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**THE STATE OF NEW HAMPSHIRE**  
DEPARTMENT OF TRANSPORTATION



*Victoria F. Sheehan*  
Commissioner

*William Cass, P.E.*  
Assistant Commissioner

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

Bureau of Right-of-Way  
May 28, 2021

**REQUESTED ACTION**

Pursuant to 228:31, authorize the New Hampshire Department of Transportation (Department) to sell the currently dismantled Robert J. Prowse Memorial Bridge (also known as the Ash Street Bridge), NH Bridge 140/120. The sale would be directly to the City of Keene (Grantee), for nominal consideration of \$1.00, effective upon Governor and Executive Council approval.

The Department's Bureau of Finance and Contracts has determined the funding for the sale of the Robert J. Prowse Memorial Bridge be applied as followed:

04-096-096-960015-0000-UUU-402156  
Administrative Fee

FY 2021  
\$1.00

**EXPLANATION**

The Department received a request from the Grantee in February of 2019 to acquire the historic Robert J. Prowse Memorial Bridge. The Grantee proposes to reuse the bridge as part of the Transportation Heritage Trail (THT). This trail is the next phase in the ongoing development of their existing Cheshire Rail Trail System. The THT will pay homage to the evolution of transportation technology through the decades. This portion of the trail system will feature educational signage and static displays related to the history of transportation and how transportation systems have shaped today's build environment.

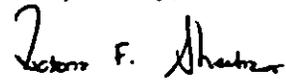
The Prowse Memorial Bridge (Prowse Bridge) that carried Ash Street over I-93 in Londonderry NH (Br. No. 140/120) was first identified as historic during the FHWA review process to exempt Interstate resources from Section 106 historic review. The Prowse Bridge was identified by FHWA, NHDOT and the State Historic Preservation Officer (SHPO) as being outstanding historic resources that would not apply to the Interstate exemption. The bridge was further identified as eligible for the National Register of Historic Places as part of the planning process for the Salem-Manchester, 10418C project. During the design phase of the project it was determined that the historic Prowse Bridge would need to be removed to accommodate the widened highway. 23 U.S. Code Section 144 requires any state that "proposes to demolish a historic bridge for a replacement project...shall first make the historic bridge available for donation..." The Department, with FHWA and SHPO concluded during the Section 106 process that we would carefully dismantle the bridge and store it for a period of 10 years while actively promoting the adaptive reuse of the structure. This was recorded in the Section 106 Memorandum of Agreement

(MOA), which also states that a historic covenant will be placed on the bridge for a period of 20 years if purchased and relocated. Per the MOA, the sale information was placed on the Department's website.

The City of Keene is committed to preserving the historical aspects of the Prowse Bridge, which makes it eligible for the National Register of Historic Places. Enclosed you will find the Project Plan, prepared by the City of Keene Engineering Division, dated January 2019. Under the Historic Preservation section, they list how they intend to preserve this historic bridge. Also enclosed is the Historic Preservation Deed Restrictions (Covenant) Provisions, prepared by NH Division of Historical Resources.

The Department respectfully requests authorization to sell the Prowse Memorial Bridge as noted above.

Respectfully,



Victoria F. Sheehan  
Commissioner

VFS/SJN  
Attachments

**HISTORIC PRESERVATION DEED RESTRICTION (COVENANT) PROVISIONS  
FOR MITIGATION BY RELOCATION OF THE  
PROWSE BRIDGE (140/120) TO KEENE, NH, FORMERLY LOCATED OVER  
INTERSTATE 93 IN LONDONDERRY, NH  
DETERMINED TO BE ELIGIBLE FOR THE NATIONAL REGISTER OF HISTORIC PLACES**

As a condition of this instrument, the Grantor, the Department of Transportation, hereby conveys the above-described property, subject to the terms of the following preservation restrictions that are hereby created in said premises, by means of the State of New Hampshire hereby reserving the following preservation restrictions, under New Hampshire Revised Statutes Annotated RSA 477:45-47, and by the State of New Hampshire and the Grantee, City of Keene, New Hampshire, said Grantee hereby covenanting to abide by and enforce the following preservation restriction.

The Grantee covenants and agrees for itself, its heirs, administrators, successors, and assigns, by accepting this deed, that the said herein conveyed premises are and shall be subject to said following preservation restrictions, and to do or refrain from doing thereon or with respect thereto all acts required or prohibited by the said following preservation restrictions.

