
Section 1: S-8 (S-8)

Registration No. 333-

As filed with the Securities and Exchange Commission on May 20, 2019

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM S-8**

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933 **Evans Bancorp, Inc.**

(Exact Name of Registrant as Specified in its Charter)

New York

(State or Other Jurisdiction of
Incorporation or Organization)

16-1332767

(I.R.S. Employer Identification No.)

One Grimsby Drive Hamburg, New York 14075

(Address of Principal Executive Offices)

Evans Bancorp, Inc. Amended and Restated 2019 Long-Term Equity Incentive Plan

(Full Title of the Plan) Copies to:

David J. Nasca
President and Chief Executive Officer
Evans Bancorp, Inc.
One Grimsby Drive
Hamburg, New York 14075
(716) 926-2000

(Name, Address and Telephone
Number of Agent for Service)

John J. Gorman, Esq.
Elizabeth A. Cook, Esq.
Luse Gorman, PC
5335 Wisconsin Ave., NW, Suite 780
Washington, DC 20015
(202) 274-2000

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"):

Large accelerated filer
Non-accelerated filer
Emerging growth company

Accelerated filer
Smaller reporting company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered ⁽¹⁾	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common stock, par value \$0.50 per share	427,386 ⁽²⁾	\$36.07 ⁽³⁾	\$15,415,813.02	\$1,869

-
- (1) Together with an indeterminate number of additional shares that may be necessary to adjust the number of shares reserved for issuance pursuant to the Evans Bancorp, Inc. Amended and Restated 2019 Long-Term Equity Incentive Plan (the "LTIP") as a result of a stock split, stock dividend or similar adjustment of the outstanding common stock of Evans Bancorp, Inc. (the "Company") pursuant to 17 C.F.R. Section 230.416 (a) under the Securities Act of 1933, as amended (the "Securities Act").
- (2) Represents the number of shares of common stock reserved for issuance under the LTIP for any grants of stock options, stock appreciation rights, restricted stock and restricted stock units.
- (3) Determined pursuant to 17 C.F.R. Section 230.457(h)(1) of the Securities Act.

This Registration Statement shall become effective upon filing in accordance with Section 8(a) of the Securities Act and 17 C.F.R. § 230.462 under the Securities Act.

PART I. INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Items 1 and 2. Plan Information; and Registrant Information and Employee Plan Annual Information

The documents containing the information specified in Part I of Form S-8 have been or will be sent or given to participants in the Plan as specified by Rule 428(b)(1) promulgated by the Securities and Exchange Commission (the "Commission") under the Securities Act.

Such documents are not being filed with the Commission, but constitute (along with the documents incorporated by reference into this Registration Statement pursuant to Item 3 of Part II hereof) a prospectus that meets the requirements of Section 10(a) of the Securities Act.

PART II. INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The following documents previously or concurrently filed with the Commission are hereby incorporated by reference in this Registration Statement:

(a) The Company's Annual Report on Form 10-K for the year ended December 31, 2018 (File No. 001-35021), filed with the Commission on February 28, 2019, pursuant to Section 13(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act");

(b) All other reports filed by the Company pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, since the end of the year covered by the Annual Report on Form 10-K referred to in (a) above; and

(c) The description of the Company's common stock contained in the Registration Statement on Form 8-A (File No. 001-35021), filed with the Commission on December 22, 2010.

All documents subsequently filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14, or 15(d) of the Securities Exchange Act of 1934, as amended, after the date hereof, and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed incorporated by reference into this Registration Statement and to be a part thereof from the date of the filing of such documents. Any statement contained in the documents incorporated, or deemed to be incorporated, by reference herein or therein shall be deemed to be modified or superseded for purposes of this Registration Statement and the prospectus to the extent that a statement contained herein or therein or in any other subsequently filed document which also is, or is deemed to be, incorporated by reference herein or therein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement and the prospectus.

All information appearing in this Registration Statement and the prospectus is qualified in its entirety by the detailed information, including financial statements, appearing in the documents incorporated herein or therein by reference.

Item 4. Description of Securities

Not applicable.

Item 5. Interests of Named Experts and Counsel

None.

Item 6. Indemnification of Directors and Officers

Article 11 of the Company's Certificate of Incorporation limits director liability as follows:

11. Director Liability. A director of the Corporation shall not be personally liable to the Corporation or its shareholders for monetary damages because of his breach as a director unless:

- (A) such liability is based upon a judgment or other final adjudication adverse to him which establishes:
 - (1) that his acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law;
 - (2) that he personally gained in fact a financial profit or other advantage to which he was not legally entitled; or
 - (3) that his acts violated Section 719 of the New York Business Corporation Law; or

(B) such liability is for any act or omission preceding the adoption of this Article.

If the New York Business Corporation Law is hereafter amended to authorize the further elimination or limitation of the liability of directors, the liability of a director of the Corporation, in addition to the limitation on personal liability provided herein, shall be further limited to the fullest extent permitted by the amended New York Business Corporation Law.

Article V of the Company's Bylaws provides for indemnification of directors and officers as follows:

ARTICLE V. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

Section 501. Right to Indemnification

Any person who was, is, or is threatened to be made a party to any action or proceeding, whether civil or criminal (including an action by or in the right of the Corporation or any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise which any director or officer of the Corporation served in any capacity at the request of this Corporation), by reason of the fact that he or she, or his or her testator or intestate, is or was a director or officer of the Corporation, or served such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity, shall be indemnified by the Corporation against all judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees actually and necessarily incurred in connection with the defense or appeal of any such action or proceeding, to the fullest extent permitted by the New York Business Corporation Law or other applicable law.

Section 502. Advancement of Expenses

Expenses incurred by a person entitled to indemnification under Section 501 of these Bylaws in defending or appealing any such action or proceeding shall be paid by the Corporation in advance of the final disposition of such action or proceeding; provided that the payment of expenses in advance of the final disposition of an action or proceeding shall be made only upon delivery to the Corporation of an undertaking by or on behalf of the director or officer to repay all amounts so advanced if it should be determined ultimately that the director or officer is not entitled to be indemnified. The preceding right of indemnification shall be a contract right enforceable by the director or officer with respect to any claim, cause of action, action or proceeding accruing or arising while this Bylaw shall be in effect.

Section 503. Authorization of Indemnification

Any indemnification provided for by Section 501 shall be authorized in any manner provided by the NY BCL or other applicable law.

Section 504. Right of Claimant to Bring Suit

If a claim of indemnification is not paid in full by the Corporation within ninety (90) days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall also be entitled to recover the expenses of prosecuting such claim.

Section 505. Non-Exclusivity of Rights

The rights conferred on any person under this Article shall not be exclusive of any other right which may exist under any statute, provision of the Certificate of Incorporation, Bylaw, agreement, vote of shareholders or disinterested directors, or otherwise.

