

AMENDMENT TO IMPLEMENT SECURE ACT AND OTHER LAW CHANGES

POLK COUNTY BOARD OF COUNTY COMMISSIONERS 457(B) DEFERRED COMPENSATION PLAN

ARTICLE 1 PREAMBLE

- 1.1 **Adoption and effective date of Amendment.** The Employer hereby adopts this Amendment to the Employer's Plan. Each Article specifies the effective date of its provisions. Also see Section 1.5.
- 1.2 **Superseding of inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment. Except as otherwise provided in this Amendment, terms defined in the Plan will have the same meaning in this Amendment. Most Articles include definitions which are specific to that Article. Also see Section 1.6.
- 1.3 **Numbering.** Except as otherwise provided in this Amendment, any "Section" reference in this Amendment refers only to this Amendment and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to the Plan article, section, or other numbering designations.
- 1.4 **Intention; Construction.** The purpose of this amendment is to amend the Plan in accordance with pension-related provisions of the Further Consolidated Appropriations Act of 2019 ("FCAA") in general, and Division O of that Act, the Setting Every Community Up for Retirement Enhancement Act of 2019 ("SECURE"), in specific. It also addresses a provision of the Bipartisan American Miners Act ("BAMA"), which is also part of FCAA, as well as a section of the Coronavirus Aid, Relief, and Economic Security Act ("CARES"). The provisions of this Amendment shall be interpreted and applied to be consistent with FCAA and CARES and IRS guidance issued in connection therewith, whether such guidance is issued before or after the date of this amendment.
- 1.5 **Effect of subsequent restatement or amendment of Plan.** If the Employer restates the Plan, then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated onto a plan document which incorporates these provisions). Some Articles in this amendment may not apply to a particular plan at the time the Amendment is executed but they will apply in the future based on subsequent amendments.
- 1.6 **Preservation of prior amendments.** If the Employer previously amended the Plan after December 20, 2019 to implement a provision contained in one or more Articles of this Amendment, that prior amendment shall remain in effect and will not be superseded by this Amendment, unless Section 1.6(a) is selected. For example, if the Employer previously adopted an amendment to implement the BAMA provisions of Article 10, that amendment remains in effect, notwithstanding the provisions of this Amendment, unless Section 1.6(a) is selected.

- (a) This amendment supersedes all prior inconsistent amendments of the Plan.

ARTICLE 2 INSTRUCTIONS; ELECTIONS

- 2.1 **Instructions.** Select 2.3a if all defaults are accepted. Select 2.3b and as applicable 2.4 - 2.10 if the Employer wishes to select other than the default for a particular provision.
- 2.2 **Reserved.**
- 2.3 **Operating Elections.** Many subsequent Articles of this Amendment refer to elections appearing in this Article 2. Each of Sections 2.4 through 2.10 refers to a corresponding Article. For example, Section 2.4 has the elections related to Article 4. The definitions in those Articles apply to the elections in the corresponding Section of this Article 2, and those elections have the same effective date as the corresponding Article. Each Section of this Article lists the default provisions which will apply if no election is made. If you accept the default(s), there is no need to complete the Section. There are no elective provisions which apply to Article 3 or Articles 11 through 16. The following are the defaults and a summary of the Articles for which there are no elections.
- Article 3. Reserved.
 - Article 4. QBADs are not permitted.
 - Article 5. Distributions of RMDs will not begin before a Participant turns 72.
 - Article 6. The Plan will apply its RMD provisions with respect to the 5-year rule in administering the 10-year rule.
 - Article 7. RMDs subject to 5-Year Rule for participants who died from 2015 through 2019 are extended one year unless the beneficiary objects.
 - Article 8. Reserved.
 - Article 9. Reserved.
 - Article 10. The amendment does not modify the minimum age for in-service distributions.
 - Article 11. Administrative policy can permit distributions of Discontinued Lifetime Income Investments.
 - Article 12. Updated RMD tables and 2022 transition.

- Article 13. Reserved.
- Article 14. Reserved.
- Article 15. Reserved.
- Article 16. Deemed IRA accounts are not subject to maximum age.

Check (a) or (b).

