

**ORDINANCE NO. 12-20**

By: Jessica Saad

**AN ORDINANCE TO AMEND THE BEXLEY OFFICE INCENTIVE PROGRAM; TO APPROVE AND AUTHORIZE THE MAYOR AND THE CITY AUDITOR TO SIGN THE BEXLEY OFFICE INCENTIVE AGREEMENT BETWEEN THE CITY OF BEXLEY AND OHIO STATE BANK.**

WHEREAS, the City of Bexley, Ohio (the "City") desires to increase employment opportunities and encourage the creation of new jobs in the City to improve the overall economic health of the City and its citizens; and

WHEREAS, in furtherance of this effort, the City established the Bexley Office Incentive Program pursuant to City Ordinance No. 69-06 adopted on September 26, 2006, to assist employers that create new jobs in the City by offering to such employers an annual cash incentive equal to a portion of the City income tax withheld from New Employee Positions (as defined in Ordinance No. 69-06) located within the corporate limits of the City for a specific period of time (the "Bexley Incentive Program");

WHEREAS, the Ohio State Bank (the "Company") is the lessee of certain property located at 2106 E. Main Street, Bexley, Ohio (the "Project Site"), and the Company intends to establish a bank at the Project Site (the "Project");

WHEREAS, in order to support the development of the Project, the City intends to amend the Bexley Incentive Program to enable it to be applied to include retained jobs in certain circumstances when the City determines that an employer established temporary operations in the City based on a commitment by the City to consider providing the employer an annual cash incentive through the Bexley Incentive Program;

WHEREAS, the City and Ohio State Bank desire to enter into an Office Incentive Agreement (the "Office Incentive Agreement") substantially in the form attached hereto as Exhibit A, to provide Ohio State Bank with substantial cash incentive payments based on Ohio State Bank's commitment to undertake investments and increase employment and payroll at the Project Site; and;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL FOR THE CITY OF BEXLEY, OHIO:

Section 1. Section 1 of Ordinance No. 69-06, Section is hereby amended and replaced with the following:

"This Council, with the full support of the Mayor, hereby creates the Bexley Office Incentive Program as one of the development tools needed for the City to attract new jobs to the City and continue to improve the overall economic health of the City and its citizens. Eligible employers can receive an annual cash incentive for a specific number of years of an amount



equal to up to fifty percent (50%) of the City income tax withheld from "New Employee Positions." To qualify as "New Employee Positions," the positions must be all of the following: (1) full-time or full-time equivalent; (2) non-retail; (3) employed by private sector, for-profit entities; and (4) either newly created in the City after the execution of the agreement specified in this Ordinance or transferred from outside the corporate limits of the City to within the corporate limits of the City after the execution of the agreement specified in this Ordinance.

The annual cash incentive may also be provided for "Retained Positions" when the City determines an eligible employer established temporary operations in the City based on a commitment made by the City to consider providing the annual cash incentive. Additionally, to qualify as "Retained Positions," the positions must be: (1) full-time or full-time equivalent; (2) non-retail; and (3) employed by private sector, for-profit entities. For Retained Positions, the annual cash incentive amount shall be equal to up to fifty percent (50%) of City income tax withheld from Retained Positions located in the City."

Section 2. That in consideration of the mutual covenants set forth in the Office Incentive Agreement substantially in the form attached hereto and made a part hereof, the Office Incentive Agreement hereby is approved and authorized with changes therein not inconsistent with this Ordinance and not substantially adverse to the City, and the Mayor and the City Auditor hereby are authorized to execute the Office Incentive Agreement and directed to take any further actions, and execute and deliver any further agreements, certificates or documents necessary to accomplish the granting of the annual payments described in the Office Incentive Agreement, provided further that the approval of changes thereto by those officials, and their character as not being substantially adverse to the City, shall be evidenced conclusively by the execution thereof.

Section 3. That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and any decision making bodies of the City of Bexley which resulted in such formal actions were in meetings open to the public or in compliance with all legal requirements of the City of Bexley, Franklin County, Ohio.

