

**MEMORANDUM OF AGREEMENT**  
**BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION,**  
**MAINE DEPARTMENT OF TRANSPORTATION,**  
**AND MAINE STATE HISTORIC PRESERVATION OFFICER**  
**REGARDING MAINEDOT WIN 20502.00**  
**OLD TOLL BRIDGE #2867 REPLACEMENT**  
**MILO, PISCATAQUIS COUNTY, MAINE**

**[ DRAFT ]**

WHEREAS, the Federal Highway Administration (FHWA) plans to fund the Old Toll Bridge #2867 Replacement Project (undertaking) in Milo, Maine, pursuant to the National Historic Preservation Act of 1966, 54 U.S.C. 306101 et seq; and

WHEREAS, the FHWA 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 undertaking consists of replacing the Old Toll Bridge #2867 with a steel beam superstructure with a cast-in-place concrete deck seated on concrete piers; and

WHEREAS, the FHWA has defined the undertaking's area of potential effects (APE) as displayed in Attachment A; and

WHEREAS, the FHWA has determined that the undertaking has an adverse effect on Sharrow Site, which is listed on the National Register of Historic Places as one of five sites within the Sebec-Piscataquis River Confluence Prehistoric Archaeological District under Criterion D; and

WHEREAS, the FHWA has consulted with the Maine State Historic Preservation Officer (Maine SHPO) pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108); and

WHEREAS, the FHWA has ensured that the significance of the National Register-listed resource will be captured in compensatory mitigation; and

WHEREAS, the FHWA has consulted with the Aroostook Band of Micmacs, Houlton Band of Maliseet Indians, Passamaquoddy Tribe, and Penobscot Nation of the proposed action in accordance with 36 CFR Section 800.3 (f)(2). Letters were sent to the Tribes on March 18, 2014, in accordance with their preferred method of receiving information from the Department of Transportation. The Penobscot Nation and Passamaquoddy Tribe replied with no concerns. Emails were sent to the Tribes on August 5, 2021, with updated information on the undertaking; and

WHEREAS, in accordance with 36 CFR 800.2(c), the FHWA has requested input from consulting parties in a manner that reflects the nature and complexity of the undertaking and its effects on the historic property; and

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

WHEREAS, in accordance with 36 CFR Section 800.6(a)(1), the FHWA has notified the ACHP of the potential for an adverse effect determination. The FHWA has invited the ACHP to consult on August 5, 2021, and the ACHP has chosen (to/to not) participate in the consultation pursuant to 36 CFR Section 800.6(a)(1)(iii) on (reply pending); and

WHEREAS, in accordance with 36 CFR Section 800.6(c)(2), the FHWA has invited the MaineDOT to be an invited signatory and in accordance with 36 CFR Section 800.6(c)(3);

NOW, THEREFORE, the 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

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

### **I. Archaeological Mitigation and Data Recovery**

Data recovery for archaeological resources will be carried out in accordance with the Maine Historic Preservation Commission's *Milo Toll Bridge Replacement (WIN 20502.00)*

*Archaeological Mitigation and Data Recovery Plan* (Plan). The Plan also includes compensatory mitigation measures for resolution of the adverse effect on the archaeological resources.

## **II. 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, the FHWA may consult with the other signatories to reconsider the terms of the agreement and amend it in accordance with Stipulation VIII.

## **III. Post-Review Discoveries**

If potential historic properties are discovered or unanticipated effects on historic properties found, the 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, the FHWA shall notify within 24 hours the ACHP, the Maine SHPO, and the Aroostook Band of Micmacs, Houlton Band of Maliseet Indians, Passamaquoddy Tribe, and Penobscot Nation. The Maine SHPO, the FHWA, MaineDOT, and Tribal 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.

## **IV. 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, and any federally recognized Tribes that may attach religious and/or cultural significance to the affected property. Notification will be within 48 hours of the discovery. No activities which might disturb or damage the remains will be conducted until the 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); and

## **V. Reporting**

Each year 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

## **VI. 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, the FHWA shall consult with the objecting party(ies) to resolve the objection. If the FHWA determines, within 30 days, that such objection(s) cannot be resolved, the FHWA will:

- A. 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 the 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 the 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, the FHWA may render a decision regarding the dispute. In reaching its decision, the FHWA will take into account all comments regarding the dispute from the parties to the MOA.
- C. The 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. The FHWA will notify all parties of its decision in writing before implementing that portion of the Undertaking subject to dispute under this stipulation. The FHWA's decision will be final.

## **VII. 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 the FHWA. The FHWA shall:

- A. Immediately notify the other signatory parties in writing of the objection. Any signatory party may choose to comment on the objection to the FHWA.
- B. Establish a reasonable time frame for this comment period. The FHWA shall consider the objection, and in reaching its decision, the FHWA will take all comments from the other parties into account.
- C. Within 15 days following closure of the comment period, the FHWA will render a decision regarding the objection and respond to the objecting party. The FHWA will promptly notify the other signatory parties of its decision in writing, including a copy of the response to the objecting party. The FHWA's decision regarding resolution of the objection will be final.
- D. Following the issuance of its final decision, the 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.

- E. The 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.

### **VIII. Amendments**

If any signatory to this MOA, including any invited signatory, determines that its terms will not or cannot be carried out or that an amendment to its terms must be made, that party shall immediately consult with the other parties to develop an amendment to this MOA pursuant to 36 CFR §§800.6(c)(7) and 800.6(c)(8). The amendment will be effective on the date a copy signed by all of the original signatories is filed with the ACHP. If the signatories, including any invited signatory, cannot agree to appropriate terms to amend the MOA, any signatory may terminate the agreement in accordance with Stipulation IX.

### **IX. Termination**

If the MOA is not amended following the consultation set out in Stipulation VIII it may be terminated by any signatory or invited signatory. Within 30 days following termination, the 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.

### **X. 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, Maine SHPO, and the ACHP that it intends to do so, and adherence to the terms of this MOA.

SIGNATORIES:

Federal Highway Administration

\_\_\_\_\_ Date \_\_\_\_\_  
Todd D. Jorgensen  
Division Administrator

Maine State Historic Preservation Officer

\_\_\_\_\_ Date \_\_\_\_\_  
Kirk Mohney  
State Historic Preservation Officer

INVITED SIGNATORY:

Maine Department of Transportation

\_\_\_\_\_ Date \_\_\_\_\_  
Joyce Taylor  
P.E., Chief Engineer

ATTACHMENT A

DRAFT

Milo Old Toll Bridge #2867 Bridge Replacement Project  
Section 106 Memorandum of Agreement  
MaineDOT WIN 20502.00

