

Loxahatchee River District

Water Reclamation | Environmental Education | River Restoration

2500 Jupiter Park Drive, Jupiter, Florida 33458

Telephone (561) 747-5700 • Fax (561) 747-9929 • www.loxahatcheeriver.org



D. Albrey Arrington, Ph.D., Executive Director

TO: GOVERNING BOARD

FROM: KARA PETERSON

DATE: MAY 20, 2016

SUBJECT: RETIREMENT PLAN UPDATE

The District provides retirement benefits to staff through a defined contribution retirement plan known as the Loxahatchee River Environmental Control District Money Purchase Plan and Trust (the “Plan”). The Plan was first effective January 1, 1980, and has been revised and updated as necessary, with the most recent revisions approved by the Governing Board on August 20, 2015.

The Plan establishes an Administrative Committee to serve as the Plan Administrator with the responsibility to administer the Plan for the exclusive benefit of the Participants and their Beneficiaries, in accordance with the terms of the Plan. The Administrative Committee consists of the following persons: LRD Board Chairman (Gordon Boggie); LRD Trustee (Harvey Silverman); LRD Executive Director (Albrey Arrington); LRD Director of Finance and Administration (Kara Peterson); and an LRD Employee Representative (George Vazquez). Bonni Jensen (Klausner, Kaufman, Jensen & Levinson) is legal counsel to the Plan, and she works with the Administrative Committee to continually evaluate the plan and consider revisions necessary to keep the Plan in compliance with ever-changing regulations.

At the request of staff, Bonni Jensen, legal counsel to the Plan, drafted a revised and restated version of the Plan to provide for the rehire of former District employees and replaces the 1 year break in service language. Proposed additions to the Plan are underlined while proposed deletions to the Plan are shown using strikeout. Changes include:

- Deleting the 1-Year Break in Service language.
- Provides upon re-employment a vested former participant can participant in the Plan at the next enrollment date.
- Provides upon re-employment a non-vested former participant will be required to satisfy the eligibility requirements before once again participating in the Plan.
- Clarifies “Period of Severance.”
- Clarifies maternity/paternity leave.

Amendments to the Plan require the approval of the Administrator, the Trustee, and the Employer. The Administrator is the Administrative Committee. LRD Board Member Harvey Silverman is the Trustee. The LRD Governing Board is the Employer.

Stephen B. Rockoff
Board Member

Dr. Matt H. Rostock
Board Member

Gordon M. Boggie
Chairman

Harvey M. Silverman
Board Member

James D. Snyder
Board Member

If the Administrative Committee approves the suggested changes on May 24, 2016, I suggest the following:

Harvey Silverman, as Trustee, is suggested to state on the record: **“The Trustee approves the amended and restated Loxahatchee River Environmental Control District Money Purchase Plan and Trust as presented.”**

Gordon Boggie, as member of the Administrative Committee, I confirm on the record that **“The Administrative Committee, as Administrator, approves the amended and restated Loxahatchee River Environmental Control District Money Purchase Plan and Trust as presented.”**

I offer the following motion for your consideration:

“THAT THE DISTRICT GOVERNING BOARD approve the amended and restated Loxahatchee River Environmental Control District Money Purchase Plan and Trust as presented and with an effective date of May 26, 2016.”

LOXAHATCHEE RIVER ENVIRONMENTAL CONTROL DISTRICT MONEY PURCHASE PLAN AND TRUST

PROPOSED PLAN AMENDMENT FOR REHIRES

Effective January 1, 2016

Below is the proposed language to amend the Money Purchase Plan to provide for the rehire of former District employees. The below language replaces the 1 year break in service language in the Plan.

ARTICLE I - DEFINITIONS

* * *

1.10 "Eligible Employee" means any Employee:

- (a) whose customary employment is for more than thirty (30) hours a week, or persons whose customary employment is for more than five (5) months in any Fiscal Year; and
- (b) who is 18 years of age or older; and
- (c) who has completed one year of full time employment.

* * *

1.17 "Forfeiture" means that portion of the Employer's Contribution to a Participant's Account that is not Vested, and occurs on the earlier of:

- (a) the distribution of the entire Vested portion of a Terminated Participant's Account, or
- (b) the last day of the Plan Year in which the Participant has been terminated for ~~incurs five (5) consecutive 1-Year Breaks in Service.~~

Furthermore, for purposes of paragraph (a) above, in the case of a Terminated Participant whose Vested benefit is zero, such Terminated Participant shall be deemed to have received a distribution of his Vested benefit upon his termination of employment. Participants whose Vested benefit is zero shall be entitled to a refund of all employee contributions upon termination of employment. ~~Restoration of such amounts shall occur pursuant to Section 6.4(f)(2).~~ In addition, the term Forfeiture shall also include amounts deemed to be Forfeitures pursuant to any other provision of this Plan.

