

**AMENDMENT AND ELECTION FORM
FOR THE
CODE SECTION 457(b) DEFERRED COMPENSATION PLAN
TO COMPLY WITH
THE CORONAVIRUS AID, RELIEF AND ECONOMIC SECURITY ACT ("CARES ACT"),
THE BIPARTISAN AMERICAN MINERS ACT OF 2019 ("MINERS ACT"),
AND THE
SETTING EVERY COMMUNITY UP FOR RETIREMENT ENHANCEMENT ACT OF 2019 ("SECURE ACT")
AS ESTABLISHED BY THE FURTHER CONSOLIDATED APPROPRIATIONS ACT 2020**

Plan Name: Clark County 457 Deferred Compensation Plan

Adoption of this interim amendment (the "Amendment") is intended as good-faith compliance with certain provisions of the Coronavirus Aid, Relief and Economic Security Act ("CARES Act"), the Bipartisan American Miners Act of 2019 ("Miners Act"), and The Setting Every Community Up for Retirement Enhancement Act of 2019 ("SECURE Act") as established with the enactment of the Further Consolidated Appropriations Act 2020. This Amendment supersedes any conflicting provisions of the Code Section 457(b) Deferred Compensation Plan, administrative policy, funding policy, and/or any previously-adopted "good faith" amendment of the same subject matter, as applicable.

This Amendment is made in "good faith" and provides both explanation and election of certain provisions. With respect to the Miners Act, the SECURE Act and the CARES Act, the deadline to adopt this amendment and any such date or dates identified in this Amendment may be extended by official notice, announcement, or other capacity, as promulgated by the Department of the Treasury.

Distribution from the Plan

Definitions and Rules Relating to Designated Beneficiaries. Effective for Participants who die after December 31, 2021, the terms below have the following meanings as they relate to required minimum distributions under Code Section 401(a)(9) and the determination of beneficiary under Code Section 401(a)(9)(E):

- (a) **Designated Beneficiary.** The term *Designated Beneficiary* means any individual designated as a Beneficiary by the Participant (or surviving Spouse).
- (b) **Eligible Designated Beneficiary.** The term *Eligible Designated Beneficiary* means any Designated Beneficiary, with respect to the Participant, who is (1) the surviving Spouse of the Participant; (2) subject to (c) below, a child of the Participant who has not reach the age of 21; (3) disabled; (4) a chronically ill individual (within the meaning of Code Section 7702B(c)(2), except that the requirements of subparagraph (A)(i) thereof shall only be treated as met if there is a certification that, as of such date, the period of inability described in such subparagraph with respect to the individual is an indefinite one which is reasonably expected to be lengthy in nature); or (5) an individual not described in any of the preceding subclauses who is not more than 10 years younger than the Participant. The determination of whether a Designated Beneficiary is an Eligible Designated Beneficiary shall be made as of the date of death of the Participant.
- (c) **Special Rule for Children.** Subject to Code Section 401(a)(9)(F), an individual described at (b)(2) above shall cease to be an Eligible Designated Beneficiary as of the date the individual reaches the age of 21 and any remainder of the portion of the individuals' interest to which subparagraph (b) above applies shall be distributed within 10 years after such date.

Modifications to Required Minimum Distribution Rules. Required minimum distributions are hereby revised according to Code Section 401(a)(9)(H) and generally apply to Participants who die after December 31, 2021, and to any Beneficiary of a Participant's Designated Beneficiary who died after December 31, 2019, (when the Participant died before January 1, 2022). In such case, the Participant's Designated Beneficiary shall be treated as an Eligible Designated Beneficiary for purposes of Code Section 401(a)(9)(H)(ii). Where a Participant dies before the distribution of such Participant's entire interest, the following shall apply:

- (a) **In General.** Except in the case of a Beneficiary who is not a Designated Beneficiary, Code Section 401(a)(9)(B)(ii) shall be applied by substituting "10 years" for "5 years" and shall apply whether or not required distributions of the Participant's interests have begun according to Code Section 401(a)(9)(A).
- (b) **Exception for Eligible Designated Beneficiary.** The application of Code Section 401(a)(9)(B)(iii) where a Participant dies after distribution has begun but before the entire interest has been distributed and where the exception to the 5-year rule for certain amounts payable over the life of the Designated Beneficiary may apply, shall apply only in the case of an Eligible Designated Beneficiary.