Section 4. This ordinance shall take effect and be in force from and after the earliest period allowed by law.



Passed: April 21, 2020



\_\_\_\_\_

President of Council

Attest: William May  
Clerk of Council

Approved: April 21, 2020



\_\_\_\_\_

Benjamin J. Kessler, Mayor

First Reading: 2-25-20  
Second Reading: 3-10-20  
Third Reading: 4-21-20



**EXHIBIT A TO ORDINANCE**

**Form of Office Incentive Agreement**

(attached hereto)





Exhibit A

**CITY OF BEXLEY**  
**OFFICE INCENTIVE AGREEMENT WITH**  
**OHIO STATE BANK**

This Office Incentive Agreement (this "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020 by and between the City of Bexley, a municipal corporation duly organized and validly existing under the Constitution and laws of the State of Ohio and its Charter (the "City") and Ohio State Bank, [an Ohio corporation] (the "Company"), with its main office to be located at 2106 E. Main Street, Bexley, Ohio. C

WHEREAS, the City has established the Bexley Office Incentive Program by Ordinance No. 69-09 adopted on September 26, 2006, to assist employers that create new jobs in the City by offering to such employers an annual cash incentive equal to a portion of the City income tax withheld from new employees located in the City for a specific period of time; and

WHEREAS, pursuant to Ordinance No. \_\_-20 adopted on March \_\_, 2020, the Bexley Office Incentive Program was amended to enable it to be applied to include retained jobs in certain circumstances when the City determines that the employer established temporary operations in the City based, in part, on a commitment by the City to consider an annual cash incentive equal to a portion of the City income tax withheld from employees located in the City (as amended, the "Bexley Incentive Program"); and

WHEREAS, the Company is the lessee of certain property located at 2106 E. Main Street, Bexley, Ohio (the "Project Site"), and the Company intends to establish a bank at the Project Site (the "Project"); and

WHEREAS, in connection with the Project, the Company will retain and create employment opportunities and payroll within the City; and

WHEREAS, consistent with the parameters of the Bexley Incentive Program, the City desires to offer the Company incentives to encourage the completion of the Project and the creation of employee positions in the City; and

WHEREAS, on \_\_\_\_\_, 2020, the City Council of the City passed Ordinance No. \_\_\_\_\_ authorizing the execution of this Agreement and the incentive set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter set forth, the parties hereby agree as follows:

**Section 1. City of Bexley Determinations**

Based upon a review of relevant information and the representations made by the Company, the City has determined the following:

- A. By no later than December 31, 2021, the Company is expected to have at least seventeen (17) employee positions at the Project Site with an aggregate annual payroll of at least one million, eight hundred thousand dollars (\$1,800,0000);
- B. The Project is economically sound and will benefit the people of Bexley by increasing opportunities for employment and strengthening the economy of the City; and
- C. Receiving the incentive set forth in this Agreement has been a major factor in the Company's decision to employ a substantial number of the Company's employees in Bexley at the Project Site and go forward with the Project.

## **Section 2. Commitments**

By no later than December 31, 2021 (the "Metric Commitment Date"), the Company shall have at least seventeen (17) employee positions at the Project Site with an aggregate annual payroll of at least one million, eight hundred thousand dollars (\$1,800,0000) (collectively, the "Metric Commitments"). The Company shall maintain the Metric Commitments throughout the term of this Agreement.

## **Section 3. Incentive**

Provided that the Company is in compliance with this Agreement and subject to Section 4, the City agrees to pay to the Company an annual financial incentive (the "Incentive"). The term for determining the Incentive shall commence on January 1, 2021 and continue for six (6) years until December 31, 2026. Each Incentive shall be calculated by taking the aggregate City income tax withheld from each employee position of the Company at the Project Site for the preceding calendar year (the "Withholdings") and multiplying that amount by five-tenths (0.50).

