

**PROGRAMMATIC AGREEMENT**  
**BETWEEN THE NATIONAL PARK SERVICE, FIRST STATE NATIONAL**  
**HISTORICAL PARK;**  
**DELAWARE STATE HISTORIC PRESERVATION OFFICE;**  
**DELAWARE DIVISION OF HISTORICAL AND CULTURAL AFFAIRS;**  
**CITY OF NEW CASTLE;**  
**DELAWARE NATION;**  
**AND THE**  
**DELAWARE TRIBE OF INDIANS**  
**REGARDING THE REHABILITATION OF THE SHERIFF’S HOUSE,**  
**NEW CASTLE, DELAWARE**

WHEREAS the National Park Service (NPS), First State National Historical Park (First State NHP) plans to rehabilitate the Sheriff’s House in New Castle, Delaware for NPS and partner use; and

WHEREAS, First State NHP has defined the undertaking's area of potential effect (APE) as the Sheriff’s House parcel and surrounding thirty foot construction easement, the New Castle Court House parcel, adjacent portions of the New Castle Green, and portions of the New Castle Historic District from where the Sheriff’s House is visible.

WHEREAS, The Delaware Division of Historical and Cultural Affairs (HCA) is the parent agency of the Delaware State Historic Preservation Office (SHPO), but for the purposes of Section 106 consultation on all First State NHP matters the HCA and SHPO will be treated as distinct consulting parties

WHEREAS First State NHP has determined that the undertaking may have an adverse effect resulting from construction of interior restrooms and modification of an original exterior door on the Sheriff’s House, a contributing structure to the New Castle National Historic Landmark Historic District listed in the National Register of Historic Places, and has consulted with the Delaware State Historic Preservation Office (SHPO) pursuant to 36 C.F.R. part 800, of the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108); AND

WHEREAS, First State NHP has consulted with the Delaware Division of Historical and Cultural Affairs (HCA), as owner and property manager of the New Castle Court House and New Castle Green, regarding the effects of the undertaking on historic properties and has invited them to sign this Programmatic Agreement (PA) as an invited signatory; and

WHEREAS, First State NHP has consulted with the City of New Castle (regarding the effects of the undertaking on historic properties and has invited them to sign this PA as a concurring party; and

WHEREAS, First State NHP has notified and consulted with the Delaware Tribe of Indians, Delaware Nation, and Stockbridge-Munsee Community, for their interest in potential archaeological resources within the APE which may be eligible for the National Register of Historic Places and have religious and cultural significance, to participate in the Section 106 consultation; the Delaware Tribe of Indians and Delaware Nation have been invited to sign this PA as invited signatories; the Stockbridge-Munsee Community declined to participate; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), First State NHP has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect finding with specified documentation and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

WHEREAS, First State NHP has coordinated the Section 106 review of the undertaking with the preparation of an Environmental Assessment pursuant to the National Environmental Policy Act (NEPA), and made its finding of adverse effect and proposed resolution of adverse effects available for public comment concurrently with the Environmental Assessment; and

WHEREAS, the *Programmatic Agreement Among the National Park Service, ACHP, and National Conference of Historic Preservation Officers (NCSHPO) for Compliance with Section 106 of the NHPA* (Nationwide PA) was executed in 2008; and the 2008 Nationwide PA defines responsibilities and qualifications of NPS staff contributing to First State NHP's compliance with Section 106 for this undertaking; and

NOW, THEREFORE, First State NHP, the DE SHPO, DE HCA, City of New Castle, Delaware Nation, and the Delaware Tribe of Indians agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

## STIPULATIONS

First State NHP shall ensure that the following measures are carried out:

### I. DESIGN REVIEW AND CONSTRUCTION

- A. The NPS will ensure that the functional requirements of this PA are incorporated into the contract between the NPS and the contractor for each stage of the project. It shall be the responsibility of the NPS to ensure that the contractor adheres to the appropriate stipulation of this agreement.
- B. The NPS will ensure that notes are incorporated into the contract regarding public use of the New Castle Court House. The NPS shall coordinate with the DE HCA and New Castle Court House Museum staff on construction plans and timing of construction to minimize disruption of regularly scheduled programs and public tours of the New Castle Court House.
- C. The NPS will ensure that all plans for the rehabilitation of the Sheriff's House, including any work affecting the New Castle Court House, are developed according to *The Secretary of the Interior's Standards for the Treatment of Historic Properties* and all recordation/documentation activities are performed or directly supervised by professionals meeting the qualification standards in the Secretary of the Interior's Professional Qualification Standards.
- D. The NPS will share information about research or inventory work including monitoring, testing, and investigations with the DE SHPO, DE HCA, City of New Castle, Delaware Nation, and the Delaware Tribe of Indians.
- E. The NPS will conduct a Phase I archeological survey for the APE of the proposed project.
  1. The NPS will provide the DE SHPO, DE HCA, City of New Castle, Delaware Nation, and the Delaware Tribe of Indians with the proposed scope of work prior to initiating survey work.
  2. The NPS will provide draft and final copies of the survey report to the consulting parties, and take into account any comments received.
  3. The NPS will ensure that known and/or newly discovered archeological sites are clearly delineated on the construction drawings to prevent unwanted construction activities in archeologically sensitive areas, and that construction specifications outline protective measures which will be monitored and enforceable by the construction manager.
  4. If avoidance of site(s) is not feasible, the parties will consult to determine an appropriate treatment plan.
- F. For each stage of the project (preliminary design drawings and construction drawings), the NPS will submit 30%, 60%, and 90% completion drawings to the DE SHPO, DE HCA, City of New Castle, Delaware Nation, and the Delaware Tribe of Indians for review and comment.
  1. Unless otherwise agreed to beforehand, the DE SHPO, DE HCA, City of New Castle, Delaware Nation, and the Delaware Tribe of Indians will be afforded a