Effective January 1, 2022, the Participant or Eligible Designated Beneficiary may elect to apply either the 10-year rule or the life expectancy rule to determine the required minimum distributions when the Participant dies before his/her Required Beginning Date. For an Eligible Designated Beneficiary who is the surviving Spouse of the Participant, if no election is timely made, the life expectancy rule applies. For an Eligible Designated Beneficiary who is other than the surviving Spouse of the Participant, if no election is timely made, the 10-year rule applies.

- (c) **Rules Upon Death of Eligible Designated Beneficiary.** If an Eligible Designated Beneficiary dies before the portion of the Participant's interest to which this subparagraph applies is entirely distributed, the exception noted at (b) above shall not apply to any Beneficiary of such Eligible Designated Beneficiary and the remainder of such portion shall be distributed within 10 years after the death of such Eligible Designated Beneficiary.
- (d) **Special Rule in Case of Certain Trusts for Disabled or Chronically Ill Beneficiaries.** In the case of an "applicable multi-beneficiary trust", if under the terms of the trust (i) it is to be divided immediately upon the death of the Participant into separate trusts for each Beneficiary, or (ii) no individual (other than an Eligible Designated Beneficiary described in Code Section 401(a)(9)(E)(ii)(III) or (IV)) has any right to the Participant's interest in the Plan until the death of all such Eligible Designated Beneficiaries with respect to the trust, for purposes of a trust described at (i) herein, clause (b) above shall be applied separately with respect to the portion of the Participant's interest that is payable to any Eligible Designated Beneficiary described in Code Section 401(a)(9)(E)(ii)(III) or (IV); and for purposes of a trust described at (ii) herein, Code Section 401(a)(9)(B)(iii) shall not apply to the distribution of the Participant's interest and any Beneficiary who is not an Eligible Designated Beneficiary shall be treated as a Beneficiary of the Eligible Designated Beneficiary upon the death of such Eligible Designated Beneficiary. For purposes of this paragraph, "applicable multi-beneficiary trust" means a trust which has more than one beneficiary, all of the Beneficiaries of which are treated as Designated Beneficiaries for purposes of determining the distribution period pursuant to this paragraph, and where at least one of the Beneficiaries of which is an Eligible Designated Beneficiary described at Code Section 401(a)(9)(E)(ii)(III) or (IV).

Required Beginning Date for Mandatory Distributions. Effective for Participants who attain age 70½ in calendar year 2020, or thereafter, the term *Required Beginning Date* means the April 1 of the calendar year following the later of the calendar year in which the Participant attains age 72 or retires due to Severance from Employment.

Distribution from the Plan

In-Service Withdrawals for Birth or Adoption. If selected, a Participant may request an in-service distribution in connection with the qualified birth or adoption of a child who has not attained age 18 (excluding a Spouse's child) or a child who is physically or mentally incapable of self-support, regardless of age. For this purpose, a qualified birth or adoption distribution ("QBAD") means a distribution to a Participant with respect to any child or eligible adoptee who meets the terms above, and for which the Participant includes the name, age, and the taxpayer identification number of the child or eligible adoptee on the Participant's tax return for the taxable year in which the distribution is made.

Any such distribution made under this provision may be made in Plan Years beginning after December 31, 2019, will not be

subject to the penalty tax under Code Section 72(t), is not subject to mandatory withholding under Code Section 3405, is not treated as an eligible rollover distribution for purposes of the direct rollover rules of Code Section 401(a)(31), and must be made within the 1-year period following the birth of such child or the legal adoption of a child is finalized. The maximum amount available per individual per child is \$5,000 from all plans maintained by the Employer (and any member of any controlled group which includes the Employer).

If the Plan permits Rollover Contributions and such Participant is eligible to make a Rollover Contribution at the time of the request, a Participant may recontribute a QBAD (or portion thereof) as if it were a direct trustee-to-trustee transfer of an Eligible Rollover Distribution as provided by Code Section 402(c)(4). If the Plan does not permit Rollover Contributions, or the Participant is not eligible to make a Rollover Contribution at the time of the request, such Participant may rollover a QBAD to an Eligible Retirement Plan in which the Participant is a beneficiary and to which a rollover can be made as provided by Code Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16), as applicable.

A QBAD is not related to any other provision or reason that may or may not permit in-service distributions from the Plan. When determining the Participant's eligibility for a QBAD, the Plan Sponsor or Administrator may rely on reasonable representations from the Participant, unless the Plan Sponsor or Administrator has actual knowledge to the contrary.

