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THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

William Cass, P.E.
Commissioner

David Rodrigue, P.E.
Assistant Commissioner

Andre Briere, Colonel, USAF (RET)
Deputy Commissioner

Bureau of Bridge Maintenance
June 21, 2023

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

REQUESTED ACTION

Authorize the New Hampshire Department of Transportation (NHDOT) to enter into an Interstate Agreement with the State of Maine Department of Transportation (MEDOT), for the management of certain bridges between Portsmouth, NH and Kittery Maine, effective upon Governor and Executive Council approval. This agreement assigns responsibility between the states and defines cost sharing arrangements. The agreement forms an oversight group called the Portsmouth-Kittery Bridge Review Group made of DOT personnel from both states.

EXPLANATION

This agreement covers assigned responsibilities for:

- Portsmouth 247/084, the Memorial Bridge: US 1 over the Piscataqua River
- Portsmouth 250/110, the Sarah Mildred Long Bridge: US 1 Bypass over the Piscataqua River
- Portsmouth 258/128, the High Level Bridge: I-95 over the Piscataqua River

Given the regional and local importance of the three afore mentioned bridges, the Parties are entering into this agreement to set out shared responsibilities regarding administration, operation, inspection, maintenance, repair, rehabilitation, and other capital improvement planning as such activities involve the Portsmouth-Kittery Bridges and to ensure satisfaction of the Parties' shared vision for the long-range viability of the Portsmouth-Kittery Bridges. This comprehensive agreement for the management of these three bridges replaces several individual, outdated, and piecemeal agreements and memoranda administering the maintenance arrangements.

The Portsmouth-Kittery Bridge Review Group (P-K BRG) will be made of each DOT's Chief Engineers, Directors of Operations and Bridge Maintenance Engineers. The group will be tasked with developing a comprehensive asset management plan for the three structures, emergency action strategies and other plans as determined or directed. The group will also ensure that planned preventative maintenance and

capital projects are appropriately programmed in each State's respective transportation improvement plans.

The agreement spells out lead agency assignments, maintenance responsibilities and states agreed to cost sharing definitions for winter maintenance, capital projects, lift bridge operation, etc.

This agreement has been approved by the Attorney General's Office as to form, substance, and execution.

We respectfully request your approval.

Sincerely,

William Cass, P.E.
Commissioner

Attachments

INTER-STATE COOPERATIVE AGREEMENT
For Management of Certain Bridges
between Portsmouth, New Hampshire and Kittery, Maine

MEMORIAL BRIDGE,
SARAH MILDRED LONG BRIDGE,
and PISCATAQUA RIVER BRIDGE

This Inter-State Agreement (the "Agreement") is entered into by and between the **NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION** ("NHDOT") and the **MAINE DEPARTMENT OF TRANSPORTATION** ("MaineDOT") (collectively, the "Parties" or individually a "Party," a "Department," or a "State") relative to the shared operation and management of the following bridges spanning the Piscataqua River between Portsmouth, New Hampshire, and Kittery, Maine (collectively, the "Portsmouth-Kittery Bridges"):

- **Memorial Bridge Crossing:** Carrying US Route 1 and comprised of three components identified as separate bridges with unique bridge numbers and names:
  - the Memorial Bridge (main truss, NBI Border Bridge #021702470008400, ME Bridge #2546, NH Bridge Portsmouth 247/084;
  - the NHDOT approach span "Scott Avenue Bridge" (NH Bridge Portsmouth 246/083); and
  - the MaineDOT approach span "Viaduct Bridge" (ME Bridge #5276).
- **Sarah Mildred Long Bridge**, one continuous bridge, carrying US Route 1-Bypass: (NBI Border Bridge# 021702500011000, ME Bridge #3641, NH Bridge Portsmouth 250/110).
- **Piscataqua River Bridge Crossing** (also known as the "High Level Bridge"), carrying Interstate Route I-95 and comprised of three components identified as separate bridges with unique bridge numbers and names:
  - Piscataqua River Bridge (main truss) (NBI Border Bridge #021702580012800, ME Bridge #6330, NH Bridge Portsmouth 258/128);
  - The NHDOT approach span "I-95 NH Approach Span" (NH Bridge Portsmouth 257/127); and
  - The MaineDOT approach span "Maine Approach Bridge" (ME Bridge #1477).

RECITALS

A. The Portsmouth-Kittery Bridges span the border between Maine and New Hampshire and are jointly controlled by the Parties. The geographic limits, including highway approaches and the individual bridge components, covered by this Agreement are depicted in the attached Figures 1 through 3.

B. Numerous additional bridges span the border between Maine and New Hampshire at non-Piscataqua River locations, the inspections for which are to be managed under a separate agreement being negotiated between the Parties (the "2023 Border Bridge Safety Inspection Agreement"). *Nothing in this Agreement is intended to affect the terms of the 2023 Border Bridge Safety Inspection Agreement.*

C. In addition, a separate agreement exists for maintenance and operation of the rail components of the Sarah Mildred Long Bridge between Boston and Maine Corporation, Springfield Terminal

Railway Company, the State of New Hampshire, and the State of Maine, dated April 24, 2018 (the "SML Bridge Rail Agreement"). *Nothing in this Agreement is intended to affect the terms of the SML Bridge Rail Agreement.*

D. The purpose of this Inter-State Cooperative Agreement is to set out the Parties' shared responsibilities regarding administration, operation, inspection, maintenance, repair, rehabilitation, and other capital improvement planning as such activities involve the Portsmouth-Kittery Bridges (collectively, the "Bridge Activities") and to ensure satisfaction of the Parties' shared vision for the long-range viability of the Portsmouth-Kittery Bridges.

AGREEMENT

Now therefore, the Parties hereby agree as follows:

1. **Portsmouth-Kittery Bridge Review Group**

Promptly upon execution of this Agreement, the Parties' Directors of Maintenance and Operations (the "Directors") shall jointly implement the creation of a Portsmouth-Kittery Bridge Review Group (the "P-K BRG"). The P-K BRG shall review and collaborate on relevant information that may influence the Parties' decisions surrounding the Bridge Activities, taking into consideration the local and regional impacts associated with the Portsmouth-Kittery Bridges.

a. The Directors shall serve as Co-Chairs of the P-K BRG.

b. The P-K BRG shall consist of the following members:

- The MaineDOT and NHDOT Directors
- The MaineDOT and NHDOT Chief Engineers
- The Maine DOT and NHDOT Bridge Maintenance Engineers/Directors

c. At the P-K BRG's discretion, the P-K BRG may seek further expertise and input from either Party's technical staff as needed.

d. The Directors shall convene annual meetings of the P-K BRG to present the findings of completed bridge inspections and to review capital improvement and maintenance plans. The P-K BRG shall provide advisory feedback on all information. Additional meetings may be scheduled at the Directors' discretion.

