

THE ACADEMY OF ELECTRICAL CONTRACTING

Paper presented by

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Perpetuation of a Privately Owned Corporation
With No Major Shareholder
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I originally began thinking about this paper early in 1977 and was impressed no end when Al Berg presented a paper entitled "The Philosophy of Perpetuating a Solely Owned Business", at the Ninth Annual Meeting of the Academy of Electrical Contracting in Phoenix in April 1977. It seemed to me that the need confronting our company which resulted in the establishing of policy and plans which I am about to talk about would be somewhat of a continuation. I have tried to be brief and to the point, and hope that it will be of interest and worthwhile.

In order to perpetuate a privately owned corporation with no major shareholder, our experience reveals that there are three areas of control and policy that are important. These are:

1. Control of stock ownership by a stock purchase agreement.
2. Incentive compensation plan.
3. Phantom stock deferred compensation plan.

In order that a basic outline of these practices is set forth, it is necessary that I elaborate on certain key areas of these documents. I hope that I can convey to you an understanding of the forthright - reasonable - fair treatment that a shareholder receives, and also the great control that lies in the hands of the Board of Directors.

STOCK PURCHASE AGREEMENT

1. A Trustee is selected for the purpose of holding all stock certificates owned by each shareholder. The Trustee may be removed by joint action of the company and the shareholders.

2. Shareholders must be employees of the company and thus own all of the issued and outstanding, no par value, only class voting stock of the company.
3. Eligibility of an individual to become a shareholder shall be determined by the company's Board of Directors.
4. In order to preserve the company's corporate existence and to provide for continuity and harmony in the management and policies of the company - the company, or the remaining shareholders, have the opportunity to repurchase the shares of common stock owned by a deceased or withdrawing shareholder(s) upon the occurrence of any of the following events.
 - a. Death of a shareholder.
 - b. Attainment of pre-retirement age (five years prior to retirement age).
 - c. Retirement age.
 - d. Termination of employment with the company due to disability.
 - e. Termination of employment with the company for any other reason whatsoever.
 - f. Voluntary or involuntary lifetime disposition of shares by any shareholder for any other reason whatsoever.

In the event of the death of a shareholder, the company shall purchase all shares of stock owned by the decedent. The purchase price shall be that price in effect on the first day of the fiscal year in which the death occurs.

Upon attainment of pre-retirement age such shareholder shall commence selling his shares of common stock of the company to the company.

The intent is that the company shall systematically redeem fifty (50) percent of his stock during the following five years. The price per share of the stock redeemed during the five year period shall be that in effect as of the first day of each such fiscal year. No shareholder shall be permitted to purchase stock after reaching pre-retirement age.

Upon attainment of retirement age (such date will be the close of the company's fiscal year in which the respective shareholder has reached retirement age), each shareholder shall sell to the company his remaining stock holdings at a price determined to be effective upon the first day of the fiscal year following that in which the shareholder has reached retirement age. The company shall provide for the payment of the redeemed stock by delivery of its promissory note to the retired stockholder in the total amount of the purchase price payable in equal annual installments over a specified period with interest at current rates.

Upon termination of employment due to disability, the company shall purchase all of such shareholder's stock on terms the same as if such shareholder had reached retirement age.

Upon termination of employment for any reason other than death, retirement or disability, the company shall purchase all of such shareholders stock on terms the same as if such shareholder had reached retirement age, except that the price to be paid by the company for the stock shall be the lesser of the price which was effective on the first day of the fiscal year in which the termination occurs or the price which was effective on the last day of the preceding fiscal year.

In the event of voluntary or involuntary disposition of shares by any shareholder for any other reason whatsoever such as sell, gift, transfer, bankruptcy, or otherwise dispose of all or part of his stock, such shareholders shall give the company sixty (60) days prior notice, and the company shall have purchase rights.

5. There shall be life insurance in force on the life of each shareholder in an amount equal to the purchase price of his shares of stock. The company shall be the owner and pay all the premiums on such policies. Upon repurchase of stock by the company from a withdrawing shareholder and the remaining balance due on the note shall be less than the combined face value of all life insurance policies in force on the life of the retired shareholder, the company shall transfer ownership of policies to the retired shareholder. The note shall be reduced by the amount of cash surrender of the policy transferred.
6. Purchase price of the stock shall be determined annually by the shareholders owning at least seventy-five (75) percent of the shares of common stock then outstanding. Such redetermination, (about ninety (90) days after fiscal year end), of purchase price shall be effective on the first day of the fiscal year in which redetermination takes place.
7. Shareholders shall not pledge their stock as collateral.
8. The company's Board of Directors shall have the right to terminate employment of any shareholder.

