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THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

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William Cass, P.E.
Commissioner

David Rodrigue, P.E.
Assistant Commissioner
Andre Briere, Colonel, USAF (RET)
Deputy Commissioner

Her Excellency, Governor Kelly A. Ayotte
and the Honorable Council
State House
Concord, New Hampshire 03301

Bureau of Bridge Design
December 17, 2024

REQUESTED ACTION

Pursuant to RSA 228:39, authorize the Department of Transportation to enter into a Cooperative Agreement with the State of Maine, to allow the Department to reimburse Maine for its estimated share of \$1,800,000 for costs associated with bridge rehabilitation on the Piscataqua River Bridge (NH Br. Nos. 250/110) carrying US 1 ByPass over the Piscataqua River between Portsmouth, New Hampshire, and Kittery, Maine, to replace the lift span operating ropes and resulting/recommended retrofits, effective upon Governor and Council approval through October 9, 2029, and continuing through engineering design, construction, inspection, and final acceptance of the completed project, and final project closeout by MaineDOT, in accordance with the Department's 10-Year Transportation Improvement Plan. (Project costs will be shared 50% by NH and 50% by Maine.)

Funds are available in the following account for Fiscal Year 2025, and are anticipated to be available in Fiscal Year 2026, Fiscal Year 2027 and Fiscal Year 2028 upon the availability and continued appropriation of funds in the future operating budgets, with the authority to adjust encumbrances between fiscal years within the price limitation through the Budget Office, if needed and justified:

Funding is available as follows:	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>	<u>FY 2028</u>
04-96-96-963515-3054				
Consolidated Federal Aid				
400-500870 Highway				
Contract Payments	\$100,000	\$50,000	\$1,500,000	\$150,000

EXPLANATION

The Department is required by RSA 228:39 to enter into an Agreement with an adjoining State, with the approval of Governor and Executive Council, before undertaking a joint project with that State. This project proposes to replace the lift-span ropes and perform any needed tower retrofits on the above referenced bridge and includes design and construction activities. This project (Portsmouth, NH – Kittery, ME - 44412) is planned to begin construction in FY 2026-2027 with an estimated construction cost of \$1,800,000.

The Agreement, after approval by Governor and Council, allows Maine to bill New Hampshire for New Hampshire's share of costs for engineering design and applicable construction work incurred by Maine. The division of costs between New Hampshire and Maine for this project is 50% by NHDOT and 50% by MainedOT, as stated in the Agreement. Work for this project is being administered by MainedOT.

The Agreement has been approved by the Attorney General as to form and execution. Copies of the fully-executed Agreement are on file at the Secretary of State's Office and the Department of Administrative Services, and subsequent to Governor and Council approval will be on file at the Department of Transportation.

It is respectfully requested that authority be given for this Interstate Agreement, as outlined above.

Sincerely,

A handwritten signature in cursive script, appearing to read "William Cass".

William J. Cass, P.E.
Commissioner

Attachments

COST-SHARING AGREEMENT

Between

**New Hampshire Department of Transportation
and**

Maine Department of Transportation

**For Design and Replacement of Lift-Ropes of an Inter-State Bridge between
PORTSMOUTH, NH and KITTERY, ME**

**NH FEDERAL PROJECT NO. X-A005(482) - NH STATE PROJECT NO. 44412
Maine WIN 26172.00**

THIS AGREEMENT is made by and between the New Hampshire Department of Transportation (hereafter "NHDOT"), and the Maine Department of Transportation (hereafter "MaineDOT"). NHDOT and MaineDOT may be collectively referred to as the "Parties" or individually as a "Party".

RECITALS

- A. An existing bridge structure (NH Br. No. 250/110 and Maine Bridge No. 3641) carrying US Route 1 Bypass in the City of Portsmouth, New Hampshire and Town of Kittery, Maine over the Piscataqua River was constructed in 2018.
- B. The existing structure consists of 10 concrete segmental approach spans supported on concrete piers, and one main steel lift span supported by concrete towers for a total of 11 spans and a bridge length of 2,785 feet.
- C. The Parties now intend to replace the lift span operating ropes and resulting/recommended retrofits.. (the "Repair").
- D. The design and construction of the Repair, together with all associated highway approach work, shall represent the "Project". The purpose of this Agreement is to establish the roles, responsibilities and all cost-sharing arrangements between the Parties in connection with the Project.