- (a) All defaults apply. *Skip the rest of Article 2 and sign the amendment.*
- (b) One or more defaults do not apply. *Complete those sections in Article 2 for which you do not accept the default; then sign the amendment.*

2.4 **Article 4 – Birth/Adoption Distributions.** In the absence of an election below, Article 4 does NOT apply. To permit QBADs (Qualified Birth and Adoption Distributions), check (a). If QBADs are available, they apply to all accounts except as provided in Article 4 or in elections (b), (c), (d) or (e). *(Select all that apply.)*

- (a) Article 4 applies effective January 1, 2020, unless a different date is selected in (1) below.
 - (1) January 1, 2020 *(Enter date after December 31, 2019.)*
- (b) QBADs may only be made from accounts in which the Participant is fully vested.
- (c) QBADs are not available if the Participant has severed employment.
- (d) Describe additional limitations: _____ *(must be definitely determinable and not subject to discretion)*
- (e) QBADs are available from the following Accounts: _____ *(must be definitely determinable and not subject to discretion)*

2.5 **Article 5 – RMD Timing.** Unless Section 2.5(a) is selected, distribution of RMDs will begin for Affected Participants no sooner than April 1 of the calendar year following the year the Participant attains age 72.

- (a) Distribution of RMDs to Affected Participants will NOT be delayed on account of this Amendment (i.e., distributions will generally commence no later than April 1 of the calendar year following the year the Affected Participant attains age 70 1/2), in accordance with Section 5.5. This election is effective for distributions after December 31, 2019, except as specified below *(Optional: select either or both of (1) or (2))*:
 - (1) Section 5.5 is effective for distributions after _____ and prior to the earlier of January 1, 2022 or the date entered in 2.5(a)(2). *(Enter date on or after December 31, 2019.)*
 - (2) Section 5.5 is repealed for distributions after _____ *(enter date on or after the date entered in 2.5(a)(1) and before January 1, 2022), subject to the anti-cutback rule of Code §411(d)(6) to the extent applicable.*

2.6 **Article 6 – 10-Year Rule for Beneficiary RMDs.** RMDs to an Eligible Designated Beneficiary of a Participant who dies prior to the Participant's RBD will be made as elected below. In the absence of an election in Section 2.6, the Plan's provisions about Beneficiary elections with regard to the 5-Year Rule will apply, substituting the 10-Year Rule for the 5-Year Rule.

- (a) **Beneficiary election.** The Eligible Designated Beneficiary may elect application of the 10-Year Rule or the Life Expectancy rule. If the Beneficiary does not make a timely election *(Select one of (1) or (2))*:
 - (1) **10-year rule.** The 10-year rule applies to the Eligible Designated Beneficiary.
 - (2) **Life Expectancy Rule.** The Life Expectancy rule applies to the Eligible Designated Beneficiary.
- (b) **10-year rule.** The 10-year rule applies to the Eligible Designated Beneficiary.
- (c) **Life Expectancy rule.** The Life Expectancy rule applies to the Eligible Designated Beneficiary.
- (d) **Shorter Period.** The entire interest of the Eligible Designated Beneficiary will be distributed no later than December 31 of the _____ *(enter a number of years, not exceeding "tenth")* year following the year of the Participant's death.
- (e) **Other:** *(Describe, e.g., the 10-Year Rule applies to all Beneficiaries other than a surviving spouse Beneficiary.)*

2.7 **Article 7 – CARES RMD Waivers; 5-Year Rule.** Unless the Employer elects otherwise below, beneficiaries of Applicable Participant Accounts will have the option to extend distribution under the 5-Year Rule by one year, and in the absence of a beneficiary election the extension will apply.

- (a) **No extension without request.** The provisions of Section 7.2 apply but in the absence of a beneficiary election the extension will NOT apply.
- (b) **Not Apply.** Article 7 will NOT apply to this Plan.

2.8 **Article 8 – Reserved.**

2.9 **Article 9 – Reserved.**

2.10 **Article 10 – In-Service Distributions.** In the absence of an election below, Article 10 does NOT apply. To permit in-service distributions at age 59 1/2, check (a). Check (b) to specify an age greater than 59 1/2. If Article 10 applies, it applies to all Accounts except as limited in Article 10.