So long as the Company timely complies with the provisions of Section 6, the City shall determine the amount of the Incentive and provide written notice to the Company (at the address of the Project) of the amount of the Incentive (the "Incentive Notice") by June 30 of the applicable year. The City reserves the right to verify the information submitted by the Company in the Annual Employee Report (defined below) by any means reasonably necessary, including but not limited to requesting supporting documentation from the Company. The Company agrees to comply with any document production requests from the City within five (5) business days. Failure by the Company to timely and fully comply with any document production request or failure of the Company to submit a complete Annual Employee Report by April 30 shall (i) delay delivery of the Incentive Notice and payment of the Incentive, and (ii) may, if not timely cured by the Company, result in an Event of Default (as defined in Section 9). In no event shall the City be held liable for any such delay nor shall the City be required to make payment of the Incentive in less than one hundred fifty (150) days from receipt of the Annual Employee Report. The City shall have no obligation to pay an Incentive to the Company for any year for which the Company: (i) fails to file an Annual Employee Report, or (ii) files an Annual Employee Report more than thirty (30) days after receiving a Default Notice (defined in Section 9) for its failure to

file the Annual Employee Report. The parties further acknowledge that no Incentive shall be paid for any year until all conditions of Section 4 have been satisfied.

**Section 4. Yearly Appropriation**

For each year during the term of this Agreement for which an Incentive payment is due to the Company, the City's obligation to pay the Incentive is expressly contingent upon passage of an ordinance by the City Council appropriating and authorizing the expenditure of monies sufficient to make such payment and the certification of the City Auditor.

**Section 5. Submission of Progress Reports and Payment**

On or before April 30 of each year beginning in 2022 and continuing through 2027, the Company shall submit to the City's Mayor a statement, certified by the Company's chief executive officer, chief financial officer, or other officer of the Company authorized to sign its tax returns, setting forth the following information for the preceding calendar year: (i) the total number of employees employed in the City, their respective payroll and the City income tax withheld for them; (ii) the total number of employee positions at the Project Site, their respective payroll and the Withholdings; and (iii) any other relevant information deemed necessary by the City (the "Annual Employee Report"). The Annual Employee Report shall be sent to the Mayor at the address provided in Section 11(C) or to such other address as the City may designate in a written notice transmitted in accordance with Section 11(C).

On or before April 30 of each year beginning in the first full calendar year after the Company begins operations and continuing through three (3) years after the termination of the Agreement (the "Reporting Period"), the Company shall provide the City with a written certification that it has maintained its operations at the Project (the "Annual Project Location Report"). The Annual Project Location Report shall be signed on behalf of the Company by its chief executive officer, chief financial officer, or other officer of the Company authorized to sign its tax returns. The Annual Project Location Report shall be sent to the Mayor at the address provided in Section 10(C) or to such other address as the City may designate in a written notice transmitted in accordance with Section 10(C).

The Annual Project Location Report can be combined with the Annual Employee Report for the years 2021 through 2026. All reports shall be prepared at the sole expense of the Company.

**Section 6. Records, Access and Maintenance**

During the term of this Agreement, and for at least three (3) years after the termination of this Agreement, the Company shall establish and maintain the records required by the City in Section 5 above and all relevant supporting documentation. The parties further agree that the records required by the City with respect to any amounts withheld, audit disallowances, litigation or disputes between the City and the Company shall be maintained for the time needed for the resolution of these issues; and that in the event of early termination of this Agreement, or if for any other reason the City shall require a review of the records related to the Project, the

Company shall at its own cost and expense, segregate all such records related to the Project from its other records of operation.

#### **Section 7. Audits and Inspections**

The Company agrees to pay the cost of a one-time external audit to determine the accuracy of reports due annually to the City required in Section 5. Such audit may be requested by the City at any time during the term of this Agreement. The City further reserves the right to audit the Company's records at any time at the City's expense, upon reasonable written notice. All audits shall take place during normal business hours.

#### **Section 8. Early Termination, Event of Default, and Forbearance**

**A. Early Termination.** If the Company fails to achieve the Metric Commitments by the Metric Commitment Date, this Agreement shall terminate, the City shall have no further obligation to provide any Incentive hereunder, and the City may require the Company to refund the City an amount equal to the value of all or a portion of the Incentive provided to date under this Agreement.

