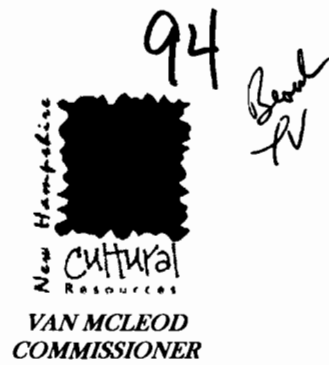




THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION
AND
DEPARTMENT OF CULTURAL RESOURCES

CHRISTOPHER D. CLEMENT, SR.
COMMISSIONER



Department of Transportation
Bureau of Environment
November 12, 2013

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, New Hampshire 03301

Sole Source

REQUESTED ACTION

Authorize the Department of Transportation (DOT), Bureau of Environment, to enter into a **SOLE SOURCE** Memorandum of Understanding (MOU) with the Department of Cultural Resources, Division of Historical Resources (DHR) (Vendor #177886) in an amount not to exceed \$175,000, for preparation of a National Register Nomination for the Portsmouth Downtown Historic District, effective upon Governor and Council approval, through December 31, 2016. 100% Federal Funds (NH's share).

Funding is available as follows for FY 2014 and FY 2015, and is contingent upon the availability and continued appropriation of funds in FY 2016 and FY 2017:

| | <u>FY 2014</u> | <u>FY 2015</u> | <u>FY 2016</u> | <u>FY 2017</u> |
|--------------------------------------|----------------|----------------|----------------|----------------|
| 04-96-96-963515-3054 | | | | |
| Consolidated Federal Aid | | | | |
| 400-500870 Highway Contract Payments | \$50,000 | \$65,000 | \$55,000 | \$5,000 |

EXPLANATION

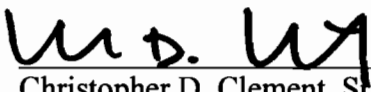
This item is sole source as stipulation #4 of a Memorandum of Agreement (MOA) for mitigation associated with replacement of the Memorial Bridge. In 2011, DOT began the process of replacing the Memorial Bridge between Portsmouth, NH and Kittery, ME. One required aspect to its removal was completion of all required federal environmental planning and documentation, including Section 106 of the National Historic Preservation Act (NHPA), ensuring that appropriate mitigation was included in the project to offset the loss of the former Memorial Bridge. The mitigation included providing DHR with funding in an amount not to exceed \$175,000 to prepare a National Register Nomination for the Portsmouth Downtown Historic District (*attached*). It was agreed by the signatories of the MOA - DOT, Maine Department of Transportation, DHR, Maine Historic Preservation Commission, and the Federal Highway Administration - that DHR was best suited and uniquely qualified to administer this work effort.

The nomination for the Portsmouth Downtown Historic District will define boundaries for a Portsmouth Historic District, which will provide an excellent planning tool for future projects in the area, while also reducing project planning costs for those projects, since required up-front surveys would have already been completed. In addition, interested property owners could realize potential voluntary incentives to maintaining the historic character of the downtown.

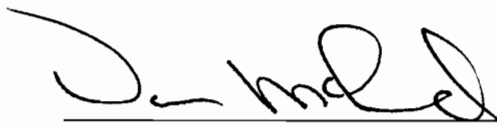
The project costs for the Memorial Bridge project is shared equally, 50% by the New Hampshire Department of Transportation and 50% reimbursement by the Maine Department of Transportation. Attached is a copy of the MOA between DOT and MaineDOT that was approved at the March 16, 2011 Governor and Council Meeting (Item #146), which outlines the funding breakdown. The New Hampshire share of this contract's funding is 80% Federal funds with 20% State match. Turnpike toll credit is being utilized for New Hampshire's match requirement, effectively using 100% federal funds.

Your approval of this resolution is respectfully requested.

Sincerely,



Christopher D. Clement, Sr.
Commissioner
Department of Transportation



Van McLeod
Commissioner
Department of Cultural Resources

CDC:VM/ktn

Attachments

STATE OF NH
DEPT OF JUSTICE
2013 NOV 20 AM 10:35

Portsmouth, NH-Kittery, ME
13678F
Fed #A000(911)
[Memorial Bridge Replacement]

MEMORANDUM OF UNDERSTANDING
Between the
NH DEPARTMENT OF TRANSPORTATION
And the
NH DIVISION OF HISTORICAL RESOURCES

WHEREAS, the NH Division of the Federal Highway Administration and the Maine Division of the Federal Highway Administration (FHWA) concurred with the NH Department of Transportation (NHDOT), Maine Department of Transportation (MaineDOT), NH Division of Historical Resources State Historic Preservation Office (NHSHP) and Maine State Historic Preservation Office (MESHPO) through a March 4, 2011 Finding of Adverse Effect Memorandum that the replacement of all spans of the 1923 Memorial Bridge that carried US Route 1 over the Piscataqua River between Portsmouth, NH and Kittery, Maine resulted in a Section 106 finding of Adverse Effect under the National Historic Preservation Act (16 U.S.C. 470f) to the Portsmouth, NH-Kittery, A000(911), 13678F Project (herein referenced as “Project”); and

WHEREAS, the FHWA in consultation with the NHDOT, MaineDOT, NHSHP and MESHPO and pursuant to regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) have signed a Memorandum of Agreement, dated March 15, 2011 (herein referenced as “2011-MOA”) outlining mitigation measures to be undertaken; and

WHEREAS, the signatories of the 2011-MOA have agreed that the preparation of a nomination to the National Register of Historic Places (hereinafter called the “Nomination”) for the Portsmouth Downtown Historic District is an appropriate mitigation measure for the adverse effects presented by the Memorial Bridge project; and

WHEREAS, as a signatory to the MOA, the NHSHP has agreed to coordinate the preparation of this Nomination given its experience with the National Register of Historic Places Program; and

WHEREAS, the FHWA and NHDOT, as the project lead, have agreed to provide Project funding up to, but not to exceed, \$175,000 to NHSHP for the completion of this mitigation stipulation;

NOW, THEREFORE, NHDOT and NHSHP agree that the Nomination will adhere to the following:

Stipulations

The Nomination objective and process is to:

- Compile sufficient research and fieldwork within the study area to identify historic properties (i.e. contributing and non-contributing to historic district);
- Formally delineate the Portsmouth Downtown Historic District boundary line and period of significance;
- Prepare the Nomination, including mapping and photography, to the standards and guidance of the National Park Service and the NHSHP;
- Undertake Public Outreach to inform property owners within the District and Portsmouth City Officials how a National Register Nomination is developed and how nomination/listing will, and will not, impact and benefit the community; and
- Provide benefits and information to property owners, the City of Portsmouth, and various other entities, such as recognition, tax credit and grant opportunities, and information that can be used for fundraising, advocacy, and planning purposes.

