

MUNICIPAL ORDER 06-2022

A MUNICIPAL ORDER AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF OWENSBORO AND BELL BANK, INC. BY WHICH THE CORPORATION SHALL LOCATE A MORTGAGE SERVICES FACILITY IN THE CITY OF OWENSBORO IN EXCHANGE FOR CERTAIN FINANCIAL INCENTIVES FROM THE CITY, INCLUDING A REBATE OF FIFTY PERCENT (50%) OF THE GENERAL FUND OCCUPATIONAL FEE ON GROSS WAGES FOR SEVEN (7) YEARS PROVIDED CERTAIN EMPLOYMENT TARGETS ARE SATISFIED.

WHEREAS, Bell Bank, Inc. desires to locate a mortgage services facility in the City of Owensboro, Kentucky which will create jobs and further stimulate local commerce; and

WHEREAS, the City of Owensboro recognizes the economic impact of the Corporation's facility in Owensboro and hereby agrees to incentivize the Corporation for its job creation initiative in our community; and

WHEREAS, the Parties wish to enter into a Memorandum of Agreement that memorializes the benefits and specific obligations of each, a copy of which is attached hereto as Exhibit "A" and incorporated by reference.

NOW, THEREFORE, BE IT ORDERED BY THE CITY OF OWENSBORO, KENTUCKY, AS FOLLOWS:

Section 1. That the Mayor be, and hereby is, authorized and directed to execute a Memorandum of Agreement between the City of Owensboro and Bell Bank, Inc. for the purpose of establishing the benefits and obligations of each Party.

Section 2. That the Mayor, City Manager and other appropriate staff members are hereby authorized and directed to execute any and all other agreements,

instruments, or documents necessary and appropriate to effectuate and implement the intentions of the City of Owensboro and Bell Bank, Inc.

INTRODUCED, PUBLICLY READ AND FINALLY APPROVED ON ONE READING, this the 1st day of February, 2022.

Thomas H. Watson, Mayor

ATTEST:

Beth Davis, City Clerk

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement (hereinafter, this “Agreement”), dated as of _____, 2022, is made by and between the City of Owensboro, Kentucky a municipal corporation of the Home Rule Class created and existing under the laws of the Commonwealth of Kentucky, 101 East Fourth Street, P. O. Box 10003, Owensboro, Kentucky 42302-9003 (hereinafter the “City”), and Bell Bank, a North Dakota corporation authorized to do business in Kentucky, 3100 13th Avenue S., Fargo, ND 58103 (hereinafter the “Company”).

RECITALS

WHEREAS, the Company desires to establish an Economic Development Project (the “Project” as defined below) in the City of Owensboro, Kentucky which will create jobs and further stimulate local commerce; and

WHEREAS, the City recognizes the economic impact of the Project and hereby agrees to incentivize the Company for its investment and job creation initiative within the City.

NOW THEREFORE, in consideration of these premises and the terms and conditions hereinafter set forth, the parties to this Agreement hereby agree as follows:

ARTICLE I. **DEFINITIONS**

Section 1.1. **Defined Terms.** In addition to the terms defined in the heading and recitals set forth above, the following terms shall have the following meanings, unless otherwise defined hereunder:

“Activation Date” means January 1, 2025 or January 1 of an earlier year as established pursuant to Section 2.2.

“Annual Compliance Date” means the end of Year 1 and the end of each year thereafter and shall serve as the date for measurement and confirmation of compliance requirements set forth in this Agreement.

“Base Employment” means the number of Full-Time Employees employed by the Company at the Project, who are residents of the Commonwealth as of the date of execution of this Agreement, which is zero (0) as the Company does not currently employ anyone in the City.

“Economic Development Project” or “Project” for purposes of this Agreement is the creation of, and maintaining of, a targeted one hundred thirty-five (135) new full-time jobs within the corporate limits of the City having an annual gross payroll of not less than five million seven hundred seventy-seven thousand one hundred seventy-nine dollars (\$5,777,179) per year.

“Employee Benefits” means non-mandated costs paid for an employee for health insurance, life insurance, dental insurance, vision insurance, defined benefits, or as contributions to a qualified cash or deferred compensation arrangement within the meaning of Section 401(k) of the Internal Revenue Code or similar qualified plans.

“FEIN” means the Employer Identification Number assigned by the United States Internal Revenue Service to a specific entity for tax identification purposes, including all employer reporting purposes.