2. **Capital Improvements and Maintenance Planning:**

The Parties shall work cooperatively to jointly develop a dynamic capital improvement and maintenance plan for the Portsmouth-Kittery Bridges (the "Capital Improvement and Maintenance Plan"), considering the results of routine and special inspections, sound engineering principles, and input received from the P-K BRG and other in-house or consulting technical expertise as appropriate. Details of funding, agency lead, and execution of individual capital projects under the Capital Improvement and Maintenance Plan shall be negotiated by the Parties on a project-by-project basis under separate inter-state cooperative agreements.

a. *An initial Capital Improvement and Maintenance Plan shall be jointly submitted by the Directors to the Departments' Chief Engineers within twelve (12) months of the execution of this Agreement.* This initial plan shall identify projects recommended for delivery during the forthcoming ten-year period and shall propose specific strategies to fund and execute identified deliverables during the immediate three-to-five-year period.

b. The Capital Improvement and Maintenance Plan shall be updated annually thereafter on a schedule that permits the Parties to incorporate projects referenced in such plan into MaineDOT's triennial capital and maintenance "Work Plan" published annually in January and into NHDOT's "Ten Year Plan" adopted biennially in even years.

3. **Emergency Planning:**

The Parties, under the leadership of the two Directors, shall jointly develop appropriate emergency plans to be implemented if one or more of the Portsmouth-Kittery Bridges are out of service for an extended period of time to mitigate impacts to the critical economic and security links provided by these bridges.

a. Emergency plans shall include development of traffic management plans that can be executed during a long-term closure or restriction.

b. MaineDOT will serve as lead agency in the development of the emergency plan for the Piscataqua River Crossing.

c. In developing such emergency plans, the Parties shall collaborate with the Maine Turnpike Authority, the affected municipalities including Portsmouth and Kittery, and local planning commissions, as appropriate.

d. *Within twelve (12) months of the execution of this Agreement,* the Directors shall present an emergency plan to the Departments' Chief Engineers for approval.

4. **Lead Department Assignment:**

a. Unless otherwise specified in this Agreement, NHDOT shall act as the *de facto* lead Department for the administration, operation, maintenance, and repair activities performed under this Agreement.

b. Unless otherwise specified in the Agreement, MaineDOT shall act as the *de facto* lead Department for all capital projects involving the Piscataqua River Bridge Crossing.

c. If the Parties mutually determine that it is in the best interest to modify lead Department assignment for a certain Bridge Activity, all terms of this Agreement shall apply but the references to each Party shall be reversed as appropriate.

5. **General Administration and Operation:**

a. Subject to the cost sharing provisions set out in the *Cost Sharing, Invoicing, and Payment Schedule* section of this Agreement, NHDOT shall be responsible for the daily administration and operation of the Portsmouth-Kittery Bridges, including all associated lift spans, gates, and associated traffic signals.

"Operation and Administration" shall include:

- Hiring and overseeing all necessary maintenance and operations personnel (including training, scheduling, and provision of wages, benefits, retirement, leave, and associated insurances).
- Responding to all inquiries from the public and the U.S. Coast Guard.
- Planning, designing, and scheduling all necessary maintenance and repairs.
- Processing payments for materials, utilities, and consumables used.
- Monitoring marine and vehicular traffic in a manner necessary to ensure safe and efficient flow.
- All other activities necessary to oversee safe and appropriate operation of the Portsmouth-Kittery Bridges.

b. In the event of significant impacts to the flow of vehicles across or marine traffic under an affected bridge, NHDOT's Transportation Systems, Management & Operations bureau ("TSMO") shall immediately notify MaineDOT's Traffic Management Center such that staff, roadside, and public notifications can be coordinated effectively between the Parties. Likewise, if MaineDOT detects such impacts, it shall immediately notify NHDOT's TSMO.

c. NHDOT shall coordinate with the appropriate utility companies for the provision of utilities necessary for the maintenance and operation of the Portsmouth-Kittery Bridges. Subject to the cost sharing provisions set out in the *Cost Sharing, Invoicing, and Payment Schedule* section of this Agreement, NHDOT shall be responsible for paying all billed utility charges.

d. Intelligent Transportation System (ITS) Devices associated with the Portsmouth-Kittery Bridges shall be managed through separate agreements entered into between the Parties. *Nothing in this Agreement is intended to affect the terms of any outstanding ITS-related agreements involving the Parties' existing arrangements for cost sharing, operation, and management of ITS Devices.* Intelligent Transportation System ("ITS") Devices include, without limitation, all operational cameras, security cameras, traffic cameras, wired communication, and wireless communication associated with the Portsmouth-Kittery Bridges, including all associated hardware, software, warranty, and licensing fees. Examples of existing related agreements include, without limitation, the following:

- Memorandum of Agreement between NHDOT, MaineDOT, and the Maine Turnpike Authority dated July 22, 2021, involving an Active Transportation Management System on the High Level Bridge;
- Tri-State Agreement between NHDOT, MaineDOT, and Vermont Agency of Transportation dated April 21, 2022, involving the shared New England Compass ITS.