For the purposes of this MOU, NHDOT and NHSHPO agree to cooperate as follows:

1. The NHDOT agrees to:
 - a. Prepare and submit all needed documentation for approval by the Governor and Executive Council to establish this project.
 - b. Authorize Project funding up to, but not to exceed, \$175,000 for the NHSHPO to have completed the Portsmouth Downtown National Register Historic District Nomination;
 - c. Reimburse NHSHPO for administrative and certified consultant costs up to the amount in Section 'b' above.
 - d. Provide support, if needed, for the NHSHPO at public meetings to assist the public's understanding of the relationship between the Nomination and the Memorial Bridge transportation project.

2. The NHSHPO agrees to:

- a. Develop a Scope of Services and Request for Proposals (RFP) and select and contract with a qualified consultant (36 CFR 61) to complete the Nomination;
- b. Seek reimbursement from NHDOT, not to exceed \$175,000, for the demonstrated costs to prepare the Nomination;
- c. Agree that the selection process shall be based upon qualification based, low-bid determination;
- d. Obtain Governor and Executive Council approval to enter into contract with consultant to complete the Portsmouth Downtown Historic District National Register Nomination;
- e. Provide administrative support for the consultant contract, including administrative management of consultant invoices and processing payments;
- f. Consultant invoicing shall be billed no more than on a quarterly schedule base, unless approved by NHDOT based upon consultant schedule and progress;
- f. Oversee and approve all products developed by the consultant including:
 - i. Assessment of methodologies;
 - ii. Draft and final product reviews;
- g. Provide a series of public meetings where interested citizens can learn more about the project and, as appropriate, participate in it.
- h. Provide quarterly financial updates to NHDOT and FHWA for TIGER Grant reporting; and
- i. Make available all nomination documentation, as may be requested, for State and Federal auditing as may be necessary.

3. The NHDOT and NHSHPO agree to the following deliverable/schedule for the completion of the Nomination:

- a. National Register Nomination for the Portsmouth Downtown Historic District
- b. December 2016

Termination of any paragraph, part, or section of this Agreement per the conditions described herein shall not be interpreted as termination of the entire Agreement. The period of this Agreement shall be from the date of Governor and Executive Council approval through December 31, 2016.

In WITNESS WHEREOF, the respective parties have hereunto set their hands on the dates indicated.

Christopher D. Clement, Sr.
Christopher D. Clement, Sr.
Department of Transportation

11/5/2013
Date

Elizabeth H. Muzzey
Elizabeth H. Muzzey
Division of Historical Resources
State Historic Preservation Office

11/5/13
Date

John J. Conforti
Print Name: John J. Conforti
Office of Attorney General

11/21/13
Date

SECRETARY OF STATE

I hereby certify that the foregoing contract was approved by the Governor and Executive Council of the State of the State of New Hampshire at there meeting on _____

Signed _____

Memorial Bridge Replacement Project
Portsmouth, NH-Kittery, ME
A000(911)
13678F
(Page 1)

**Memorandum of Agreement
SUBMITTED TO THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
PURSUANT TO 36 CFR PART 800.6(a)**

WHEREAS, the NH Division of the Federal Highway Administration (NHFHWA) and the Maine Division of the Federal Highway Administration (MEFHWA) propose the replacement of all spans of the Memorial Bridge that carries US Route 1 over the Piscataqua River between Portsmouth, NH and Kittery, Maine; and

WHEREAS, the NHFHWA and MEFHWA in consultation with the NH State Historic Preservation Officer (NHSPO) and the Maine State Historic Preservation Officer (MESHPO) and pursuant to regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) have determined that the proposed undertaking will have an adverse effect on the following properties that are eligible for listing in the National Register of Historic Places:

Memorial Bridge Historic District, Portsmouth, NH and Kittery, Maine
Scott Avenue Bridge, Portsmouth, NH
Memorial Bridge (lift span and two flanking spans), Portsmouth, NH and Kittery, Maine
Memorial Park, Portsmouth, NH
Portsmouth Historic District, Portsmouth, NH
John Paul Jones Memorial Park, Kittery, Maine

and;

WHEREAS, the NHFHWA and the MEFHWA have agreed that the New Hampshire Department of Transportation (NHDOT) and the Maine Department of Transportation (Maine DOT) shall participate in the consultation with the NHSPO and MESHPO respectively to find ways to mitigate the effects to the above six properties through their respective standard consultation processes; and

WHEREAS, the NHDOT and Maine DOT on behalf of the NHFHWA and MEFHWA respectively will execute these efforts to mitigate the adverse effects of the project; and

WHEREAS, the NHDOT and Maine DOT have solicited public comment through the public involvement process and the consulting party procedures with NHFHWA and MEFHWA as stated in 36 CFR 800 (2); and

WHEREAS, the FHWA has consulted with the Aroostook Band of MicMacs, the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, and the Penobscot Nation and will apprise them of any findings; and

WHEREAS, the NHDOT and Maine DOT have consulted with the following Consulting Parties to the Section 106 Process: the National Trust for Historic Preservation, Port of Portsmouth Maritime Museum and Albacore Park, Historic Bridge Foundation, and the Portsmouth Historical Society in the development of this agreement; and

WHEREAS, the NHFHWA and MEFHWA have agreed that the NHDOT and Maine DOT shall participate in consultation with the NHSHPO and the MESHPO to find ways to mitigate its effects on impacted archaeological sites found eligible for the National Register of Historic Places under its standard phased investigations; and

WHEREAS, to the best of our knowledge and belief, no human remains and/or associated or unassociated funerary objects or sacred objects of cultural patrimony as defined in the Native American Graves Protection Act (25 U.S.C. 3001), are expected to be encountered in the archaeological work; and

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

NOW, THEREFORE, NHFHWA with the assistance of MEFHWA, NHDOT, and Maine DOT shall ensure that the following terms and conditions will be implemented by the NHDOT and Maine DOT under this MOA in a timely manner and with adequate resources in compliance with the National Historic Preservation Act of 1966 16 U.S.C. 470.