Section 506. Insurance

Subject to the laws of New York, the Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation against any expense, liability or loss of the general nature contemplated by this Article, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the laws of New York.

Section 507. Severability

It is the intent of the Corporation to indemnify its officers and directors to the fullest extent authorized by the laws of New York as they now exist or may hereafter be amended. If any portion of this Article shall for any reason be held invalid or unenforceable by judicial decision or legislative amendment, the valid and enforceable provisions of this Article will continue to be given effect and shall be construed so as to provide the broadest indemnification permitted by law.

Item 7. Exemption From Registration Claimed.

Not applicable.

Item 8. List of Exhibits.

<u>Regulation S-K Exhibit Number</u>	<u>Document</u>	<u>Reference to Prior Filing or Exhibit No. Attached Hereto</u>
<u>5</u>	Opinion of Luse Gorman, PC	Attached as Exhibit 5
<u>10.1</u>	Evans Bancorp, Inc. Amended and Restated 2019 Long-Term Equity Incentive Plan	Incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 001-35021), filed by Evans Bancorp, Inc. on April 26, 2019
<u>10.2</u>	Form of Employee Restricted Stock Award Agreement	Attached as Exhibit 10.2
<u>10.3</u>	Form of Employee Stock Option Award Agreement	Attached as Exhibit 10.3
<u>10.4</u>	Form of Director Restricted Stock Award Agreement	Attached as Exhibit 10.4
<u>10.5</u>	Form of Director Stock Option Award Agreement	Attached as Exhibit 10.5
<u>23.1</u>	Consent of Luse Gorman, PC	Contained in Exhibit 5
<u>23.2</u>	Consent of KPMG LLP	Attached as Exhibit 23.2
<u>24</u>	Power of Attorney	Contained on Signature Page

Item 9. Undertakings

The undersigned registrant hereby undertakes:

1. To file, during any period in which offers or sales are being made, a post-effective amendment to the Registration Statement to include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

2. That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof;

3. To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering;

4. That, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof; and

5. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

The Registrant. Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement on Form S-8 to be signed on its behalf by the undersigned, thereunto duly authorized, in the Town of Hamburg, State of New York, on this 20th day of May, 2019.

EVANS BANCORP, INC.

By: /s/ David J. Nasca
David J. Nasca
President and Chief Executive Officer
(Duly Authorized Representative)

POWER OF ATTORNEY

We, the undersigned directors and officers of Evans Bancorp, Inc. (the "Company") hereby severally constitute and appoint David J. Nasca and John B. Connerton as our true and lawful attorney and agent, to do any and all things in our names in the capacities indicated below which said David J. Nasca and John B. Connerton may deem necessary or advisable to enable the Company to comply with the Securities Act of 1933, and any rules, regulations and requirements of the Securities and Exchange Commission, in connection with the registration of shares of common stock to be granted and shares of common stock to be issued upon the exercise of stock options to be granted under the Evans Bancorp, Inc. Amended and Restated 2019 Long-Term Equity Incentive Plan, including specifically, but not limited to, power and authority to sign for us in our names in the capacities indicated below the registration statement and any and all amendments (including post-effective amendments) thereto; and we hereby approve, ratify and confirm all that said David J. Nasca and John B. Connerton shall do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement on Form S-8 has been signed by the following persons in the capacities and on the date indicated.

<u>Signatures</u>	<u>Title</u>	<u>Date</u>
<u>/s/ David J. Nasca</u> David J. Nasca	President and Chief Executive Officer/ Director (Principal Executive Officer)	May 20, 2019
<u>/s/ John B. Connerton</u> John B. Connerton	Treasurer (Principal Financial Officer and Principal Accounting Officer)	May 20, 2019
<u>/s/ Lee C. Wortham</u> Lee C. Wortham	Chairman of the Board/Director	May 20, 2019
<u>/s/ Oliver H. Sommer</u> Oliver H. Sommer	Vice Chairman of the Board/Director	May 20, 2019
Michael A. Battle	Director	May 20, 2019

<u>/s/ James E. Biddle, Jr.</u> James E. Biddle, Jr.	Director	May 20, 2019
Jody L. Lomeo	Director	May 20, 2019
<u>Robert G. Miller, Jr.</u> Robert G. Miller, Jr.	Director	May 20, 2019
<u>Kimberley A. Minkel</u> Kimberley A. Minkel	Director	May 20, 2019
<u>Christina P. Orsi</u> Christina P. Orsi	Director	May 20, 2019
<u>David R. Pfalzgraf, Jr.</u> David R. Pfalzgraf, Jr.	Director	May 20, 2019
<u>Michael J. Rogers</u> Michael J. Rogers	Director	May 20, 2019
<u>Nora B. Sullivan</u> Nora B. Sullivan	Director	May 20, 2019
<u>Thomas H. Waring, Jr.</u> Thomas H. Waring, Jr.	Director	May 20, 2019

[\(Back To Top\)](#)

Section 2: EX-5 (EX-5)

Exhibit 5
LUSE GORMAN, PC
ATTORNEYS AT LAW

5335 WISCONSIN AVENUE, N.W., SUITE 780
WASHINGTON, D.C. 20015

TELEPHONE (202) 274-2000
FACSIMILE (202) 362-2902
www.luselaw.com

May 20, 2019

Board of Directors
Evans Bancorp, Inc.
One Grimsby Drive
Hamburg, New York 14075

**Re: Evans Bancorp, Inc. – Registration Statement on Form S-8
Amended and Restated 2019 Long-Term Equity Incentive Plan**

Ladies and Gentlemen:

You have requested the opinion of this firm as to certain matters in connection with the registration of 427,386 shares of common stock, \$0.50 par value per share (the “Shares”), of Evans Bancorp, Inc. (the “Company”) to be issued pursuant to the Evans Bancorp, Inc. Amended and Restated 2019 Long-Term Equity Incentive Plan (the “LTIP”).

In rendering the opinion expressed herein, we have reviewed the Certificate of Incorporation of the Company, the LTIP, the Company’s Registration Statement on Form S-8 (the “Form S-8”), as well as resolutions of the board of directors of the Company and applicable statutes and regulations governing the Company. We have assumed the authenticity, accuracy and completeness of all documents in connection with the opinion expressed herein. We have also assumed the legal capacity and genuineness of the signatures of persons signing all documents in connection with which the opinions expressed herein are rendered.

Based on the foregoing, we are of the following opinion:

Following the effectiveness of the Form S-8, the Shares of the Company, when issued in accordance with the terms and conditions of the LTIP, will be legally issued, fully paid and non-assessable.

This opinion has been prepared solely for the use of the Company in connection with the preparation and filing of the Form S-8, and shall not be used for any other purpose or relied upon by any other person without the prior express written consent of this firm. We hereby consent to the use of this opinion in the Form S-8.