“Full-Time Employee” means an individual employed by the Company at the Project for a minimum of thirty-two (32) hours per week.

“Incentive” means the rebate to the Company by the City pursuant to this Agreement equal to fifty percent (50%) of the General Fund Occupational Fee on gross wages for a year.

“Minimum Job Requirement” means the number of Project Employees (as defined below) that the Company commits to create and maintain at the Project based on annual average. The Minimum Job Requirements are established as the following:

| | |
|--------|-----|
| Year 1 | 135 |
| Year 2 | 135 |
| Year 3 | 135 |
| Year 4 | 135 |
| Year 5 | 135 |
| Year 6 | 135 |
| Year 7 | 135 |

“Minimum Total Wage Requirement” means the annual Total Wages that the Company must meet for all Project Employees (as defined below) created and maintained as a result of the Project to receive each year’s incentive, established as follows:

| | |
|--------|----------------------|
| Year 1 | \$5,777,179 per year |
| Year 2 | \$5,777,179 per year |
| Year 3 | \$5,777,179 per year |
| Year 4 | \$5,777,179 per year |
| Year 5 | \$5,777,179 per year |
| Year 6 | \$5,777,179 per year |
| Year 7 | \$5,777,179 per year |

“New Employee” means a person who was not an employee of the Company working at the Project Site on the date of execution of this Agreement and whose job at the Project Site was created as a result of the Project.

“Project Employee” means an employee of the Company who is both a New Employee and a Full-Time Employee hired at the Project Site as a result of the Project after the execution date of this Agreement, working at the Project Site, and domiciled for City of Owensboro occupational tax purposes at the Project Site within the City of Owensboro.

“Project Site” means 234 Frederica Street, Owensboro, Kentucky 42301.

“Term” means the period during which this Agreement is effective pursuant to Article II.

“Total Wages” means gross hourly wages and bonuses, but specifically excludes Employee Benefits.

“Year 1” means the period of time commencing on the Activation Date and ending twelve months later on December 31. Any references to “Year 2,” “Year 3,” “Year 4,” etc., shall mean the second, third, fourth, etc., year following the Activation Date.

Section 1.2. **Sections.** References to “Sections” shall be to Sections of this Agreement, unless otherwise expressly designated.

Section 1.3. **Headings.** Article and Section headings are for reference only and shall have no interpretative weight or value.

Section 1.4. **Plural.** The plural and singular form of words shall import either or both a plural and/or singular meaning, as the case may be.

ARTICLE II.

TERM

Section 2.1. **Term Dates.** The Term of this Agreement begins on the Activation Date and shall end on the earlier of the seven (7) year anniversary of the Activation Date established in accordance with Section 2.2, or December 31, 2031 (the “Term”).

Section 2.2. **Acceleration of Activation Date.** The Company may request acceleration of the Activation Date in writing to the City, which will then automatically set the next January 1 as the Activation Date and the beginning of Year 1. Years shall run consecutively.

ARTICLE III.

REPRESENTATIONS AND WARRANTIES OF THE COMPANY TO INDUCE THE CITY TO ENTER INTO THIS AGREEMENT

In order to induce the City to enter into this Agreement and grant the Incentives, the Company hereby represents, warrants and confirms to the City, as of the date of this Agreement, that:

Section 3.1. **Legal Status.** It is a corporation duly organized or formed, validly existing and in good standing under the laws of the state of North Dakota, and authorized to do business in the Commonwealth of Kentucky.

Section 3.2. **Company’s Authority.** It has full power and authority to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated herein.

Section 3.3. **Employer Identification Numbers.** The Company’s FEIN for income tax returns filed with the United States Internal Revenue Service and the Kentucky Department of Revenue (the “Revenue Department”) has been accurately reported to the City.

Section 3.4. **Base Employment.** The Base Employment for the Project is zero (0) employees.

Section 3.5. **Documentation.** The Company will provide to the City with its notice of Accelerated Activation, a certification as to the number of Project Employees that have been hired as of the Activation Date, and the Total Wages paid to Project Employees of the Company. The Company will also provide to the City, in accordance with the filing policies of the City, FORM-REC (available at owensboro.org) not later than February 28 of each year (attached hereto as Exhibit A).