**B. Event of Default.** A party shall be in default of this Agreement if the party fails to perform any material obligation under this Agreement (including, but not limited to, any obligation under Sections 2, 5, 6, 7, 9 and 10.O) and such failure continues uncured for more than thirty (30) days after receiving a written notice from any other party of default (a "Default Notice"). Any such default which continues uncured beyond the thirty (30) day cure period above shall constitute an "Event of Default."

1. **Default by the Company.** Following an Event of Default by the Company, the City may immediately exercise one or more of the following non-exclusive remedies: (i) terminate this Agreement; (ii) decline to pay any further Incentive; (iii) require the Company to refund the City an amount equal to the value of all or a portion of the Incentive provided under this Agreement; (iv) unilaterally reduce the amount and/or term of the Incentives provided to the Company; (v) recover all costs and expenses incurred by the City following the Company's Event of Default to pursue any remedies hereunder, including, but not limited to, interest and attorneys' fees; and (vi) pursue any other legal or equitable remedies the City may have under this Agreement or applicable law. This section shall survive the termination of this Agreement.

2. **Default by the City.** Following an Event of Default by the City, may immediately exercise one or more of the following non-exclusive remedies: (i) terminate this Agreement; and (ii) pursue any other legal or equitable remedies the Company may have under this Agreement or applicable law.

**C. Forbearance.** No act of forbearance or failure to insist on the prompt performance by a party of its obligations under this Agreement, either express or implied, shall be construed as a waiver by the other party of any of its rights hereunder.

**Section 9. Additional Consideration for Incentives**

In consideration of the Incentive, the Company agrees to the following conditions:

- A. The Company shall use its best efforts to hire residents of the City;
- B. The Company shall maintain substantial operations in the City for a period of least three (3) years after the termination of this Agreement, and should the Company fail to maintain the operations in the City for such a period, the Company shall repay an amount determined by the City, up to the full amount of the Incentive received by the Company, plus interest at the rate specified under Ohio Revised Code Section 5703.47;
- C. The Company shall become a member and maintain membership in the Bexley Area Chamber of Commerce.

**Section 10. Miscellaneous**

- A. **Entire Agreement.** This Agreement and any documents referred to herein constitute the complete understanding of the parties and merge and supersede any and all other discussions, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof.
- B. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective, valid, legal and enforceable under applicable law, but if any provision of this Agreement is to any extent invalid, illegal, or incapable of being enforced, such term shall be excluded to the extent of such invalidity, illegality, or unenforceability, while all other terms of this Agreement shall remain in full force and effect.
- C. **Notices.** All notices, consents, demands, requests and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if (i) personally delivered, (ii) sent by United States mail, registered or certified, return receipt requested, postage prepaid, when the return receipt is signed or refused, or (iii) sent by electronic mail with a copy sent by United States mail the same day, to the addresses set forth herein or to such other address as a party may designate in a written notice transmitted in accordance with this paragraph.

- a) In case of the City, to:

Ben Kessler  
Mayor  
City of Bexley  
2242 East Main Street  
Bexley, Ohio 43209  
Email: [bkessler@bexley.org](mailto:bkessler@bexley.org)

With a copy to:

Scott J. Ziance, Esq.  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street  
Columbus, Ohio 43215  
Email: sjziance@vorys.com

b) In case of the Company, to:

Ohio State Bank  
2106 E. Main Street  
Bexley, Ohio 43209  
Attn: Ingrid Phillips, CFO  
Phone: (614) 697-1012  
Email: iphillips@bankatosb.com