1. **APPLICABILITY:** The following preservation restrictions, to which the herein conveyed premises are subject, are as follows:
  - A. Grantor herein shall mean the Department of Transportation, its successors or assigns.
  - B. Grantee herein shall mean the Grantee of this deed.
  - C. All preservation restrictions contained herein, whether covenants, restrictions, easements, or conditions, shall be binding upon both the Grantor and Grantee.
  - D. The restrictions specified herein shall apply to the herein conveyed premises unless the Grantor provides the Grantee with a specific written waiver for any specific act in contravention thereof.
  - E. The burden of these restrictions shall run with the bridge, and not the parcels from which it is moved, and shall be binding upon all owners of any interest therein. The right of enforcement of these restrictions by the Grantor and the New Hampshire Division of Historical Resources / State Historic Preservation Office (DHR / SHPO) shall be as provided in New Hampshire Revised Statutes Annotated RSA 477:45-47 (Chapter 391, Laws of 1973, and Chapter 301, Laws of 1979), as they may be amended from time to time.
2. **GENERAL INTENT:** In the event the Grantor and/or Grantee and/or DHR / SHPO have a difference of opinion about the meaning of a specific term or condition recited below, they shall be guided in interpretation by the following statements of General Intent:
  - A. The purpose of the preservation restrictions is to preserve the significance, integrity, and engineering and historical values associated with the bridge, that make it eligible for the National Register of Historic Places. The restrictions shall apply to the steel rigid frame bents (two exterior and one interior), the hinged cantilever system, the pin and hanger system and the fixed bearings. The exterior steel bents shall be reused to the extent possible, keeping similar massing and aesthetic features.
  - B. All changes to the bridge subject to these preservation restrictions will be in the spirit of contributing to the public purpose of protecting and preserving the bridge in conformance with the Standards for Review, or as required by local, state, and federal legislation for the public benefit.
  - C. The preservation restrictions shall apply to the design, structural integrity, and preservation of the materials of the bridge. Insofar as feasible, repair, replacement, alterations and removals, and additions should be made in-kind, with forms and materials that match or complement and are compatible with the historic forms and materials. It is understood that not all of the interior steel frames will be reused for pedestrian use. The restrictions shall not apply to the abutments, wingwalls, deck, and safety railing.
  - D. The preservation restrictions shall apply for a term of ten (10) years.
3. **INTERPRETATION:** In the event of a disagreement between Grantor and/or Grantee and/or DHR / SHPO as to the interpretation or application of the provisions of these preservation restrictions, any party may petition to the Merrimack County Superior Court for relief.
4. **STANDARDS FOR REVIEW:** The Grantor and the DHR / SHPO shall apply the following Standards for Review in exercising any authority created by these preservation restrictions to inspect the premises subject to these preservation restrictions, and to review and approve any proposed construction, alteration, rehabilitation, relocation, demolition, change in use, sale, subdivision, or other transfer of property rights. The Grantee agrees to abide by the Standards for Review in performing any construction, alteration, rehabilitation, relocation, demolition, change in use, sale, subdivision, or other transfer of property rights affecting the premises subject to these preservation restrictions. The Standards for Review are as follows:
  - A. *The Secretary of the Interior's Standards for the Treatment of Historic Properties* (36 CFR Part 68, 1995) as they may be amended from time to time. A copy of the Standards is on file with the DHR / SHPO and can be found on the National Park Service website.
  - B. The following documents will be used as baseline documentation for the bridge:

- b. Individual Inventory form, LON0116, Ash Street Bridge No. 140/120, prepared by Preservation Company in 2001 and rewritten by James Garvin of NH Division of Historical Resources in 2002.
  - c. Conditions Assessment Report completed by NHDOT in 2021. This report documents the condition of the bridge pieces after it was removed from its location spanning I-93 and is being stored in Londonderry. The Conditions Assessment report takes note of any current and future concerns as it is currently stored. This contains current photographs. The Grantee shall include digital photographs as the bridge is being moved to include in this report.
5. **INSPECTION AND COMPLIANCE:** The Grantee agrees that the State of New Hampshire, by and through its DHR / SHPO, shall have the right to inspect the bridge subject to these preservation restrictions at reasonable times, to ascertain whether the terms of these preservation restrictions have been complied with. The Grantee agrees to submit to the Grantor, including both DHR / SHPO and DOT, for the duration of these preservation restrictions, an annual stewardship report detailing the current condition of the bridge, all physical work, if any, undertaken on the bridge over the course of the previous year, as well as any proposed stewardship activities anticipated for the upcoming year. DHR / SHPO shall provide a template for the annual stewardship report.
  6. **MAINTENANCE AND ADMINISTRATION:** The Grantee agrees to assume the total costs of continued maintenance, repair, and administration of the bridge, in a manner that complies with the Standards for Review, in order to preserve the engineering and historical integrity of its features, materials, appearance, workmanship and environment, and in order to protect and enhance those significant characteristics which make the bridge eligible for the National Register of Historic Places. The Grantee shall maintain the bridge at all times and shall keep it in a state of good repair, and shall not allow the appearance of the bridge to deteriorate in any material way. Nothing herein shall prohibit the Grantee from seeking financial assistance from any sources available to the Grantee.
  7. **TREATMENT OF PROPERTY/ALTERATIONS:** The Grantor and the Grantee and the DHR / SHPO agree that the bridge will be appropriately moved and mothballed awaiting final erection and that no alterations shall be made to the bridge subject to these preservation restrictions, without the prior written consent of the State of New Hampshire, by and through its Division of Historical/State Historic Preservation Office, its successors or assigns, except for:
    - A. ordinary repair and maintenance to conserve engineering and historical values, significance, and integrity; or
    - B. actions required to mitigate a casualty or other emergency promptly reported to the DHR / SHPO, its successors or assigns.
  8. **SUBDIVISION AND CHANGE IN USE:** The Grantee agrees that the use of the bridge subject to these preservation restrictions shall not be changed, nor shall covenants or other property be granted, sold, or transferred, without the prior written consent of the State of New Hampshire, by and through the DHR / SHPO, its successors or assigns.
  9. **EXCLUSION:** The Grantee agrees that the State of New Hampshire, by and through any of its agencies, in no way assumes any obligation whatsoever for maintaining, repairing, or administering the premises covered by these preservation restrictions.
  10. **LIABILITY:** The grantee agrees to protect, indemnify, hold harmless, and defend at its own cost and expense, the grantor, its agents, trustees, directors, officers, and employees, or independent contractors, from and against any and all claims, liabilities, expenses, costs, damages, losses, and expenditures, including reasonable attorneys' fees and disbursements hereafter incurred, arising out of or in connection with injury to or death of any person in or on the Property, physical damage to the Property, or the presence or release in, on, or about the Property at any time of any substance now or hereafter defined, listed, or otherwise classified pursuant to any law, ordinance, or regulation as a hazardous, toxic, polluting, or contaminating substance, or against any other injury or other damage occurring on or about the Property and arising from the Grantee's negligent acts. In the event the Grantee is required to indemnify the Grantor in accordance with this section, the amount of such indemnity, until discharged, shall constitute a lien on the property and shall have the same priority as a mechanic's lien. Nothing contained in this section shall jeopardize the priority of any lien on the Property given by the Grantee to secure a Promissory Note or Promissory Notes. Notwithstanding the foregoing, nothing herein contained shall be construed to be a waiver of the sovereign immunity of the State of New Hampshire, nor shall it be construed to be a waiver of the statutory limitation on liability available to the City of Keene.
  11. **EXERCISE OF RIGHTS AND REMEDIES:** Failure of the Grantor and/or the DHR / SHPO to exercise any right or remedy granted under these preservation restrictions shall not have the effect of waiving or limiting the exercise by the Grantor and/or the DHR / SHPO of any other right or remedy or the invocation of such right or remedy at any other time.
  12. **CONTINUATION:** In the event that the bridge is damaged or destroyed through the willful action or negligence of the Grantee, the State of New Hampshire may initiate such administrative or judicial actions as may be legally available and appropriate.
  13. **SEPARABILITY:** Any portion of items of these preservation restrictions found to be contrary to law shall not invalidate any other portions or items or the whole of these preservation restrictions.
  14. **EXTINGUISHMENT:** Grantor, the DOT with the DHR / SHPO, and Grantee hereby recognize that circumstances may arise that may make impossible the continued ownership or use of the bridge in a manner consistent with the purpose of this Covenant and necessitate extinguishment of the Covenant. Such circumstances may include, but are

not necessarily limited to, partial or total destruction of the structure resulting from casualty, natural disaster, or other events beyond the control of the Grantee, or by eminent domain. No such extinguishment or termination of this Covenant shall be effective until an instrument to that effect is recorded in the Cheshire County Registry of Deeds.

15. **AMENDMENT:** If circumstances arise under which an amendment to or modification of this Covenant would be appropriate, Grantor, the DOT with the DHR / SHPO, and Grantee may by mutual written agreement jointly amend this Covenant, provided that no amendment shall be made that will adversely affect the qualification of this Covenant or the status of Grantor and DHR / SHPO under any applicable laws, including Sections 170(h) and 501(c)(3) of the Code and the laws of the State of New Hampshire. Any such amendment shall be consistent with the protection of preservation values of the structure and the purpose of this Covenant; shall not affect its duration; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall engineering and historical values protected by this Covenant. Any such amendment shall be recorded in the Cheshire County Registry of Deeds. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.
16. **OTHER CONDITIONS:** The Grantor and the DHR /SHPO agree that the bridge will temporarily stored in its current location until September 13, 2026, or until the Grantee is prepared to erect it in its final location, whichever comes first. If the Grantee is unable to relocate the bridge by this date, the Grantor may, at its sole discretion, elect to continue storing the bridge or dispose of the bridge, as allowed in the Memorandum of Agreement between the NEDOT, FHWA, and NH SHPO, dated 9/13/2016.