Section 3.6. **Project Completion.** The Project will be operated, maintained and completed in such manner as to conform with all applicable zoning, planning, building, environmental and other applicable governmental regulations and as to be consistent with the laws of the Commonwealth of Kentucky as amended from time to time.

Section 3.7. **Availability of Records.** The Company shall make its books and records, relating to its representations, warranties and covenants in this Agreement and to the Incentives claimed or withheld, available to the City at the Project, or at another location in the Commonwealth of Kentucky acceptable to the City, at such reasonable times as the City shall request, upon no less than ten (10) business days prior written notice. Any City review of the Company's books and records shall be conducted so as to limit any adverse impact on the Company's business operations at the Project Site.

Section 3.8. **Consolidated Tax Returns.** The Company files consolidated income tax returns with the United States Internal Revenue Service with its corporate parent, State Bankshares, Inc. Notwithstanding, it is the Company's responsibility to provide the City with any and all documentation necessary, at the reasonable discretion of the City, to substantiate Total Wages and employment at the Project Site. No payments shall be made to the Company unless the Company is eligible to receive the Incentive under Section 4.2.

ARTICLE IV. **ACTIVATION/INCENTIVE**

Section 4.1. **Notice of Activation.** This Agreement shall automatically begin on the Activation Date unless the Company accelerates the Activation Date as per Section 2.2. Once the Company has activated the Agreement, Year 1 shall be deemed to have begun on the date established in Section 2.2 by the Company or the Activation Date, whichever is earlier.

Section 4.2. **Required Employment and Wages.** The Company shall be entitled to receive its Incentive provided that during the year in which the incentive is claimed, the Company has met **both** the annual Minimum Job Requirement of one hundred thirty-five (135) Project Employees and the Minimum Total Wage Requirement of five million seven hundred seventy-seven thousand one hundred seventy-nine dollars (\$5,777,179) paid to Project Employees. At least seventy-five (75%) percent of the Project Employees must be residents of Kentucky in order to satisfy the Minimum Job Requirement. In each year, the Company is either deemed eligible or ineligible to receive the Incentive.

Section 4.3. **Payment of Incentive.** The City shall make payment of the earned Incentive within thirty (30) days of receiving FORM-REC and upon satisfactory compliance with this Agreement.

ARTICLE V.
COVENANTS OF THE COMPANY

After the Company has met the requirements of Article IV and activated its Project, as conditions to the utilization of the Incentives throughout the remainder of the Term of this Agreement, the Company hereby covenants that:

Section 5.1. **Maintenance of Minimum Requirements.** The Company shall use every reasonable effort to achieve both the Minimum Job Requirement and the Minimum Total Wage Requirement as set forth in Section 4.2 of this Agreement. Failure to achieve the Minimum Job Requirement or Minimum Total Wage Requirement shall not subject this Agreement to termination; however, in the event of such failure the Company will not be eligible to receive the Incentive for that year.

Section 5.2. **Utilization Disclosure.** With the execution of this Agreement and the approval of Incentives, the Company hereby waives any right to confidentiality with regard to the total dollar value of Incentives for the Fiscal Year and the City may post information disclosed as required by this Agreement in any public forum, report or documentation deemed beneficial to public interest.

Section 5.3. **Changes to Company or Project.** The Company shall promptly notify the City in writing if the Company ceases or fundamentally alters operations at the Project. Delivery of a written notice required by this Section 5.4 shall not relieve the Company of its obligation to continue to comply with all representations, warranties and covenants contained herein and this Section 5.4 shall not be construed as modifying any covenant, representation or warranty contained herein.

ARTICLE VI.
ASSIGNMENT

Section 6.1. **Assignments by the Company.** The Company's rights, including the right to Incentives and its obligations under this Agreement, are unique and personal to it as an approved company under the program. The inducements are not assignable without the written consent of the City and the passage of a resolution approving the proposed assignee of the Incentives as an approved company. In the event the Company enters into any transaction by which it desires to assign its rights, including the right to Incentives, or its obligations under this Agreement to another legal entity, whether as part of a merger, a transfer, a liquidation, a reorganization, or other form of structural change, the proposed assignee must submit to the City a written description of the transaction, and an application signed by the proposed assignee requesting designation as an approved company under the program. If the City approves the assignment of the rights and obligations hereunder, it may authorize the desired assignment either prospectively or retroactively to the effective date of the assignment.