AGREEMENT

NOW THEREFORE, the Parties agree as follows:

1. Project and Contract Administration:

- a. MaineDOT will serve as the lead agency implementing the Project and shall procure and administer all contracts to design and construct the Project (the "Design Contract" and the "Construction Contract" or collectively the "Project Contracts") in accordance with the plans and specifications developed by MaineDOT and reviewed and accepted by NHDOT.
- b. The MaineDOT will send final contract documents to NHDOT for review and comment. No portion of the Project shall be advertised for bidding until the review is complete and all comments resolved, at which time NHDOT will approve in writing the Project advertisement. NHDOT shall process its review and comment within 30 calendar days of receipt of such final contract documents. Failure to respond within 30 calendar days shall be deemed acquiescence to MaineDOT finalizing contract documents without the review and comment of NHDOT.

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- c. The MaineDOT will give NHDOT the opportunity to review the contract bids. The Contract will not be awarded until MaineDOT receives a letter of concurrence from NHDOT. NHDOT shall process its review and comment within one week. Failure to respond within one week shall be deemed acquiescence to MaineDOT selecting a contract bid without concurrence from NHDOT.
- d. MaineDOT expects to advertise the Project for solicitation of competitive construction bids in May, 2026. Construction is estimated to extend through the 2027 construction season, with an anticipated completion date of October 20, 2027.
- e. If applicable, the work administered shall include any approved additional work requested by either the Town of Kittery, Maine (“Kittery”) or the City of Portsmouth, New Hampshire (“Portsmouth”), subject to review, approval and cost-sharing as further set out in this Agreement.
- f. MaineDOT shall be the sole administrator of the Project Contracts and will pay all Project Contract costs up front, subject to the cost sharing allocations set out in the *Project Cost Sharing and Invoicing* section of this Agreement.
- g. MaineDOT agrees that it shall not hire a consultant or contractor who is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Project by any federal department or agency, and shall require its contractors and consultants to ensure that their subcontractors and principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Project by any federal department or agency. MaineDOT shall notify NHDOT promptly if it becomes aware of a Project contractor, subcontractor, consultant or principal being disqualified from Project participation under the terms of this section.

2. Project Scope, Design and Pre-Construction Responsibilities:

- a. Project scope that will be the subject of the Project Contracts shall include the replacement of the tower operating ropes and all resulting/recommended retrofits (the “Project Scope”).
- b. *Subject to the limitations described in Section 2.c. below*, Project Scope shall also include 1) all necessary design elements associated with environmental, archaeological and cultural resources in both New Hampshire and Maine; 2) all Right-of-Way design elements in both New Hampshire and Maine; and 3) all permitting and utilities elements directly associated with the construction of the Repair itself.
- c. MaineDOT will consult NHDOT before implementing any adjustments to the Project Scope, and NHDOT will, likewise, notify MaineDOT of any proposed changes it

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wishes to implement. Any such changes shall be in writing and mutually agreed upon by both Parties. To the extent that any requested or approved changes are due to additional work requested by either Portsmouth or Kittery, the costs of such additional work shall be borne by the Party associated with the state in which such work will occur. Any negotiation for cost sharing between a Party and Portsmouth or Kittery shall be separate from this Agreement and shall not affect the cost-sharing allocations set out between NHDOT and MaineDOT herein.

d. Project Design Milestones. MaineDOT agrees to share information about the Project with NHDOT at the following milestones:

- Midpoint team meeting;
- Formal public meeting(s);
- Plan Impacts Complete (PIC);
- 60% Plan Review;
- 90% Plan Review;
- Plans, Specifications and Estimate (PS&E) complete (98% complete);
- Changes in the Project schedule or engineer's estimate of costs.

e. The MaineDOT will submit preliminary plans to NHDOT for review and comment. NHDOT will respond in writing with its comments and approval prior to any substantive work being performed on the final design of the Project by MaineDOT. NHDOT shall process its review and comment within 30 calendar days of receipt.

f. The MaineDOT will coordinate with NHDOT relative to any public meetings. Further, MaineDOT will attend any such public meetings held in Maine or New Hampshire to present the Project and participate in discussions, as needed and as appropriate.

g. MaineDOT will invite the NHDOT Project Manager to the Project's pre-construction meeting.

h. Responsibility for pre-construction activities not otherwise captured in the Project Contracts shall be allocated between the Parties as follows:

i. Environmental, Archaeological and Cultural Resources:

Each Party shall review all Project work regarding environmental, archaeological, and cultural resources located in or associated with that Party's State, including without limitation all permitting and mitigation needs. Each Party shall report to the other to clearly identify the work necessary to be performed and administered in its own State to satisfy Project needs, including identification of all deliverables affecting the Project and timelines expected to produce such deliverables (the "Environmental Actions and Deliverables"). NHDOT shall be responsible for

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performing, administering and providing all necessary Environmental Actions and Deliverables required in New Hampshire, and MaineDOT shall be responsible for performing, administering and providing all necessary Environmental Actions and Deliverables required in Maine. Notwithstanding the foregoing, the Parties agree that all design costs (including permitting and mitigation) associated with the Environmental Actions and Deliverables shall be included in the Design Contract, with associated costs for design shared equally by the Parties as set out in the *Project Cost Sharing and Invoicing* section of this Agreement.

ii. Right-of-Way (“ROW”) Identification and Acquisitions.

MaineDOT, through its Design Contract, shall identify, categorize (e.g. temporary construction easement, drainage easement), and quantify all areas of necessary ROW acquisition within both New Hampshire and Maine to construct the Project. Based on this design information, each Party shall then report to the other to clearly identify the work necessary to be performed and administered in its own State to satisfy ROW acquisition needs, including identification of all deliverables affecting the Project and timelines expected to produce such deliverables (the “ROW Actions and Deliverables”). NHDOT shall then be responsible for performing, administering and providing all necessary ROW Actions and Deliverables required in New Hampshire, and MaineDOT shall be responsible for performing, administering and providing all necessary ROW Actions and Deliverables required in Maine. Notwithstanding the foregoing, the Parties agree that all design costs associated with the ROW Actions and Deliverables shall be included in the Design Contract, with associated costs for design shared equally by the Parties as set out in the *Project Cost Sharing and Invoicing* section of this Agreement.

iii. Permitting and Utilities.

Each Party shall review all Project requirements for permitting or utility impacts. Each Party shall report to the other to clearly identify the work necessary to be performed and administered in its own State to satisfy Project needs, including identification of all deliverables affecting the Project and timelines expected to produce such deliverables (the “Permitting and Utilities Actions and Deliverables”). NHDOT shall be responsible for performing, administering and providing all necessary Permitting and Utilities Actions and Deliverables required in New Hampshire, and MaineDOT shall be responsible for performing, administering and providing all necessary Permitting and Utilities Actions and Deliverables required in Maine. Prior to Project advertisement, NHDOT shall provide MaineDOT with all permits or agreements for which NHDOT is responsible under this subsection. Each Party shall be responsible for its costs associated with work performed under this subsection. Notwithstanding the foregoing, the Parties agree that all costs associated with the Permitting and Utilities Actions and Deliverables, to the extent that such are directly related to the

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construction of the Repair, shall be shared by the Parties as set out in the *Project Cost Sharing and Invoicing* section of this Agreement.

3. Project Cost Sharing and Invoicing:

- a. The estimated cost of the Project is **\$3,600,000.00** (the “Estimated Project Costs”). This cost assumes the complete replacement of the operating ropes and any required retrofits within each tower of the lift span. The division of the Estimated Project Costs is as follows:

Bridge & Approach Roadways	NHDOT Share 50%	MaineDOT Share 50%	Total Estimated Cost
Preliminary Engineering – Preliminary Design	\$100,000.00	\$100,000.00	\$200,000.00
Preliminary Engineering – Final Design	\$50,000.00	\$50,000.00	\$100,000.00
Construction	\$1,500,000.00	\$1,500,000.00	\$3,000,000.00
Construction Engineering	\$150,000.00	\$150,000.00	\$300,000.00
Subtotal	\$1,800,000.00	\$1,800,000.00	\$3,600,000.00
NH Env. Costs	\$0.00		\$0.00
ME Env. Costs		\$0.00	\$0.00
Right of Way NH	\$0.00		\$0.00
Right of Way Maine		\$0.00	\$0.00
Indirect Costs	\$0.00	\$0.00	\$0.00
Total	\$1,800,000.00	\$1,800,000.00	\$3,600,000.00

- b. Notwithstanding the Estimated Project Costs outlined in the table above, all actual Project costs incurred (the “Actual Project Costs”) will be divided between the Parties as follows:

- i. **NHDOT and MaineDOT shall share equally (50% by each Party) in all Actual Project Costs associated with the following:**