☒ Distribution made from the Plan on account of birth, adoption, or placement of a child is hereby adopted effective November 15, 2021.

In-Service Withdrawals. Effective as of the date adopted (in no event earlier than the Plan Year beginning after December 31, 2019 and no later than the last day of the Plan Year in which effective), the age limit for in-service withdrawals is decreased from no less than age 70½ to no less than age 59½. No distribution may be made while employed (other than any portion thereof which is attributable to Rollover Contributions) prior to age 59½.

☐ Effective _____, a Participant who has reached age _____ (*cannot be earlier than age 59½*) and who has not yet terminated employment may elect to receive a distribution of his or her Vested Account Balance.

Portability of Lifetime Income Options. Effective with Plan Years beginning after December 31, 2019, in the case where a lifetime income investment is no longer authorized to be held as an investment option under the Plan, the Administrator of the Plan may during the 90-day period before such lifetime income investment option becomes unavailable under the Plan, allow affected Participants to make a direct trustee-to-trustee transfer to another employer-sponsored retirement plan or an IRA of any eliminated lifetime income investments or request an in-service distribution of any such lifetime income investment in the form of a qualified plan distribution annuity.

Rollover Rules for Qualified Plan Loan Offset Amounts. The Plan is hereby amended for Section 1.402(c)-3 affecting plan loan offset amounts, including qualified plan loan offset amounts, distributed on or after January 1, 2021, unless applied earlier to distributions made on or after August 20, 2020.

Unless specifically excluded, an Eligible Rollover Distribution means any distribution to a Participant (or to a Spouse Beneficiary) of all or any portion of the balance to the credit of the Employee in a Qualified Plan, including a distribution of a "qualified plan loan offset amount" (QPLO). For this purpose, a QPLO amount means a distribution that occurs when, under the Plan terms governing the loan, the balance in the Participant's Account is reduced or offset upon a Participant's severance from employment or request for distribution, in order to repay an outstanding or defaulted loan, but does not include a deemed distribution under Code Section 72(p). Any such amount that does not exceed the plan loan offset amount may be rolled over by the Participant (or Spouse Beneficiary) to an Eligible Retirement Plan by the individual's tax filing due date (plus extensions) for the taxable year in which the offset occurs unless the plan offset amount fails to be an Eligible Rollover Distribution for another reason. This extended period in which to complete a rollover of the QPLO amount will apply even if such taxpayer does not request an extension to file and instead files his or her return by the unextended tax filing due date.

For this purpose, a "QPLO" is a plan loan offset amount that is treated as a distribution to a Participant or Beneficiary solely by reason of either the termination of the Employer's Qualified Plan, or the failure to meet the repayment terms of the loan because of the Participant's severance from employment, provided such loan met the requirements of Code Section 72(p)(2) immediately prior to the termination of the Employer's Qualified Plan or the Participant's severance from employment, as applicable. A QPLO amount is treated as distributed from a Qualified Plan to a Participant or Beneficiary solely by reason of the failure to meet the Plan loan repayment terms because of severance from employment if the plan loan offset (i) relates to a failure to meet the repayment terms of the plan loan, and (ii) occurs within the period beginning on the date of the employee's severance from

employment and ending the first anniversary of that date.

CARES Act Provisions

Required Minimum Distributions (RMDs). All distributions from the Plan will be determined and made in accordance with the Regulations under Code Section 401(a)(9) and the minimum distribution incidental benefit requirement of Code Section 401(a)(9)(G). Notwithstanding the provisions of the Plan to the contrary, a Participant or Beneficiary who would have been required to receive a required minimum distributions-in calendar year 2020 but for the enactment of Code Section 401(a)(9)(I) ("2020 RMDs"), and who elected to receive the RMD based on scheduled installments received the 2020 RMD, unless the Participant elected not to receive it. All other Participants received the 2020 RMD only if a request was submitted to the Plan Administrator. If no request was made, the 2020 RMD was not distributed. For Beneficiaries of deceased Participants, calendar year 2020 will not be counted as part of the five (5) year period during which they must take a distribution.

- ☒ A Participant who elected to receive RMDs based on scheduled installments received the 2020 RMD, unless the Participant elected not to receive it. All other Participants received the 2020 RMD only if a request was submitted to the Plan Administrator. If no request was made, the 2020 RMD was not distributed.