6. **Bridge Maintenance and Repair:**

a. Subject to the cost sharing provisions set out in the *Cost Sharing, Invoicing, and Payment Schedule* section of this Agreement, NHDOT shall perform, or cause to be performed, all maintenance and/or repair, activities associated with the Portsmouth-Kittery Bridges, excluding snow and ice control and including all moveable bridge system components and operator houses associated with the bridges, in such a manner as necessary to preserve the use and function thereof for the expected period of their normal useful life as determined by accepted engineering and/or industry standards. Notwithstanding the foregoing, MaineDOT shall serve as the lead Department for maintenance and repair activities performed on Maine DOT's Viaduct Bridge.

i. "Maintenance and/or Repair Activities" are defined as all items and work activities, excluding snow and ice control, normally considered to be included in the physical maintenance of highway bridges and associated traffic services as defined by the American Association of State Highway and Transportation Officials ("AASHTO") manuals. Snow and ice control shall be carried out in accordance with the *Winter Maintenance Activities* section of this Agreement.

ii. "Moveable Bridge System Components" are defined as all hardware, electrical components, and software comprising the seven movable-bridge functional systems listed in the AASHTO Movable Bridge Inspection, Evaluation, and Maintenance Manual, Part 1, Chapter 1.5, as such manual may be updated. [Said systems further include all associated support, balance, drive, control, interlocking, navigation guidance, and traffic control components.]

b. Maintenance and Repair Activities of a non-emergency nature and estimated to cost less than $100,000.00 shall be performed at NHDOT's discretion.

c. Maintenance and Repair Activities of a non-emergency nature and estimated to cost $100,000.00 or more shall be subject to the Directors' joint prior written approval.

i. Prior to approving the proposed Bridge Activity, the Directors shall consult with the Departments' respective Bridge Maintenance Engineers, detailing the scope, estimated cost, and recommended lead Department.

ii. The Directors' approval may be documented through their written concurrence with the proposed annual bridge maintenance program for a specific year.

d. Emergency Response: If either Party determines that circumstances require emergency Maintenance and Repair Activities being performed without delay, either Party shall have the authority to take whatever action is deemed necessary but shall notify the other Party immediately of such emergency and the action that is being taken in connection therewith.

7. **Winter Maintenance Activities:**

Winter maintenance activities, including snow and ice control, shall be performed by NHDOT, MaineDOT, the Maine Turnpike Authority, and the municipalities of Kittery and Portsmouth in their respective jurisdictions as further set out below:

a. **Memorial Bridge Crossing**

In accordance with the respective State laws and policy, the municipality of Kittery and the City of Portsmouth are responsible for winter maintenance activities for the Memorial Bridge Crossing within the borders of their own State. Because there is no turn-around location on Memorial Bridge, Kittery and Portsmouth have historically agreed that Kittery will plow across the entire Memorial Bridge. The Parties anticipate this arrangement continuing.

b. **Sarah Mildred Long Bridge**

NHDOT shall perform all snow and ice control on Sarah Mildred Long Bridge on behalf of NHDOT and MaineDOT, as well as the highway limits within Maine extending beyond the bridge approach to the traffic signals at the intersection of Bridge Street and the US 1 Bypass in Kittery, ME. NHDOT shall pay up front all costs of materials, equipment, and labor related to snow and ice control thereon subject to the cost sharing provisions set out in the *Cost Sharing, Invoicing, and Payment Schedule* section of this Agreement.

c. **Piscataqua River Bridge Crossing**

NHDOT and MaineDOT shall jointly perform snow and ice control on the Piscataqua River Bridge. MaineDOT, through its maintenance agreement with the Maine Turnpike Authority, shall perform snow and ice control across the entire bridge. To provide an overlapping, high level of service, NHDOT shall also perform snow and ice control across the entire bridge. Each Party shall be responsible for its own costs of materials, equipment, and labor related to snow and ice control on the Piscataqua River Bridge.

8. Inspections:

a. Standard of Evaluation: All inspections and load ratings (collectively, "Inspection Activities") shall be performed in compliance with the National Bridge Inspection Standards set out in 23 CFR Part 650, subpart C, as such may be amended (the "NBIS"), and in accordance with the recommendations set out in the most current edition of AASHTO's Manual for Bridge Evaluation.

b. Reporting Requirements and Information Sharing:

i. In compliance with the NBIS, each Party shall be responsible for reporting the bridge information required to be reported by the Federal Highway Administration ("FHWA") to FHWA's National Bridge Inventory (the "NBI").

ii. For all Portsmouth-Kittery Bridges, each Party shall electronically share all inspection and load rating information directly with the other Party promptly upon availability. Each Party shall immediately inform the other Party of emergency situations revealed by any Inspection Activities.

iii. Each Party shall electronically share all bridge information required by the Manual of Bridge Evaluation directly with the other Party promptly upon availability.

c. Emergency Response Authority: The Parties hereby grant one another full authority in emergency situations to post or close any Portsmouth-Kittery Bridge when an inspection reveals a deficiency that is considered detrimental to the safety of the traveling public. In such instance, the Party taking action shall notify the other Party immediately of such emergency and the action that is being taken in connection therewith.

d. Inspection Activities: NHDOT and MaineDOT shall efficiently coordinate the safety inspection and load rating efforts of the Portsmouth-Kittery Bridges in accordance with the following criteria and schedule:

i. **Memorial Bridge Crossing**

1. Designated Lead State and Costs Incurred:

- NHDOT shall serve as the "Designated Lead State," as such term is defined in the Specifications for the National Bridge Inventory ("SNBI"), for the Memorial Bridge and shall be responsible for performing all Inspection Activities and incurring all costs associated therewith.

- MaineDOT shall serve as the "Neighboring State," as such term is defined in the SNBI, for the Memorial Bridge.

- Each Party shall be responsible for performing all Inspection Activities and incurring all costs associated with its State's approach span.

2. Inspection Schedules:

- Routine and fracture critical ("FC") inspections shall be performed, at a minimum, every twenty-four (24) months on odd numbered years unless an alternative interval is required by the NBIS or, if appropriate, as otherwise may be extended and approved by FHWA.

- Electrical and mechanical inspections of the Memorial Bridge shall be performed every five (5) years beginning in 2023.

- Underwater inspections shall be performed at frequencies that meet the requirements of the NBIS.

3. Submittal to NBI:

- NHDOT shall submit to the NBI all bridge information required of the Designated Lead State for the Memorial Bridge in accordance with any requirements set out in the NBIS.

- MaineDOT shall submit to the NBI all bridge information required of the Neighboring State for Memorial Bridge as such requirements are set out in the NBIS.

- Each Party shall submit to the NBI all bridge information required for its own approach bridge.

ii. **Sarah Mildred Long Bridge**

1. Designated Lead State and Costs Incurred:

   - MaineDOT shall serve as the Designated Lead State for the Sarah Mildred Long Bridge and shall be responsible for performing all Inspection Activities and incurring all costs associated therewith.

   - NHDOT shall serve as the Neighboring State for the Sarah Mildred Long Bridge.

2. Inspection Schedules:

   - Routine and FC inspections shall be performed, at a minimum, every twenty-four (24) months on odd numbered years unless an alternative interval is required by the NBIS or, if appropriate, as otherwise may be extended and approved by FHWA.