Very truly yours,

[\(Back To Top\)](#)

Section 3: EX-10.2 (EX-10.2)

Employee

EXHIBIT 10.2 RESTRICTED STOCK AWARD AGREEMENT

Granted by

EVANS BANCORP, INC.
under the

EVANS BANCORP, INC. AMENDED AND RESTATED 2019 LONG TERM EQUITY INCENTIVE PLAN

1 . **Restricted Stock Award.** Evans Bancorp, Inc. (the “**Company**”) has granted to the following person (the “**Participant**”) a Restricted Stock Award (the “**Award**”), pursuant to the Company’s Amended and Restated 2019 Long-Term Equity Incentive Plan (as amended from time to time) (the “**Plan**”), of the number of shares (the “**Shares**”) of common stock (“**Common Stock**”) of the Company set forth opposite the Participant’s name below, subject to the terms and conditions of this Restricted Stock Award Agreement (the “**Agreement**”) and the Plan. Except where the context otherwise requires, the term “**Company**” shall include the parent and all present and future subsidiaries of the Company as defined in Sections 424(e) and 424(f) of the Internal Revenue Code of 1986, as amended or replaced from time to time (the “**Code**”). Capitalized terms used herein but not defined shall have the same meaning as in the Plan.

Name of Participant:

Number of Shares of Common Stock Granted:

Date of Grant:

2 . **Forfeitable Shares and Vested Shares.** All Shares shall be deemed to be “**Forfeitable Shares**” until the Company’s right of Forfeiture, described in Section 4 below, has expired (and the Participant’s right to retain such shares has accrued) in accordance with the Vesting Schedule set forth in Section 3. Forfeitable Shares shall be subject to Forfeiture as described in Section 4 below. “**Vested Shares**” are Shares held by the Participant as to which the Company’s right of Forfeiture has expired (and the Participant’s right to retain such Shares has accrued) based on the Vesting Schedule. All certificates representing Forfeitable Shares shall remain in the possession of the Company until such shares become Vested Shares in accordance with the terms of this Agreement. The Company shall deliver to the Participant a certificate representing the Participant’s Vested Shares promptly after such Shares become Vested Shares.

3 . **Vested Shares; Vesting Schedule.** The Company’s right of Forfeiture shall expire and the whole Shares shall become Vested Shares in accordance with the following:

(a) Twenty-five percent (25%) of the total number of Shares shall become Vested Shares on the first anniversary of the date of grant;

(b) An additional twenty-five percent (25%) of the total number of Shares shall become Vested Shares on the second anniversary of the date of grant; and

(c) An additional twenty-five percent (25%) of the total number of Shares shall become Vested Shares on the third anniversary of the date of grant; and

(d) The final twenty-five percent (25%) of the total number of Shares shall become Vested Shares on the fourth anniversary of the date of grant.

(e) **Vesting Upon Death or Disability.** In the event of Participant's termination of employment due to death or Disability of the Participant before the expiration of the Vesting Schedule, then the vesting of the Shares under the Vesting Schedule shall be automatically accelerated in full so that all of the Shares shall become Vested Shares, effective as of the date of death or Disability;

(f) **Vesting Upon Retirement.** In the event of the Participant's termination of employment by reason of Retirement before the expiration of the Vesting Schedule, then the vesting of the Shares under the Vesting Schedule shall be automatically accelerated in full so that all of the Shares shall become Vested Shares, effective as of the date of such Retirement.

(g) **Vesting Upon an Involuntary Termination of Employment Following a Change in Control.** In the event of the Participant's Involuntary Termination of Employment (as defined in the Plan) following a Change in Control (as defined in the Plan), all Restricted Stock Awards shall become fully earned and vested immediately.

4. **Forfeiture of Shares.**

(a) **Forfeiture.** Upon the Participant's termination of employment for any reason (other than the Participant's death, Disability or Retirement or following a Change in Control as provided in Section 3) before the end of the term of the Vesting Schedule, then all Shares which as of the date of such termination constitute Forfeitable Shares shall be forfeited to the Company ("**Forfeiture**") without payment of any consideration by the Company. There shall be no further accruals under the Vesting Schedule (and no further Forfeitable Shares shall become Vested Shares) from and after the date of any such termination.

(b) **Forfeiture of Forfeitable Shares.** The Participant's rights in all Forfeitable Shares shall terminate automatically on the date of the Participant's termination of employment for reasons other than the Participant's death, Disability or Retirement, and the Company may thereupon cancel the certificate or certificates representing such Forfeitable Shares on its books. In the event that the certificates then being held by the Company under this Agreement represent Vested Shares as well as Forfeitable Shares, the Company shall issue to the Participant a replacement certificate for such Vested Shares.

5. **No Implied Rights.** Neither a Participant nor any other person shall by reason of participation in the Plan acquire any right in or title to any assets, funds or property of the Company or any subsidiary whatsoever, including any specific funds, assets, or other property which the Company or any subsidiary, in its sole discretion, may set aside in anticipation of a liability under the Plan. A Participant shall have only a contractual right to the shares of Common Stock or amounts, if any, payable or distributable under the Plan, unsecured by any assets of the Company or any subsidiary, and nothing contained in the Plan shall constitute a guarantee that the assets of the Company or any subsidiary shall be sufficient to pay any benefits to any person. No individual shall have the right to be selected to receive an Award under the Plan, or, having been so selected, to receive a future Award under the Plan.

6. **No Rights as a Stockholder.** Except as otherwise provided in the Plan, no Award under the Plan shall confer upon the holder thereof any rights as a stockholder of the Company prior to the date on which the individual fulfills all conditions for receipt of such rights.

7. **Dividends.** Any dividends or distributions (other than a stock dividend consisting of shares of Common Stock) declared and paid with respect to shares of Common Stock subject to the Award, without regard to vesting status, shall be immediately distributed to the Participant.

8. **Voting Rights.** The Participant shall have the right to vote the shares of Common Stock subject to this Award, without regard to vesting status, unless shares are forfeited.

9. **Availability of Tax Election.** The Participant acknowledges that the Company has advised the Participant of the possibility of making an election under Section 83(b) of the Code with respect to the Award of the Shares and has recommended that the Participant consult a qualified tax advisor regarding the desirability of making such an election in light of the Participant's individual circumstances.

10. **Acceptance and Acknowledgment.** The Recipient hereby accepts this Award, subject to all the terms and provisions herein and to the provisions of the Plan (as it may be amended from time to time). The Recipient hereby agrees to accept as binding, conclusive, and final, all decisions and interpretations of the Committee upon any questions arising under the Plan. As a condition to the issuance of shares of common stock of the Company under this Award, the Recipient authorizes the Company to deduct any taxes required to be withheld by the Company under federal, state, or local law as a result of his receipt of this Award.

11. **Miscellaneous.**

(a) This Agreement may not be amended or otherwise modified unless evidenced in writing and signed by the Company and the Participant.

