph 7.

# Alternative 6

At retirement, the member elected a form of payment under Option \*(B or C) as specified in NMSA 1978, § 22-11-29 and designated \* (name of ex-spouse) as survivor pension beneficiary. \*(name of ex-spouse) is to be removed as the survivor pension beneficiary and the form of payment is to be changed to Option A under NMSA 1978, § 22-11-30. The member may name anyone as the Option A refund beneficiary.

**Alternative 7**

At retirement, the member elected a form of payment under Option \*(B or C) as specified in NMSA 1978, § 22-11-29 and designated \* (name of ex-spouse) as survivor pension beneficiary. \*(name of ex-spouse) is to be removed as the survivor pension beneficiary and the form of payment is to be changed to Option A under NMSA 1978, § 22-11-30. The member must name the co-payee as the Option A refund beneficiary.

1. **Alternative 1**

If the co-payee predeceases the member and/or the member’s survivor pension beneficiary, the co-payee’s interest in the retirement benefit shall cease.

# Alternative 2

If the co-payee predeceases the member and/or the member’s survivor pension beneficiary, the co-payee’s interest in the retirement benefit shall be paid to the co-payee’s estate. In all cases, payments made to the co-payee or any person designated by the co-payee to receive payments shall cease when benefits to the member or their survivor beneficiary cease.

1. ERB is hereby ordered to divide the member’s retirement benefit according to the percentages stated in paragraph 7, and issue separate warrants for the proper amounts to each party using the information stated in paragraphs 2-3, or the information as modified according to paragraph 4.
2. If the member has chosen Option A under NMSA 1978, § 22-11-30 at retirement and dies before there is paid an aggregate amount equal to his or her accumulated contributions at the time of retirement, the difference between the amount of the accumulated contributions and the aggregate amount of pension paid shall be divided between the co-payee and the member’s refund beneficiary or estate, according to paragraph 7.
3. All retirement benefits or contributions except for non-taxable benefits or contributions paid to each party pursuant to this Order shall constitute individual gross income for taxation purposes and ERB shall withhold the appropriate amounts as permitted or required. (All pre-1983 contributions shall be assigned according to the formula as described in paragraphs 6 and 7).
4. Copies of this Order shall be transmitted by counsel for the (member) (co-payee) to the Plan Administrator for the ERB. ERB shall notify the parties within a reasonable time after receipt of the Order whether the Order conforms to the requirements of the applicable statutes and rules and is administratively feasible.
5. The co-payee shall be entitled to communicate with the ERB and receive information from the Plan Administrator that concerns the member’s interest in the plan.
6. The court reserves jurisdiction on the issue of the final qualification of this Order in order to correct, amend or enforce this Order. There is no just reason for delay for entry of a final order and decree containing the terms stated in this section, and for the other provisions of the decree and settlement.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Judge

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Petitioner

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Respondent