- 30-day period, commencing on receipt of NPS materials, to comment on submitted information and drawings.
2. The NPS will consult with the DE SHPO, DE HCA, City of New Castle, Delaware Nation, and the Delaware Tribe of Indians to resolve any identified concerns regarding the effective avoidance and minimization of adverse effects to historic properties.
- G. Once any identified concerns are resolved, the First State NHP Superintendent may approve the construction drawings and proceed with permitting the construction of the undertaking.
- H. The NPS will submit an application and plans to the City of New Castle for issuance of a Historic Review Certificate and building permit pursuant to Sections 7.5 and 9.2 of the New Castle Zoning Ordinance.
- I. The DE SHPO, DE HCA, City of New Castle, Delaware Nation, and the Delaware Tribe of Indians may monitor construction activities pursuant to this agreement. The NPS will cooperate with the DE SHPO, DE HCA, City of New Castle, Delaware Nation, and the Delaware Tribe of Indians in carrying out any monitoring and review responsibilities.
- J. Should design changes become necessary during construction, the First State NHP Superintendent may approve minor changes determined by First State NHP's cultural resource management team, as defined in the 2008 Nationwide PA, to meet the *Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation* and which would result in no effect or no adverse effect to historic properties. These changes may include, but not be limited to, such things as changes in fixtures, quantity or type of materials, installation methods, or changes in configuration of non-historic fabric from the approved plans that would not result in additional adverse effects and would not, in the opinion of the CRM Team affect character-defining elements. Changes approved in this manner will be reported in the annual report to the DE SHPO and the annual report on the PA (see stipulation V).
- K. If First State NHP's cultural resource management team determine that the proposed design changes are neither minor nor meet the Secretary of Interior's Standards, First State NHP shall notify and provide documentation (including drawings, renderings, or specifications, as needed) to the DE SHPO, DE HCA, City of New Castle, Delaware Nation, and the Delaware Tribe of Indians and an assessment of whether the proposed changes alter the adverse effect finding for the undertaking.
1. First State NHP may convene a meeting(s) on site, in person, or otherwise to discuss the proposed design changes with the consulting parties.
  2. Within thirty (30) days of receipt, or other mutually agreeable timeframe, the DE SHPO, DE HCA, City of New Castle, Delaware Nation, and the Delaware Tribe of Indians may provide comments to First State NHP on the proposed design changes and assessment of any change to the adverse effect finding for the undertaking.
  3. The First State NHP Superintendent will consult with the DE SHPO, DE HCA, City of New Castle, Delaware Nation, and the Delaware Tribe of Indians to

resolve any identified concerns before approving the design changes.

4. Should the parties determine that additional mitigation measures are necessary to resolve increased adverse effects as a result of the design changes, the DE SHPO, DE HCA, City of New Castle, Delaware Nation, and the Delaware Tribe of Indians may amend this PA in accordance with stipulation VII.

## II. ARCHEOLOGICAL MONITORING AND DOCUMENTATION

- A. The NPS will use fencing or other barriers, and archeological monitoring by qualified staff or consultants, to protect archeological resources known or discovered during planning for this project from construction-related effects.
- B. Should new archeological sites be identified or new effect to a known archeological site become necessary during project activities, the NPS will implement the Discovery Plan in stipulation IV below.
- C. The NPS will assemble all artifacts and field records, including field notes compiled by the archeologists, site sketches, and reports and accession them into First State NHP's museum collection. Final reports will be added to the NPS's Technical Information Center. All objects of historical or archaeological value or interest found on archaeological sites owned or controlled by the NPS shall be curated in accordance with NPS standards.
- D. All objects of historical or archaeological value or interest found on archaeological sites owned or controlled by the State of Delaware and related records resulting from research, surveys and excavation under this Agreement shall be curated at the DE HCA, or its designee, following the policies of the institution. The NPS shall ensure that all records and materials resulting from the archaeological investigations will be processed, prepared for, and curated in accordance with 36 CFR Part 79 and the Division's "Guidelines for the Curation of Archaeological Collections" (2001) or its successor.
- E. The NPS will provide copies of all documentation of archeological sites within the APE to the DE SHPO, DE HCA, City of New Castle, Delaware Nation, and the Delaware Tribe of Indians, within two (2) years of construction completion.