1. All Design Contract costs;
2. All Construction Contract costs;

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3. All design and construction related costs incurred by either Party after execution of this Agreement in connection with either Party's staff costs, excluding overhead/(indirect costs), to the extent that such staff costs are directly associated with design and construction engineering (e.g., project management, inspection, plan and specification review);
 4. All Permitting and Utility Actions and Deliverables costs to the extent that such costs are directly related to the construction of the Repair and not the highway approaches.
 5. All design and construction-related costs incurred by MaineDOT after execution of this Agreement in connection with the Project for work performed by other Maine state agencies (excluding overhead), or consultants or contractors hired by MaineDOT outside of the Project Contracts, unless otherwise specified in this Agreement.
- ii. *Except for the components included in the Design Contract as set out in Section 2.c. above, NHDOT and MaineDOT shall each pay 100% of its own costs incurred* outside of the Project Contracts in connection with the following:
1. Environmental Actions and Deliverables;
 2. ROW Actions and Deliverables;
 3. Permitting and Utility Actions and Deliverables that are not directly related to the construction of the Repair;
 4. All staff costs (PE) that are not otherwise identified as design and construction engineering costs;
 5. All costs and activities that are expended or performed by either Party in connection with the Project prior to execution of this Agreement.
- c. Provided that the Actual Project Costs by phase are within 10% of the Estimated Project Costs by phase, the Parties' shares will be allocated as set out above. Otherwise, the Parties reserve the right to reconsider the percentage allocations set out above. Any revision to the allocations set out above shall be in writing and approved by both Parties.
- d. Invoicing and Payment:
- i. MaineDOT will invoice NHDOT on a monthly basis for NHDOT's share of Project Costs incurred to date;

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- ii. NHDOT will submit payment to MaineDOT within thirty (30) calendar days of invoice receipt. If NHDOT does not concur with invoiced charges, they must contact MaineDOT, within 15 days of invoice receipt.
- iii. MaineDOT Project invoices sent to NHDOT for reimbursement shall include all supporting documentation (e.g. proof of payment) and show all previous payments made by NHDOT for this Project as a credit toward the amount owed to MaineDOT for each phase. The invoice structure shall include details of work completed consistent with the scope of work as set forth and agreed upon at the scoping meeting.
- iv. Each Party will document its internal staff costs related to construction engineering, excluding overhead, and will invoice one another on a monthly basis, such that each Party has assumed responsibility for its agreed upon, allocated share of such costs. Each Party shall provide one another with all appropriate supporting documentation (i.e. proof of payment/billable hours) of such costs.
- v. Following Project completion, and NHDOT's final inspection and written acceptance of that portion of the Project located within the State of New Hampshire, and upon MaineDOT's final payment to all Project contractors after all quantities are verified and any required adjustments have been made, MaineDOT will invoice NHDOT for any remaining NHDOT share as determined by the contract prices, completed quantities of work, and all final reconciliation of MaineDOT and NHDOT internal staff costs. This final invoice will reflect any balance due to MaineDOT or credit owing by MaineDOT to NHDOT. If credit is owed to NHDOT, MaineDOT shall remit payment in the amount of such credit within 30 days of this final invoiced accounting.
- vi. MaineDOT shall certify that all invoices properly represent payment for work that has been completed and paid for by MaineDOT.
- vii. Invoicing Disputes.
 - 1. If NHDOT does not concur with invoiced charges as set out in Section 3.d.ii above (the "Dispute"), and the Dispute cannot be resolved between the Parties' respective Project Managers, 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.
 - 2. If the Executive Officers are unable to resolve the Dispute, either party may seek whatever remedies are available at law.

4. Construction Implementation and Oversight:

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- a. MaineDOT shall ensure that the Project is constructed in accordance with the Construction Contract.
- b. NHDOT may inspect the work on the Project upon reasonable notice to MaineDOT.
- c. NHDOT will allow MaineDOT's contractor to control all traffic through the work areas on the Project as necessary to permit construction thereof in the manner specified in the Traffic Control Plan approved by MaineDOT and reviewed by NHDOT. NHDOT will further ensure that Portsmouth allows the same traffic control by the contractor.
- d. MaineDOT will keep NHDOT informed as to Project construction progress and shall communicate promptly regarding any impacts that could affect the Project schedule or Estimated Project Costs.
- e. MaineDOT will notify NHDOT when construction of the Project is substantially complete, at which time NHDOT will inspect the portion of work located in New Hampshire and will notify MaineDOT, of either acceptance of the Project or items needing correction.