Stipulations

NHFHWA, with the assistance of MEFHWA, NHDOT, and Maine DOT will ensure that the following stipulations are carried out:

Project Development

1. The NHSHPO, the MESHPO, FHWA and the Parties consulted during the Section 106 and National Environmental Policy Act (NEPA) processes as listed above will be provided the opportunity to review and comment on the bridge design during the design-build process *at the following milestones: 25-30% (30 day review), 60% (10 day review), and 90% design (10 day review)*. The bridge design for the replacement of the bridge will follow *the Secretary of the Interior's Standards for Rehabilitation and Guidelines for the Rehabilitation of Historic Buildings*, Standards 9 and 10, as determined by FHWA in consultation with NHSHPO and MESHPO. This continued consultation will focus on the design's conformance with Standards 9 and 10.

2. NHDOT will ensure that the Memorial Bridge, including the three-span Memorial Bridge, the Scott Avenue Bridge (Portsmouth Approach Span), and the Kittery Approach Spans are marketed together for reuse in compliance with 23 USC Sec. 144 for relocation. Marketing will occur once within a New Hampshire and Maine state and local newspaper by June 1, 2011. Additionally, the NHDOT and Maine DOT will market the bridge on their websites between April 1 and June 1, 2011. Ownership transfer will require the use of preservation covenants or other instruments to ensure the long-term protection of the qualifying characteristics of the Memorial Bridge.
3. FHWA shall ensure that NHDOT provides a letter report on all activities carried out under this agreement to the MESHPO, NESHPO, and the consulting parties to the Section 106 process. Each party who contributes to the mitigation of the Memorial Bridge Replacement Project will prepare a section of this letter report relative to such involvement annually due one month prior to the due date of the letter report on April 1 of each year beginning in 2012 and terminating at the termination of this MOA.

Historical Resources

4. NHDOT will provide NESHPO with funding in an amount not to exceed \$175,000 to prepare a National Register Historic District Nomination for the Portsmouth Downtown District.
5. The Maine DOT, in coordination with the MESHPO will develop a phased plan to identify National Register Eligible properties in the Town of Kittery. The survey plan will include geographically relevant areas of the town and a priority order to survey the areas. The Maine DOT will provide \$50,000 from the project for the completion of the survey that will be completed in accordance with the phased plan.
6. The NHDOT will fund and oversee the development of an interpretive panel as follows. A 36 CFR 61(Appendix A)-qualified architectural historian will prepare an interpretive panel explaining the history of the Memorial Bridge crossing, the Engineering significance of the bridge, and background of its design engineer, J.A.L. Waddell, the preeminent designer of lift bridges. The panel will be placed in Prescott Park or a location near the bridge identified by the Public Outreach Committee (see stipulation 10 below). The first location is contingent upon continuing consultation with and agreement by the Prescott Park Trustees, Trustees of Trust Funds. Any other location will be coordinated with the landowner. NHDOT will ensure that the interpretive panel is manufactured and erected with appropriate American with Disabilities Act access as part of this design-build project. The design and content of the panel will be subject to the

approval of the NESHPO and MESHPO, who will be provided 45 calendar days for review; and will be subject to approval by the property owner on which the panel is placed. The panel will be erected as part of the design-build contract.

7. The preparation of the Historic Structures Report (HSR) for the Memorial Bridge, which included the distribution of thirty copies to state and local repositories and its placement on the NHDOT website, has been completed. The Historic American Engineering Record for the bridge is within this document and includes the detailed description, narrative history, discussion of engineering significance, archivally stable large format photographs, and archivally stable copies of the original design plans. NHDOT will also ensure that an annotation of the bibliography of the HSR is completed to provide the location and a brief description of the contents of primary sources. The bibliography will be placed on the NHDOT and NESHPO websites. The bibliographic annotation will be prepared by an architectural historian qualified under 36 CFR 61 (Appendix A) under the direction of the NHDOT and reviewed by NESHPO and MESHPO within 45 calendar days of submission. It will be completed by December 1, 2014.
8. For the 2012 meeting schedules, the NHDOT will work towards setting up pre-defined educational forums for the maintenance and rehabilitation of historic bridges by the NHDOT at an appropriate venue, such as: Technology Transfer Center at UNH (Local Government Center), the American Council of Engineering Companies, Structural Engineers of New Hampshire, and the NHDOT Training. The NHDOT will ensure that this training is offered by qualified persons with demonstrated expertise in historic bridge maintenance and rehabilitation.

Archaeologically-Based Impacts

9. All necessary archaeological investigations will be completed before or during construction as specified in the stipulations below. If preservation in place is found necessary, then NHEHWA and MEFHWA will consult with their respective SHPOs and identified Native American groups that may attach religious or cultural importance to the affected property to resolve the treatment of such archaeological deposits. Such Native American groups will be identified prior to the commencement of construction under the design-build contract. NHDOT will oversee the following efforts.

- a. Portsmouth Approach Span (Scott Avenue and Memorial Park)

NHEHWA will ensure that NHDOT conducts all necessary phases of archaeological investigation based on archaeological protocols and research designs incorporated into the design-build contract. Although the replacement

of the Portsmouth abutment may broaden the scope of work, the protocols and scope of work for the Rehabilitation of the Memorial Bridge were adequately defined in the following documents: *Memorial Bridge Rehabilitation: Scope of work for Archaeological Monitoring During Construction (October 23, 2007)* and *Memorial Bridge Rehabilitation: Archaeological Monitoring Protocol (April 2006)* by Independent Archaeological Consulting. The archaeological monitoring and investigations will be conducted by a historical archaeologist qualified under 36 CFR 61 (Appendix A) with the ability to consult with an archaeologist qualified in Native American archaeological studies. The historical archaeologist will have five years' experience in historical archaeology in the New England region. The final report will be reviewed and finalized by December 1, 2016.

b. Maine Approach Span

Independent Archaeological Consulting assessed the archaeological sensitivity of the Kittery Approach for the ME-NH Connections Study in the *ME-NH Connections Study Summary Report on Phase 0 (ME) / Phase 1A (NH) Archaeological Sensitivity Assessment* (Rev. August 27, 2009). This portion of the project area was assessed at moderate archaeological sensitivity. If accessible prior to construction, all necessary phases of archaeological investigation will be completed prior to construction. If portions of the sensitive area are not accessible prior to construction, then a monitoring protocol and research goals will be developed for this portion of the construction monitoring. An archaeologist qualified under 36 CFR 61 (Appendix A) will conduct the archaeological investigations with the ability to consult with an archaeologist qualified in historical archaeological studies. The archaeologist will have five years' experience in the archaeology of Native American cultures in the New England region. The final report will be reviewed and finalized by December 1, 2016.

