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STATE OF NEW HAMPSHIRE
DEPARTMENT OF MILITARY AFFAIRS AND VETERANS SERVICES

BUSINESS ADMINISTRATION
STATE MILITARY RESERVATION
4 PEMBROKE ROAD
CONCORD, NEW HAMPSHIRE 03301-5852

David J. Mikolaities, Major General
The Adjutant General

Phone: 603-225-1360
Fax: 603-225-1341
TDD Access: 1-800-735-2984

Warren M. Perry
Deputy Adjutant General

June 19, 2023

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

REQUESTED ACTION


Authorize the Department of Military Affairs and Veterans Services (DMAVS) and the New Hampshire Fish and Game Department (F&G) to enter into a Memorandum of Understanding for ground search and rescue support through the mobilization and deployment of the New Hampshire National Guard (NHNG) in a voluntary State Active Duty status effective upon the Governor's order in accordance with RSA 110-B:6. The agreement itself shall be effective upon Governor and Council approval and expires in five (5) years.

EXPLANATION

The New Hampshire Department of Military Affairs and Veterans Services (DMAVS) wishes to enter into a Memorandum of Understanding with New Hampshire Fish and Game Department (F&G) to support ground search and rescue efforts from the Lakes Region to the Southern Border of New Hampshire. Currently search and rescue efforts in this geographical area are covered by teams based in the northern part of the State. The NHNG V-SAR Team will help improve search and rescue services for citizens living in these areas because their proximity to these locations will result in quicker response to requests for support from F&G.

While there are no funds being exchanged between departments for the execution of this MOU, a risk of incurring costs up to \$100,000 exists in the event a member of the NHNG V-SAR team is injured or killed while in a State Active Duty status pursuant to NH RSA 110-B:6. Pursuant to NH RSA 110-B:66, members of the National Guard serving on state active duty, within or without the state who sustain an injury or personal injury as defined in RSA 281-A, shall be entitled to receive benefits pursuant to RSA 281-A (workers' compensation). For injuries that do not fall within the definition of RSA 281-A, and for a member who does not have health insurance, the State shall pay the cost of necessary medical treatment. Additionally, pursuant to NH RSA 110-B:37-a a member of the NHNG who dies while on state active duty because of injuries incurred while on state active duty are eligible to receive a death benefit in the amount of \$100,000. In accordance with the RSAs listed above, any funds paid out in the event of illness, injury or death sustained by a guardsperson while in a State Active Duty status will be paid from General Funds. A copy of the fully executed agreement is attached for your review.

Respectfully submitted,


David J. Mikolaities
Major General, NH National Guard
The Adjutant General

State of New Hampshire

Interagency Memorandum of Understanding

Whereas, the Department of Military Affairs and Veterans Services, a duly constituted agency or branch of government of the State of New Hampshire;

Whereas, the New Hampshire Fish and Game Department, a duly constituted agency or branch of government of the State of New Hampshire;

Whereas, pursuant to RSA 110-B: members of the New Hampshire National Guard can be ordered to state status by the governor in case of invasion, disaster, insurrection, riot, breach of the peace, resistance to process of this state, or imminent danger thereof, or for the safety of the inhabitants of the state, to order into the active service of the state for such period, to such extent, and in such manner as the governor may deem necessary, all or any part of the national guard. Such power shall include the power to order the national guard or any part thereof to function under the operational control of the United States army, navy, or air force commander in charge of the defense of any area within the state which is invaded or attacked or is or may be threatened with invasion or attack. The governor shall also permit paid and unpaid training and other state duty under such regulations as prescribed by the adjutant general.

Whereas, pursuant to RSA 110-B:37-a: there is established a death benefit in the amount of \$100,000 for each activated New Hampshire Army National Guard or New Hampshire Air National Guard member who dies while on state active duty or as the result of injuries incurred on state active duty. This death benefit shall be paid by the adjutant general, with the approval of the fiscal committee of the general court, on the warrant of the governor, out of any money in the treasury not otherwise appropriated.

Whereas, pursuant to RSA 110-B:66:

- I. Any member of the National Guard serving on state active duty pursuant to this chapter, within or without the state, who, while serving on state active duty, sustains an "injury" or "personal injury," as defined in RSA 281-A, shall be entitled to receive benefits pursuant to RSA 281-A.
- II. Members of the national guard on state active duty who become ill or whose injuries do not fall within the definition of RSA 281-A shall receive appropriate medical attention and treatment. If the member does not have health insurance, the state shall pay the cost of necessary medical treatment during the period of state active duty. In the event that the individual has health insurance, the state shall reimburse the individual for all expenses that are the responsibility of the individual incurred in the treatment of the condition during the period of state active duty.
- III. Members unable to return to their civilian employment by reason of an injury or illness that occurred on state active duty may be retained on state active duty for a period of time, which shall normally not exceed 30 days.

