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STATE OF DELAWARE



EXECUTIVE DEPARTMENT  
DOVER

EXECUTIVE ORDER  
NUMBER THIRTEEN

TO: Members of the 127th General Assembly, Heads of all State Departments and Agencies

RE: Contract between the State of Delaware and the Farmers Bank of the State of Delaware, dated June 18, 1973; and distribution thereof.

WHEREAS, a contract between the State of Delaware and the Farmers Bank of the State of Delaware, attached hereto and made a part hereof, has been executed; and

WHEREAS, a condition of the contract is that there are no obligations on the part of the State unless the contract is ratified or authorized by the General Assembly; and

WHEREAS, the contract should be made available to all Members of the General Assembly and to all interested persons prior to consideration by the General Assembly of any legislation ratifying or authorizing the contract.

NOW, THEREFORE, I, SHERMAN W. TRIBBITT, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order as follows:

1. Copies of this Executive Order and the contract attached hereto shall be distributed to each member of the General Assembly prior to June 20, 1973.
2. The Secretary of State shall maintain extra copies of this Executive Order and the contract attached hereto at his office or at such other place or places as he deems advisable for inspection and distribution to interested persons.

APPROVED this 18th day of June, 1973

Governor

ATTEST:

Secretary of State



CONTRACT

THIS CONTRACT, made and entered into as of this 18th day of June, 1973, by and between FARMERS BANK OF THE STATE OF DELAWARE (hereinafter defined and referred to as the "Bank"), duly incorporated and existing under and by virtue of the Laws of the State of Delaware, and THE STATE OF DELAWARE (hereinafter defined and referred to as the "State").

WITNESSETH:

WHEREAS, it has been determined to be in the best interests of both State and the Bank that the historic relationship between them be modified; and

WHEREAS, the State has maintained in the Bank an average daily balance in excess of \$77,000,000.00 for the period of the five years preceding December 31, 1972; and

WHEREAS, this Contract will prevent an abrupt termination of the relationship which, if such occurred, would result in serious adverse consequences because of the Bank's historic role as the sole depository of State moneys and the State's historic and unique dependence on the Bank's financial advice and management.

NOW, THEREFORE, upon approval hereof by the Treasurer, the Secretary of Finance and the Attorney General, and upon execution of this Contract by the Governor and the Chairman of the Board of Directors of the Bank with signatures attested thereto, for and in consideration of \$1.00 and the mutual covenants, promises and obligations herein the sufficiency whereof is hereby mutually acknowledged, the parties hereto formally covenant, agree and bind themselves as follows, to-wit:

## ARTICLE I

### Definitions

§1.1 "Bank" shall mean The Farmers Bank of the State of Delaware.

§1.2 "Contract" shall mean this Contract as from time to time amended or supplemented in accordance with the terms hereof.

§1.3 "Contract date" shall mean the date ascribed to and written on this Contract.

§1.4 "Commencement date" shall mean the immediate date when all of the following either separately or together have occurred:

(a) A legal opinion of the Attorney General and a legal opinion of counsel for the Bank to the effect that valid legislation shall have been enacted by the State which adequately:

(i) ratifies or authorizes the State to enter into and perform this Contract; and

(ii) authorizes the sale of capital stock of the Bank held by the State.

(b) A legal opinion of the Attorney General and a legal opinion of counsel to the Bank to the effect that this Contract is

legally binding and enforceable upon both the State and the Bank and no provision thereof is contrary to Federal or State law or regulation.

- (c) The sale by the State of stock of the Bank and receipt of collected moneys by the Treasurer of the State of Delaware for the full net sales price of the stock.

§1.5 "State" shall mean the State of Delaware except where reference is made to moneys, it shall further include its School Districts, agencies and other bodies, other than counties, which are required by law on the Contract date to deposit moneys or funds in the Bank.

§1.6 "Fiscal Year" shall mean the fiscal year used by the State as of the Contract date. The first State fiscal year shall mean the fiscal year beginning after the commencement date of this Contract. The second State fiscal year shall be the subsequent year and so on.

## ARTICLE II

### Duration

§2.1 This Contract shall become effective on the commencement date and continue until the end of fifteen full State fiscal years following the commencement date, or until such earlier date as mutually agreed upon by the State and Bank.

## ARTICLE III

### Contractual Obligations

§3.1 This Contract shall be a binding contractual obligation on State and Bank and is not to be altered, amended or modified unilaterally by either State or Bank.

§3.2 Subject to the provisions of §3.3 and §3.4 hereof, the State shall deposit each fiscal year to the credit of the State Treasurer in the Bank sufficient moneys so that at the end of such fiscal year the corresponding amount shown below shall have been the average of the daily balances for such fiscal year:

The portion of the fiscal year after the commencement date (if the commencement date is not on the first day of a fiscal year), and for each of the six full fiscal years after commencement date

	\$70,000,000
7th fiscal year	63,000,000
8th fiscal year	56,000,000
9th fiscal year	49,000,000
10th fiscal year	42,000,000
11th fiscal year	35,000,000
12th fiscal year	28,000,000
13th fiscal year	21,000,000
14th fiscal year	14,000,000
15th fiscal year	7,000,000

In calculating or determining whether the State has met the above minimum average of daily balances for any fiscal year, any moneys invested or deposited with the Bank as the result of competitive bidding shall not be considered.