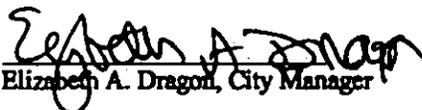
TO HAVE AND TO HOLD the said bridge, with all the privileges and appurtenances thereunto belonging to the said Grantee and its assigns forever.

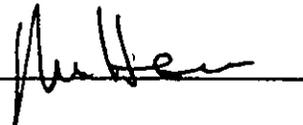
THE NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
Victoria F. Sheehan, Commissioner

Witness: \_\_\_\_\_

THE CITY OF KEENE

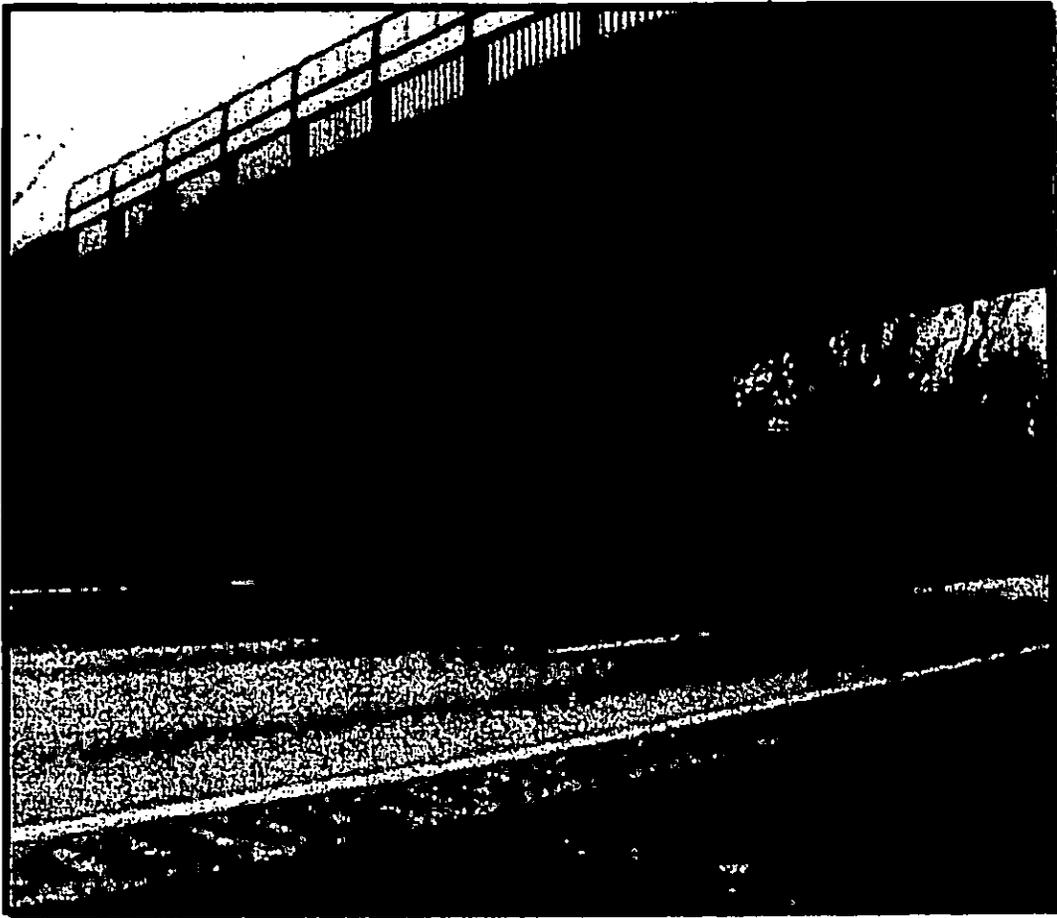
By:   
Elizabeth A. Dragon, City Manager

Witness: 

# Project Plan

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*Reuse of the Robert J. Prowse Memorial Bridge*



*prepared by*  
City of Keene, Engineering Division  
January 2019

## Project Vision

The City of Keene proposes to acquire and reuse the Robert J. Prowse Memorial Bridge as a central component of the envisioned Transportation Heritage Trail. This Trail will be the next phase in the ongoing development for our existing Cheshire Rail Trail System. This section will begin at the terminus of the previously completed Industrial Heritage Trail (IHT). Where the IHT celebrates Keene's history as an industrial and manufacturing hub, the Transportation Heritage Trail (THT) will pay homage to the evolution of transportation technology through the decades.