- IV. The governor is hereby authorized to draw a warrant for sums sufficient to pay for awards made under this section out of any money in the treasury not otherwise appropriated, and said sums are hereby appropriated.

Whereas, pursuant to RSA 281-A:2-XI: defines injury as an accidental injury or death arising out of and in the course of employment, or any occupational disease or resulting death arising out of and in the course of employment, including disability due to radioactive properties or substances or exposure to ionizing radiation. "Injury" or "personal injury" shall not include diseases or death resulting from stress without physical manifestation, except that, if an employee meets the definition of an "emergency response/public safety worker" under RSA 281-A:2, V-c, the terms "injury" or "personal injury" shall also include acute stress disorder and post-traumatic stress disorder. "Injury" or "personal injury" shall not include a mental injury if it results from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or any similar action, taken in good faith by an employer. No compensation shall be allowed to an employee for injury proximately caused by the employee's willful intention to injure himself or injure another. Conditions of the aging process, including but not limited to heart and cardiovascular conditions, shall be compensable only if contributed to or aggravated or accelerated by the injury. Notwithstanding any law to the contrary, "injury" or "personal injury" shall not mean accidental injury, disease, or death resulting from participation in athletic/recreational activities, on or off premises, unless the employee reasonably expected, based on the employer's instruction or policy, that such participation was a condition of employment or was required for promotion, increased compensation, or continued employment.

Whereas, the Department of Military Affairs and Veterans Services desires to establish a search and rescue team that will be employed in an unpaid state active duty status to support the New Hampshire Fish and Game Department.

Whereas, pursuant to RSA 206:27-i, any person recognized by the executive director, department of fish and game, as a fish and game volunteer who is under the supervision of a department employee and is actually performing assigned volunteer duties or search and rescue activities shall be considered a state employee for the purpose of defense and indemnification from civil suits under RSA 99-D; provided, however, such a volunteer shall not be indemnified from any civil suit arising out of a criminal act.

Whereas, the New Hampshire Fish and Game Department desires to partner with the Department of Military Affairs and Veterans Services to deploy members of the New Hampshire National Guard search and rescue team in an unpaid state active duty status in support of search and rescue operations.

NOW, THEREFORE, the parties enter into this Memorandum of Understanding to their mutual benefit, the benefit of the State and in furtherance of constitutional or statutory authority and objectives.

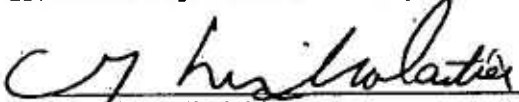
1. The Department of Military Affairs and Veterans Services agrees to:

- A. Perform the services described in the attached MOU Exhibit A, which is hereby incorporated by reference.
2. The New Hampshire Fish and Game Department agrees to:
 - A. Perform the services described in the attached MOU Exhibit A, which is hereby incorporated by reference.
 - B. In the event of the death of a member of the New Hampshire National Guard search and rescue team while on voluntary state active duty, process and pay the \$100,000.00 death benefit pursuant to RSA 110-B:37-a.
 - C. In the event of an injury of a member of the New Hampshire National Guard search and rescue team while on voluntary state active duty, process and pay the worker's compensation costs pursuant RSA 281-A:2-XL.
3. All obligations hereunder are contingent upon the availability and continued appropriation of funds. The agencies shall not be required to transfer funds from any other account in the event that funds are reduced or unavailable.
4. The Memorandum of Understanding is effective for 5 years after the date of approval.
5. This Memorandum of Understanding may be amended by an instrument in writing signed by both parties. Either party may terminate this agreement by providing written notice to the other party at least 30 days prior to termination.
6. The Parties agree that the obligations, agreements, and promises made under this Memorandum of Understanding are not intended to be legally binding on the Parties and are not legally enforceable.
7. Disputes arising under this Memorandum of Understanding which cannot be resolved between the agencies shall be referred to the New Hampshire Department of Justice for review and resolution.
8. This Agreement shall be construed in accordance with the laws of the State of New Hampshire.
9. The parties hereto do not intend to benefit any third parties and this Memorandum of Understanding shall not be construed to confer any such benefit.
10. In the event any of the provisions of this Memorandum of Understanding are held to be contrary to any state or federal law, the remaining provisions of this Memorandum of Understanding will remain in full force and effect.

11. This Memorandum of Understanding, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Memorandum of Understanding and understandings between the parties, and supersedes all prior Memoranda of Understanding and understandings relating hereto.

12. Nothing herein shall be construed as a waiver of sovereign immunity, such immunity being hereby specifically preserved.