§3.3 The State shall not be in default of its obligations set forth in §3.2 if the State has insufficient moneys during any fiscal year to meet its requirement of the average of daily balances for that fiscal year, provided, however, that this section shall not apply to the limited extent of any portion of such insufficiency which is the result of the State depositing moneys in other banks or making investments other than with the Bank.

§3.4 The State shall not be in default of its obligations set forth in §3.2 if the State has insufficient moneys during any fiscal year to meet its requirement of the minimum average of daily balances for that fiscal year as the result of the State making investments or making deposits in other banks, provided, however, that during the next following fiscal year the average of the daily balances is greater than the required minimum average of the daily balances for such next following fiscal year by at least the amount of the insufficiency resulting from such investments and such deposits with other banks, and further provided, however, that this section shall apply only to the limited extent of 10% of the required minimum average of the daily balances of the fiscal year in which such insufficiency occurs. Nothing in this section shall be construed so as to permit the State to intend to create an insufficiency by means of making deposits in other banks or making investments other than with the Bank.

§3.5 Throughout the duration of this Contract as stated in Article II herein the Bank shall be a depository of State moneys and shall, without special fee or charge, furnish to the State the same services the Bank extends without special fee or charge to its other depositors, and, in addition, without special fee or charge, the Bank shall at the option of the State (1) continue to

act as paying agent for the State and for all School District bonds and coupons,  
(2) continue to provide daily balance statements on operating accounts, and  
(3) furnish, as the State may reasonably request to assist it in its financial planning, such information as is available to the Bank regarding the State's finances during the relationship between the State and the Bank previous to the Contract date.

## ARTICLE IV

### Compensation to the Bank

§4.1 The rate of return to the State on deposits held in time accounts in the Bank shall be set by annual negotiation between the Bank and the State and shall constitute a reasonable return to the State on such deposits. In so negotiating, the parties shall consider the rate of return the State might reasonably expect to earn on a portfolio of short term treasury securities and other high grade short term investments having maturity dates corresponding to such time accounts, provided, however, that such rate of return shall not exceed the amount the Bank is permitted to pay by law or regulation.

§4.2 During the period from the commencement date to the end of the tenth full fiscal year following the commencement date, the State shall maintain all of the demand deposit accounts of the State in the Bank and the Bank shall continue, as heretofore, to provide services to the State in addition to those set forth in Article III, §3.5 and the State shall pay the Bank therefore, which consideration may include the maintenance of compensating balances in the demand deposit accounts of the State, as determined by annual negotiation between the parties on the basis of the nature of the services, the cost thereof to the Bank and a reasonable profit thereon to the Bank.

§4.3 In the event of the inability of the parties to agree to the rate of return provided by §4.1 hereof, or the additional services and the compensation therefor provided by §4.2 hereof, then such shall be set by determination of the Court of Chancery with a right of appeal to the Supreme Court of the State of Delaware.

## ARTICLE V

### Miscellaneous

§5.1 This Contract may be amended or modified from time to time only in

writing and by mutual agreement of the appropriate authorities of the State and Bank.

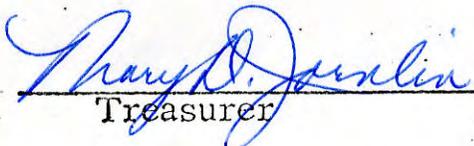
§5.2 This Contract may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

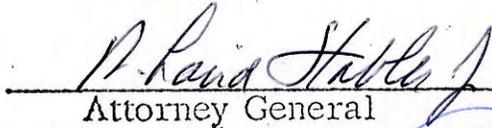
§5.3 Failure of either party to exercise any right or remedy shall not constitute a waiver of such right or remedy or any other rights or remedies, provided, however, that no right or remedy for any default may be exercised more than three years after such default.

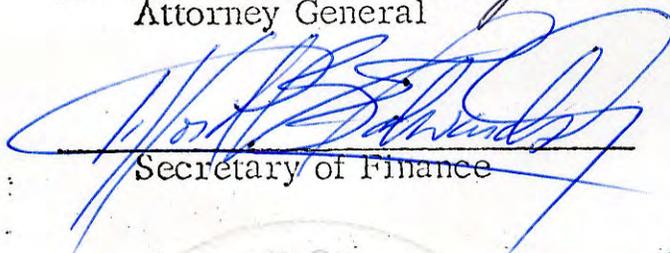
§5.4 This Contract may be terminated by the option of either party in the event that all legislation referred to in Article I, §1.4 (a) is not enacted prior to June 30, 1973, provided, however, that such option may not be exercised after the enactment of all such legislation.

IN WITNESS WHEREOF, the State and the Bank have approved this Contract and have caused the same to be executed in their respective names and behalf and the respective seals to be affixed and attested.

Approved By:

  
Treasurer

  
Attorney General

  
Secretary of Finance

STATE OF DELAWARE

  
By Governor

Attest:  (SEAL)  
Secretary of State



FARMERS BANK OF THE STATE OF  
DELAWARE

By *W. L. ...*  
Chairman of the Board of Directors

Attest: *Lewis ...* (SEAL)  
Secretary