(b) All notices under this Agreement shall be mailed or delivered by hand to the parties at their respective addresses set forth beneath their names below or at such other address as may be designated in writing by either of the parties to one another.

(c) This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its principles of conflicts of laws.

(d) This Agreement is executed in two (2) counterpart originals, one (1) to be retained by the Participant and one (1) to be retained by the Company.

EVANS BANCORP, INC.

By:

David J. Nasca, President and Chief Executive Officer

PARTICIPANT'S ACCEPTANCE

The undersigned hereby accepts the grant of the Award described in this Agreement and agrees to the terms and conditions hereof and of the Amended and Restated 2019 Long Term Equity Incentive Plan. The undersigned hereby acknowledges receipt of a copy of the Company's Amended and Restated 2019 Long-Term Equity Incentive Plan.

PARTICIPANT

(Participant Name)

[\(Back To Top\)](#)

Section 4: EX-10.3 (EX-10.3)

EMPLOYEE

**Exhibit 10.3
Stock Option**

Granted by

EVANS BANCORP, INC.
under the

EVANS BANCORP, INC. AMENDED AND RESTATED 2019 LONG TERM EQUITY INCENTIVE PLAN

This option ("**Option**") is and shall be subject in every respect to the provisions of the Amended and Restated 2019 Long-Term Equity Incentive Plan (as may be amended from time to time) (the "**Plan**"), of Evans Bancorp, Inc. (the "**Company**"), which is incorporated herein by reference and made a part hereof, subject to the provisions of this Agreement. A copy of the Plan has been provided to each person granted an Option pursuant to the Plan. The holder of this Option (the "**Participant**") hereby accepts this Option, subject to all the terms and provisions of the Plan and this Agreement, and agrees that all decisions under and interpretations of the Plan and this Agreement by the Compensation Committee ("**Committee**") or the Board shall be final, binding and conclusive upon the Participant and the Participant's heirs, legal representatives, successors and permitted assigns. Except where the context otherwise requires, the term "Company" shall include the parent and all present and future subsidiaries of the Company as defined in

Section 424(e) and 424(f) of the Internal Revenue Code of 1986, as amended or replaced from time to time (the “Code”). Capitalized terms used herein but not defined shall have the same meaning as in the Plan.

1. **Name of Participant:**
 2. **Date of Grant:**
 3. **Total number of shares of Company common stock, \$0.50 par value (“Common Stock”) that may be acquired pursuant to this Option:** (subject to adjustment pursuant to Section 10 below).
 - Number of Incentive Stock Options:
 - Number of Non-qualified Options:
 4. **Exercise price per share:**
(subject to adjustment pursuant to Section 10 below)
 5. **Expiration Date of Option:**
 6. **Vesting Schedule.** Except as otherwise provided in this Agreement, this Option becomes first exercisable, subject to the Option’s expiration date, in whole share installments as follows:
 - (i) Twenty-five percent (25%) of the number of shares subject to the Option are first exercisable on the first anniversary of the date of grant; and
 - (ii) Twenty-five percent (25%) of the number of shares subject to the Option are first exercisable on the second anniversary of the date of grant; and
 - (iii) Twenty-five percent (25%) of the number of shares subject to the Option are first exercisable on the third anniversary of the date of grant; and
-

- (iv) Twenty-five percent (25%) of the number of shares subject to the Option are first exercisable on the fourth anniversary of the date of grant; and

The right of exercise shall be cumulative. This Option may not be exercised at any time on or after the Option's expiration date. Vesting will automatically accelerate in the event of the Participant's death, Disability, Retirement or Involuntary Termination following a Change in Control.

7. **Exercise Procedure.**

7.1. **Delivery of Notice of Exercise.** This Option shall be exercised in whole or in part by the Participant's delivery to the Company of written notice (the "**Notice of Exercise**" attached hereto as Exhibit A) setting forth the number of shares with respect to which this Option is to be exercised, together with payment by cash or other means acceptable to the Committee, including:

- (i) by tendering, either actually or by attestation, shares of Common Stock valued at Fair Market Value (as defined in Section 7.2 hereof) as of the day of exercise;
- (ii) by irrevocably authorizing a third party, acceptable to the Committee, to sell shares of Common Stock (or a sufficient portion of the shares) acquired upon exercise of the Option and to remit to the Company a sufficient portion of the sale proceeds to pay the entire exercise price and any tax withholding resulting from such exercise;
- (iii) by personal, certified or cashier's check, or
- (iv) by other property deemed acceptable by the Committee; or
- (v) by any combination thereof.

7.2. **"Fair Market Value"** means, with respect to a share of Common Stock on a specified date:

- (i) the final reported sales price on the date in question (or if there is no reported sale on such date, on the last preceding date on which any reported sale occurred) as reported in the principal consolidated reporting system with respect to securities listed or admitted to trading on the principal United States securities exchange on which the shares of Common Stock are listed or admitted to trading, as of the close of the market in New York City and without regard to after-hours trading activity; or
- (ii) if the shares of Common Stock are not listed or admitted to trading on any such exchange, the closing bid quotation with respect to a share of Common Stock on such date, as of the close of the market in New York City and without regard to after-hours trading activity, or, if no such quotation is provided, on another similar system, selected by the Committee, then in use; or
- (iii) if (i) and (ii) are not applicable, the Fair Market Value of a share of Common Stock as the Committee may determine in good faith and in accordance with Code Section 422.

8. **Delivery of Shares.**

8.1 **Delivery of Shares.** Delivery of shares of Common Stock upon the exercise of this Option shall be subject to the following:

(i) Delivery of shares of Common Stock shall comply with all applicable laws (including, the requirements of the Securities Act), and the applicable requirements of any securities exchange or similar entity.

(ii) The issuance of shares of Common Stock pursuant to the exercise of this Option may be effected on a non-certificated basis, to the extent not prohibited by applicable law or the applicable rules of any stock exchange.

9. **Change in Control.**

9.1 In the event of an Involuntary Termination of Employment following a Change in Control, all Options held by the Participant will become fully exercisable, subject to the expiration provisions otherwise applicable to the Option.

9.2 A “Change in Control” shall be deemed to have occurred as provided in Section 5.2 of the Plan.

10. **Adjustment Provisions.**

10.1 This Option, including the number of shares subject to the Option and the exercise price, shall be adjusted upon the occurrence of the events specified in, and in accordance with the provisions of, Section 4.4 of the Plan.

11. **Termination of Option and Accelerated Vesting.**

11.1 This Option shall terminate upon the Option’s expiration date, or earlier as follows:

(i) **Death.** This Option shall vest and become exercisable in full in the event of the Participant’s termination of employment by reason of the Participant’s death while this Option is unexercised. This Option may thereafter be exercised by the legal representative or legatee of the Participant for a period of one year from the date of death, subject to termination on the expiration date of this Option, if earlier.