Direct Rollovers. Notwithstanding the provisions of the Plan to the contrary, and solely for purposes of applying the direct rollover provisions of the Plan, the additional distributions in 2020 checked below (if any) will be treated as eligible rollover distributions. However, if no election is made below, a direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Code Section 401(a)(9)(I).

- ☐ 2020 RMDs and Extended 2020 RMDs (as defined above).
- ☒ 2020 RMDs (as defined above) but only if paid with an additional amount that is an eligible rollover distribution without regard to Code Section 401(a)(9)(I).

☒ **Coronavirus-Related Distributions from Retirement Plans.** If elected, the term "coronavirus-related distribution" means any distribution from an eligible retirement plan (as defined by Code Section 402(c)(8)(B)) made on or after the date of the enactment of the CARES Act and before December 31, 2020, (or such later date as the Secretary of the Treasury or its delegate may prescribe) to an individual:

- who is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention,
- whose spouse or dependent (as defined in Code Section 152) is diagnosed with such virus or disease by such a test, or
- who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to such virus or disease, being unable to work due to lack of childcare due to such virus or disease, closing or reducing hours of a business owned or operated by the individual due to such virus or disease, or other factors as determined by the Secretary of the Treasury (or the Secretary's delegate).

The aggregate amount of distributions received by an individual for any coronavirus-related distributions from all plans maintained by the employer (and any member of any controlled group as defined in Code Sections 414(b), (c), (m) or (o) which includes the employer) for any taxable year shall not exceed \$100,000 and Code Section 72(t) shall not apply.

For purposes of Code Sections 401(a)(31), 402(f), and 3405, coronavirus-related distributions shall not be treated as eligible rollover distributions and will therefore not be subject to mandatory withholding. For purposes of making unforeseeable distributions, a coronavirus-related distribution shall be treated as meeting the requirements of Code Sections 401(k)(2)(B)(i), 403(b)(7)(A)(i), 403(b)(11), and 457(d)(1)(A).

An individual who receives a coronavirus-related distribution may, at any time during the 3-year period beginning on the day after the date on which such distribution was received, make one or more contributions in an aggregate amount (not to exceed the amount of such distribution) to an eligible retirement plan of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made under Code Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16), as


the case may be. If such contribution is made with respect to a coronavirus-related distribution from an eligible retirement plan other than an individual retirement plan, then the individual shall, to the extent of the amount of the contribution, be treated as having received the coronavirus-related distribution in an eligible rollover distribution (as defined in Code Section 402(c)(4)) and as having transferred the amount to the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution. In the case of any coronavirus-related distribution, unless the taxpayer elects not to have this paragraph apply for any taxable year, any amount required to be included in gross income for such taxable year shall be so included ratably over the 3-taxable-year period beginning with such taxable year.

☒ **Expanded Loan Provisions.** If elected, in the case of any loan from a qualified employer plan (as defined under Code Section 72(p)(4)) to a qualified individual (as defined at Section 1 above) made during the 180-day period beginning on the date of the enactment of the CARES Act (or such later date as the Secretary of the Treasury or its delegate may prescribe), clause (i) of Code Section 72(p)(2)(A) shall be applied by substituting “\$100,000” for “\$50,000”, and clause (ii) of such section shall be applied by substituting “the present value of the nonforfeitable accrued benefit of the employee under the plan” for “one-half of the present value of the nonforfeitable accrued benefit of the employee under the plan”.

☒ If elected, in the case of a qualified individual with an outstanding loan (on or after the date of the enactment of this Act) from a qualified employer plan with a due date for any repayment with respect to such loan occurring during the period beginning on the date of the enactment of this Act and ending on December 31, 2020, such due date shall be delayed for 1 year (or such later date as the Secretary of the Treasury or its delegate may prescribe), any subsequent repayments with respect to any such loan shall be appropriately adjusted to reflect the delay in the due date and any interest accruing during such delay. In determining the 5-year period and the term of a loan under subparagraph (B) or (C) of Code Section 72(p)(2), the period described herein shall be disregarded.

Signature of Sponsoring Employer

The Plan is hereby amended, as indicated above, and includes by reference all other relevant provisions of the SECURE Act, effective January 1, 2022, and as of the dates indicated herein.

DocuSigned by:
Signature  Title County Manager
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