- (a) Article 10 applies effective on or after the first day of the first plan year beginning after December 31, 2019, unless a different date is selected in (1) below.
 - (1) January 1, 2020. (Enter date on or after the first day of the first plan year beginning after December 31, 2019.)
- (b) Age at which in-service distributions are permitted _____. (Enter age greater than 59 1/2.) This provision applies effective on or after the first day of the first plan year beginning after December 31, 2019, unless a different date is selected in (1) below.
 - (1) _____. (Enter date on or after the first day of the first plan year beginning after December 31, 2019.)

**ARTICLE 3
RESERVED**

**ARTICLE 4
BIRTH/ADOPTION DISTRIBUTIONS – SECURE Act §113**

- 4.1 **Application.** This Article 4 will apply only if the Employer elects in Section 2.4(a) for this Article 4 to apply, effective on the date specified in Section 2.4(a).
- 4.2 **Distribution Authorized.** Except as limited by Section 2.4 (b), (c), (d), (e), a Participant may request a distribution of up to \$5,000 (per child or Eligible Adoptee) as a QBAD. The Participant may request the distribution whether or not the Participant has severed employment unless Section 2.4(c) is selected. This \$5,000 limit shall be reduced by QBADs to the Participant made with respect to the same child or Eligible Adoptee by other plans maintained by the Employer or a related employer described in Code §414(b), (c), (m), or (o). The Plan Administrator may adopt a policy imposing frequency limitations or other reasonable administrative conditions for QBADs.
- 4.3 **Definitions.** The following definitions apply for this Article 4 and Section 2.4:
 - (a) A "**QBAD**" is a Qualified Birth or Adoption Distribution described in Code §72(t)(2)(H)(iii). A QBAD must be made during the 1-year period beginning on the date on which a child of the Participant is born or on which the legal adoption of an Eligible Adoptee by the Participant is finalized.
 - (b) An "**Eligible Adoptee**" is an individual, other than a child of the Participant's spouse, who has not attained age 18 or is physically or mentally incapable of self-support. An individual is considered physically or mentally incapable of self-support if that individual is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or to be of long-continued and indefinite duration. This provision shall be applied in a manner consistent with Part D of IRS Notice 2020-68.
- 4.4 **Rollover.** A Participant who received one or more QBADs from this Plan may, if the Plan then permits the Participant to make rollover contributions, make one or more contributions in an aggregate amount not to exceed the amount of such QBADs. The Plan will treat such a contribution as a rollover contribution made by direct trustee-to-trustee transfer within 60 days of distribution.
- 4.5 **Reliance.** The Plan Administrator may rely on an individual's reasonable representation that the individual is eligible to receive a QBAD unless the Plan Administrator has actual knowledge to the contrary.
- 4.6 **Status.** A QBAD is not an eligible rollover distribution for purpose of the obligation to permit a direct rollover under Code §401(a)(31), the notice requirement of Code §402(f), or the mandatory withholding rules of Code §3405(c)(1).

**ARTICLE 5
REQUIRED BEGINNING DATE – SECURE Act §114**

- 5.1 **Application.** This Article 5 will apply to all plans, regardless of type. It is effective with regard to RMDs required to be made after December 31, 2019.
- 5.2 **Delay of Required Beginning Date.** An Affected Participant's RBD shall not be earlier than April 1 of the calendar year following the year the Affected Participant attains age 72. For purposes of determining an Affected Participant's RBD, an Affected Participant will be treated as a more than 5% owner if the Participant was a 5-percent owner (as defined in Code §416(i)(1)(B)) as to the Plan Year ending in the calendar year the Participant attains age 72.
- 5.3 **Spousal Distributions.** If an Affected Participant dies prior to the Participant's RBD, and the Participant's sole Designated Beneficiary is the Participant's surviving spouse, then the RMDs to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 72, if later. However, this Section will apply only if the Plan, prior to this Amendment,

permitted a surviving spouse to delay RMD distributions to December 31 of the calendar year in which the Participant would have attained age 70 1/2.