The major feature of this project will be the adaptive reuse of three historic bridges. To the west, the trail will reuse the Robert J. Prowse Memorial Bridge to cross NH Route 101. In the center, the trail will feature the existing Stone Arch Bridge, which will be rehabilitated with appropriate railings. The City anticipates reusing either our own Island Street Bridge (a Bally truss bridge) or a historic wooden bridge to carry the trail over Swanzey Factory Road. Additional features may be added as opportunities present. For example, the proposed extension of Victoria Street may present an opportunity for an additional historic bridge to be reused.

Along the trail, the historic bridges will form the context for educational signage and static displays related to the history of transportation and how transportation systems have shaped today's built environment.

## Project Implementation

Financial reality requires that a project of this scale be accomplished over a period of years and in multiple phases. The chart below lays out a conceptual plan for implementing this project in very broad terms.

Activity	Funding Source(s)	Completion Date
Apply for Transportation Alternatives Grant	N/A	2020
Install safety railings on Stone Arch Bridge; Create trailhead parking area on Swanzey Factory Road	Preserve America Local Donations General Revenue	2023
Extend trail on existing rail bed from Eastern Avenue to Rt. 101; Catalog and remove Stone abutment; Regrade slope	General Revenue Recreational Trails Program	2024
Install Prowse Bridge	Transportation Alternatives General Revenue	2025

Several steps must be completed to prepare the site for the Prowse Bridge. By undertaking these tasks prior to the actual bridge move, the project can leverage a variety of funding opportunities and allow us to build project momentum. The first task will be to catalog the existing stone abutment and remove it from the site. At the same time, the existing slopes will be regraded to make room for the future bridge.

Next, the existing trail will be extended from its current terminus at Eastern Avenue to Route 101. During this stage, the rail bed will be cleared and drainage systems will be restored.

Before making a formal connection to the Stone Arch Bridge, it will be necessary to install safety railings along the length of the structure. Because the Stone Arch Bridge itself is a historic structure, the railing system will be designed in consultation with the SHPO. We anticipate this step will include a small trail-head parking area on Swanzey Factory Road.

Finally, new abutments will be cast and the Prowse Bridge will be relocated to its new home. New pre-cast concrete decking will be installed and railings added. We expect the bridge will be open to trail users in the fall of 2024.

After the Prowse Bridge is installed, the trail will temporarily descend from the original railroad grade to meet the existing grade at Swanzey Factory Road. We anticipate a future project will be developed in cooperation with the Town of Swanzey to extend the trail system from Swanzey Factory Road to the Swanzey Town line and beyond. During this next phase, the City will evaluate the feasibility of reusing the Island Street Bridge to cross Swanzey Factory Road. The Island Street Bridge is structurally inadequate for highway loads and is scheduled to be replaced as part of the Winchester Street Reconstruction Project (FY 20).

## **Financial Plan**

The City estimates that the reuse of the Prowse Bridge as part of an overall rail trail project will cost approximately \$2,564,500. As described above, funding for this work is expected to come from a variety of sources, including grants, donations and general revenue appropriations. The enclosed project cost estimate is based on an assumed sequence of work and timing of project components.

## **Historic Preservation**

The proposed reuse must comply with the September 2016 Memorandum of Understanding between the New Hampshire Department of Transportation (NHDOT), the New Hampshire Department of Resources (SHPO) and the Federal Highway Administration (FHWA). The City of Keene understands that it will be required to rehabilitate and maintain the bridge in accordance with *the Secretary of the Interior's Standards for Rehabilitation*. The following paragraphs describe how the proposed project will satisfy this obligation.

1. *A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.*

We propose to use the bridge for its historic purpose; the crossing of traffic over a major highway. While the proposed reuse will not carry vehicular traffic, we believe the use for non-motorized transportation meets the intent of the Secretary's standard.

- 2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.*

The historic significance of the Prowse Bridge is characterized by several unique features and special emphasis will be placed on preserving these. Among them are the distinct horizontal "spandrels" at each leg. Although the City anticipates using only three of the five steel bents, we request both of the exterior bents so that this decorative feature will be visible from both directions.

Another distinctive feature of the original construction was the coffered concrete wing walls. Although it is not possible to relocate the former wing walls, the City will incorporate this aesthetic element into the new location to the extent practical.

Finally, the original construction featured aluminum bridge rails. In 1976, the NHDOT installed protective chain-link screening attached to the outside of the aluminum rails. While the original railings offer improved aesthetics, they may not satisfy highway safety requirements. It may not be possible to retain this design element.

- 3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.*

No new architectural elements or aesthetic features are proposed.

- 4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.*

The two known alterations to the bridge, specifically the addition of protective screening in 1976 and the replacement of deck joint sealant in 1999 are not believed to be historically significant.

