

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 GOVENOR and EXECUTIVE COUNCIL of the State of New Hampshire approved this Agreement as Item # _____ on _____, 2011.

Date

Secretary of State
State of New Hampshire