5.4 **Definitions.** The following definitions apply for this Article 5 and Section 2.5:

- (a) A Participant is an "**Affected Participant**" if the Participant was born after June 30, 1949.
- (b) An "**RMD**" is a Required Minimum Distribution as described in Code §401(a)(9).
- (c) A Participant's "**RBD**" is the Participant's Required Beginning Date as described in Code §401(a)(9)(C), as amplified by Section 5.2.

5.5 **Optional Distribution Timing.** If the Employer elects in Section 2.5(a) for this Section 5.5 to apply, the timing and form of distributions to an Affected Participant will be determined as though this Article 5 had not been adopted. Distributions pursuant to this paragraph, which are not RMDs, will be treated as eligible rollover distributions for purposes of the direct rollover provisions of Code §401(a)(31). This Section 5.5 will no longer be effective for distributions after December 31, 2021, or, if earlier, the date specified in Section 2.5(a)(2).

ARTICLE 6 BENEFICIARY RMDs – SECURE Act §401

6.1 **Application.** This Article 6 will apply to all plans. This Article will not apply to qualified annuities described in SECURE Act §401(b)(4)(B).

6.2 **Effective Date.** Except as provided in Section 6.4, Article 6 will apply to Participants who die on or after the Effective Date of this Article. Generally, the Effective Date of this Article is January 1, 2022. The Effective Date of this Article 6 in the case of a collectively-bargained plan will be the date determined in SECURE Act §401(b)(2). See Section 6.5 regarding the limited application of this Article to certain accounts of Participants who died before the Effective Date of this Article.

6.3 **Death before RBD.** If the Participant dies before the Participant's RBD, the Plan will distribute or commence distribution of the Participant's Vested Accrued Benefit not later than as follows:

- (a) **No Designated Beneficiary.** If there is no Designated Beneficiary as of September 30 of the year following the calendar year of the Participant's death, the Beneficiary's entire interest will be distributed under the 5-Year Rule.
- (b) **Eligible Designated Beneficiary.** If the distributee of a Participant's account is an Eligible Designated Beneficiary, the Beneficiary's entire interest will be distributed under the Life Expectancy Rule unless the 10-Year Rule applies. The Employer may elect application of the Life Expectancy rule or the 10-Year Rule in Section 2.6. In the absence of an election in Section 2.6, the Plan's provisions with regard to election of the 5-Year Rule will apply, substituting the 10-Year Rule for the 5-Year Rule. A permitted Beneficiary election must be made no later than the earlier of December 31 of the calendar year in which distribution would be required to begin under the Life Expectancy Rule, or by December 31 of the calendar year which contains the tenth anniversary of the Participant's (or, if applicable, surviving spouse's) death.
- (c) **Other Designated Beneficiaries.** If the distributee of the Participant's account is a Designated Beneficiary who is not an Eligible Designated Beneficiary, then the Beneficiary's entire interest will be distributed under the 10-Year Rule.
- (d) **10-Year Rule.** If distribution of a deceased Participant's account thereof is subject to the "10-Year Rule," then the Plan will distribute the account in full no later than December 31 of the tenth year following the year of the Participant's death. No RMDs are required to be distributed from the account prior to that date.

6.4 **Death after RBD.** If the Participant dies on or after the Participant's RBD, the Participant's remaining interest will be distributed at least as rapidly as under the method of distribution being used as of the date of the participant's death, using the Life Expectancy Rule, as, and to the extent, provided by applicable guidance. If the Beneficiary is a Designated Beneficiary that is not an Eligible Designated Beneficiary, the Plan will distribute the remaining account in full no later than December 31 of the tenth year following the year of the Participant's death.

6.5 **Beneficiary Death.** If an Eligible Designated Beneficiary receiving distributions under the Life Expectancy Rule dies before receiving distribution of the Beneficiary's entire interest in the Participant's account, the Plan will distribute that interest in full no later than December 31 of the 10th year following the year of the Eligible Designated Beneficiary's death. Similarly, if a Participant died before the Effective Date of this Article 6, and the beneficiary died after such Effective Date, but prior to receiving full distribution of the beneficiary's interest, the Plan will distribute that interest in full no later than December 31 of the tenth year following the year of the beneficiary's death.