c. Data Recovery Process

The NHDOT and NESHPO agree that recovery of significant information from affected significant archaeological sites will be done in accordance with published guidance. In accordance with 36 CFR 800, the NHPFHA and MEFHWA acknowledge and accept the advice and conditions outlined in the Advisory Council on Historic Preservation's "Recommended Approach for Consultation on the Recovery of Significant Information from Archaeological Sites," and other mitigation procedures published in the Federal Register on May 18, 1999. Additionally, all consulting parties agree that Native American tribes that may attach religious or cultural importance to the affected property

will be consulted in the development of a mitigation approach to each significant Native American site as noted above in this stipulation.

d. Discovery of Burials

If human remains and/or grave-associated artifacts are discovered while carrying out the activities pursuant to this MOA, the NHFHWA, MEFHWA, NHDOT, and Maine DOT will immediately notify the appropriate authorities, as prescribed by New Hampshire and Maine statutes to determine an appropriate course of action in accordance with the Advisory Council on Historic Preservation's (Council's) Revised "Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects," adopted by the Council on February 23, 2007 at its quarterly business meeting in Washington, D.C.

Economic-Based Impacts

10. NHDOT/Maine DOT and FHWA will provide funding through the project to hire and supervise a Public Outreach Coordinator, that is 36 CFR 61 (Appendix A) qualified, for two years or for the duration of construction whichever is greater. This individual will, in part, act as the project's conduit for communication and interface with the public. To this end, NHDOT/ Maine DOT and FHWA will seek first to augment an existing part-time position at an existing entity, such as the Portsmouth or Kittery city/town offices and attempt to use existing office facilities. If no appropriate position(s) exist, NHDOT/ Maine DOT, and FHWA will create a new fulltime, temporary position for this purpose. This individual will be qualified under 36 CFR 61 (Appendix A) as a historian or architectural historian or closely related field with demonstrated five years' experience in conducting public programming, public coordination, and promotion of businesses and organizations within a historical setting. This position will have the following functions:
 - a. Coordinate with an advisory committee, known as the Public Outreach Committee, established for this purpose. The Public Outreach Coordinator will invite the business community in Portsmouth and Kittery (i.e., Seacoast Chamber of Commerce); city and town representatives; historical societies and historic district commissions; museums; historic house museums; the arts community; and trustees of public parks and lands within the two communities to participate in the Public Outreach Committee.
 - b. Market and promote the business districts in Portsmouth and Kittery during construction.
 - c. Monitor visitorship at local museums / National Historic Landmarks (for example Strawberry Banke and the MacPhaedris-Warner House respectively).

- d. Assist the Design-Build Contractor and other city and state entities involved in access issues with continued vehicle access to the downtowns by designation of the placement and wording of directional signs; mapping; internet communication; coordination with the design/build contractor to establish sufficient parking; and any other transportation issues.
- e. Assist in access to planned events in the City of Portsmouth and the Town of Kittery.
- f. Coordinate planned cultural events within the two communities to promote the downtowns.
- g. Arrange public educational outreach programs concerning the history of the two communities, the significance of the Memorial Bridge, and other effective types of outreach education determined through the Public Outreach Committee. The program(s) identified by the committee will generate a lasting physical product, such as a book or film, which would be available to the communities and be within the budget established for this effort.

One suggested approach to fulfilling the above objectives would be to use the National Trust for Historic Preservation's Main Street Program model. The Trust provides guidance for this type of position. Guidance for this will be sought through Kathy LaPlante of the National Trust's Washington Office or her designated representative

Construction-Based Impacts

11. The existing plaques on the Memorial Bridge and in Memorial Park will be conserved and re-installed on the proposed replacement bridge and in an appropriate area adjacent to the bridge entrance. This installation will be completed by the Design-Build Contractor under the direction of NHDOT in close consultation with the conservator described below. The conservation of the plaques will follow the original proposal completed for the former Rehabilitation of the Memorial Bridge Project, but there would need to be some design modifications of the plaques to fit them onto the replacement bridge. The scope of this work will be incorporated in the Design-Build contract. The Design-Build Contractor will contract with an established and qualified metal conservator. The conservator will hold a Masters of Arts Degree in Art History or related field with a certificate or similar designation in Conservation and at least ten years of experience in the field of conservation that includes at least three major successful projects involving metal conservation. The NH Division of Historical Resources will approve a list of at least three metal conservators. The conservator will be hired within a timeframe sufficient to re-examine the plaques, verify the method of safe removal, and conserve the plaques for their installation on the replacement bridge during the design-build contract.

12. Modern dedication signs will be prepared and installed at each portal of the proposed bridge. They will place the bridge and other plaques into their historical contexts. The wording of the signs will be prepared by a 36 CFR 61 (Appendix A) architectural historian and reviewed by the NHSHPO and MESHPO within 45 days of submission. The signs will be fabricated within sufficient time for their placement by the Design-Build contractor under the direction of NHDOT.
13. Vibration levels will be monitored during construction. The Design-Build Contractor will hire a qualified individual whose qualifications are specified below to conduct a preconstruction survey. This survey will establish the area of vibration impact, provide details about the fragility of building materials, and specify the environmental conditions in the area of impact that would affect transmission of vibrations. This preconstruction survey will establish the baseline conditions for monitoring during construction, the construction activities that require monitoring, the general timeframes for monitoring, and the thresholds of vibration levels that will be maintained during construction. These elements will be placed in a Vibration Monitoring Plan. The NHSHPO and MESHPO will be provided fourteen days in which to comment on the Vibration Monitoring Plan prior to its finalization prior to the beginning of construction. The NHSHPO and MESHPO will also be afforded five days to review any modifications to the Vibration Monitoring Plan made during construction. While it is noted that the national standard for vibration threshold is established at 0.2 inches per second, the vibration limit for this project will be based on the findings of the preconstruction survey. Vibration will remain within safe levels for the historic buildings and structures within the Portsmouth Historic District that lie adjacent to the project area, including the National Historic Landmarks such as the MacPhaedris-Warner House, and Kittery properties in the vicinity of the construction. If vibrations are found to exceed the thresholds established for this project, the work causing that vibration will cease and corrective action will be taken to return the vibration level to acceptable thresholds. The vibration monitoring for these particular structures will be incorporated into the design-build "Request for Proposals" for the requirements of the contract. If damage should occur to buildings within the area of vibration impact, then the contractor will be responsible for repairing the damage in accordance with *the Secretary of the Interior's Standards for Rehabilitation and Guidelines for the Rehabilitation of Historic Buildings*.

