

UPDATED DRAFT February 15, 2022

**MEMORANDUM OF AGREEMENT
BETWEEN National Park
Service, Independence
National Historical Park, the
Delaware Nation, the
Shawnee Tribe, and the
Pennsylvania State Historic
Preservation Office
REGARDING the Rehabilitation and Reuse of the First Bank of the United States
South Third Street, Philadelphia, PA**

WHEREAS, the Independence National Historical Park (the PARK) plans to undertake the Rehabilitation of the First Bank of the United States (First Bank) the undertaking; located in Philadelphia, Pennsylvania; and

WHEREAS, the undertaking consists of the rehabilitation of the interior, repair of the exterior masonry, replacement of the deteriorated metal roof and the construction of an addition on the west elevation of the building; and

WHEREAS, the First Bank is individually listed on the National Register of Historic Places and listed as a National Historic Landmark (NRIS #87001292); and

WHEREAS, the First Bank was closed to routine public visitation in 2002 and since that time has been underutilized; and

WHEREAS, the PARK explored alternatives to minimize the effect on the First Bank and in consultation with Pennsylvania State Historic Preservation Office (PA SHPO) and the NPS Region 1, National Historic Landmark (NHL) program concluded that the construction of an addition on the west façade was the best alternative; and

WHEREAS, the PARK has defined the undertaking's area of potential effect (APE) as a city block bounded by 3rd Street to the east, 4th Street to the west, Chestnut Street to the North, and Walnut Street to the South; and

WHEREAS, the APE includes Carpenters' Hall, individually listed on the National Register of Historic Places and listed as a National Historic Landmark (NRIS #70000552); and

WHEREAS, the First Bank Building is visible from several historic buildings within the APE, all part of Independence National Historical Park, including the NHL Carpenters' Hall; and

WHEREAS, an Archaeological Sensitivity Study was completed in June 2020. The study included 0.73-acres surrounding the First Bank. The study suggested that although it is likely that archaeological resources remain in the project area, it is unlikely that intact ground surfaces, pre-contact deposits, or early historic-period structures remain. However, the study noted that it is possible that deeply buried historic-period features exist. Due to the possibility of encountering deeply buried historic-period archaeological features, the area was determined to be archaeologically sensitive and formal monitoring of excavations exceeding 5 feet in depth was recommended; and

WHEREAS, the PARK determined that the undertaking may have an adverse effect on First

Bank of the United States and Carpenters' Hall, and has consulted with the Pennsylvania State Historic Preservation Officer pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108); and

WHEREAS, the PARK initiated consultation with the Delaware Tribe, the Delaware Nation, the Shawnee Tribe, The Shawnee Tribe of Eastern Oklahoma and the Stockbridge Munsee Band of Mohican Indians pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108); and invited them to be consulting parties for this undertaking; and

WHEREAS, the Delaware Tribe, requested to continue as a consulting party but not as a signatory on this MOA, the Delaware Nation and the Shawnee Tribe requested to continue as a consulting parties and be signatories on the MOA, and the Stockbridge Munsee Community has indicated that the project is outside of their area of interest and has declined; and

WHEREAS, the PARK has notified the Secretary of the Interior (through Region 1, NPS National Historic Landmarks Program) and invited them to participate in consultation regarding the potential effects to NHLs and they have accepted; and

WHEREAS, the NPS, NHL program concluded that the undertaking would have an adverse effect; and

WHEREAS, the PARK entered into a Partner Design and Construction Agreement on May 7, 2019, with Independence Historical Trust (IHT), whereby IHT would procure and facilitate the design and construction services needed to rehabilitate the First Bank; and

WHEREAS, the Partner Design and Construction agreement was limited to the adaptive reuse and rehabilitation of the First Bank Building and did not include repair and replacement of the main metal roof and/or repair of the exterior masonry; projects NPS was undertaking separately; and

WHEREAS, fundraising challenges limited IHT's ability to cover the cost of the construction; and

WHEREAS, the PARK has consulted with IHT regarding the effects of the undertaking on historic properties and has invited them to sign this MOA as a concurring party; and

WHEREAS, Carpenters' Hall is owned by the Carpenters' Company and the Park has consulted with the Carpenters' Company regarding the effects of the undertaking on their property and has invited them to be a consulting party and invited them to sign the MOA as a concurring party; and