   - Electrical and mechanical inspections of the Sarah Mildred Long Bridge shall be performed every five (5) years beginning in 2026.

   - Underwater inspections shall be performed at frequencies that meet the requirements of the NBIS.

   - Sonar Inspections: Periodic bathymetric surveys of the submarine cable locations shall be performed on an annual basis through the year 2026 to monitor the horizontal and vertical locations of the cables as required by the United States Army Corp of Engineers (the "Sonar Inspections"). *Notwithstanding the foregoing,* costs associated with these Sonar Inspections shall be shared equally between the Parties.

3. Submittal to NBI:

   - MaineDOT shall submit to the NBI all bridge information required of the Designated Lead State for Sarah Mildred Long Bridge in accordance with any requirements set out in the NBIS.

- NHDOT shall submit to the NBI all bridge information required of the Neighboring State for Sarah Mildred Long Bridge in accordance with any requirements set out in the NBIS.

iii. **Piscataqua River Bridge Crossing**

1. Designated Lead State, and Costs Incurred:

- MaineDOT shall serve as the Designated Lead State for the Piscataqua River Bridge and shall be responsible for performing all Inspection Activities associated therewith. Costs shall be shared equally between the Parties.

- NHDOT shall serve as the Neighboring State for the Piscataqua River Bridge.

- Each Party shall be responsible for performing all Inspection Activities and incurring all costs associated with its State's approach bridge.

2. Inspection Schedules:

- Routine and FC inspections shall be performed, at a minimum, every twenty-four (24) months on even numbered years unless an alternative interval is required by the NBIS or, if appropriate, as otherwise may be extended and approved by FHWA.

- Underwater inspections shall be performed at frequencies that meet the requirements of the NBIS.

3. Submittal to NBI:

- MaineDOT shall submit to the NBI all bridge information required of the Designated Lead State for the Piscataqua River Bridge in accordance with any requirements set out in the NBIS.

- NHDOT shall submit to the NBI all bridge information required of the Neighboring State for the Piscataqua Truss Span in accordance with any requirements set out in the NBIS.

- Each Party shall submit to the NBI all bridge information required for its own Approach Span.

Anticipated Ten-Year Schedule of Inspections for Portsmouth-Kittery Bridges

Calendar Year	Piscataqua	Sarah Mildred Long	Memorial
2023		Routine and FC	Routine and FC

			Electrical-Mechanical
2024	Routine and FC		
2025		Routine and FC	Routine and FC
2026	Routine and FC	Electrical-Mechanical	
2027		Routine and FC	Routine and FC
2028	Routine and FC		Electrical-Mechanical
2029		Routine and FC	Routine and FC
2030	Routine and FC		
2031		Routine and FC Electrical-Mechanical	Routine and FC
2032	Routine and FC		

9. **Capital Improvements**

Capital improvements will be initiated through the Capital Improvement and Maintenance Plan. An individual project agreement will be executed for each capital project designating the lead Department and cost sharing arrangement for the project.

10. **Use of Consultants and Contractors:**

Either Party may retain or employ independent consultants or contractors (the "Consultants/Contractors") to execute that Party's respective responsibilities under this Agreement if that Party determines that such retention is appropriate to effectuate the goals of this Agreement. The Party hiring such Consultants/Contractors shall be responsible for paying such Consultants/Contractors up front subject to the cost sharing provisions set out in the *Cost Sharing, Invoicing, and Payment Schedule* section of this Agreement. Consulted or contracted work with an estimated total cost of $100k or greater shall be treated as "Maintenance and/or Repair Activities" and reviewed and approved in accordance with the *Bridge Maintenance and Repair* Section of this Agreement. Consulted or contracted work that represents Independent Costs as defined in the *Cost Sharing, Invoicing, and Payment Schedule* section of this Agreement shall be performed at the discretion of the Party responsible for paying such Independent Costs.

11. **Bridge Activities Execution and Oversight:**

a. Each Party shall ensure that all Bridge Activities undertaken by that Party are performed using appropriate and acceptable engineering standards.

b. Either Party may inspect any work executed by the other Party upon reasonable notice to that Party.

c. Each Party shall allow the lead Party, or its contractor, performing a Bridge Activity to control all traffic through the affected work areas as necessary to execute the Bridge Activity in accordance with a traffic control plan approved by the Parties as applicable.

d. The lead Party of any Bridge Activity shall keep the other Party informed as to the progress of that Bridge Activity and shall promptly inform the other Party regarding any impacts that could affect schedules or estimated costs.

e. The lead Party of any Bridge Activity shall notify the other Party when a given Bridge Activity is substantially complete, at which time the other Party shall inspect the completed work and shall notify the lead Party of either acceptance of the completed work or items that the other Party believes need correction.

12. Cost Sharing, Invoicing, and Payment Schedule:

a. Cost Sharing:

i. Equal Shares: For the following Bridge Activities performed under the terms of this Agreement, the Parties shall share equally in all direct costs of materials and labor, with each Party paying 50% of the actual costs incurred:

- Administration and Operation associated with the Portsmouth-Kittery Bridges.
- Maintenance and Repair associated with the Portsmouth-Kittery Bridges, excluding snow and ice control activities.
- Provision of utilities serving the Portsmouth-Kittery Bridges.
- All Inspection Activities associated with the Piscataqua River Bridge.
- Snow and ice control activities performed by NHDOT or any Consultant/Contractor hired in connection therewith on the Sarah Mildred Long Bridge.
- For General Administration and Operation and Bridge Maintenance and Repair performed by either party, overhead costs will be included. Overhead includes cost of buildings, utilities, equipment repair, and clerical staff. Unless otherwise agreed, the Overhead rate will be the Performing Party's prevailing overhead rate at the time the work was accomplished. Direct costs paid to others, such as utility payments, are not subject to application of the Overhead rate.
- For Capital Projects, each Party's internal design and construction engineering direct labor costs (e.g., project management, plan and specification review, construction oversight), (the "Design and Construction Engineering Costs") excluding indirect overhead costs, to the extent that such costs are directly associated with the performance of Bridge Activities described in this subsection. Direct labor costs shall include wages incurred to perform the associated Bridge Activity, plus payroll taxes, costs of Department-paid medical insurance, life insurance, workers' compensation insurance, any Department-matched pension contributions, and other Department benefits associated with those wages.

