weber · obrien ltd.

AN INDEPENDENT MEMBER OF BDO SEIDMAN ALLIANCE

Memo

To: Client

From: Weber • O'Brien Ltd.

Re: Outline for a Deferred Compensation

The following represents a sample of deferred compensation talking points. Once revised and agreed to this would be presented in its final form to an attorney for drafting a formal document.

OBJECTIVE:

1. To attract, reward, motivate and retain key employees.
2. To provide an opportunity for higher than competitive market compensation levels.
3. To function as a long-term incentive plan which is incremental to base pay bonuses and employee benefits currently in place.
4. To create a team sharing financial environment.
5. To reward long-term employment.

MEASUREMENT:

1. Establish a bonus pool based on net income or other reasonable standard.
   a. Applies only to the existing Company.
   b. The plan may not apply to new companies.
   c. Income will be determined on an accrual basis.
   d. Income will be pretax income.
      - The pool can be established using other measures than net income, i.e. sales, gross profits, units of production, hours worked, etc.

PARTICIPATION:

1. Eligible Employees will be selected by Board of Directors
2. Select employees will be eligible to participate after one (1) full year of employment.
3. Plan year effective January 1, 20XX.
4. Shareholders of the company are not eligible to participate.

EVALUATION:

1. The company should implement a formal employee evaluation process to accompany this plan.

ALLOCATION OF BONUS:

1. Subjective - based on superior performance by employees eligible to participate.
2. Quantitative - based on achievement of specific goals.
3. Management is not required to allocate the entire bonus pool annually.
4. It is possible that certain eligible employees will not receive a deferred bonus.
5. Awards will be based on individual and company performance; however individual performance will be a primary factor.
6. Achievement of less than fifty percent (50%) of goal will eliminate the deferred compensation pool; achievement of greater then fifty percent (50%) of goal will be calculated on a pro-rata basis.
7. The deferral amount will (will not) accrue interest.

VESTING:

1. The deferral amount will vest as follows:
    a. Thirty-three percent (33%) on the anniversary of year one (1).
    b. Thirty-three percent (33%) on the anniversary of year two (2); and
    c. Thirty-three percent (33%) on the anniversary of year three (3).

PAYMENT:

1. Distributions under the plan will be paid as follows:

    a. One Hundred percent (100%) of the vested deferred amount will be paid as follows:
        1. One hundred percent (100%) of the vested amount will be paid in monthly payments over ten (10) years after the event (termination retirement disability and death)
        2. The formal plan will define disability, retirement and termination in good standing and not in good standing.

b. Death

One Hundred percent (100%) of the vested amount paid monthly over ten (10) years.
- Any key man life insurance benefits received by the company on death will be paid in cash to the participant's estate when received. The amount paid will not exceed the deferral amount.

c. Disability

One hundred percent (100%) of the vested amount paid monthly over ten (10) years.

d. Retirement

One hundred percent (100%) of the vested amount paid monthly over ten (10) years.

e. Termination of Employment

1. **In Good Standing** - One hundred percent (100%) of the vested amount paid monthly over ten (10) years.

2. **Not In Good Standing** - Not to be paid. All amounts will be forfeited.

FORFEITURES:

1. In the event of forfeiture the previously allocated amounts will revert back to the company or can be reallocated to other employees at the discretion of the board of advisors.

OTHER:

1. Management reserves the right to change or terminate the plan at any time.
2. Management reserves the right to change the allocation based on economic conditions or death.
3. These changes apply to future awards; awards previously granted will remain available to the employee subject to the plan terms in effect at the time the awards were granted.
4. This is a non-qualified plan, which could result in the participants becoming unsecured creditors of the company for an amount equal to the awards outstanding under the plan.
5. There may be federal registration requirements for this type of non-qualified plan. The drafting attorney should advise the company as to these requirements.
6. Participants in the plan will not recognize income under the plan until they receive cash distributions.
7. The company will not receive a deduction until the participants recognize income under the plan.
8. The company will record a liability for the plan on the company's accrual basis financial statements.
9. All distributions will be subject to federal, state and local payroll withholding as required by law.
10. Should the ownership control of the company be changed or transferred from the current shareholders all employees will be deemed fully vested for all outstanding awards. Employees within the plan shall have the right of first refusal if the owners of the company are considering the sale of the company to a third party.
11. New companies, or spin-offs into new business entities in the normal course of business, are not considered a change in control.
12. The award calculations will be determined annually by the company's board of directors.
13. Notice will be given to the eligible employees of the award and allocated amounts no later than six (6) months after year-end.
14. Participating employees will be subject to non-compete and non-solicitation restrictions. Should they terminate their employment with the company certain restrictions may apply.
15. The plan balance may be converted to a phantom stock or common stock option at a later date.