5. **Miscellaneous Provisions:**

- a. This Agreement, and all obligations of the Parties hereunder, shall become effective when signed by all signatories and on the date of approval of this Agreement by the Governor and Executive Council of the State of New Hampshire.
- b. This Agreement may be amended when such an amendment is agreed to in writing by all signatories and approved by the State of New Hampshire's Governor and Council.
- c. NHDOT shall have the right at all reasonable times to inspect and review all plans, contracts, documents, books, vouchers and records pertaining to the Project, including, but not limited to, accounting and auditing records upon which the costs to NHDOT are to be based.
- d. Non-Appropriation. Notwithstanding any other provision of this Agreement, if MaineDOT or NHDOT does not receive sufficient funds to fund this Agreement and other obligations of MaineDOT or NHDOT, if funds are de-appropriated, or if MaineDOT or NHDOT do not receive legal authority to expend funds from its Legislature or courts, then MaineDOT and NHDOT are not obligated to move forward with the Project.
- e. Termination. The Parties may postpone, suspend, abandon or otherwise terminate this Agreement upon thirty (30) days written notice and in no event, shall any such action

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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 of the Parties to perform any of the services required under this Agreement to the satisfaction of the other Party. In the event of termination, the Parties will be responsible for their share of any costs, expenses, penalties and/or liabilities expended, committed or imposed in connection with the Project Scope and the Project Contracts as of such date of termination. Each Party will be individually responsible for any FHWA payback requirements imposed on that Party by FHWA due to such termination.

- f. 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 will 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 will 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.
- g. The Parties shall avoid hindering each other's performance, fulfill all obligations diligently, and cooperate in achievement of the intent of this Agreement.
- h. No assignment of this Agreement is contemplated, and in no event shall any assignment be made without the express written permission of both Parties.
- i. This Agreement constitutes the entire agreement between the Parties; supersedes all prior oral or written agreements, understandings, and courses of dealing between the Parties with regard to the subject matter of this Agreement; and may only be amended or modified by a writing signed by all Parties and approved by New Hampshire's Governor and Executive Council.
- j. All provisions of this Agreement as appended, except those which by their very nature are intended to survive, shall expire upon completion of Project construction and final collection and/or payment of all outstanding Project invoices, if any.
- k. Counterparts and Electronic Signatures. This Agreement may be implemented in one or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same Agreement, and will be effective when counterparts have been signed by each of the Parties and delivered to the other Parties. Each Party agrees that this Agreement and any other

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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.

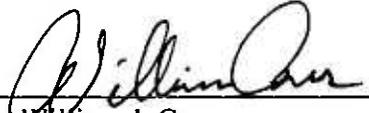
- 6. **Notices:** Any communications, requests or notices required or appropriate to be given under this Agreement shall be in writing and mailed via U.S. Mail, Certified or Registered, Return Receipt Requested or sent via a recognized commercial carrier such as, but not limited to Federal Express, that requires a return receipt delivered to the sending party. Alternatively, communication may be sent via email and shall satisfy the delivery requirements of this section through express acknowledgement of receipt by the receiving party. Said communications, requests or notices shall be sent to the other party as follows:

MaineDOT: Maine Department of Transportation
16 State House Station
Augusta, ME 04333-0016
Attn.: Wayne Frankhauser
Email: wayne.frankhauser.jr@maine.gov

NHDOT: New Hampshire Department of Transportation
7 Hazen Dr.
P.O. Box 483
Concord, NH 03302-0483
Attn.: David Scott
Email: david.l.scott@dot.nh.gov

This AGREEMENT is here by executed by the Parties and effective when signed by all signatories and on the date of approval of this Agreement 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
Commissioner
Duly authorized

STATE OF MAINE
Department of Transportation

Signed by:
By: 
Bruce A. Van Note
Commissioner
Duly authorized

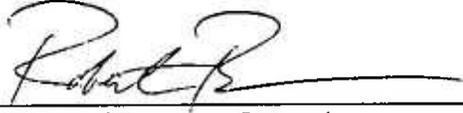
State of Maine
Department of Transportation

Todd Pelletier
Bureau of Project Development
Director
Deputy Chief Engineer

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

Date: December 10, 2024



Office of Attorney General
State of New Hampshire
Robert Pearce
Attorney

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