- All Consultant/Contractor costs associated with any of the Bridge Activities described in this subsection.

ii. Independent Costs (not shared): For the following Bridge Activities performed under the terms of this Agreement, each Party shall be responsible for its own costs incurred and shall not seek reimbursement from the other Party for any portion of such costs:

- Snow and ice control activities performed on the Piscataqua River Bridge.
- Inspection Activities performed on the MaineDOT Viaduct Bridge and I-95 Maine Approach Bridge.
- Inspection Activities performed on the NHDOT Scott Avenue Bridge and the I-95 NH Approach Bridge.
- Inspection Activities performed by a Party in its role as the Designated Lead State for Memorial Bridge and Sarah Mildred Long Bridge as set out in the *Inspections* section of this Agreement.
- Inspection Activities performed by a Party in its role as the Neighboring State for Memorial Bridge and Sarah Mildred Long Bridge as set out in the *Inspections* section of this Agreement.
- Except as otherwise provided for in this Agreement, all activities performed within a Party's state boundary involving environmental or right of way impacts, actions or deliverables.
- All permitting, utility or railroad impacts, actions or deliverables within a Party's state boundary that are not directly related to the maintenance, operation, repair, or inspection of the Portsmouth-Kittery Bridges.
- All internal staff costs that are not otherwise identified above as shared Design and Construction Engineering Costs.
- All Consultant/Contractor costs associated with any of the above-described activities in this subsection.

b. Invoicing and Payment Schedule:

i. The Party leading a given Bridge Activity (the "Performing Party") shall pay up front all costs associated with that Bridge Activity, subject to the cost-sharing provisions set out in this *Cost Sharing, Invoicing, and Payment Schedule* Section, and invoice the other Party (the "Reimbursing Party") for reimbursement as specified herein.

ii. The Performing Party shall track and document all incurred Bridge Activity costs for which it intends to seek reimbursement and shall share updated figures with the Reimbursing Party in accordance with the schedule set out below.

iii. The Performing Party shall submit detailed invoices to the Reimbursing Party of actual costs incurred and the Reimbursing Party's share of such costs (the "Reimbursable Share") according to the following schedule:

1. Upon execution of this Agreement, each Party shall invoice the other Party for outstanding Reimbursable Shares of any Bridge Activity costs incurred prior to execution of this Agreement that are not otherwise payable under a previously existing agreement.

2. Going forward, the Performing Party shall invoice the Reimbursing Party periodically for Reimbursable Shares based on documented costs incurred within the invoice period. Invoicing may be timed at the Performing Party's discretion, provided that invoices are submitted at least quarterly per year and no more often than monthly, provided Bridge Activities have been completed during that subject period.

iv. Invoices shall be accompanied with sufficient back up documentation as proof of work performed by the Performing Party.

v. The Reimbursing Party shall review all invoices received from the Performing Party and may request any additional documentation, information or breakdowns necessary to identify, support and/or calculate any costs included in any invoices submitted.

vi. The Reimbursing Party reserves the right to refute payment of any invoiced Reimbursable Shares that are inconsistent with the agreed upon Bridge Activities. Disputes will be resolved in accordance with the *Dispute Resolution* section of this agreement.

vii. For each Bridge Activity performed, submitted invoices shall reflect all previous Reimbursable Shares paid for the subject Bridge Activity as a credit toward the amount owed to the Performing Party for that Bridge Activity.

viii. Provided the Reimbursing Party concurs with the invoiced charges, the Reimbursing Party shall submit payment in full to the Performing Party within thirty (30) calendar days of invoice receipt.

ix. If the Reimbursing Party does not concur with invoiced charges, that Party shall notify the Performing Party within 15 days of invoice receipt and the disputed charges shall be reviewed in accordance with the *Dispute Resolution* section of this Agreement.

x. Accounting/Records: Each Party shall establish and maintain adequate accounting procedures and records to document all Bridge Activity performed and costs incurred under this Agreement and shall make such records available to the other Party during normal business hours upon reasonable notice.

13. **Dispute Resolution**

If any Party disputes any decisions made or judgment exercised by the other Party when executing its obligations under this Agreement (a "Dispute"), the concerned Party shall promptly notify the other Party of the Dispute through the Parties' Directors.

i. If the Dispute cannot be resolved between the Directors, the Dispute shall be referred to NHDOT's Assistant Commissioner/Chief Engineer and MaineDOT's Chief Operating Officer, or their selected designees (the "Executive Officers"), for review and negotiation.

ii. If the Executive Officers are unable to resolve the Dispute, either Party may seek whatever remedies are available at law.

14. **Indemnification/Insurance**

a. Each Party shall assume its own risks of liability, if any, arising from or related to, actions performed in connection with this Agreement when such actions are performed outside of that Party's own state boundaries.

b. Each Party shall require any Consultants/Contractor(s) hired to perform activities encompassed by this Agreement (the "Contractor") to indemnify, defend, and hold harmless the State of New Hampshire and the State of Maine, their officers, agents and employees from all claims, suits or liabilities arising from negligent or wrongful acts, errors or omissions by the Consultant/Contractor, its officials, employees, agents, consultants or subcontractors, and to carry sufficient liability insurance to adequately cover its risks arising from or related to actions performed in connection with this Agreement. All certificates of insurance shall name both the State of New Hampshire and the State of Maine as additional insureds on such coverage and shall specifically state that the State of New Hampshire and the State of Maine's coverage is limited to those areas for which governmental immunity has been expressly waived, and that coverage procured thereunder shall not be deemed a waiver of any defense, immunity or limitation of liability that may be available under each state's respective sovereign immunity.

c. Nothing in this Agreement shall waive any defense, immunity or limitation of liability that may be available to the State of New Hampshire or the State of Maine under each state's respective sovereign immunity, tort-claim laws, other state statutory law, judicial precedent, or common law.

15. **Termination:**

Either Party may postpone, suspend, abandon or otherwise terminate this Agreement upon thirty (30) days written notice and in no event, shall any such action be deemed a breach of contract. Postponement, suspension, abandonment or termination may be taken for any reason by the Parties or specifically as the result of any failure by either Party to perform any of the services required under this Agreement to the satisfaction of the other Party. In the event of termination, the Parties shall be responsible for their share of any costs, expenses, penalties, and/or liabilities expended, committed or imposed in connection with Bridge Activities as of such date of termination. Each

Party shall be individually responsible for any FHWA payback requirements imposed on that Party by FHWA due to such termination.

