# MEMORANDUM OF AGREEMENT

**AMONG THE FEDERAL HIGHWAY ADMINISTRATION,**

**ADVISORY COUNCIL ON HISTORIC PRESERVATION, MAINE DEPARMENT OF TRANSPORTATION,**

**AND MAINE STATE HISTORIC PRESERVATION OFFICER REGARDING THE INTERNATIONAL BRIDGE #2399**

**REPLACEMENT**

**AROOSTOOK COUNTY, MAINE**

**DRAFT**

WHEREAS, the Federal Highway Administration (FHWA) plans to fund the International Bridge project (undertaking) between Madawaska, Maine, and Edmunston, New Brunswick, pursuant to the National Historic Preservation Act of 1966, 54 U.S.C. 306101 et seq; and

WHEREAS, the FHWA Maine Division Administrator is the "Agency Official" responsible for ensuring that the undertaking complies with Section 106 of the National Historic Preservation Act (NHPA) ((54 U.S.C. § 306108), as amended, and codified in its implementing regulations, 36 CFR Part 800, as amended (August 5, 2004); and

WHEREAS, the MaineDOT has been delegated responsibilities under the November 4, 2004 Programmatic Agreement Among Federal Highway Administration, Federal Transit Administration, the Advisory Council on Historic Preservation, The Maine State Historic Preservation Officer, and Maine Department of Transportation, Regarding the Implementation of the Federal Aid Highway and Federal Transit Programs in Maine; and

WHEREAS, FHWA has defined the undertaking’s area of potential effect (APE) for the International Bridge replacement project in accordance with 36 CFR Section 800.16(d); and

WHEREAS, FHWA has determined that the undertaking has an adverse effect on the International Bridge, which is eligible for listing in the National Register of Historic Places (NRHP) under Criteria A, B, & C, and has consulted with the SHPO; and

WHEREAS, FHWA has consulted with the Maine State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. Section 470(f)); and

WHEREAS, FHWA has consulted with federally-recognized Indian tribes (Tribes) including the Aroostook Band of Micmacs, Houlton Band of Maliseet Indians, Passamaquoddy Tribe, and Penobscot Nation on the proposed undertaking in accordance with 36 CFR Section 800.3 (f)(2). Emails were sent to the Tribes on December 13, 2017 in accordance with their preferred method of receiving information from the Department of Transportation. The Penobscot Nation replied on January 11, 2018, the Passamaquoddy Tribe responded on December 28, 2017, and the Houlton Band of Maliseets replied on January 2, 2018 and indicated that this undertaking will have no impact on a structure or site of historic, architectural or archaeological significance to their Tribes. Additional information was provided on the preferred alternative and archaeological review on February 4, 2019, via email; The Houlton Band of Maliseets and Penobscot Nation replied and indicated no concern with this additional information; and

WHEREAS, in accordance with 36 CFR 800.2(d), FHWA has requested input and considered the views of and the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties; and

WHEREAS, in accordance with 36 CFR Section 800.6(c)(2), FHWA has invited the MaineDOT to be an invited signatory; and

WHEREAS, in accordance with 36 CFR Section 800.6(a)(1), FHWA has notified the ACHP of the potential for an adverse effect determination. FHWA invited the ACHP to consult and the ACHP has (chosen/chosen not) to participate in the consultation pursuant to 36 CFR Section 800.6(a)(1)(iii) (on Month, Day, Year); and

NOW, THEREFORE, the ACHP, FHWA and the Maine 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

FHWA, with assistance from MaineDOT, shall ensure that the following measures are carried out:

1. **New Bridge Design Review Process**

MaineDOT will consult with the Maine SHPO and the consulting parties on the final design of the new bridge. MaineDOT will provide the SHPO and the consulting parties, for their review and comments, details on aesthetic bridge design features, including public space, viewing, railing and lighting options to ensure compatibility with existing historic features. The information will be provided at 60% and 90% relevant design documents via email and posted on the MaineDOT International Bridge web page. The SHPO and consulting parties will have 30 calendar days to review and provide any comments to MaineDOT.