ARTICLE VII.
EVENTS OF DEFAULT

Section 7.1. **Failed Obligations.** If any covenant, warranty, or obligation of the Company as set forth in this Agreement is not met or achieved pursuant to the requirements of this

Agreement, and such failure is not cured within thirty (30) days following the Company's receipt of written notice thereof from the City, then such failure shall be deemed an Event of Default and the City shall have the right to apply any or all of its remedies set forth in Article VIII of this Agreement.

Section 7.2. **Inaccurate Representations or Warranties.** If any representation or warranty of the Company to the City shall prove to have been untrue or inaccurate in any material aspect when made, same shall be deemed an Event of Default as of the date of the untrue or inaccurate statement and the City shall have the right to apply any or all of its remedies set forth in Article VIII of this Agreement, including termination of this Agreement.

Section 7.3. **Bankruptcy.** In the event the Company: (i) admits in writing its inability to pay its debts generally as they become due, (ii) has an order for relief entered in any case commenced by or against it under the federal bankruptcy laws, as now or hereafter in effect, and any such order for relief entered against it has not been rescinded within forty-five (45) days after it has been so entered, (iii) commences a proceeding under any other federal or state bankruptcy, insolvency, reorganization or other similar law, or have such a proceeding commenced against it and either have an order of insolvency or reorganization entered against it or have the proceeding remain undismissed and unstayed for ninety (90) days, (iv) makes an assignment for the benefit of creditors, or (v) has a receiver or trustee appointed for it or for the whole or any substantial part of its property, such conditions shall be an Event of Default.

Notwithstanding anything to the contrary contained in this Article VII, the failure to achieve the Minimum Job Requirement or the Minimum Total Wage Requirement shall not be deemed an Event of Default and, if no other Event of Default has occurred, the City shall take no action other than to declare the Company ineligible for that Fiscal Year's Incentive.

ARTICLE VIII. **REMEDIES**

Upon the occurrence of any Event of Default or other non-compliance, the City shall have any and all of the following remedies, cumulatively with the remedies provided elsewhere in this Agreement and without limitation, and not exclusive of any other remedies the City may have at law or otherwise:

Section 8.1. **Suspension.** If the Company has not cured any Event of Default within the time period set forth in Article VII (or if no time period is set forth in Article VII, within thirty (30) days of the date of the written notice from the City), the City may suspend the availability to the Company of any and all Incentives.

Section 8.2. **Termination.** The City may terminate this Agreement upon the occurrence of any other Event of Default set forth above in Article VII.

Section 8.3. **Recovery of Incentives; Other Remedies.** While an Event of Default is continuing, the City may immediately recover from the Company funds equal to any Incentives paid to the Company after the date of the occurrence of such Event of Default, in addition to pursuing any other remedy which they may be entitled to by law. Except as a remedy that may be available to the City under applicable law in the event of fraud or intentional misrepresentation by

the Company, in no event will the Company be required to repay or disgorge any Incentive paid to the Company prior to the occurrence of an Event of Default or, subject to the City's remedies under Sections 8.1 and 8.2, after such Event of Default has been cured by the Company.

ARTICLE IX. **MISCELLANEOUS**

Section 9.1. **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective permitted successors and assigns, subject, however, to the limitations contained in this Agreement.

Section 9.2. **City Liability.** All covenants, agreements and obligations (collectively hereinafter, the "Covenants") of the City contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such Covenant shall be deemed to be a Covenant of any present or future official, director, officer, agent or employee of the City, the Commonwealth of Kentucky or any agency or political subdivision thereof in other than his or her official capacity, and neither the directors of the City, nor any official executing this Agreement nor any official, employee or agent of the City, the Commonwealth of Kentucky or any agency or political subdivision thereof shall be liable personally on this Agreement.

Section 9.3. **Notices.** All notices, requests or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when received by registered or certified mail, postage prepaid and return receipt requested, or delivered by overnight courier service:

If to City, at:

City of Owensboro
101 East 4th Street
PO Box 10003
Owensboro, Kentucky 42302-9003
Attention: Nate Pagan, City Manager

If to the Company, at:

Bell Bank, Inc.
3100 13th Avenue S.
Fargo, ND 58103
Attn: Robert Smiley, Senior Vice President

With a copy to:

Vantage Law Group, PLLC
125 SE Main St., Suite 250
Minneapolis, MN 55414
Attn: Tyler Adams

The City or the Company, by appropriate notice, may designate any further or different addresses to which subsequent notices, requests or communications shall be sent.