When developing the vibration thresholds and preparing the Vibration Monitoring Plan, the Design-Build Contractor will contract with an individual trained in Historic Architecture or closely related field. The individual will have five years of professional experience as a Building Conservation Specialist and will have successfully completed three building conservation projects where he/she has taken into account the effects of different levels of vibration on historic masonry

and frame buildings. The standards cited herein are the *Secretary of the Interior's Historic Preservation Professional Qualification Standards* 62, *Fed. Reg. 33, 707* (June 20, 1997/*Historic Architecture* [<http://www.cr.nps.gov/local-law/gis/html/quals.html>]). The NHSHPO will provide the names and contact information of at least three individuals who would be qualified to perform such services.

Discovery of Unidentified Properties

14. The NHDOT and Maine DOT will ensure that if additional previously unidentified architectural and / or archaeological properties are discovered, which may be affected by the undertaking or known properties are affected in an unanticipated manner, it will notify FHWA and the NHSHPO and MESHPO. FHWA and the NHSHPO and MESHPO will apply the criteria of eligibility and consult pursuant to 36 CFR 800.13.

NHFHWA and MEFHWA shall also ensure that the following terms and conditions are implemented:

1. Dispute Resolution

Should the any party to this agreement or a consulting party to the Section 106 process for this project object within 30 days to any actions proposed or findings submitted for review, NHFHWA and MEFHWA shall consult with the objecting party(ies) to resolve the objection. If NHFHWA and MEFHWA determine that any objection(s) remains unresolved, NHFHWA and MEFHWA shall:

- a. Forward all documentation relevant to the dispute to the ACHP in accordance with 36 CFR 800.2(b)(2). On receipt of adequate documentation, the ACHP shall review and advise NHFHWA and MEFHWA on the resolution of the objection within 30 days. Any comment provided by the ACHP, and all comments from the parties to the agreement will be taken into account by FHWA in reaching a final decision regarding the dispute.
- b. If the ACHP does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, NHFHWA and MEFHWA may render a decision regarding the dispute. In reaching its decision, NHFHWA and MEFHWA will take into account all comments regarding the dispute from the parties to this agreement.
- c. NHFHWA's and MEFHWA's responsibility to carry out all other actions subject to the terms of this agreement that are not subject of the dispute remain unchanged. NHFHWA and MEFHWA will notify all parties of its decision in writing before implementing that portion of the undertaking subject to the dispute under this stipulation. NHFHWA's and MEFHWA's decision will be final.

2. Termination of Agreement

If any signatory determines that the terms of the MOA cannot be executed, the signatories shall consult to seek amendment of the agreement. If the agreement is not amended, any signatory may terminate the agreement. If the terms of this agreement have not been implemented by December 1, 2016, this agreement shall be considered null and void. In such event, the agency shall notify the parties to this agreement, and if it chooses to continue with the undertaking, shall reinitiate review of the undertaking in accordance with 36 CFR 800.

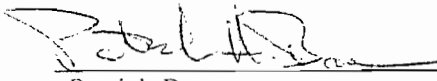
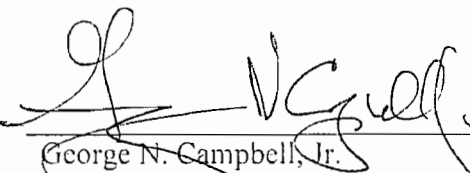
3. Amendment

Any party to this agreement may propose to other parties that the agreement be amended, whereupon the agency will consult with the other parties to this agreement to consider the amendment. An amendment shall be executed when it has been signed by all of the signatories to this MOA.

Execution of this MOA by NHFHWA, NHSHPO, NHDOT, MEFHWA, MESHPO, and the Maine DOT and its subsequent filing with the Council, and implementation of its terms are evidence that FHWA has afforded the Council an opportunity to comment on this project, and that FHWA has taken into account the effects of the undertaking on historic properties.

Memorial Bridge Replacement Project
Portsmouth, NH-Kittery, ME
A000(911)
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(Page 11)

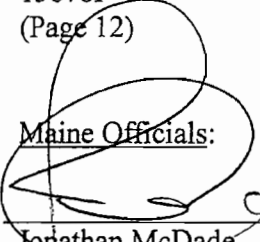
New Hampshire Officials:

| | | | |
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|  | <u>3-15-11</u> |  | <u>3/15</u> |
| Patrick Bauer | Date | George N. Campbell, Jr. | Date |
| Acting Administrator | | Commissioner | |
| Federal Highway Administration | | NH Department of Transportation | |
| NH Division | | | |

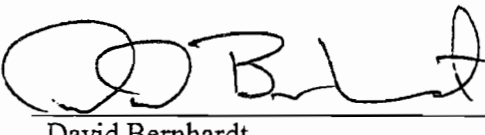
3/15/2011
Wanda Ray Wurm, DSHPO, for
Elizabeth H. Muzzey Date
State Historic Preservation Officer
NH Division of Historical
Resources

Memorial Bridge Replacement Project
Portsmouth, NH-Kittery, ME
A000(911)
13678F
(Page 12)


Maine Officials:


Jonathan McDade
Administrator
Federal Highway Administration
ME Division

Date


David Bernhardt
Commissioner
ME Department of Transportation

Date


Earle G. Shettleworth, Jr.
State Historic Preservation Officer
ME Historic Preservation Commission

Date

MEMORANDUM OF AGREEMENT

Between the States of

NEW HAMPSHIRE and MAINE

Regarding the

THREE BRIDGES BETWEEN PORTSMOUTH, NH AND KITTERY, ME

This Memorandum of Agreement (the "Agreement") is entered into this ___ day of February, 2011, by and between the State of New Hampshire through its Department of Transportation (NHDOT) and the State of Maine through its Department of Transportation (MaineDOT) concerning the Memorial Bridge, the Sarah Mildred Long Bridge, and the I-95 High Level Bridge, all being over the Piscataqua River between Portsmouth, New Hampshire and Kittery, Maine.

BACKGROUND

New Hampshire and Maine are jointly responsible for three bridges described herein.