6.6 **Age of Majority.** If a child of the Participant was receiving distributions under the Life Expectancy rule, when the child reaches the age of Majority, the Plan will distribute the child's account in full no later than 10 years after that date, provided the child is not otherwise an Eligible Designated Beneficiary, such as a disabled or chronically ill individual.

6.7 **Definitions; operating rules.** The following definitions and operating rules apply for this Article 6 and Section 2.6:

- (a) An "**RMD**" is a Required Minimum Distribution as described in Code §401(a)(9).
- (b) A Participant's "**RBD**" is the Participant's Required Beginning Date as described in Code §401(a)(9)(C) and the Plan. Also see Section 5.2.
- (c) A distributee of a Participant's account is a "**Designated Beneficiary**" if the distributee is an individual or trust who is a beneficiary of the account (whether pursuant to a designation by the Participant or application of the Plan terms) and who is a designated beneficiary under Code §401(a)(9) and Treas. Reg. §1.401(a)(9)-4, Q&As-4 and -5.
- (d) An individual is an "**Eligible Designated Beneficiary**" of a Participant if the individual qualifies as a Designated Beneficiary and is (1) the Participant's spouse, (2) the Participant's child who has not reached the age of Majority, (3) an individual not more than 10 years younger than the Participant, (4) a disabled individual, as defined in Code §72(m)(7), or (5) an individual who has been certified to be chronically ill (as defined in Code §7702B(c)(2)) for a reasonably lengthy period, or indefinitely. Certain trusts may be treated as Eligible Designated Beneficiaries pursuant to Code §401(a)(9)(H)(iv) and (v).
- (e) Whether a child has reached the age of "**Majority**" is determined under Code §401(a)(9)(F) and applicable regulations and guidance issued thereunder.
- (f) The "**Life Expectancy Rule**" for distributing RMDs is described in Code §401(a)(9)(B)(iii) and is further described in the Plan.
- (g) The "**5-Year Rule**" for distributing RMDs is described in Code §401(a)(9)(B)(ii) and is further described in the Plan.
- (h) The "**10-Year Rule**" is described in Section 6.3(d).
- (i) **Shorter period.** Section 2.6(e) may specify a shorter period to be used in place of the tenth year after the death of a Participant or Beneficiary.
- (j) **Separate share rule.** All references in this Article to a Participant's Account and a Beneficiary's interest in that account will be applied separately to each separate account determined under Treas. Reg. §1.401(a)(9)-8, Q&A 2 and 3, and Code §401(a)(9)(H)(iv).

**ARTICLE 7
EXTENSION OF 5-YEAR RULE FOR RMDs – CARES §2203**

- 7.1 **Application.** This Article 7 does not apply if the Employer has selected Section 2.7(b); otherwise, it is effective January 1, 2020.
- 7.2 **Waiver; default provision.** The beneficiary of an Applicable Participant Account will have the option to extend the deadline to distribute the account for one year. The default in the absence of a beneficiary election will be to extend the distribution, unless the Employer elects in Section 2.7(a) for the default to be not to extend unless the beneficiary requests it.
- 7.3 **Definitions.** The following definitions apply for this Article 7 and Section 2.7:
 - (a) "**RMDs**" means required minimum distributions described in Code §401(a)(9).
 - (b) The "**5-Year Rule**" for distributing RMDs is described in Code §401(a)(9)(B)(ii) and is further described in the Plan.
 - (c) "**Applicable Participant Account**" means the remaining account of a Participant who died during the years 2015-2019, to the extent the account is subject to the 5-Year Rule.

**ARTICLE 8
RESERVED**

**ARTICLE 9
RESERVED**

**ARTICLE 10
IN-SERVICE PENSION DISTRIBUTIONS – BAMA §104**

- 10.1 **Application.** This Article 10 will apply if the Employer elects in Section 2.10 for this Article 10 to apply, effective on the date specified in Section 2.10(a).
- 10.2 **Distribution at 59 1/2.** A Participant can take an in-service distribution at age 59 1/2, or, if later, the age (if any) specified in Section 2.10(b). Such a distribution will be limited to the vested portion of the Participant's accrued benefit or account and will be

subject to all Plan provisions related to in-service distributions. The Plan can operationally permit distributions as early as January 1 of the calendar year the Participant attains 59 1/2 (or such later age).