(ii) **Disability.** This Option shall vest and become exercisable in full in the event of the Participant’s termination of employment by reason of Disability while this Option is unexercised. This Option may thereafter be exercised for a period of one year from the date of such termination of Service by reason of Disability, subject to termination on the Option’s expiration date, if earlier. The Committee shall have sole authority and discretion to determine whether the Participant’s employment has been terminated by reason of Disability.

(iii) **Retirement.** If the Participant’s employment terminates by reason of the Participant’s Retirement while this Option is unexercised, this Option shall vest and become exercisable in full, and may thereafter be exercised for a period of one year from the date of such termination, subject to termination on the Option’s expiration date, if earlier.

(i) **Termination for Cause.** If the Participant’s employment has been terminated for Cause, this Option shall immediately terminate and be of no further force and effect. The Board of Directors shall have sole authority and discretion to determine whether the Participant’s employment has been terminated for Cause.

(ii) **Other Termination.** If the Participant’s employment terminates for any reason other than death, Disability, Retirement or for Cause, this Option may thereafter be exercised, to the extent it was exercisable at the time of such termination, for a period of three

months following termination, subject to termination on the Option's expiration date, if earlier.

- (iii) **Incentive Option Treatment.** No Option shall be eligible for treatment as an incentive option in the event such Option is exercised more than three months following termination of employment, or one year following termination of employment due to death or Disability and provided further, in order to obtain incentive option treatment for Options exercised by heirs or devisees of a Participant, the Participant's death must have occurred while employed or within three (3) months of termination of employment.

12. **Miscellaneous.**

- 12.1. No Option shall confer upon the Participant thereof any rights as a stockholder of the Company prior to the date on which the individual fulfills all conditions for receipt of such rights. This Agreement may not be amended or otherwise modified unless evidenced in writing and signed by the Company and the Participant.
- 12.2. Except as otherwise provided by the Committee, Options under the Plan are not transferable other than by will or by the laws of descent and distribution or pursuant to a qualified domestic relations order. The Committee shall have the discretion to permit the transfer of Options under the Plan; *provided, however*, that such transfers shall be limited to Immediate Family Members of Participants, trusts and partnerships established for the primary benefit of such family members or to charitable organizations, and; *provided, further*, that such transfers are not made for consideration to the Participant.
- 12.3. This Option shall be governed by and construed in accordance with the laws of the State of New York, without regard to its principles of conflicts of laws.
- 12.4. This Option is subject to all laws, regulations and orders of any governmental authority which may be applicable thereto and, notwithstanding any of the provisions hereof, the Participant agrees that he will not exercise the Option granted hereby nor will the Company be obligated to issue any shares of stock hereunder if the exercise thereof or the issuance of such shares, as the case may be, would constitute a violation by the Participant or the Company of any such law, regulation or order or any provision thereof.
- 12.5. The granting of this Option does not confer upon the Participant any right to be retained in the employ of the Company or any subsidiary.

IN WITNESS WHEREOF, the Company has caused this instrument to be executed in its name and on its behalf as of the date of grant of this Option set forth above.

EVANS BANCORP, INC.

By:

David J. Nasca, President and CEO

PARTICIPANT'S ACCEPTANCE

The undersigned hereby accepts the foregoing option and agrees to the terms and conditions hereof, including the terms and provisions of the Amended and Restated 2019 Long-Term Equity Incentive Plan. The undersigned hereby acknowledges receipt of a copy of the Company's Amended and Restated 2019 Long-Term Equity Incentive Plan.

Participant

(Participant Name)

EXHIBIT A

NOTICE OF EXERCISE OF STOCK OPTIONS
(BY EMPLOYEES)

I hereby exercise the stock option (the "Option") granted to me by Evans Bancorp, Inc. (the "Company") or its affiliate, subject to all the terms and provisions set forth in the Stock Option Agreement (the "Agreement") and the Evans Bancorp, Inc. Amended and Restated 2019 Long-Term Equity Incentive Plan (the "Plan") referred to therein, and notify you of my desire to purchase _____ shares of common stock of the Company ("Common Stock") for a purchase price of \$_____ per share.

Enclosed please find (check one):

- Cash, personal, certified or cashier's check in the sum of \$_____, in full payment of the purchase price.
- Stock of the Company with a fair market value of \$_____ in full payment of the purchase price.*
- My check in the sum of \$_____ and stock of the Company with a fair market value of \$_____, in full payment of the purchase price.*
- Please sell _____ Shares from my Option Shares **through a broker** in full/partial payment of the purchase price.

I understand that after this exercise, _____ shares of Common Stock remain subject to the Option, subject to all terms and provisions set forth in the Agreement and the Plan.

I hereby represent that it is my intention to acquire these shares for the following purpose:

- investment
- resale or distribution

Please note: if your intention is to resell (or distribute within the meaning of Section 2(11) of the Securities Act of 1933) the shares you acquire through this Option exercise, the Company or transfer agent may require an opinion of counsel that such resale or distribution would not violate the Securities Act of 1933 prior to your exercise of such Option.

Date: _____, _____.
_____ Participant's signature

* If I elect to exercise by exchanging shares I already own, I will constructively return shares that I already own to purchase the new option shares. If my shares are in certificate form, I must attach a separate statement indicating the certificate number of the shares I am treating as having exchanged. If the shares are held in "street name" by a registered broker, I must provide the Company with a notarized statement attesting to the number of shares owned that will be treated as having been exchanged. I will keep the shares that I already own and treat them as if they are shares acquired by the option exercise. In addition, I will receive additional shares equal to the difference between the shares I constructively exchange and the total new option shares that I acquire.

[\(Back To Top\)](#)

Section 5: EX-10.4 (EX-10.4)

Director

**EXHIBIT 10.4
RESTRICTED STOCK AWARD AGREEMENT**

Granted by

EVANS BANCORP, INC.
under the

EVANS BANCORP, INC. AMENDED AND RESTATED 2019 LONG TERM EQUITY INCENTIVE PLAN

1 . **Restricted Stock Award.** Evans Bancorp, Inc. (the "Company") has granted to the following person (the "Participant") a Restricted Stock Award (the "Award"), pursuant to the Company's Amended and Restated 2019 Long-Term Equity Incentive Plan (as amended from time to time) (the "Plan"), of the number of shares (the "Shares") of common stock ("Common

Stock) of the Company set forth opposite the Participant's name below, subject to the terms and conditions of this Restricted Stock Award Agreement (the "**Agreement**") and the Plan. Except where the context otherwise requires, the term "Company" shall include the parent and all present and future subsidiaries of the Company as defined in Sections 424(e) and 424(f) of the Internal Revenue Code of 1986, as amended or replaced from time to time (the "**Code**"). Capitalized terms used herein but not defined shall have the same meaning as in the Plan.