- D. Amendments or Modifications.** No amendment or modification shall be effective unless in writing and signed by both parties to this Agreement.
- E. Assignment.** This Agreement is specifically entered into for the sole benefit of the Company and is not assignable without the written consent of the City.
- F. Agreement Binding: No Personal Liability.** All covenants, obligations and agreements of the City contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of the City or the Company in other than their official capacity, and neither the members of the City Council or the City nor any official executing this Agreement on behalf of the City or the Company shall be liable personally by reason of the covenant, obligations or agreements of the City or the Company contained in this Agreement.
- G. Forum Selection.** For all claims, counterclaims, disputes and other matters in question between the City, its agents and employees, and the Company, its agents and employees, arising out of or relating to this Agreement or its breach, the parties irrevocably and unconditionally consent and agree to the venue and exclusive jurisdiction (unless the law otherwise requires) of the Court of Common Pleas of Franklin County, Ohio.
- H. No Pledge of Tax Revenues.** Nothing in this Agreement shall constitute a pledge of the City's tax revenues in violation of Article VIII, Section 13 of the Ohio Constitution.
- I. Effectiveness of Agreement.** This Agreement shall be of no force and effect unless and until the following take place, at which point this Agreement shall be in effect immediately: (i) this Agreement is fully executed by both parties and (ii) City Council passes an ordinance approving this Agreement, and the ordinance takes effect.

- J. **Term.** The term of this Agreement shall continue until the end of the final calendar year of the Reporting Period, unless otherwise terminated in accordance with the provisions of this Agreement.
- K. **Executed Counterparts.** This Agreement may be executed in counterparts. Each counterpart shall be deemed an original, and the counterparts together shall constitute one and the same instrument. Signatures transmitted by facsimile or electronic means are deemed to be original signatures.
- L. **No Third-Party Beneficiary.** The parties intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third-party beneficiary, or any individual or entity other than the parties, or their respective successors and permitted assignees.
- M. **Notice of Change.** If the Company intends to cease operating at the Project Site, the Company shall provide the City with written notice at least thirty (30) days in advance of the intended change.
- N. **Survival.** Any provision of this Agreement which, by its nature, is intended to survive the expiration or other termination of this Agreement, including, without limitation, Sections 6, 8.B.1, and 10.O, will so survive and will benefit the parties and their respective successors and permitted assigns.
- O. **Indemnification.** Except to the extent of the City's proportional responsibility due to the City's gross negligence, recklessness, or misconduct, the Company, shall, at its cost and expense, defend, indemnify, and hold the City and any officials, employees, agents and representatives of the City, its successors and permitted assigns, (collectively the "Indemnified Parties" and each an "Indemnified Party"), harmless from and against, and shall reimburse the Indemnified Party for, any and all loss, cost (including reasonable attorneys' fees incurred in defending claims), claim, liability, damage, judgment, penalty, injunctive relief, expense, or action, whether or not the Indemnified Party shall also be indemnified as to any such claim by any other person, the basis of which claim (a) was caused by or results from the actions or failures to act of the Company or its affiliates, agents, employees, contractors, subcontractors and material suppliers while in possession or control of the Project Site, whether or not such action or inaction was negligent or reckless, or is in any way related to the construction of the Project or the selection of contractors, subcontractors or material suppliers relating thereto; (b) is based, in whole or in part upon failure or alleged failure of the Company to satisfy its obligations under this Agreement; (c) relates to fraud, misapplication of funds, illegal acts, or willful misconduct on the part of the Company; or (d) relates to the bankruptcy, receivership or insolvency of the Company.
- P. **Future Tenants.** The City agrees that it shall consider in good faith providing the Bexley Incentive Program to future tenants at the Project Site based upon the terms and conditions contained in the City Ordinance No. 69-09.

- Q. **Payment of City's Legal Fees.** Within thirty (30) days after the execution of this Agreement and the delivery by the City of an invoice for reimbursement of the legal fees incurred by the City in connection with the preparation and negotiation of this Agreement and any related tax increment financing agreement, the Company shall reimburse the City for such fees.
- P. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

[Remainder of the page intentionally left blank.]



**IN WITNESS WHEREOF**, the parties hereto have caused their duly authorized representation to execute this Office Incentive Agreement on the day and year first above written.

**CITY:**

**THE COMPANY:**

**CITY OF BEXLEY**

**OHIO STATE BANK**, an Ohio corporation

By: \_\_\_\_\_  
Ben Kessler, Mayor

By: \_\_\_\_\_  
David Mallett  
Its Chief Executive Officer

Approved as to form:

\_\_\_\_\_  
Mark Fishel, City Attorney