The I-95 High Level Bridge, also known as the Piscataqua River Bridge (designated by NHDOT as Portsmouth Bridge Number 247/084 and by MaineDOT as Bridge Number 6330) is a high level, steel through truss with shared truss spans being 1,334 feet in length. Completed in 1972, it is the primary economic connection between the states, carrying over 74,000 vehicles a day (2007 AADT), being about 75% of the traffic carried by all three bridges. It is obviously critical to the viability of Maine Turnpike specifically, and Interstate Commerce more generally, and based upon economic data, is considered by Maine transportation officials to be the most important bridge in Maine to the overall Maine economy.

The Sarah Mildred Long Bridge (designated by NHDOT as Portsmouth Bridge Number 251/108 and by MaineDOT as Bridge Number 3641) is a steel vertical lift bridge with deck truss, roadway, rail and approaches having a total span length of about 2,800 feet. Completed in 1940, it carries the US Route 1 Bypass and provides a critical link across the river. It includes a rail line used to transport heavy freight to the Portsmouth Naval Shipyard, which employs approximately 4,200 workers, serves as a critical back-up route in the event of a disruption of service on Interstate 95, services heavy truck transit to and from the commercial service stations along the US 1 Bypass, and has experienced structural deterioration reducing its life expectancy to five to seven years for vehicle traffic. It is currently posted for 20 tons, and therefore cannot service 100,000 pound vehicles using I-95.

The Memorial Bridge (designated by NHDOT as Portsmouth Bridge Number 247/084 and by Maine DOT as Bridge Number 2546) is a steel vertical lift bridge with through truss approaches having a total truss span length of about 900 feet. Completed in 1923, it carries US Route 1 and links the thriving business, social, religious and arts communities of Kittery and Portsmouth, is the only bicycle and pedestrian crossing of the Piscataqua River, supports community cohesion and quality of life. It is in extremely poor condition and is in near

immediate need of replacement or closure. It is currently posted for 3 tons, thus currently only servicing cars and pickup trucks.

In 2008, after bids received for a then-planned rehabilitation of the Memorial Bridge were about 30 % higher than anticipated, MaineDOT and NHDOT decided to conduct an extensive study to determine the long-term transportation needs of the host communities and the region and determine the best long-term solution for connecting the two states (the Connections Study). Commencing in March of 2009 and lasting through 2010, the Connections Study included a planning level study, detailed bridge inspections, and planning-level cost estimates for alternatives. The two state DOTs partnered fully on the Study, with MaineDOT taking the lead on the planning study portion and NHDOT taking the lead in the bridge inspections and cost estimates. The total consultant costs of the Study were about \$4.1 million (\$1.5 million for the planning portion and \$2.7 million for the detailed bridge inspections).

From the Connections Study, it was determined that the Memorial Bridge needed to be replaced, and that three bridges should be maintained to best serve the needs of all the existing modes of transportation including vehicles, railroad, bicycle, and pedestrian.

On October 4, 2010, the Governors of both states issued Executive orders to create a "Bi-State Bridge Funding Task Force" ("Task Force"). See NH Executive Order No. 2010-4 and ME Executive Order No. 04 FY11/12. In order to seek a "cooperative, comprehensive, sustainable, cost-effective and long-term solution that addresses all three bridges", the order established a six member Task Force (three from each state). Members included the Commissioners of Transportation from both states and the Chair of the Maine Turnpike Authority. Task Force duties included identifying funding mechanisms for the replacement, rehabilitation, repair, maintenance and operation of the three bridges, with a report deadline of December 15, 2010.

The Task Force met five times between October 5 and December 14, 2010. The Task Force quantified the 30 year capital, repair, rehabilitation, maintenance and operations needs for the three bridges at an estimated \$506 million.

To address these extraordinary needs, the Task Force recommended, among other things, to fund the \$90 million replacement of the Memorial Bridge to commence in 2011, fund a \$110 million rehabilitation of the Sarah Mildred Long Bridge, create a sinking fund to be funded equally by both states (with the MTA assisting with the Maine share) to fund the Capital Repair and Rehabilitation of the I-95 High Level Bridge and the Sarah Mildred Long Bridge, combine operator duties to significantly reduce operator costs, and to revitalize the Interstate Bridge Authority (IBA) with legislation in both states to oversee the capital repair and rehabilitation needs of all three bridges and to serve as the administrator of the sinking fund.

In light of the foregoing, the primary purposes of this Agreement are to establish the respective responsibilities of the two state DOTs regarding the design, contracting, and future construction work associated with the replacement of the Memorial Bridge and the rehabilitation of the Sarah Mildred Long Bridge and to memorialize and forward the Task Force recommendations.

AGREEMENT

Accordingly, NHDOT and MaineDOT hereby agree as follows.

Memorial Bridge Project

1. NHDOT will be the lead agency for the Memorial Bridge, devising and implementing a design-build process for its replacement including permitting, procurement, design, environmental mitigation, construction, inspection, and all related work as defined herein. NHDOT has issued a Request for Qualification for design-build teams and anticipates issuance of the Request for Proposals in the 3rd quarter of 2011. A Notice to Proceed is scheduled for the 4th quarter of calendar year 2011, and the new bridge is expected to be open to traffic in October 2013. The Memorial Bridge connection will be closed during construction.
2. NHDOT anticipates that it will undertake the following tasks and activities associated with design and contract development for the replacement of the Memorial Bridge:
 - a. Environmental documentation, including section 4f/106 documentation and coordination, and NEPA classification. This work effort is anticipated to be completed by McFarland-Johnson, Inc. under contract with NHDOT and documented in scope of work dated October 15, 2010.
 - b. Preliminary conceptual design of a superstructure replacement for use in coordination with cultural resource agencies. This work effort is anticipated to be completed by HDR under contract with NHDOT and documented in scope of work dated October 13, 2010.
 - c. Development of design/build procurement documents and general technical support in the design/build selection process. Design/build is anticipated as a means to expedite the project. This work effort is anticipated to be completed by HDR under contract with NHDOT and documented in scope of work dated October 13, 2010.
 - d. Development of a Quality Assurance Shop Inspection contract for Quality Assurance support services during construction. This is anticipated to be a low-bid contract to provide inspection services to assist NHDOT Construction staff.
 - e. Other tasks or activities as might be needed to successfully develop and design this project.
3. The scope of the Memorial Bridge Project includes replacement of the fixed spans, moveable span, towers, abutments, the Scott Avenue Bridge, the Kittery approach, all engineering, and related work. More specifically, as set forth by NHDOT in its RFQ, the scope is as follows.
 - Replacement of the Fixed spans, Movable span, Towers; and abutments,

- Increase the overall cross-section of the Memorial Bridge by four feet by providing for a 11'-4" typical and a clear 6-foot sidewalk on each side as a minimum,
- Maintain or improve the current navigational clearances in both the closed and open position,
- Rehabilitation of the piers and existing fender system with the possibility of a new dolphin fendering system, if required,
- Replacement of the Scott Avenue Bridge including piers, abutment and superstructure,
- Replacement of the Kittery Approach Structure including piers, abutments and superstructure,
- Relocation of Utilities and services for the structure, and
- Civil, Highway and drainage improvements.