Name of Participant:

Number of Shares of Common Stock Granted:

Date of Grant:

2 . **Forfeitable Shares and Vested Shares.** All Shares shall be deemed to be "**Forfeitable Shares**" until the Company's right of Forfeiture, described in Section 4 below, has expired (and the Participant's right to retain such shares has accrued) in accordance with the Vesting Schedule set forth in Section 3. Forfeitable Shares shall be subject to Forfeiture as described in Section 4 below. "**Vested Shares**" are Shares held by the Participant as to which the Company's right of Forfeiture has expired (and the Participant's right to retain such Shares has accrued) based on the Vesting Schedule. All certificates representing Forfeitable Shares shall remain in the possession of the Company until such shares become Vested Shares in accordance with the terms of this Agreement. The Company shall deliver to the Participant a certificate representing the Participant's Vested Shares promptly after such Shares become Vested Shares.

3 . **Vested Shares; Vesting Schedule.** The Company's right of Forfeiture shall expire and the whole Shares shall become Vested Shares in accordance with the following:

(a) Twenty-five percent (25%) of the total number of Shares shall become Vested Shares on the first anniversary of the date of grant;

(b) An additional twenty-five percent (25%) of the total number of Shares shall become Vested Shares on the second anniversary of the date of grant; and

(c) An additional twenty-five percent (25%) of the total number of Shares shall become Vested Shares on the third anniversary of the date of grant; and

(d) The final twenty-five percent (25%) of the total number of Shares shall become Vested Shares on the fourth anniversary of the date of grant.

(e) **Vesting Upon Death or Disability.** In the event of Participant's termination of employment due to death or Disability of the Participant before the expiration of the Vesting Schedule, then the vesting of the Shares under the Vesting Schedule shall be automatically accelerated in full so that all of the Shares shall become Vested Shares, effective as of the date of death or Disability;

(f) **Vesting Upon Retirement.** In the event of the Participant's termination of employment by reason of Retirement before the expiration of the Vesting Schedule, then the vesting of the Shares under the Vesting Schedule shall be automatically accelerated in full so that all of the Shares shall become Vested Shares, effective as of the date of such Retirement.

(g) **Vesting Upon an Involuntary Termination of Service Following a Change in Control.** In the event of the Participant's Involuntary Termination of Employment (as defined in the Plan) following a Change in Control (as defined in the Plan), all Restricted Stock Awards shall become fully earned and vested immediately.

4. **Forfeiture of Shares.**

(a) **Forfeiture.** Upon the Participant's termination of employment for any reason (other than the Participant's death, Disability or Retirement or following a Change in Control as provided in Section 3) before the end of the term of the Vesting Schedule, then all Shares which as of the date of such termination constitute Forfeitable Shares shall be forfeited to the Company ("**Forfeiture**") without payment of any consideration by the Company. There shall be no further accruals under the Vesting Schedule (and no further Forfeitable Shares shall become Vested Shares) from and after the date of any such termination.

(b) **Forfeiture of Forfeitable Shares.** The Participant's rights in all Forfeitable Shares shall terminate automatically on the date of the Participant's termination of employment for reasons other than the Participant's death, Disability or Retirement, and the Company may thereupon cancel the certificate or certificates representing such Forfeitable Shares on its books. In the event that the certificates then being held by the Company under this Agreement represent Vested Shares as well as Forfeitable Shares, the Company shall issue to the Participant a replacement certificate for such Vested Shares.

5. **No Implied Rights.** Neither a Participant nor any other person shall by reason of participation in the Plan acquire any right in or title to any assets, funds or property of the Company or any subsidiary whatsoever, including any specific funds, assets, or other property which the Company or any subsidiary, in its sole discretion, may set aside in anticipation of a liability under the Plan. A Participant shall have only a contractual right to the shares of Common Stock or amounts, if any, payable or distributable under the Plan, unsecured by any assets of the Company or any subsidiary, and nothing contained in the Plan shall constitute a guarantee that the assets of the Company or any subsidiary shall be sufficient to pay any benefits to any person. No individual shall have the right to be selected to receive an Award under the Plan, or, having been so selected, to receive a future Award under the Plan.

6. **No Rights as a Stockholder.** Except as otherwise provided in the Plan, no Award under the Plan shall confer upon the holder thereof any rights as a stockholder of the Company prior to the date on which the individual fulfills all conditions for receipt of such rights.

7. **Dividends.** Any dividends or distributions (other than a stock dividend consisting of shares of Common Stock) declared and paid with respect to shares of Common Stock subject to the Award, without regard to vesting status, shall be immediately distributed to the Participant.

8. **Voting Rights.** The Participant shall have the right to vote the shares of Common Stock subject to this Award, without regard to vesting status, unless shares are forfeited.

9. **Availability of Tax Election.** The Participant acknowledges that the Company has advised the Participant of the possibility of making an election under Section 83(b) of the Code with respect to the Award of the Shares and has recommended that the Participant consult a qualified tax advisor regarding the desirability of making such an election in light of the Participant's individual circumstances.

10. **Acceptance and Acknowledgment.** The Recipient hereby accepts this Award, subject to all the terms and provisions herein and to the provisions of the Plan (as it may be amended from time to time). The Recipient hereby agrees to accept as binding, conclusive, and final, all decisions and interpretations of the Committee upon any questions arising under the Plan. As a condition to the issuance of shares of common stock of the Company under this Award, the Recipient authorizes the Company to deduct any taxes required to be withheld by the Company under federal, state, or local law as a result of his receipt of this Award.

11. **Miscellaneous.**

(a) This Agreement may not be amended or otherwise modified unless evidenced in writing and signed by the Company and the Participant.

(b) All notices under this Agreement shall be mailed or delivered by hand to the parties at their respective addresses set forth beneath their names below or at such other address as may be designated in writing by either of the parties to one another.

(c) This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its principles of conflicts of laws.

(d) This Agreement is executed in two (2) counterpart originals, one (1) to be retained by the Participant and one (1) to be retained by the Company.

EVANS BANCORP, INC.

By:

David J. Nasca, President and Chief Executive Officer

PARTICIPANT'S ACCEPTANCE

The undersigned hereby accepts the grant of the Award described in this Agreement and agrees to the terms and conditions hereof and of the Amended and Restated 2019 Long Term Equity Incentive Plan. The undersigned hereby acknowledges receipt of a copy of the Company's Amended and Restated 2019 Long-Term Equity Incentive Plan.