This covers the basic requirements for stock ownership control.

INCENTIVE COMPENSATION PLAN

OBJECTIVES: Motivating the general management, project managers and other key individuals to do their best for the company by rewarding them with a portion of the profits.

Making it possible for key individuals to earn sufficient income to enable them to buy stock in the company for both expansion and replacement of the investment previously made by people who are or soon will be retired.

An individual will become eligible to participate in the plan upon being selected by the Board of Directors and shall remain eligible unless his eligibility is terminated by the Board of Directors.

Specific areas of responsibility to be rewarded may be - but not necessarily limited to the following:

- Board of Directors
- President
- Controller
- Division Head
- Job Bidding
- Job Purchasing
- Job Management
- General Field Supervision
- Co-ordinator Manpower and Equipment

An equal base salary will be established by the Board of Directors for all participants annually on a fiscal year basis. Such salary ought to be as near as possible to actual cost of living.

Cash incentive payments will not be distributed in excess of a predetermined percent of the company's net operating profit.

The Board of Directors will establish maximum salaries which may be paid under the plan. Individuals whose total income under this plan exceeds the

maximum salary limits, will become eligible to participate in the deferred compensation plan.

PHANTON STOCK DEFERRED COMPENSATION PLAN

The purpose of this plan is to provide rewards and stimulate incentive to key management employees, upon whose efforts the continued success of the company is dependent.

The Board of Directors of the company shall administer and interpret this plan, and their interpretation shall be final and conclusive.

To be eligible as a participant such person must be, in the opinion of the Board of Directors, one of the key personnel of the company.

A participant shall receive a base salary plus a share of profits as provided by the "Incentive Compensation Plan".

A maximum allowable salary shall be determined annually by the Board of Directors for each participant.

A participant's annual earnings in excess of his maximum allowable salary, shall be the amount of income deferred. Such amount of deferred income shall be reduced by the highest current corporate tax rates then in effect, regardless of the company's actual tax bracket, and then divided by the redemption purchase price of one share of common stock in effect on the first day of such preceding fiscal year under the stock purchase agreement. This determines the number of phantom stock performance units awarded to the participants account.

The phantom stock shall be of the same value as the company's common stock as determined annually.

Redemption by the company of a participant's phantom stock performance units shall be handled in the same manner as provided by the stock purchase agreement, other than attainment of preretirement age provision which shall not apply, and the following forfeiture provision: the company's obligation to make payments to a participant is contingent upon the participant's refraining from being actively interested in, or taking part in, the affairs of any competing company.

Each participant may file with the company a notice designating one or more beneficiaries to whom payments shall be made in the event of a participant's death. If no beneficiary has been designated, the payment shall be made to the participant's estate.

There shall be life insurance in force on the life of each participant in an amount equal to the total value of phantom stock performance units in the account of each participant. The company shall be the owner and pay all premiums on such policies. In the event the remaining balance due a participant shall be less than the combined face value of all life insurance policies in force on the life of a participant, the company shall transfer ownership of policies to the participant. The remaining balance due the participant shall be reduced by the amount of cash surrender of the policy transferred.

The Board of Directors may terminate this plan at any time, subject however, to the continuance of all awards previously granted.

This covers the major points of the three plans. I would like to make several comments as to our observations during the ten year period since implementation.

Encourages people to be of their highest competence - self discipline and, over all, credibility. They are aware of the total responsibility that goes along with purchase of their first share of stock.

Provides opportunity for people to move ahead on their own motivation. The level they may attain in the company is not limited.

Creates objectiveness and versatility in people which moves the company into more diversified operations in a positive direct responsible manner.

The personal relationship which develops among the owners and key people is exceptional. There seems to be a strong tendency to communicate freely, thus leading to true understanding and awareness of each other.

The president of the company is solely responsible to the Board of Directors as top executive.

Bonding companies and short term and long term financing institutions react very favorably to the continuity of people resulting from control implemented by the formal plans.

It is my personal opinion that the most important benefit of all is that people like to know where they are at. A firm basis under which to work has to be one of the greatest incentives a person can have.

This concludes my presentation however, a few comments as to the nature of the company's business may be of interest to you.

The company was founded in 1913 as a plumbing and heating contractor. It has since developed a totally complete industrial mechanical design and installation division; an electric power division was established in 1948 which primarily does outside electric installation, and in 1968 the company acquired an inside electrical design and installation firm. During the past ten years, the company has directed much of its interest towards providing a full service to the electrical industry.

I appreciate having had your attention and sincerely thank you. If you have any comments or questions I would be pleased to hear them.