

**MEMORANDUM OF AGREEMENT  
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,  
THE NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION  
AND THE  
NEW HAMPSHIRE STATE HISTORIC PRESERVATION OFFICER  
REGARDING THE ANDOVER 20650 PROJECT**

**WHEREAS**, the Federal Highway Administration (FHWA) plans to fund the Andover project (undertaking) pursuant to Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended, 54 U.S.C. § 306108; and

**WHEREAS**, the undertaking consists of the New Hampshire Department of Transportation (NHDOT) replacing the bridges that NH Route 11 Bridge over the Northern Rail Trail (206/137) and Sucker Brook (208/137) in Andover; and

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

**WHEREAS**, FHWA has determined that the undertaking will have an adverse effect on bridge 208/137 and the Northern Railroad Historic District, both eligible for listing in the National Register of Historic Places, and has consulted with the New Hampshire State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108); and

**WHEREAS**, FHWA has consulted with the Town regarding the effects of the undertaking on historic properties, and the Friends of the Northern Rail Trail in Merrimack County (FNRT) has been identified as a consulting party; and

**WHEREAS**, in accordance with 36 CFR § 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); and

**NOW, THEREFORE**, FHWA, NHDOT and the SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

**STIPULATIONS**

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

- A. Interpretive Panel – NHDOT will develop two (2) interpretive panels. One panel will discuss railroad related features found along the rail trail in Andover, topics may include water management and/or commerce in Andover. The second panel will discuss the relation of the Sucker Brook Bridge and the transportation network in Andover. This effort will be completed by a 36 CFR 61-qualified architectural historian and will be developed in collaboration with the Town and FNRT, along with the location of the panel. A draft final product will be provided to NHDOT, in digital format for a 30 day review and comment period. A hard copy will subsequently be submitted to the SHPO,

FNRT, and the Town for a 30 day review and comment period. Upon approval by NHDOT, the final panels can be fabricated and installed, and a digital copy given to NHDOT.

- B. During construction NHDOT will ensure that the Contractor includes an identifier at the new bridge that brands “Northern Railroad” for the trail users to read. The location and size of the branded words will be coordinated with the FNRT.
- C. NHDOT will design the project to reduce the amount of impacts to the current railroad resources. There will be no impacts to the thru plate girder rail trail bridge (mile marker 95.69) over Sucker Brook, nor will there be impacts to the extant tell tale located west of the existing NH 11 bridge over the Northern Rail Trail. The NH Route 11 bridge abutments will remain in place, as much as practical due to safety reasons. The fallen tell tale east of the bridge will remain within the project area. If it needs to be moved for construction purposes, it will be placed in a similar fashion outside of the construction zone. Lengths of the concrete cribbing retaining wall not impacted during construction will remain in place, and appropriate ditching and path materials will be placed within areas impacted during construction.
- D. NHDOT will ensure that the contractor carefully remove designated granite blocks to be reused along the rail trail at locations to be determined by the FNRT. FNRT has submitted a plan for the reuse of thirty-three (33) granite blocks to be used at up to 12 locations along the Northern Railroad Historic District. NHDOT will remove the blocks from the project location and store at designated NHDOT sheds, within 10 miles of the project. NHDOT will enter into a separate vendor agreement (P37?) with FNRT, and NHDOT will reimburse up to an agreed upon amount based on an estimate provided by FNRT. Reimbursable expenses will be limited to the transportation, site preparation, placement and interpretation of the granite blocks. Should any blocks be left at a District shed longer than 2 years, the District will be responsible for removing and/or reusing the blocks for their needs.
- E. NHDOT will market the bridges (208/137 and 206/137) for relocation/re-use in compliance with 23 USC Section 144. For each bridge, marketing will occur for a period of 30 days and will include advertising on the NHDOT website. Ownership transfer for the re-use of the bridge will require the use of restrictive preservation and maintenance covenants lasting for ten (10) years to comply with the Secretary of Interior’s Standards and Guidelines. The award will not be dependent on the highest bid, but will be based on the applicant’s plan for moving the historic bridge and the future use which most satisfactorily meets the Secretary of the Interior’s “Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.” If there are no offers or proposals for use of the bridge by the end of the 30-day period, final bid and construction documents will be completed to specify demolition and disposal of the bridge.

## I. DURATION

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

## II. POST-REVIEW DISCOVERIES

If properties are discovered that may be historically significant or unanticipated effects on historic properties found, NHDOT shall contact the signatories to this agreement. Should human remains be uncovered, NH RSA 227-C. IV shall be followed.

## III. MONITORING AND REPORTING

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

## IV. DISPUTE RESOLUTION

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

- A. Forward all documentation relevant to the dispute, including the 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, 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.

## V. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

## VI. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per

Stipulation VIII, 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 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 by FHWA, NHDOT 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.

DRAFT

**SIGNATORIES:**

NH FEDERAL HIGHWAY ADMINISTRATION

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Patrick A. Bauer  
Division Administrator

NEW HAMPSHIRE DIVISION OF HISTORICAL RESOURCES

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Nadine Miller  
NH Deputy State Historic Preservation Officer

NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_ Date: \_\_\_\_\_  
William J. Oldenberg  
Director of Project Development

**INVITED SIGNATORIES:**

FRIENDS OF THE NORTHERN RAIL TRAIL IN MERRIMACK COUNTY

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Donald Moyer  
President