## III. DURATION

This PA will expire if its terms are not carried out within ten (10) years from the date of its execution. Six months prior to the expiration of this period, First State NHP shall consult with the other signatories to reconsider the terms of the PA and amend it in accordance with stipulation VII below. No extension or amendment will be considered in effect unless all signatures have agreed in writing.

## IV. POST-REVIEW DISCOVERIES

If potential historic properties are discovered or unanticipated effects on historic properties found, First State NHP shall implement the following Discovery Plan:

- A. First State NHP will immediately halt construction in the area of discovery, and will provide documentation of the discovery including an account of how it happened;

drawings, map, and photographs, as appropriate; and proposed avoidance, minimization, investigation, and/or recordation to the DE SHPO, DE HCA, City of New Castle, Delaware Nation, and the Delaware Tribe of Indians, within two (2) days of discovery.

- B. If human remains are discovered, First State NHP shall immediately halt all construction involving subsurface disturbance in the area of the discovery, and in the area immediately surrounding the discovery where further subsurface features may reasonably be expected to occur. First State NHP shall cover and protect the area. First State NHP shall immediately (within 24 hours) notify the Delaware SHPO and consult to determine an appropriate course of action, taking into consideration the Advisory Council on Historic Preservation's Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects and the provisions of the Delaware Unmarked Human Remains Act (7 Del. C. Ch. 54).
- C. If the discovery involves Native American remains, burials or artifacts protected by the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 (PL 101-601), First State NHP will also notify the Delaware Tribe of Indians and the Delaware Nation within 48 hours of the discovery, and consult to determine an appropriate course of action in compliance with NAGPRA and 43 CFR 10, Subpart B with regard to Inadvertent Discoveries on Federal Lands.
- D. The First State NHP may convene a meeting(s) on site, in person, or otherwise to discuss the discovery and proposed avoidance, minimization, investigation, and/or recordation with the DE SHPO, DE HCA, City of New Castle, Delaware Nation, and the Delaware Tribe of Indians.
- E. Within seven (7) days of receipt, or other mutually agreeable timeframe, the parties may provide comments to the First State NHP on the proposed design changes and assessment of any change to the adverse effect finding for the undertaking.
- F. The First State NHP Superintendent will consult with the DE SHPO, DE HCA, City of New Castle, Delaware Nation, and the Delaware Tribe of Indians to resolve any identified concerns prior to approving avoidance, minimization, investigation, and/or recordation.
- G. Should the parties determine that additional mitigation measures are necessary to resolve an increased adverse effect as a result of the discovery, the parties may amend this PA in accordance with stipulation VII.

#### V. MONITORING AND REPORTING

By February of each year following the execution of this PA until it expires or is terminated, First State NHP shall provide all parties to this PA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in First State NHP's efforts to carry out the terms of this PA.

#### VI. DISPUTE RESOLUTION

Should any signatory to this PA object at any time to any actions proposed or the manner in

which the terms of this PA are implemented, First State NHP shall consult with such party to resolve the objection. If First State NHP determines that such objection cannot be resolved, First State NHP will:

- A. Forward all documentation relevant to the dispute, including the First State NHP's proposed resolution, to the ACHP. The ACHP shall provide First State NHP with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, First State NHP shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. First State NHP will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, First State NHP may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, First State NHP shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the PA, and provide them and the ACHP with a copy of such written response.
- C. First State NHP's responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

## VII. AMENDMENTS

This PA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

## VIII. TERMINATION

If any signatory to this PA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per stipulation VII, above. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories.

Once the PA is terminated, and prior to work continuing on the undertaking, First State NHP must either (a) execute a new agreement pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. First State NHP shall notify the signatories as to the course of action it will pursue.

## IX. ANTI-DEFICIENCY

All actions taken by First State NHP in accordance with this PA are subject to the availability of funds, and nothing in this PA shall be interpreted as constituting a violation of the Anti-Deficiency Act.

Execution of this PA by First State NHP, the DE SHPO, DE HCA, City of New Castle, Delaware Nation, and the Delaware Tribe of Indians and implementation of its terms evidence that First State NHP has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORIES:

National Park Service, First State National Historical Park

\_\_\_\_\_ Date  
Ethan McKinley, Superintendent

Delaware State Historic Preservation Officer

\_\_\_\_\_ Date  
Gwen Davis, Deputy State Historic Preservation Officer

INVITED SIGNATORIES:

Delaware Division of Historical and Cultural Affairs

\_\_\_\_\_ Date  
Timothy Slavin, Director

Delaware Nation

\_\_\_\_\_ Date  
Name, Title

Delaware Tribe of Indians

\_\_\_\_\_ Date  
Name, Title

City of New Castle

\_\_\_\_\_ Date  
Name, Title