16. General Provisions

a. Cooperation of Parties. The Parties shall avoid hindering each other's performance, fulfill all obligations diligently, and cooperate in achievement of the intent of this Agreement.

b. Effective Date. This Agreement, and all obligations of the Parties hereunder, shall become effective when signed by all signatories and approved by the Governor and Executive Council of the State of New Hampshire, as such date is reflected at the end of this Agreement.

c. Governing Laws. Activities carried out under this Agreement shall be performed in compliance with all applicable state and federal laws, statutes, rules, regulations, standards, and guidelines. To the extent not otherwise governed by federal law, the respective rights and obligations of the Parties under this Agreement with respect to activities conducted within the limits of the State of New Hampshire shall be governed by New Hampshire law (without regard to conflicts-of-law principles that would require the application of any other law), and the respective rights and obligations of the Parties under this Agreement with respect to activities conducted by a Party within the limits of the State of Maine shall be governed by Maine law (without regard to conflicts-of-law principles that would require the application of any other law). Nothing herein shall be deemed to constitute a waiver of sovereign immunity of either the State of New Hampshire or the State of Maine, each of which is hereby reserved to the respective State.

d. Amendments. This Agreement may be amended when such an amendment is agreed to in writing by both Parties and approved by the State of New Hampshire's Governor and Executive Council.

e. Assignment. No assignment of this Agreement is contemplated, and in no event shall any assignment be made without the express written permission of both Parties.

f. Severability. In the event any of the provisions of this Agreement are declared null, void or unenforceable by a court of competent jurisdiction for reasons other than breach of the Agreement, said declaration shall not affect the validity and enforceability of the remaining provisions of the Agreement.

g. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties with regard to this Agreement's subject matter and supersedes all prior agreements and understandings relating hereto, except for those prior written agreements specifically referenced in this Agreement.

h. Rights of Entry. Each Party hereby grants unto the other Party, its employees, consultants, and contractors the right to enter upon property owned or controlled by the granting Party for all purposes necessary to carry out the responsibilities set out herein.

i. Failure to Perform. If either Party fails to perform its obligations as set out herein, the other Party shall hereby reserve the right to undertake such obligations and to invoice the responsible Party for its share of any costs incurred when such action is deemed

necessary to protect the integrity of the affected Portsmouth-Kittery Bridge or the safety of the travelling public.

j. No Waiver of Rights. No delay or omission on the part of either Party in exercising any of its rights under this Agreement shall constitute a waiver of such right or any other right under this Agreement, and no waiver of any such right on one occasion shall be construed as a waiver of it on any other occasion.

k. Rights of Set-Off. Each Party shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, without limitation, each Party's option to withhold for the purposes of set-off monies due to the other Party under a specific project contract up to any amounts due and owed to the withholding Party under this Agreement, including any agreement/contract for a term commencing prior to the term of this Agreement, plus any amounts due and owed to the withholding Party for any reason including without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. A Party shall exercise its set-off rights in accordance with normal state practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the withholding Party, its representatives, or its State Controller.

l. Non-Appropriation. Notwithstanding anything herein to the contrary, the Parties acknowledge and agree that although the execution of this Agreement by each Party manifests that Party's intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by that Party's State Legislature and the federal government and, therefore, this Agreement does not create any obligation on behalf of either Party in excess of such appropriations.

m. Binding Effect. This provision shall apply to the Parties' successors, administrators and legal representatives.

n. Independent Capacity. Neither Party, its respective employees, agents, representatives, consultants, and contractors shall act as officers, employees or agents of the other Party.

o. Counterparts and Electronic Signatures. This Agreement may be implemented in one or more counterparts, each of which shall be deemed to be an original copy and all of which, when taken together, shall be deemed to constitute one and the same Agreement, and shall be effective when counterparts have been signed by each Party and delivered to the other Party, together with evidence of the appropriate approval of New Hampshire's Governor and Executive Council. Each Party agrees that this Agreement and any other documents to be executed in connection herewith may be electronically signed and that any electronic signatures appearing on this Agreement, or the associated documents are the same as handwritten signatures for the purposes of validity, enforceability and admissibility.

This AGREEMENT is hereby executed by the Parties and effective when signed by all signatories and approved by the Governor and Executive Council of the State of New Hampshire as documented below.

STATE OF NEW HAMPSHIRE
Department of Transportation

By: _____
William J. Cass, PE Commissioner
Duly authorized

STATE OF MAINE
Department of Transportation

By: _____
Bruce A. Van Note, Commissioner 6-15-2023
Duly authorized

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

Date: 6/22/2023

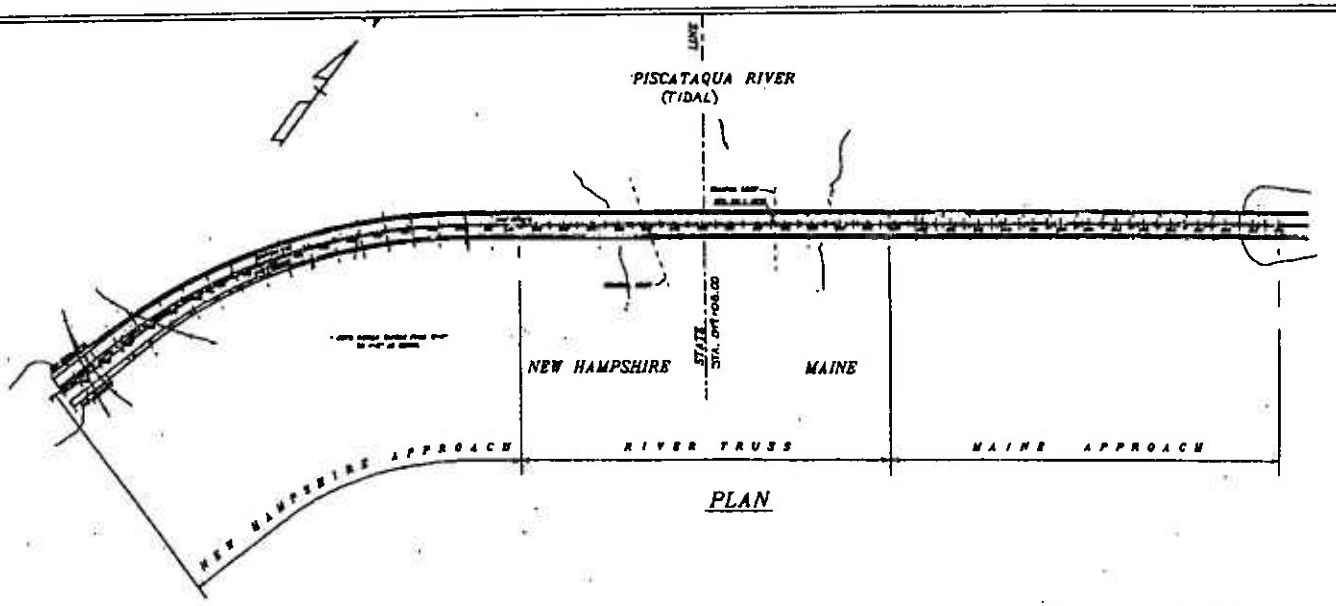
_____
Office of Attorney General
State of New Hampshire