- 5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.*

As described above, the distinctive features of the steel frames shall be retained. Construction techniques used as part of the original design shall be recreated to the extent possible. For example, the City will review the original design to understand how cross-bracing members were positioned and attached.

In addition to replicating the style of the original wing walls, the City requests that the commemorative plaque previously affixed to the bridge be installed as part of our reuse.

- 6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old*

*in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.*

Based upon our review of the June 1, 2017 NHDOT inspection report, we anticipate only minor rusting of the main girders. We also expect movable bearings will be re-usable with minor repair. However, we expect that all cross-bracing will need to be replaced.

7. *Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.*

It is our understanding that the bridge has been tested and found to be free of lead-based paint. We plan to restore the existing protective coating by spot cleaning to remove rust and re-painting with a color-matched coating

8. *Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.*

The proposed reuse will require the removal of an existing stone masonry bridge abutment from the northern side of Rt. 101 that previously supported a railroad bridge over the highway. The bridge and one abutment were removed at some point in time to improve highway geometry and overhead clearance.

While the existing abutment would be out of context to reuse as part of the Prowse Bridge project, it is an excellent example of the craftsmanship from the heyday of the railroads. The City proposes to carefully document the existing conditions, label individual stones and relocate the materials for later reuse. Ideally, the abutment could be reconstructed in the future to support a non-historical bridge project. However, the reuse of the stonework is not proposed as part of this project.

9. *New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.*

As noted above, the new crossing may require substantially altered railings to satisfy highway safety requirements. We will work with NHDOT staff from Highway Design and Cultural Resources to develop a railing system that protects highway traffic while respecting the character of the original design.

10. *New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.*

Removal of new railings and abutments will not affect the essential form of the steel bridge.

**BILL OF SALE**

The STATE OF NEW HAMPSHIRE, by Victoria F. Sheehan, Commissioner of The Department of Transportation, 7 Hazen Drive, PO Box 483, Concord, New Hampshire 03302-0483 ("Seller"), duly authorized by vote of the New Hampshire Governor and Council on \_\_\_\_\_, 2021 (Item # \_\_) and in accordance with RSA 4:39-c and RSA 228:31, for consideration paid does hereby unconditionally sell and convey, for the sale price of \$1.00, to the CITY OF KEENE, 3 Washington Street, Keena, New Hampshire 03431 ("Buyer"), its successors and assigns forever the following described chattels and personal property:

The Prowse Memorial Bridge (also known as the Ash Street Bridge) as now dismantled, and currently located on State-owned land adjacent to I-93 just south of Exit 4 in the Town of Derry, acquired under Salem-Manchester Im-IR-93-1(174)0, 10418C.

Seller represents that, as of the time of the execution of the Historic Preservation Agreement between Buyer and Seller, dated \_\_\_\_\_, it has good and marketable title to the bridge being transferred.

THE BRIDGE IS BEING SOLD AND TRANSFERRED "AS IS, WHERE IS," AND, EXCEPT TO THE EXTENT SPECIFICALLY PROVIDED HEREIN, THE STATE IS NOT MAKING ANY OTHER REPRESENTATIONS OR WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH REPRESENTATIONS, OTHER THAN THOSE HEREIN, ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

Executed this \_\_\_\_ day of April, 2021.

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
Victoria F. Sheehan, Commissioner

Witness: \_\_\_\_\_

CITY OF KEENE

By: Elizabeth A. Dragon  
Elizabeth A. Dragon, City Manager

Witness: M. Heun

**FIRST AMENDED MEMORANDUM OF AGREEMENT**  
**AMONG NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION,**  
**FEDERAL HIGHWAY ADMINISTRATION,**

**and the**

**NEW HAMPSHIRE STATE HISTORIC PRESERVATION OFFICER**

**Regarding the Salem to Manchester Interstate 93 widening project.**

**WHEREAS**, the Federal Highway Administration (FHWA) plans to provide funds for the New Hampshire Department of Transportation (NHDOT) to improve and widen the I-93 corridor between Salem and Manchester; and

**WHEREAS**, FHWA has determined that the undertaking will have an adverse effect on the following properties that are eligible for listing in the National Register of Historic Places:

George F. Armstrong House (WND0085), 86 Range Road, Windham,  
Robert Armstrong House (WND0086), 88 Range Road, Windham,  
Robert J. Prowse Memorial Bridge (LON0116), Ash Street over I-93, Londonderry,  
Gearty House (LON0105), 117 Rockingham Road, Londonderry,  
Stone walls associated with Searles Castle (WND-D1), off NH Route 111, Windham,  
Henry Vartanian House, 2 Brady Street (SAL0224), Salem,  
Armenian Settlement Historic District, Salem,  
Brick-topped stone culvert under the Manchester & Lawrence Railroad, west of Exit 5, Londonderry, and  
Stone culvert under the Manchester & Lawrence Railroad, adjacent to Independence Drive, Londonderry

and has consulted with the NHDOT and the New Hampshire State Historic Preservation Officer (SHPO) pursuant to 36 C.F.R. part 800, of the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108); and