10.3 **Limited application to Profit-Sharing Plans.** If the Employer elects in Section 2.10 for this Article 10 to apply, this Article 10 will apply to an account in a 401(k) Plan or a Profit-Sharing Plan which holds assets transferred from a Money Purchase Pension Plan or a Defined Benefit Plan.

**ARTICLE 11
DISTRIBUTIONS OF DISCONTINUED LIFETIME INCOME INVESTMENTS – SECURE §109**

- 11.1 **Application.** This Article 11 is effective for Plan Years beginning after December 31, 2019.
- 11.2 **Distributions authorized.** The Plan Administrator may authorize Participants to request, and as soon as practical after a Participant makes the request, the Plan will make a distribution of a Discontinued Lifetime Income Investment. Distribution under this Article is limited to the 90-day period prior to the date on which the Lifetime Income Investment is no longer authorized to be held as an investment option under the Plan. Such distribution will be in the form of a Qualified Distribution, or in the form of a Qualified Plan Distribution Annuity Contract, as determined by the Plan Administrator. The Plan Administrator will administer this section in a reasonable, nondiscriminatory manner, and may authorize distributions of some Discontinued Lifetime Income Investments and not others.
- 11.3 **Definitions.** The terms "**Lifetime Income Investment**," "**Qualified Distribution**" and "**Qualified Plan Distribution Annuity Contract**" have the meanings set forth in Code §401(a)(38)(B). A "**Discontinued Lifetime Income Investment**" is a Lifetime Income Investment which will no longer be authorized to be held as an investment option under the Plan.

**ARTICLE 12
UPDATED LIFE EXPECTANCY TABLES – TREAS. REG. §1.401(a)(9)-9**

- 12.1 **Application.** This Article 12 will apply to all plans and is effective for distribution calendar years beginning on or after January 1, 2022.
- 12.2 **New RMD Tables.** Any Plan reference to the life expectancy tables detailed in Treas. Reg. §1.401(a)(9), such as the Uniform Life Table, the Single Life Table, or the Joint and Last Survivor Table, refers to these tables as published in Treas. Reg. §1.401(a)(9)-9 from time to time, and is subject to adjustment as described in Treas. Reg. §1.401(a)(9)-9(f).

**ARTICLE 13
RESERVED**

**ARTICLE 14
RESERVED**

**ARTICLE 15
RESERVED**

**ARTICLE 16
REPEAL OF DEEMED IRA MAXIMUM AGE – SECURE §107**

- 16.1 **Application.** This Article 16 will apply only if the Plan permits deemed IRA contributions (sometimes called "designated IRA" contributions) described in Code §408(q). It is effective January 1, 2020.
- 16.2 **No Maximum Age.** To the extent the Plan otherwise permits a Participant to make deemed IRA contributions, the Participant may make such contributions regardless of whether the Participant has attained age 70 1/2 or any other age.

This Amendment has been executed this _____ day of _____, _____.

Name of Plan: Polk County Board of County Commissioners 457(b) Deferred Compensation Plan

Name of Employer: Polk County Board of County Commissioners

By: _____
W. C. Braswell, Chairman

CERTIFICATE OF ADOPTING RESOLUTION

The undersigned authorized representative of Polk County Board of County Commissioners (the Employer) hereby certifies that the following resolution was duly adopted by Employer on the date specified below, and that such resolution has not been modified or rescinded as of the date hereof:

RESOLVED, the Amendment to Implement SECURE Act and Other Law Changes to the Polk County Board of County Commissioners 457(b) Deferred Compensation Plan (the Amendment) is hereby approved and adopted and that an authorized representative of the Employer is hereby authorized and directed to execute and deliver to the Plan Administrator the Amendment and to take any and all actions as it may deem necessary to effectuate this resolution.

The undersigned further certifies that attached hereto is a copy of the Amendment approved and adopted in the foregoing resolution.

Date: _____

Signed: _____

W. C. Braswell, Chairman