1. **Historic American Engineering Recordation**

MaineDOT will provide recordation of the International Bridge (#2399) in consultation with the National Park Service and in accordance with Historic American Engineering Record (HAER) Level 1 Standards which include *Guide to Written Reports for the Historic American Engineering Record (HAER)* and the *Guide to Preparing HABS/HAER Photographic Documentation* (2008, updated December 2017; and 2011, updated June 2015, respectively).  Documentation will be prepared by a 36 CFR 61 qualified architectural historian. All materials submitted as documentation will follow the requirements stated by the Heritage Documentation Program and the National Park Service Northeast Regional Office’s schedule of documentation. The Maine SHPO will be provided an opportunity of forty-five (45) days to review and comment on one draft before the HAER is submitted to the National Park Service to be archived. The Maine SHPO may request a second round of review.

MaineDOT will be responsible for providing the following to:

\*Maine SHPO

one (1) archival printed copy of the HAER, one (1) set of large format photos and negatives, and pdfs on a USB flash drive.

\*Town of Madawaska

one (1) archival printed copy of the HAER and one (1) set of large format photos and negatives.

\*City of Edmunston, New Brunswick

one (1) archival printed copy of the HAER and one (1) set of large format photos and negatives.

MaineDOT will complete the recordation and distribution by December 2022.

1. **Adaptive Reuse or Reuse of Portions of the Structure**

Prior to dismantling, MaineDOT and the Federal Highway Administration (FHWA) shall offer the International Bridge or a portion of the bridge to any group that could legally take possession of the bridge and maintain it at a new location, provided the group assumes all future legal and financial liability. Costs to induce acceptance of the offer of donation may not exceed the cost to dismantle the bridge. FHWA, the Maine State Historic Preservation Officer and MaineDOT will work jointly to determine the most appropriate use of the existing bridge from any proposals received.

If no offers are received for adaptive reuse, then a portion and/or feature of the International Bridge will be retained and offered to the Town of Madawaska and the City of Edmunston.

MaineDOT will offer the bridge for adaptive reuse by (Month, Year). If no offers are received MaineDOT will coordinate with the Town of Madawaska and the City of Edmunston, New Brunswick on portions of the bridge beginning by (Month, Year).

1. **Duration**

This agreement will be null and void if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, FHWA may consult with the other signatories to reconsider the terms of the agreement and amend it in accordance with Stipulation XI.

1. **Post-Review Discoveries**

If potential historic properties are discovered or unanticipated effects on historic properties found, FHWA shall consult in accordance with 36 CFR Section 800.6(c)(6). If any unanticipated discoveries of historic properties or archaeological sites are encountered during the implementation of this undertaking, MaineDOT shall suspend work in the area of the discovery in accordance with Maine Department of Transportation Standard Specification *105.9: Historic and Archaeological Considerations* and DOT shall immediately notify the FHWA. In compliance with 36 CFR §800.13, FHWA shall notify within 24 hours the ACHP, the Maine SHPO, any federally recognized tribal organizations that attach religious and/or cultural significance to the affected property, and the Wolastoqey Nation in New Brunswick. The Maine SHPO, the FHWA, MaineDOT, and Tribal and Wolastoqey Nation in New Brunswick representatives, as appropriate, may conduct a joint field review within 72 hours of the notification to the FHWA. The FHWA, in consultation with the appropriate parties, will determine an appropriate treatment of the discovery prior to the resumption of construction activities in the area of the discovery.