The Towers, Fixed spans, and Movable span for the Memorial Bridge are to be replaced with new structure, which is in compliance with the memorandum of understanding with the New Hampshire State Historic Preservation Office (SHPO) and Maine State Historic Preservation Office. This requires that the structure meet Secretary of Interior Standards for Rehabilitation of Historic Buildings with special attention to items 9 and 10. A major goal of the new structure will be to eliminate details, which are prone to corrosion. The new fixed spans and movable span may consist of a similar truss design, which is visually similar to the existing span or any alternative design that meets the project's objectives while meeting the Secretary of Interior Standards for Rehabilitation of Historic Buildings.

The Memorial Bridge should be able to remotely operate other bridges or be remotely operated from another bridge or location.

A new dolphin fendering system may be constructed for the main bridge river piers in accordance with current standards. Strengthening and rehabilitation of the existing piers may be required based upon the new superstructure loads.

A major goal for the design of the Memorial Bridge is reduced long-term operating and maintenance costs of the lift structure and components.

The Scott Avenue Bridge shall be replaced in accordance with the design established by the 2008 contract documents. This work will include a detour of traffic, demolition of the existing structure and construction of the new structure along the lines of the work proposed in 2008 contract documents. The work shall be coordinated with any planned outages for the movable span to minimize impacts to the travelling public. A standby generator with automatic transfer switch and bridge operator parking shall be located under the new Scott Avenue Bridge within the existing right of way.

The Kittery Approach Structure shall be replaced with a low maintenance structure. The new structure should employ longer spans than the existing bridge, thus eliminating several existing piers. This work shall include detour of traffic, demolition of the existing structure and

construction of the new structure. The work shall be coordinated with any planned outages for the movable span to minimize impacts to the traveling public.

The work includes utility coordination, civil work, drainage and all other work required to complete the Project.

4. NHDOT has established the estimated cost of the above described Memorial Bridge Project at \$90 Million, based upon the HDR estimate dated July 1, 2010.
5. The parties are relying on a federal TIGER II grant of \$20 million to partially fund the Memorial Bridge Project. This leaves a funding need of \$70 Million, or \$35 million for each state.
6. The parties have or will include such funding in their respective federal STIPs and have or will include such funding in their respective state capital plans.
7. At the time of award, if the cost of the successful design-build proposal, construction engineering, and all related work is such that Maine's 50% share exceeds \$38.5 million (being MaineDOT's estimated share of \$35 million plus 10%), then NHDOT agrees that NHDOT will not award the contract without the written concurrence of the Commissioner of MaineDOT. NHDOT understands and acknowledges that such concurrence will be contingent upon a review of the proposal, a policy level review, and fiscal arrangements agreeable to both parties.
8. After award, MaineDOT agrees to reimburse NHDOT for 50% of qualifying Memorial Bridge Project Costs, or \$38.5 million (being MaineDOT's estimated share of \$35 million plus 10%), whichever is less. Qualifying costs are costs directly related to and necessary for Project completion as reasonably determined by both parties.
9. MaineDOT also agrees to pay 50% of unanticipated construction costs in excess of its \$38.5 million cost cap that are determined to be directly and primarily caused by differing site conditions and/or uncontrollable and uninsurable events and to be unrelated to design, plans and specifications, construction engineering, inspection, inadequate design-build procedures or oversight, or any other causes that are within the reasonable control of NHDOT.
10. NHDOT agrees to pay for all other costs related to the Memorial Bridge Project in excess of MaineDOT's share as described in paragraphs 8 and 9 above including all extra work orders, change orders, escalators, claims, delay costs, litigation expenses, attorneys' fees, etc.

Sarah Mildred Long Bridge Project

11. MaineDOT will be the lead agency for the rehabilitation of the Sarah Mildred Long (SML) Bridge Project, using a traditional design-bid-build process including permitting, design, bidding, environmental mitigation, construction, inspection, and all related work as defined herein. Design work is to commence in the 3rd quarter of calendar year 2011, advertisement for bids is anticipated for spring of 2014 (after the new Memorial Bridge is open to traffic), and the project is expected to be substantially complete in 2017. The Sarah Mildred Long Bridge will be

closed to highway traffic during rehabilitation construction. It will remain open to periodic railroad traffic with careful advance coordination.

12. Maine DOT anticipates that it will undertake the following tasks and activities associated with the SML Bridge project:

- a. Environmental documentation, including section 4f/106 evaluation; documentation and coordination, NEPA classification and supporting preliminary conceptual design to determine the selected alternative of rehabilitation or replacement. This work effort is anticipated to be completed by MaineDOT.
- b. Further development and refinement of preliminary conceptual design for the selected alternative as necessary to determine and support the final design and/or procurement process.
- c. Development of final design plans, specifications, estimate, and contract documents.
- d. Other tasks or activities as might be needed to successfully develop and design this project.

13. The scope of work for the SML Bridge Project is to retain and completely rehabilitate the existing truss spans, replace the retractable railroad span, remove and replace all of the girder approach spans, reconstruct the approach highways within the project limits as shown in the TransSystems report of December 3, 2010, and improve intersections at the Market Street Extension ramp, at Bridge Street, and at Oak Street. This scope is further detailed in the TransSystems report of December 3, 2010.

14. MaineDOT has established a total budget of \$119 Million for the rehabilitation of the SML Bridge Project (based upon the \$110 million TransSystems 2010 estimate plus 2% annual inflation for four years). This consists of an estimated \$12 million (about 10%) for engineering after the date of this agreement (preliminary engineering and construction engineering) and \$107 million for construction.