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~~1.29 "1-Year Break in Service" means a Period of Severance which is of at least 12 consecutive months in duration.~~

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~~1.331.34~~**1.34**—“Period of Service” means the aggregate of all periods commencing with the Employee’s first day of employment or reemployment with the Employer and ending **upon termination of employment** ~~on the date a 1-Year Break in Service begins.~~ The first day of employment or reemployment is the first day the Employee performs an Hour of Service **for purposes of determining eligibility in Article III.** ~~An Employee will also receive partial credit for any Period of Severance of less than 12 consecutive months. Fractional periods of a year will be expressed in terms of days.~~

Eligible Employees who are rehired and were vested for the first term of service shall be eligible for participation as of the earlier of the first day of the Plan year or the first day of the seventh month of the Plan Year without the requirement to work for an additional year.

Eligible Employees who were rehired and were not vested for the first term of service shall become a Participant effective as of the earlier of the first day of the Plan year or the first day of the seventh month of such Plan Year coinciding with or next following the date such Employee meet the eligibility requirements of Section 3.1, provided the Employee was still employed as of such date.

For purposes of determining an Employee's service under the Plan, any military service in the Armed Forces of the United States during which an Employee's employment and re-employment rights with the Employer are guaranteed by federal law (including the Uniformed Services Employment and Re-employment Rights Act of 1994) shall be recognized as service, provided such Employee applies for re-employment with the Employer after such separation from military service within the time prescribed by such law.

In the case of an individual who is absent from work for maternity or paternity reasons, ~~the 12 consecutive month period beginning on the first anniversary of the first day of such absence shall not constitute a~~ **severance but is not considered a Period of Service** ~~1-Year Break in Service.~~ For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (a) by reason of the pregnancy of the individual, (b) by reason of the birth of a child of the individual, (c) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (d) for purposes of caring for such child for a period beginning immediately following such birth or placement.

~~1.341.35~~**1.35**—“Period of Severance” means a continuous period of time during which the Employee is not employed by the Employer. Such period begins on the date the Employee retires, quits or is discharged, ~~or if earlier, the 12 month anniversary of the date~~

on which the Employee was otherwise first absent from service.

As defined in Period of Service, absence ~~In the case of an individual who is absent from work for maternity or paternity reasons~~ **is not considered a period of severance.** ~~the 12-consecutive month period beginning on the first anniversary of the first day of such absence shall not constitute a 1-Year Break in Service. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (a) by reason of the pregnancy of the individual, (b) by reason of the birth of a child of the individual, (c) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (d) for purposes of caring for such child for a period beginning immediately following such birth or placement.~~

ARTICLE III - ELIGIBILITY

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3.2 EFFECTIVE DATE OF PARTICIPATION

An Eligible Employee shall become a Participant effective as of the earlier of the first day of the Plan Year or the first day of the seventh month of such Plan Year coinciding with or next following the date such Employee met the eligibility requirements of Section 3.1, provided said Employee was still employed as of such date. ~~(or if not employed on such date as of the date of rehire if a 1-Year Break in Service has not occurred.)~~

Eligible Employees who are rehired and were vested for the first term of service shall be eligible for participation as of the earlier of the first day of the Plan year or the first day of the seventh month of the Plan Year without the requirement to work for an additional year.

Eligible Employees who were rehired and were not vested for the first term of service shall become a Participant effective as of the earlier of the first day of the Plan year or the first day of the seventh month of such Plan Year coinciding with or next following the date such Employee meet the eligibility requirements of Section 3.1, provided the Employee was still employed as of such date.

* * *

3.4 TERMINATION OF ELIGIBILITY

(a) In the event a Participant shall go from a classification of an Eligible Employee to an ineligible Employee, such Former Participant shall continue to vest in his interest in the Plan for each Period of Service completed while a noneligible Employee,

until such time as his Participant's Account shall be forfeited or distributed pursuant to the terms of the Plan. Additionally, his interest in the Plan shall continue to share in the earnings of the Trust Fund.

(b) In the event a Participant is no longer a member of an Eligible class of Employees and becomes ineligible to participate ~~but has not incurred a 1-Year Break in Service~~, such Employee will participate immediately upon returning to an eligible class of Employees. If such Participant terminates Service ~~incurs a 1-Year Break in Service~~, eligibility will be determined under the ~~break-in-service~~ rules of the Plan in Sections 1.33 ~~4.29~~ and 4.3.