WHEREAS, the PARK has informed and engaged the public regarding the Rehabilitation of the First Bank during a June 10, 2021, virtual public meeting presenting the alternatives and the proposed rehabilitation plan and subsequently invited participants, including the Museum of the American Revolution (MOAR) to continue to consult with the park on the project; and

WHEREAS, the Park has invited the MOAR, located at the corner of 2nd and Chestnut Streets directly across 2nd Street from the First Bank of the United States (outside of the APE) to be a consulting party and they have accepted; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), NPS has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation, and the ACHP has chosen *not to* participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

NOW, THEREFORE, the PARK and the SHPO 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

I. MITIGATION OF THE ADVERSE EFFECT

1. An exhibit focusing on the history of the site and setting of the First Bank and Carpenters' Hall will be incorporated into the planned permanent exhibit in the First Bank. Beginning with the pre-contract period through to the development of the current setting, the exhibit will include the entire block bounded by Walnut Street, Chestnut Street, Third Street and Fourth Street, which includes the First Bank and Carpenters' Hall. The exhibit will improve interpretation of Dock Creek, provide an opportunity to introduce Native American occupation of the area into the story of the development of the First Bank, and help visitors understand the chronology of the setting, urbanism, and the current assemblage of historic buildings in a green landscape. 3D modeling, animation, interactives and/or narration will be utilized to show the changes in dynamic, time-lapse fashion; static panels featuring renderings and text covering various periods will augment the 3D as needed.
 - a. The setting and site exhibit will be submitted to PA SHPO and the tribes for review prior to production.
 - b. The exhibit will be developed to allow it to be used by the Park in other locations including the website.
2. A full set of coordinated Design Development documents for the entire project including the rehabilitation and addition as well as the exterior masonry repair and roof replacement project will be submitted to PA SHPO for review.
3. In accordance with the recommendations of the Archeological Sensitivity Study produced in June 2020, all construction excavations deeper than 5' below existing grade will be monitored by an archeologist meeting the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (SOI Standards). The results of the monitoring will be documented, and a final report produced which meets SOI Standards.
 - a. A copy of the report will be submitted to PA SHPO and the tribes.

IV. DURATION

This MOA will expire if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, NPS may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VIII below.

V. INADVERTENT DISCOVERIES

If during construction or demolition activities previously unknown archeological resources are discovered all work in the immediate vicinity of the discovery will be halted and the procedures of 36 CFR Part 800, 13(c) followed. In the unlikely event that Native American human remains, funerary objects, sacred objects and objects of cultural patrimony are discovered, all work in the immediate vicinity of the discovery will be halted and the procedures of 43 CFR § I 0.3 will be carried out including taking immediate steps to protect the discoveries in situ, notification of affiliated tribes, tribal consultation, and the development and execution of a Plan of Action.

VI. POST-REVIEW DISCOVERIES

If properties are discovered that may be historically significant or unanticipated effects on historic properties occur, NPS shall reinitiate consultation with the consulting parties and signatories to this PA to determine how to proceed.

VII. MONITORING AND REPORTING

Every twenty-four months, two years, following the execution of this MOA until it expires or is terminated, NPS shall provide all parties to this MOA 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 NPS's efforts to carry out the terms of this MOA.

VIII. DISPUTE RESOLUTION

Should any signatory or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, NPS shall consult with such party to resolve the objection. If NPS determines that such objection cannot be resolved, NPS will:

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

IX. AMENDMENTS

This MOA 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.

X. ANTI-DEFICIENCY ACT

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

XI. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation VIII, above. If within thirty (30) days (or another time period agreed to by all signatories) an

amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, NPS must either (a) execute an MOA 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. NPS shall notify the signatories as to the course of action it will pursue.

Execution of this MOA by the PARK and the PA SHPO and implementation of its terms evidence that NPS has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.**

SIGNATORIES:

National Park Service

_____ Date
[insert agency official name and title]

The Delaware Nation

_____ Date
[insert name and title]

The Shawnee Tribe

_____ Date
[insert name and title]

Pennsylvania State Historic Preservation Officer

_____ Date
[insert name and title]

CONCURRING PARTIES:

Independence Historical Trust

_____Date
[insert name and title]

The Carpenters' Company

_____Date
[insert name and title]

Notes:

** This document assumes that the term "signatory" has been defined in the agreement to include both signatories and invited signatories.*

*** Remember that the agency must submit a copy of the executed MOA, along with the documentation specified in Section 800.11(f), to the ACHP prior to approving the undertaking in order to meet the requirements of Section 106. 36 CFR § 800.6(b)(1)*

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