15. The costs of engineering will be shared equally; an estimated \$ 6 million for each state, except that NHDOT will not be responsible for amounts in excess of \$6.6 million (being its share plus 10%) without written concurrence from NHDOT contingent upon review of the additional cost rationale.

16. The bid documents shall provide for separate bid subtotals for the following three components of the work: (1) all costs related to the girder approach spans, highway, rail and intersection work located in Maine (Maine Construction Costs), (2) all costs related to the girder approach spans, highway, rail and intersection work located in New Hampshire (New Hampshire Construction Costs), and (3) all cost related to the truss spans and the retractable railroad span (Gross Shared Construction Costs).

17. At the time of award, if the construction cost is in excess of \$117.7 million (being the total estimated share of construction - \$107 million - plus 10%), then MaineDOT agrees that MaineDOT will not award the contract without the written concurrence of the Commissioner of NHDOT. MaineDOT understands and acknowledges that such concurrence will be contingent upon a review of the proposal, a policy level review, and fiscal arrangements agreeable to both parties.
18. MaineDOT will pay 100% of the Maine Construction Costs and NHDOT will pay 100% of the New Hampshire Construction Costs.
19. The parties agree to seek Department of Defense (DOD) funding (due to the use of the rail by the Shipyard) and other project-specific, non-formula federal funding sources (TIGER, other designated funding, etc.) The placeholder amount in the Task Force report for such funding is \$30 million. The amount of any such funding will be subtracted from the Gross Shared Construction Costs, yielding the Net Shared Construction Costs.
20. NHDOT agrees to reimburse MaineDOT for 50% of qualifying Net Shared Construction Costs, provided that NHDOT will not be responsible for amounts in excess of 10% of such costs determined at the time of contract award, except as provided below. Qualifying costs are costs directly related to and necessary for Project completion as reasonably determined by both parties.
21. Due to the longer girder approach spans and more substantial intersection work, New Hampshire's share of the total construction costs for the SML Bridge project will be more than 50%. The parties agree to revisit cost shares and caps, and if necessary amend this Agreement, if more detailed information at the PS&E stage, or after bid, shows costs materially different from those contained herein.
22. NHDOT also agrees to pay 50% of unanticipated construction costs in excess of its share of the Net Shared Construction Costs as provided in paragraph 20 above that are determined to be directly and primarily caused by differing site conditions and/or uncontrollable and uninsurable events and to be unrelated to design, plans and specifications, construction engineering, inspection, or any other causes that are within the reasonable control of MaineDOT.
23. MaineDOT agrees to pay for all other costs related to the SML Bridge Project in excess of NHDOT's share as described in paragraphs 20 and 22 above including all extra work orders, change orders, escalators, claims, delay costs, litigation expenses, attorneys' fees, etc.
24. The parties will include such funding in their respective state capital plans, and agree to seek all required funding and approvals for the same. The Maine funding share includes, in accordance with the Task Force report, at least \$28 million to be derived from a sale of the southerly 1.9 miles portion of I-95 to the Maine Turnpike Authority.

General Project Provisions

25. The parties agree to jointly address any areas of concern by mutual concurrence, if reasonably possible.

26. NHDOT and MaineDOT agree that utility relocation cost reimbursement factors must be addressed and minimized to the greatest extent practicable in any of the design contracts for the bridges, that utility relocation reimbursement costs may be subject to different eligibility requirements under the laws of each state and are, therefore, not necessarily subject to the equal sharing provisions of this agreement, and that such issues may be addressed in a later agreement if necessary.

Task Force Recommendations

27. Except as otherwise provided herein, the parties agree to submit legislation, assemble capital plans, make budget requests, and take all other reasonable actions to implement the essential recommendations contained in the Bi-State Bridge Funding Task Force Final Report, as long as the basic assumptions in that report remain accurate. Such assumptions include scopes of work for the Memorial Bridge and Sarah Mildred Long projects (replacement and rehabilitation, respectively), federal and state funding, and the financial contribution of turnpike authorities.

28. The parties agree to seek authorization to establish and fund the sinking fund at a rate of \$1.7 million per year for each state. MaineDOT will be seeking a funding share from the Maine Turnpike Authority in at least the amount contained in the Task Force Report.

29. The parties agree to submit legislation regarding the Interstate Bridge Authority to expand its jurisdiction to include oversight of the capital repair and rehabilitation of all three bridges, and administration of the sinking fund to be used for the I-95 High Level Bridge and the Sarah Mildred Long Bridge. The maintenance and operation of the bridges, including inspections, shall remain the equally shared responsibility of the state DOT's.

I-95 High Level Bridge Work

30. The Task Force report sets forth substantial anticipated future capital repair and rehabilitation work for the I-95 High Level Bridge including paint, deck and wearing surface, and below deck steel rehabilitation. The Interstate Bridge Authority will be responsible for reviewing inspections and determining the capital repair and rehabilitation needs of the I-95 High Level Bridge.

31. Each state agrees to be 100% responsible for the cost of work to the approach spans located in each state.

32. The parties agree to equally share the cost of work relating to the shared truss spans (being 1,334 feet in length) that is not funded by the sinking fund administered by the Interstate Bridge Authority.

General Provisions

33. This Agreement sets forth a cooperative, long-term understanding between the state DOT's for these three bridges. Like all such long-term agreements between states, the parties cannot bind future Governors or Legislatures, so the policy and financial obligations set forth in

this Agreement obviously are contingent upon ongoing policy support and subject to legislative appropriation.

34. A basic purpose of this Agreement is to determine respective responsibilities and define and limit the overall financial obligations of both parties with respect to the three bridges. If the basic cost financial assumptions contained in this Agreement prove to be materially invalid (examples- fundamental project scope changes, extraordinary material cost inflation, or policy direction that makes assumed funding sources no longer viable), then the parties will renegotiate in good faith to redefine the obligations in mutually agreeable manner.

35. This agreement and all the obligations of the parties hereunder, shall become effective on the date of approval of this Agreement.

WITNESS:

By: [Signature]

STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

By: [Signature]
COMMISSIONER

WITNESS:

By: [Signature]

STATE OF MAINE
DEPARTMENT OF TRANSPORTATION

By: [Signature]
COMMISSIONER

This Agreement has been reviewed and is approved as to form and execution.

Date

Office of the Attorney General
State of New Hampshire

This is to certify that the GOVERNOR and EXECUTIVE COUNCIL of the State of New Hampshire approved this Agreement as Item # _____ on _____, 2011.

Date

Secretary of State
State of New Hampshire