PARTICIPANT

(Participant Name)

[\(Back To Top\)](#)

Section 6: EX-10.5 (EX-10.5)

DIRECTOR

**EXHIBIT 10.5
Stock Option**

Granted by

EVANS BANCORP, INC.
under the

EVANS BANCORP, INC. AMENDED AND RESTATED 2019 LONG TERM EQUITY INCENTIVE PLAN

This option ("**Option**") is and shall be subject in every respect to the provisions of the Amended and Restated 2019 Long-Term Equity Incentive Plan (as may be amended from time to time) (the "**Plan**"), of Evans Bancorp, Inc. (the "**Company**"), which is incorporated herein by reference and made a part hereof, subject to the provisions of this Agreement. A copy of the Plan has been provided to each person granted an Option pursuant to the Plan. The holder of this Option (the "**Participant**") hereby accepts this Option, subject to all the terms and provisions of the Plan and this Agreement, and agrees that all decisions under and interpretations of the Plan and this Agreement by the Compensation Committee ("**Committee**") or the Board shall be final, binding and conclusive upon

the Participant and the Participant's heirs, legal representatives, successors and permitted assigns. Except where the context otherwise requires, the term "Company" shall include the parent and all present and future subsidiaries of the Company as defined in Section 424(e) and 424(f) of the Internal Revenue Code of 1986, as amended or replaced from time to time (the "Code"). Capitalized terms used herein but not defined shall have the same meaning as in the Plan.

1. **Name of Participant:**
 2. **Date of Grant:**
 3. **Total number of shares of Company common stock, \$0.50 par value ("Common Stock") that may be acquired pursuant to this Option:** (subject to adjustment pursuant to Section 10 below).
 - Number of Non-qualified Options:
 4. **Exercise price per share:**
(subject to adjustment pursuant to Section 10 below)
 5. **Expiration Date of Option:**
 6. **Vesting Schedule.** Except as otherwise provided in this Agreement, this Option becomes first exercisable, subject to the Option's expiration date, in whole share installments as follows:
 - (i) Twenty-five percent (25%) of the number of shares subject to the Option are first exercisable on the first anniversary of the date of grant; and
 - (ii) Twenty-five percent (25%) of the number of shares subject to the Option are first exercisable on the second anniversary of the date of grant; and
 - (iii) Twenty-five percent (25%) of the number of shares subject to the Option are first exercisable on the third anniversary of the date of grant; and
 - (iv) Twenty-five percent (25%) of the number of shares subject to the Option are first exercisable on the fourth anniversary of the date of grant; and
-

The right of exercise shall be cumulative. This Option may not be exercised at any time on or after the Option's expiration date. Vesting will automatically accelerate in the event of the Participant's death, Disability, Retirement or Involuntary Termination following a Change in Control.

7. **Exercise Procedure.**

7.1. **Delivery of Notice of Exercise.** This Option shall be exercised in whole or in part by the Participant's delivery to the Company of written notice (the "**Notice of Exercise**" attached hereto as Exhibit A) setting forth the number of shares with respect to which this Option is to be exercised, together with payment by cash or other means acceptable to the Committee, including:

- (i) by tendering, either actually or by attestation, shares of Common Stock valued at Fair Market Value (as defined in Section 7.2 hereof) as of the day of exercise;
- (ii) by irrevocably authorizing a third party, acceptable to the Committee, to sell shares of Common Stock (or a sufficient portion of the shares) acquired upon exercise of the Option and to remit to the Company a sufficient portion of the sale proceeds to pay the entire exercise price and any tax withholding resulting from such exercise;
- (iii) by personal, certified or cashier's check, or
- (iv) by other property deemed acceptable by the Committee; or
- (v) by any combination thereof.

7.2 **"Fair Market Value"** means, with respect to a share of Common Stock on a specified date:

- (i) the final reported sales price on the date in question (or if there is no reported sale on such date, on the last preceding date on which any reported sale occurred) as reported in the principal consolidated reporting system with respect to securities listed or admitted to trading on the principal United States securities exchange on which the shares of Common Stock are listed or admitted to trading, as of the close of the market in New York City and without regard to after-hours trading activity; or
- (ii) if the shares of Common Stock are not listed or admitted to trading on any such exchange, the closing bid quotation with respect to a share of Common Stock on such date, as of the close of the market in New York City and without regard to after-hours trading activity, or, if no such quotation is provided, on another similar system, selected by the Committee, then in use; or
- (iii) if (i) and (ii) are not applicable, the Fair Market Value of a share of Common Stock as the Committee may determine in good faith and in accordance with Code Section 422.

8. **Delivery of Shares.**

8.1 **Delivery of Shares.** Delivery of shares of Common Stock upon the exercise of this Option shall be subject to the following:

- (i) Delivery of shares of Common Stock shall comply with all applicable laws (including, the requirements of the Securities Act), and the applicable requirements of any securities exchange or similar entity.

- (ii) The issuance of shares of Common Stock pursuant to the exercise of this Option may be effected on a non-certificated basis, to the extent not prohibited by applicable law or the applicable rules of any stock exchange.

9. **Change in Control.**

9.1 In the event of an Involuntary Termination of Employment following a Change in Control, all Options held by the Participant will become fully exercisable, subject to the expiration provisions otherwise applicable to the Option.

9.2 A “**Change in Control**” shall be deemed to have occurred as provided in Section 5.2 of the Plan.

10. **Adjustment Provisions.**

10.1 This Option, including the number of shares subject to the Option and the exercise price, shall be adjusted upon the occurrence of the events specified in, and in accordance with the provisions of, Section 4.4 of the Plan.

11. **Termination of Option and Accelerated Vesting.**

11.1 This Option shall terminate upon the Option’s expiration date, or earlier as follows:

- (i) **Death.** This Option shall vest and become exercisable in full in the event of the Participant’s termination of employment by reason of the Participant’s death while this Option is unexercised. This Option may thereafter be exercised by the legal representative or legatee of the Participant for a period of one year from the date of death, subject to termination on the expiration date of this Option, if earlier.
- (ii) **Disability.** This Option shall vest and become exercisable in full in the event of the Participant’s termination of employment by reason of Disability while this Option is unexercised. This Option may thereafter be exercised for a period of one year from the date of such termination of Service by reason of Disability, subject to termination on the Option’s expiration date, if earlier. The Committee shall have sole authority and discretion to determine whether the Participant’s employment has been terminated by reason of Disability.
- (iii) **Retirement.** If the Participant’s employment terminates by reason of the Participant’s Retirement while this Option is unexercised, this Option shall vest and become exercisable in full, and may thereafter be exercised for a period of one year from the date of such termination, subject to termination on the Option’s expiration date, if earlier.
- (i) **Termination for Cause.** If the Participant’s employment has been terminated for Cause, this Option shall immediately terminate and be of no further force and effect. The Board of Directors shall have sole authority and discretion to determine whether the Participant’s employment has been terminated for Cause.
- (ii) **Other Termination.** If the Participant’s employment terminates for any reason other than death, Disability, Retirement or for Cause, this Option may thereafter be exercised, to the extent it was exercisable at the time of such termination, for a period of three months following termination, subject to termination on the Option’s expiration date, if earlier.