ARTICLE IV – CONTRIBUTION AND ALLOCATION

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4.3 ACCOUNTING AND ALLOCATIONS

(a) The Administrator shall establish and maintain an account in the name of each Participant to which the Administrator shall credit biweekly all amounts allocated to each such Participant as set forth herein.

(b) The Employer shall provide the Administrator with all information required by the Administrator to make a proper allocation of the Employer contributions for each biweekly period. Within a reasonable period of time, but no later than 5 days after the date of receipt by the Administrator of such information, the Administrator shall allocate such contribution to each Participant's Account in accordance with Section 4.1.

(c) As of each Anniversary Date or on the Former Participant's employment termination date any amounts which became Forfeitures since the last Anniversary Date ~~shall first be made available to reinstate previously forfeited account balances of Former Participants, if any, in accordance with Section 6.4(g)(2)~~. The remaining Forfeitures, if any, shall be used to reduce the contribution of the Employer hereunder for the Plan Year in which such Forfeitures occur.

(d) Vested Participants shall be eligible to share in the allocation of employer contributions on a biweekly basis.

(e) Non-vested Participant's employer contributions shall be aggregated into a separate account in each Participant's name. These accounts shall be invested in the Plan's designated interest bearing money market fund so as to minimize the risk of any loss. When an employee vests, the Employer Contribution shall be combined with the Participant Directed Account.

(f) Participants' accounts shall be debited for any insurance or annuity premiums paid, if any, and credited with any dividends received on insurance contracts.

(g) If a **vested** Former Participant is reemployed **and still has an account with the Plan** after five (5) consecutive 1-Year Breaks in Service, then **the new Employee contributions and Employer Contributions will be added to the existing account balance so that there is only one account for the vested Former Employee.** ~~separate accounts shall be maintained as follows:~~

- ~~—— (1) — one account for nonforfeitable benefits attributable to pre-break service; and~~
- ~~—— (2) — one account representing his status in the Plan attributable to post-break service.~~

ARTICLE VI – DETERMINATION AND DISTRIBUTION OF BENEFITS

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6.4 DETERMINATION OF BENEFITS UPON TERMINATION

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(g) (1) If any **vested** Former Participant shall be reemployed by the Employer before a 1-Year Break in Service occurs, he shall continue to participate in the Plan **as of the earlier of the first day of the Plan year or the first day of the seventh month of the Plan Year without the requirement to work for an additional year.** ~~in the same manner as if such termination had not occurred.~~

(2) ~~If any Former Participant shall be reemployed by the Employer before five (5) consecutive 1-Year Breaks in Service, and such Former Participant had received, or was deemed to have received, a distribution of his entire Vested interest prior to his reemployment, his forfeited account shall be reinstated only if he repays the full amount distributed to him before the earlier of five (5) years after the first date on which the Participant is subsequently reemployed by the Employer or the close of the first period of five (5) consecutive 1-Year Breaks in Service commencing after the distribution, or in the event of a deemed distribution, upon the reemployment of such Former Participant. In the event the Former Participant does repay the full amount distributed to him, or in the event of a deemed distribution, the undistributed portion of the Participant's Account must be restored in full, unadjusted by any gains or losses occurring subsequent to the Valuation Date coinciding with or preceding his termination. The source for such~~

reinstatement shall first be any Forfeitures occurring during the year. If such source is insufficient, then the Employer shall contribute an amount which is sufficient to restore any such forfeited Accounts.

(2)(3) If any non-vested Former Participant is reemployed then upon re-employment the non-vested Former Participant will be required to satisfy the eligibility requirements in Article III before the non-vested Former Employee can once again participate in the Plan. after a 1-Year Break in Service has occurred, Periods of Service shall include Periods of Service prior to his 1-Year Break in Service subject to the following rules:

(i) If a Former Participant has a 1-Year Break in Service, his pre-break and post-break service shall be used for computing Periods of Service for vesting purposes only after he has been employed for one (1) Period of Service following the date of his reemployment with the Employer;

(ii) Any Former Participant who under the Plan does not have a nonforfeitable right to any interest in the Plan resulting from Employer contributions shall lose credits otherwise allowable under (i) above if his consecutive 1-Year Breaks in Service equal or exceed the greater of (A) five (5) or (B) the aggregate number of his pre-break Periods of Service;

(iii) After five (5) consecutive 1-Year Breaks in Service, a Former Participant's Vested Account balance attributable to pre-break service shall not be increased as a result of post-break service;

(iv) Any Employee who terminates employment for any reason other than Retirement or by reason of Total and Permanent Disability shall, in the event of reemployment, be subject to the eligibility requirements set forth above in order to again become a Participant. No period of absence from employment by reason of a Leave of Absence shall be deemed to constitute termination of employment.