**WHEREAS**, NHDOT has reached out to the various and other interested groups via letters and at the Public Informational Meeting and the Public Hearing to seek Consulting Party status; the Windham Historic District Commission has been identified as a Consulting Parties; and

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

**WHEREAS**, the FHWA, NHDOT and the SHPO executed a Memorandum of Agreement (Original MOA) signed February 5, 2004 taking into account the adverse effects on the project; and

**WHEREAS**, Stipulations II, IV, and V in the Original MOA concerning the acquisition, relocation and marketing of the George F. Armstrong House and the Robert Armstrong House, shall be deleted due to updated project plans that no longer impacted those properties; and

**WHEREAS**, Stipulation VIII, concerning the Robert Prowse Bridge, in the Original MOA shall be amended to accommodate updated project plans; and

**WHEREAS**, Stipulation X, concerning archaeological resources, in the Original MOA shall be amended to accommodate updated project plans; and

**WHEREAS**, the same signatories that executed the Original MOA have agreed that an amendment to the memorandum of agreement should be executed; and

**WHEREAS**, the duration of the MOA shall be extended to the date stipulated in Section I of this amendment;

**NOW, THEREFORE**, FHWA, NHDOT and the SHPO agree that, upon submission of a copy of this executed amended MOA, as well as the documentation specified in 36 C.F.R Section 800.11 (e) and (f) to the ACHP, FHWA shall ensure that the Original MOA dated February 2004 is amended by deleting all of its stipulations and replacing them with the following in order to take into account the effect of the undertaking on historic properties.

### **STIPULATIONS**

FHWA/NHDOT/SHPO agree that the following stipulations have been completed and warrant no further mitigative actions:

1. **Minimization of Impact through design**
  - a. Impacts to the Gearty House (LON0105) were minimized by choosing an alternative that avoided unnecessary slope impacts.
  - b. A brick top culvert along the Manchester-Lawrence railroad was protected with fencing during construction
  - c. Stabilization occurred on the Robert Armstrong House and a preservation easement was signed on the building.
  - d. The barn/workshop addition on the George Armstrong House was removed in an effort to preserve the remaining structure.
  - e. A state historic marker was installed in Salem discussing the importance of the Armenian Settlement Historic District.
  
2. **Recordation has been completed on the following properties and all have been accepted by SHPO:**
  - a. Robert Armstrong House, New Hampshire Historic Property Documentation (NHHPD), NH State No. 604
  - b. George F. Armstrong House, NHHPD, NH State No. 605
  - c. Robert Prowse Bridge, Ash Street, Londonderry, NHHPD, NH State No. 650
  - d. Henry Vartanian House, NHHPD, NH State No. 613
  - e. Manchester-Lawrence Railroad Culvert MM 19.23, Independence Drive, Londonderry, NHHPD, NH State No. 654
  - f. The Manchester-Lawrence railroad was recorded in a Historic District Area form
  - g. The Indian Rock Road wall fragment, associated with Searles Castle was recorded on an Individual

Inventory Form (WND0008). No additional stone walls associated with Searles Castle were identified.

3. Wetland Mitigation Site: All of the wetland mitigation sites for the project have been completed. No additional archaeological resources were identified.