This is to certify that the GOVERNOR AND EXECUTIVE COUNCIL of the State of New Hampshire on the _____ day of _____, 20____ approved this AGREEMENT as Item # _____.

Date: _____

ATTEST:

By: _____
Secretary of State of New Hampshire



I-95 NH Approach Bridge

NH Portsmouth BR # 257/127

Piscataqua River Bridge

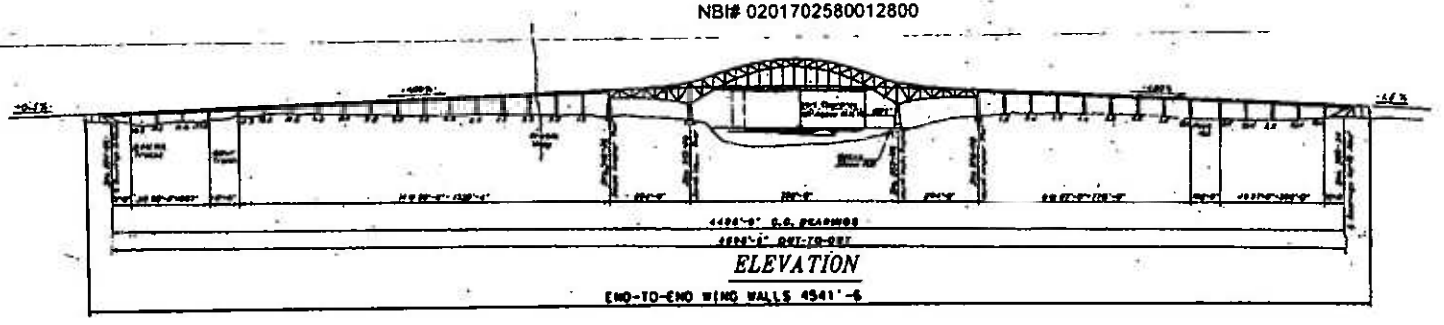
NH Portsmouth BR # 258/128

ME BR #6330

NBI# 0201702580012800

I-95 Maine Approach Bridge

ME BR #1477



Maintenance Limits:

End-to-End of Wingwalls: 4,541'-6"

Components Included:

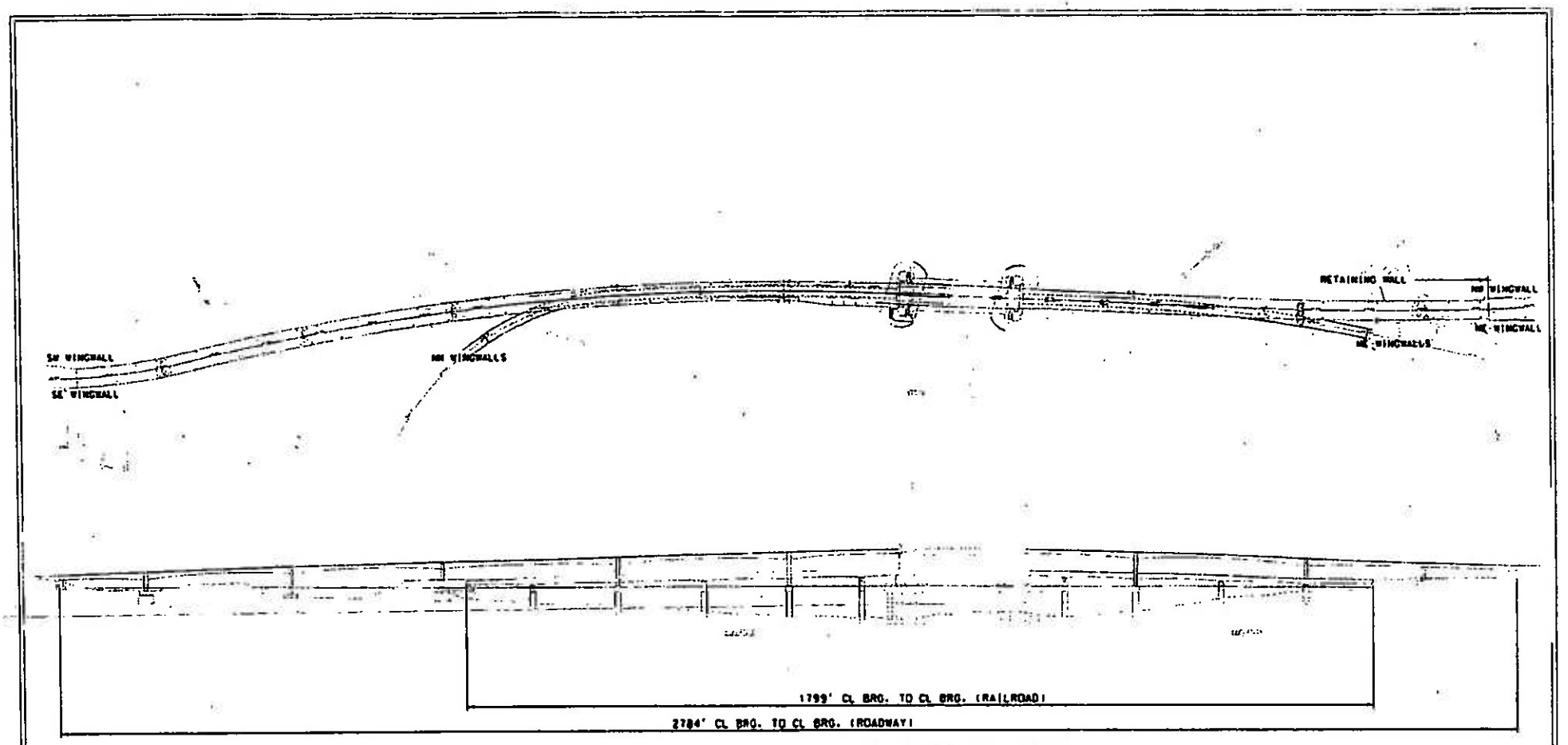
- Truss and Girder Superstructures
- Piers
- Abutments and Wingwalls
- Approach Slabs
- Street Lighting and Navigation Lighting
- Bridge mounted Security and Traffic cameras
- Electric Utilities and Utility Service to the Bridge