12. **Miscellaneous.**

- 12.1. No Option shall confer upon the Participant thereof any rights as a stockholder of the Company prior to the date on which the individual fulfills all conditions for receipt of such rights. This Agreement may not be amended or otherwise modified unless evidenced in writing and signed by the Company and the Participant.
- 12.2. Except as otherwise provided by the Committee, Options under the Plan are not transferable other than by will or by the laws of descent and distribution or pursuant to a qualified domestic relations order. The Committee shall have the discretion to permit the transfer of Options under the Plan; *provided, however*, that such transfers shall be limited to Immediate Family Members of Participants, trusts and partnerships established for the primary benefit of such family members or to charitable organizations, and; *provided, further*, that such transfers are not made for consideration to the Participant.
- 12.3. This Option shall be governed by and construed in accordance with the laws of the State of New York, without regard to its principles of conflicts of laws.
- 12.4. This Option is subject to all laws, regulations and orders of any governmental authority which may be applicable thereto and, notwithstanding any of the provisions hereof, the Participant agrees that he will not exercise the Option granted hereby nor will the Company be obligated to issue any shares of stock hereunder if the exercise thereof or the issuance of such shares, as the case may be, would constitute a violation by the Participant or the Company of any such law, regulation or order or any provision thereof.
- 12.5. The granting of this Option does not confer upon the Participant any right to be retained in the employ of the Company or any subsidiary.

IN WITNESS WHEREOF, the Company has caused this instrument to be executed in its name and on its behalf as of the date of grant of this Option set forth above.

EVANS BANCORP, INC.

By:

David J. Nasca, President and CEO

PARTICIPANT'S ACCEPTANCE

The undersigned hereby accepts the foregoing option and agrees to the terms and conditions hereof, including the terms and provisions of the Amended and Restated 2019 Long-Term Equity Incentive Plan. The undersigned hereby acknowledges receipt of a copy of the Company's Amended and Restated 2019 Long-Term Equity Incentive Plan.

Participant

(Participant Name)

EXHIBIT A

NOTICE OF EXERCISE OF STOCK OPTIONS
(BY EMPLOYEES)

I hereby exercise the stock option (the "Option") granted to me by Evans Bancorp, Inc. (the "Company") or its affiliate, subject to all the terms and provisions set forth in the Stock Option Agreement (the "Agreement") and the Evans Bancorp, Inc. Amended and Restated 2019 Long-Term Equity Incentive Plan (the "Plan") referred to therein, and notify you of my desire to purchase _____ shares of common stock of the Company ("Common Stock") for a purchase price of \$ _____ per share.

Enclosed please find (check one):

- Cash, personal, certified or cashier's check in the sum of \$ _____, in full payment of the purchase price.
- Stock of the Company with a fair market value of \$ _____ in full payment of the purchase price.*
- My check in the sum of \$ _____ and stock of the Company with a fair market value of \$ _____, in full payment of the purchase price.*
- Please sell _____ Shares from my Option Shares **through a broker** in full/partial payment of the purchase price.

I understand that after this exercise, _____ shares of Common Stock remain subject to the Option, subject to all terms and provisions set forth in the Agreement and the Plan.

I hereby represent that it is my intention to acquire these shares for the following purpose:

- investment
- resale or distribution

Please note: if your intention is to resell (or distribute within the meaning of Section 2(11) of the Securities Act of 1933) the shares you acquire through this Option exercise, the Company or transfer agent may require an opinion of counsel that such resale or distribution would not violate the Securities Act of 1933 prior to your exercise of such Option.

Date: _____, _____
Participant's signature

* If I elect to exercise by exchanging shares I already own, I will constructively return shares that I already own to purchase the new option shares. If my shares are in certificate form, I must attach a separate statement indicating the certificate number of the shares I am treating as having exchanged. If the shares are held in "street name" by a registered broker, I must provide the Company with a notarized statement attesting to the number of shares owned that will be treated as having been exchanged. I will keep the shares that I already own and treat them as if they are shares acquired by the option exercise. In addition, I will receive additional shares equal to the difference between the shares I constructively exchange and the total new option shares that I acquire.

[\(Back To Top\)](#)

Section 7: EX-23.1 (EX-23.1)

Exhibit 5
LUSE GORMAN, PC
ATTORNEYS AT LAW

5335 WISCONSIN AVENUE, N.W., SUITE 780
WASHINGTON, D.C. 20015

TELEPHONE (202) 274-2000
FACSIMILE (202) 362-2902
www.luselaw.com

May 20, 2019

Board of Directors
Evans Bancorp, Inc.
One Grimsby Drive
Hamburg, New York 14075

**Re: Evans Bancorp, Inc. – Registration Statement on Form S-8
Amended and Restated 2019 Long-Term Equity Incentive Plan**

Ladies and Gentlemen:

You have requested the opinion of this firm as to certain matters in connection with the registration of 427,386 shares of common stock, \$0.50 par value per share (the "Shares"), of Evans Bancorp, Inc. (the "Company") to be issued pursuant to the Evans Bancorp, Inc. Amended and Restated 2019 Long-Term Equity Incentive Plan (the "LTIP").

In rendering the opinion expressed herein, we have reviewed the Certificate of Incorporation of the Company, the LTIP, the Company's Registration Statement on Form S-8 (the "Form S-8"), as well as resolutions of the board of directors of the Company and applicable statutes and regulations governing the Company. We have assumed the authenticity, accuracy and completeness of all documents in connection with the opinion expressed herein. We have also assumed the legal capacity and genuineness of the signatures of persons signing all documents in connection with which the opinions expressed herein are rendered.

Based on the foregoing, we are of the following opinion:

Following the effectiveness of the Form S-8, the Shares of the Company, when issued in accordance with the terms and conditions of the LTIP, will be legally issued, fully paid and non-assessable.

This opinion has been prepared solely for the use of the Company in connection with the preparation and filing of the Form S-8, and shall not be used for any other purpose or relied upon by any other person without the prior express written consent of this firm. We hereby consent to the use of this opinion in the Form S-8.

Very truly yours,

/s/ Luse Gorman, PC
LUSE GORMAN, PC

[\(Back To Top\)](#)

Section 8: EX-23.2 (EX-23.2)

EXHIBIT 23.2 Consent of Independent Registered Public Accounting Firm

The Board of Directors
Evans Bancorp, Inc.:

We consent to the incorporation by reference in the registration statement on Form S-8 of Evans Bancorp, Inc. of our reports dated February 28, 2019, with respect to the consolidated balance sheets of Evans Bancorp, Inc. and subsidiaries as of December 31, 2018 and 2017, the related consolidated statements of income, comprehensive income, changes in stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2018, and the related notes (collectively, the consolidated financial statements), and the effectiveness of internal control over financial reporting as of December 31, 2018, which reports appear in the December 31, 2018 annual report on Form 10-K of Evans Bancorp, Inc. incorporated herein by reference.

KPMG LLP

Buffalo, New York
May 20, 2019

[\(Back To Top\)](#)