Section 9.4. **Severability.** If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to the persons or circumstances other than those to which it is held invalid or unenforceable, shall not be

affected thereby, and such remaining terms, covenants or conditions of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 9.5. **Amendments.** The Company may request an amendment during the Term of this Agreement by submitting a written request setting forth the need for the amendment and requesting approval of same. Upon submission of a written request, such amendment will be subject to the express, prior written consent of the City.

Section 9.6. **Execution in Counterparts.** This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if all signatures were upon the same instrument.

Section 9.7. **No Waiver.** No failure by the City to insist upon the strict performance by the Company of any provision hereof shall constitute a waiver of the City's right to strict performance and no express waiver shall be deemed to apply to any other existing or subsequent right of the City to require the Company to remedy any and all failures by the Company to observe or comply with any provision hereof.

Section 9.8. **Release and Indemnification by Company.** The Company releases the City from, holds the City harmless against, agrees that the City shall not be liable for, and fully indemnifies the City against, any and all losses, liabilities, costs and expenses imposed upon, incurred by, asserted against or with respect to the City and arising out any third-party claim, action or proceeding on account of: (i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the maintenance, operation and use of the Project or the existence of this Agreement; and (ii) any breach on the part of the Company of any of its covenants hereunder or the occurrence of any default set forth herein.

The indemnification set forth above and all references to the City in this Section 9.8 are intended to and shall include all officials, directors, officers, employees, agents and representatives of the City.

Section 9.9. **Right to Inspect.** The City shall have the right, upon the same prior notice and subject to the same terms and conditions as required under Section 3.7, to enter upon the premises of the Project in order to monitor the Company's compliance with the terms of this Agreement. The City shall have the right to verify any information necessary for administration and monitoring of the terms of this Agreement and to inspect, without limitation, any and all original records relating to the Project or the Company's utilization of the Incentives, including all payroll books and records pertaining to the Project.

Section 9.10. **Payment of Fees and Expenses.** The Company shall pay all costs and expenses, including reasonable legal fees, if any, in connection with any amendments to this Agreement and the enforcement of any Event of Default under this Agreement within thirty (30) days from the billing date.

Section 9.11. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

Section 9.12. **Company Authorization of Release of Information.** Company agrees that any information reported by the Company to the City in compliance with this Agreement may be disclosed in any public forum, report or documentation deemed beneficial to public interest.

Section 9.13. **Jurisdiction and Venue.** The parties hereto agree that any suit, action or proceeding with respect to this Agreement may only be brought in or entered by the courts of the Commonwealth of Kentucky situated in Owensboro, Daviess County, Kentucky, or the United States District Court for the Western District of Kentucky, Owensboro Division, and the parties hereby submit to the jurisdiction of such courts for the purpose of any such suit, action, proceeding or judgment and waive any other preferential jurisdiction by reason of domicile.

Section 9.14. **Commission Approval.** The Company acknowledges that this Agreement is conditioned upon approval by the Owensboro Board of Commissioners.

Section 9.15. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and no other writings or communications (oral or otherwise) shall have any legal effect unless made pursuant to the terms of this Agreement.

[Executed on the following pages]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed in their respective names, all as of the date set forth in the heading of this Agreement.

“City”

City of Owensboro

By: _____
Thomas H. Watson, Mayor

ATTEST:

Beth Davis, City Clerk

STATE OF KENTUCKY)
) Sct.
COUNTY OF DAVIESS)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me by Thomas H. Watson, as Mayor, and attested by Beth Davis, as City Clerk, for and on behalf of the City of Owensboro, Kentucky, on this the ____ day of _____, 2022.

Notary Public, State of Kentucky at Large
Notary ID# _____
My commission expires: _____

“Company”

Bell Bank

By: _____

Name: _____

Its: _____

STATE OF _____)

)

Sct.

COUNTY OF _____)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me by _____, as
_____ for and on behalf of Bell Bank, on this the ____ day of _____, 2022.

Notary Public, State of _____ at Large

Notary ID# _____

My commission expires: _____

PREPARED BY:

Mark Pfeifer
City Attorney
City of Owensboro, Kentucky
101 E. Fourth Street
P. O. Box 10003
Owensboro, Kentucky 42302-9003
(270) 687-8556

Exhibit A

City of Owensboro FORM-REC