1. **Discovery of Human Remains**

MaineDOT shall ensure that any human remains and/or grave-associated artifacts encountered during the archaeological investigations are brought to the immediate attention of the FHWA, the Maine SHPO, any federally recognized Tribes that may attach religious and/or cultural significance to the affected property, and the Wolastoqey Nation in New Brunswick. Notification will be within 48 hours of the discovery. No activities which might disturb or damage the remains will be conducted until FHWA, in consultation with the appropriate parties, has developed a treatment plan that considers the comments of the appropriate parties. All procedures will follow the guidance outlined in the National Park Service Publication *National Register Bulletin 41: Guidelines for Evaluating and Registering Cemeteries and Burial Places*, taking into account the Native American Graves Protection and Repatriation Act of 1990 (PL 101-601). If Native American cultural materials are encountered during the course of the project, MaineDOT will abide by the Maine Department of Transportation Standard Specification *105.9: Historic and Archaeological Considerations* by stopping all activities in the area of discovery and notifying FHWA, SHPO, ACHP, the Aroostook Band of Micmacs, Houlton Band of Maliseet Indians, Passamaquoddy Tribe, Penobscot Nation, and the Wolastoqey Nation in New Brunswick. Stipulation X of this agreement will be followed; and

1. **Reporting**

Each year, by December 1, following the execution of this agreement until it expires or is terminated, MaineDOT shall provide all parties to this agreement 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 MaineDOT’ s efforts to carry out the terms of this agreement. Failure to provide such summary report may be considered noncompliance with the terms of this MOA; and

1. **Dispute Resolution**

Should any party to this agreement object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, FHWA shall consult with the objecting party(ies) to resolve the objection. If FHWA determines, within 30 days, that such objection(s) cannot be resolved, FHWA will:

* 1. Forward all documentation relevant to the dispute to the ACHP in accordance with 36 CFR Section 800.2(b)(2). Upon receipt of adequate documentation, the ACHP shall review and advise FHWA on the resolution of the objection within 30 days. Any comment provided by the ACHP, and all comments from the parties to the MOA, will be taken into account by FHWA in reaching a final decision regarding the dispute.
  2. If the ACHP does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, FHWA may render a decision regarding the dispute. In reaching its decision, FHWA will take into account all comments regarding the dispute from the parties to the MOA.

C. FHWA’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. FHWA will notify all parties of its decision in writing before implementing that portion of the Undertaking subject to dispute under this stipulation. FHWA’s decision will be final

1. **Resolving Public Objections**

At any time during implementation of the terms of this Agreement, should any member of the public raise an objection in writing pertaining to such implementation to any signatory party to this Agreement, that signatory party shall immediately notify FHWA. FHWA shall:

1. Immediately notify the other signatory parties in writing of the objection. Any signatory party may choose to comment on the objection to FHWA.
2. Establish a reasonable time frame for this comment period. FHWA shall consider the objection, and in reaching its decision, FHWA will take all comments from the other parties into account.
3. Within 15 days following closure of the comment period, FHWA will render a decision regarding the objection and respond to the objecting party. FHWA will promptly notify the other signatory parties of its decision in writing, including a copy of the response to the objecting party. FHWA’s decision regarding resolution of the objection will be final.
4. Following the issuance of its final decision, FHWA may authorize the action subject to dispute hereunder to proceed in accordance with the terms of that decision. Nothing in this paragraph creates additional legal rights or responsibilities on the FHWA that are not already afforded under the NHPA.
5. FHWA’s responsibility to carry out all other actions or terms of this MOA that are not the subject of the objection remain unchanged and may proceed.
6. **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.

1. **Termination**

If the MOA is not amended following the consultation set out in Stipulation XV it may be terminated by any signatory or invited signatory. Within 30 days following termination, FHWA shall notify the signatories if it will initiate consultation to execute an MOA with the signatories under 36 CFR §800.6(c)(1) or request the comments of the ACHP under 36 CFR §800.7(a) and proceed accordingly.

1. **Coordination with Other Federal Reviews**

In the event that another federal agency not initially a party to or subject to this MOA receives an application for funding/license/permit for the Undertaking as described in this MOA, that agency may fulfill its Section 106 responsibilities by stating in writing it concurs with the terms of this MOA and notifying the FHWA, SHPO, and the ACHP that it intends to do so, and adherence to the terms of this MOA.

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