FIGURE 1

Interstate 95 over Picataqua River (High Level)

NH Portsmouth 258/128

ME 6330



Sarah Mildred Long Bridge

NH Portsmouth BR #250/110
ME BR #3641
NBI# 021702500011000

Maintenance Limits:

Roadway (2784' CL brg to CL brg
Railroad (1799' CL brg to CL brg)
NH Wingwalls (SE:15'-6"/SW:7'-6")
ME Wingwalls (NE:100'-9"/NW:46'-11"/NW Retaining wall:24'1-1/2")
RR Wingwalls (NH:59' ME:9')

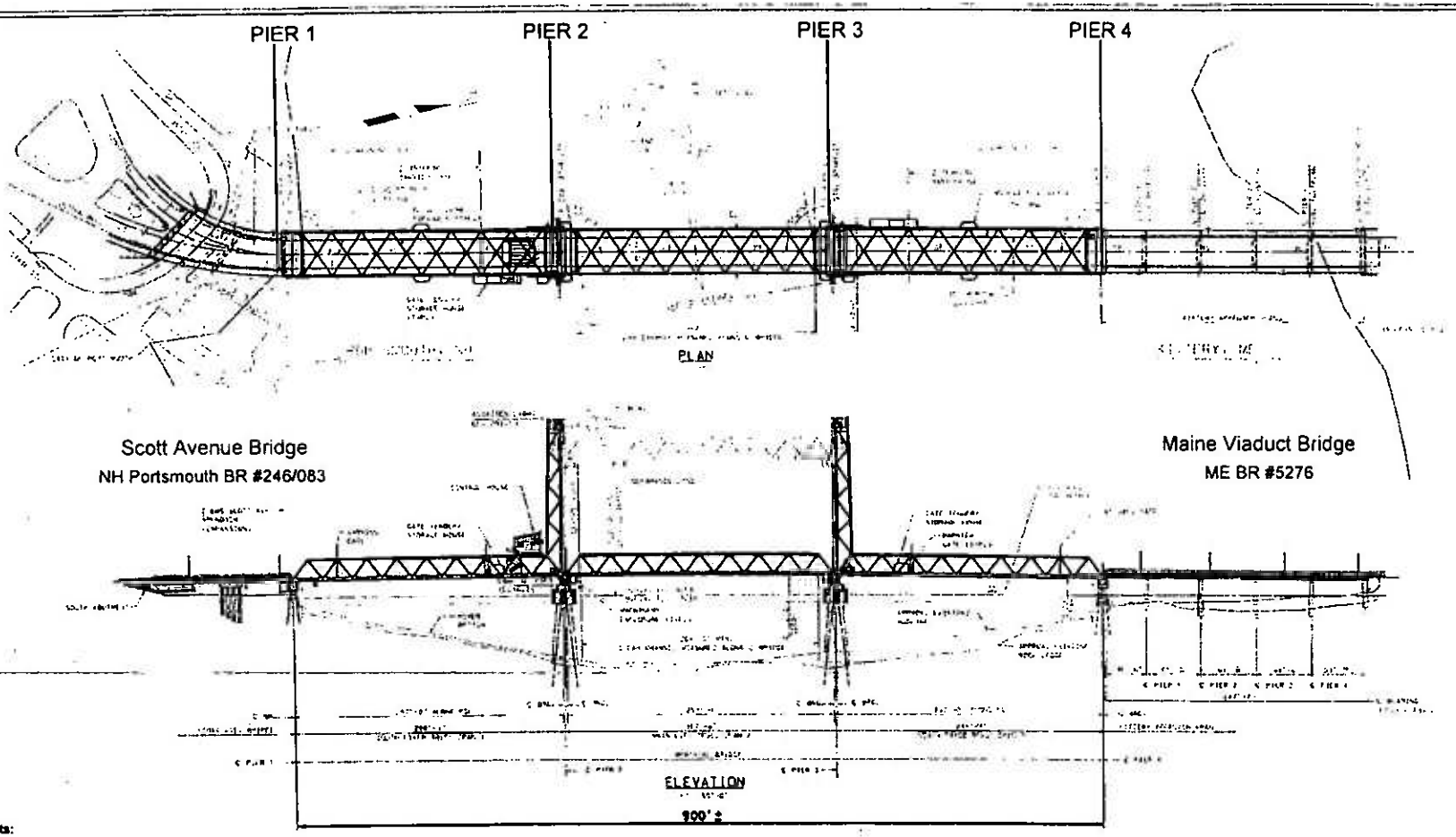
Components included:

Segmental Concrete and Steel Box Superstructures
Piers/Towers
Abutments and Wingwalls (Does not include MSE walls)
Approach Slabs
Mechanical/Electrical/Computerized Lift Bridge Systems
Street Lighting and Navigation Lighting
Security and Operation Cameras
Electric/Water/Septic/Broadband/Telephone Utilities
Emergency Generator
Solar Radio Controlled Advance Warning Signs (NH & ME)

FIGURE 2

US1 Bypass over Piscataqua River (Sarah Mildred Long)

NH Portsmouth 250/110
ME 3641



Maintenance Limits:

Superstructure - End-to-End of Trusses: (900' CL brg to CL brg)
Substructure Piers 1 to 4

Components Included:

Truss/Tower Superstructure
Piers 1 to 4 in their entirety
Mechanical/Electrical/Computerized Lift Bridge Systems
Operator House/Electrical/Storage Buildings
Street Lighting and Navigation Lighting
Security and Operation cameras
Cathodic Protection System
Electric/Natural Gas/Water/Sewer/Broadband/Telephone Utilities
Emergency Generator

Memorial Bridge

NH BR # Portsmouth 247/084

ME BR #2546

NBI# 021702470008400

FIGURE 3
US1 over Piscataqua River (Memorial)
NH Portsmouth 247/084 ME 2546