**FHWA/NHDOT shall ensure that the following measures are carried out:**

4. Mitigation of the Robert Prowse Bridge (LON0116)
  - a. The NHDOT will replace the bridge with a two-span steel stringer bridge with the girders haunched over the pier. This design is similar to the look and feel of the historic Ash Street Bridge.
  - b. NHDOT will make a concerted effort to find an adaptive reuse for the bridge. In 2015 it was determined feasible to remove the structure in a manner so as not to impact the character defining features of the bridge.
    - i. Because of the national significance of the bridge, it will be carefully dismantled and stored on NHDOT property, for a period not to exceed ten (10) years while NHDOT actively seeks for its relocation.
    - ii. NHDOT will offer the bridge for reuse in accordance with 23 USC Section 144. NHDOT will develop a marketing plan which will seek to market the bridge for relocation yearly, up to 10 years. This will include advertising on the NHDOT website, local and regional newspapers, and national preservation publications. Specific attention will be made to target municipalities, recreation trails and railroads. Ownership transfer for the re-use of the bridge will require the use of restrictive preservation and maintenance covenants lasting for 20 years to ensure protection of the character-defining features of the bridge. Any applicants interested in the bridge will also have to submit a preservation plan, showing how they will meet the Secretary of the Interior's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings," and will assume all future legal and financial responsibilities for the bridge. Federal Aid highway funds will be made available for its removal and relocation up to the estimated cost of demolition, not to exceed the approved bid estimate.
      1. The marketing plan will be developed no later than December 30, 2016. A 45 day review period will be provided for the draft submittal to FHWA and SHPO.
    - iii. If NHDOT cannot find an adaptive reuse in 10 years the bridge will be disposed of.
    - iv. Should the bid amount for this construction contract item vary by more than 25% from the engineering estimate, the Signatories will meet to discuss whether possible modifications to the proposed action may be necessary in order to better align the current scope to carefully dismantle, store and market the bridge with available funding.
  - c. NHDOT will create and install an interpretive exhibit about its design and fabrication. The location of the installation will be determined in consultation with NHDOT and its consultant, SHPO, and FHWA. NHDOT and SHPO will have a 45 day minimum to review a draft product prior to installation.
5. Archaeological Investigations
  - a. All Phase II archaeological investigations have been completed. If project plans change and additional archaeological investigation is necessary, extended Phase II or Phase III investigations

- will occur as needed.
- b. Final reports of the Phase II investigations, and any additional work, will be submitted to NHDOT for review. NHDOT will have 30 days to review and comment. Any revisions will be incorporated and final drafts will be submitted to SHPO for their 30 day review period.
    - i. Finalization of reports will include reviewing, and if necessary correcting, the site names to match those in the SHPO archaeological site database.
  - c. Additional mitigation, specifically public education, for the impacts on archaeological sites, if any, will be discussed and determined between FHWA, NHDOT and SHPO.
  - d. If human remains and grave-associated artifacts are discovered while carrying out the activities pursuant to this MOA, the FHWA and NHDOT will immediately notify the appropriate authorities, as prescribed by New Hampshire statutes, and the SHPO, to determine an appropriate course of action in accordance with RSA 277-C:8a-8j and the ACHP's "Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects," adopted by ACHP on February 23, 2007.
6. Protection of Historic Properties – The NHDOT shall ensure that any historic properties and/or archaeological sites, are secured and protected against damage, unauthorized occupancy, and vandalism until the measures stated in this agreement are implemented.

#### I. DURATION

This MOA amendment will expire if its terms are not carried out on December 31, 2022. Prior to such time, FHWA may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation IV below.

#### II. MONITORING AND REPORTING

Each year following the execution of this MOA amendment until it expires, is terminated or stipulations completed, NHDOT shall provide all parties to this MOA amendment a summary report detailing work undertaken pursuant to its terms. Such report shall include the status outcome of the bridge marketing, any adaptive reuse possibilities, any scheduling changes proposed, any problems encountered, and any disputes and objections received in FHWA's efforts to carry out the terms of this MOA amendment.

#### III. DISPUTE RESOLUTION

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

- A. Forward all documentation relevant to the dispute, including FHWA's proposed resolution, to the ACHP. The ACHP shall provide FHWA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FHWA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and

concurring parties, and provide them with a copy of this written response. FHWA will then proceed according to its final decision.

- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, FHWA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FHWA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA amendment, and provide them and the ACHP with a copy of such written response.
- 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.

#### **IV. AMENDMENTS**

This MOA amendment 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.

#### **V. TERMINATION**

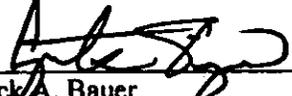
If any signatory to this MOA amendment determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation IV, above. If within thirty (30) days (or another time period agreed to by all signatories)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

Once the MOA is terminated, and prior to work continuing on the undertaking, FHWA must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. FHWA shall notify the signatories as to the course of action it will pursue.

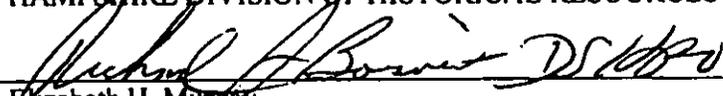
Execution of this MOA amendment by FHWA, NHDOT and SHPO and implementation of its terms evidence that FHWA has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

**SIGNATORIES:**

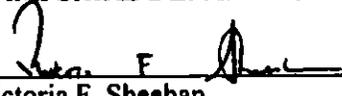
**FEDERAL HIGHWAY ADMINISTRATION**

By:  Date: 09/13/2016  
for Patrick A. Bauer  
NH Division Administrator

**NEW HAMPSHIRE DIVISION OF HISTORICAL RESOURCES**

By:  Date: 9-8-16  
Elizabeth H. Muzzey  
State Historic Preservation Officer

**NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION**

By:  Date: 9/12/16  
Victoria F. Sheehan  
Commissioner