13. For the Department of Military Affairs and Veterans Services

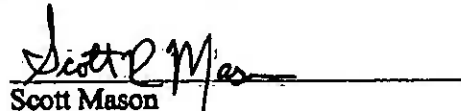


David J. Mikolaitis
Major General
The Adjutant General

6/22/2023

Date

14. For the New Hampshire Fish and Game Department



Scott Mason
Executive Director

6/26/23

Date

STATE OF NEW HAMPSHIRE

MOU EXHIBIT A – Terms of Agreement

SUBJECT: New Hampshire Department of Military Affairs and Veterans Services
Volunteer Search and Rescue Team

1.0 INCORPORATED DOCUMENTS

This Agreement consists of the following documents: MOU and Exhibit A that are incorporated herein by reference as if fully set forth herein.

2.0 INTENT

This Agreement is applicable to all Department of Military Affairs and Veterans Services (DMAVS) support to the NHF&G Department (NHF&G) ground Search and Rescue (SAR) activities. It establishes policies, procedures, and guidelines relative to the DMAVS support to the NHF&G for search and rescue operations in the State of New Hampshire. The DMAVS provides ground SAR support to the NHF&G through the mobilization and deployment of the New Hampshire National Guard (NHNG) Volunteer Search & Rescue (V-SAR) Team. The primary role of the team is to conduct line and hasty searches under the direction and guidance of NHF&G officers. This Agreement does not apply to helicopter search and rescue operations that are covered in a separate agreement.

2.1 BACKGROUND. This Agreement is applicable to all DMAVS support to the NHF&G Department ground Search and Rescue (SAR) activities when ordered by the Governor of the State of NH pursuant to RSA 110-B:6.

3.0 UNDERSTANDING OF THE PARTIES

3.1 DMAVS RESPONSIBILITIES:

- a. Maintain communication with the Governor's office and keep them informed when the V-SAR team has been activated.
- b. Prepare the official Order for Activation of the NHNG V-SAR Team and coordinate signature.
 - i. NHNG personnel, who are eligible to participate in accordance with NHNG procedures, (traditional Guardsmen or "M-Day" and dual status Federal Technicians) will be deployed in a volunteer State Active Duty status (without pay), when requested by the NHF&G Incident Commander or ranking officer.
- c. The NHNG V-SAR Team will deploy with individual military equipment sufficient to sustain team operations.
- d. Use of the NHNG V-SAR Team and individual military equipment (see recommended packing list addendum) shall not violate federal, state, or local laws, or applicable regulations.
- e. Members of the NHNG will comprise the V-SAR Team. All V-SAR Team members will complete training to a level consistent with NHF&G requirements or be working under a V-SAR Team member that has been previously trained.

- f. The primary response window for the team is during the ground SAR response, or immediate danger period. The purpose of the V-SAR Team is not to sustain long-term rescue/recovery operations.
- g. To participate in the ground SAR response, NHNG personnel must be on the official team roster.
- h. Aside from noted exceptions, NHNG support is provided to NHF&G without reimbursement by NHF&G.
- i. Prior to 1 October of each year (start of National Guard training year), the VSAR Team Officer-in-Charge (OIC) shall submit a list of proposed mission OICs for approval to The Adjutant General for New Hampshire (TAGNH). As a rule, the pre-approved OIC, who is present for the ground SAR response, will be the V-SAR Team leader. The pre-approved OIC is responsible for on-site command and control and administration of team members and equipment.
- j. The Operations Directorate/Director of Joint Staff (DJS) will monitor and support V-SAR activities from the NHNG Joint Operations Center (JOC) located at the State Military Reservation, 1 Minuteman Way, Concord, NH.
 - i. NHNG personnel in support of the NHF&G will be directly responsible to and under the operational direction of the V-SAR Team leader.
 - ii. The V-SAR Team will follow safety and technical guidance provided by NHF&G and will report for duty physically prepared and properly equipped to execute the mission.
 - iii. The NHNG PAO will coordinate all public affairs activities with NHF&G prior to releasing information about NHNG participation in SAR activities.
 - iv. Subject to availability of V-SAR Team members, military mission, and training requirements, respond to NHF&G requests for assistance.

3.2 NHF&G RESPONSIBILITIES:

- a. Requests for support shall be made via telephone to the NHNG Joint Operations Center (JOC) located at the State Military Reservation, Concord, NH at 603-227-1555.
- b. NHF&G officers will provide the V-SAR Team leader with direction and guidance for the use of NHNG assets.
- c. NHF&G does not assume any responsibility for expenses incurred by the NHNG V-SAR Team except as listed under 5.1, Workers Compensation.
- d. NHF&G is the lead agency for public affairs.
- e. Provide direction for the use of NHNG V-SAR assets.
- f. Provide the DJS/JOC with feedback on operations and effectiveness of the NHNG V-SAR Team.
- g. Process any claims for worker's compensation due to injuries incurred during SAR activities.

4.0 PERSONNEL REQUIREMENTS

4.1 Each Party is responsible for all costs of its personnel, including pay and benefits, support, and travel. Each Party is responsible for supervision and management of its personnel.

- a. Workers Compensation, Reference RSA 110-B:66 and 281-A:2 VII (a)(5) and (7).
 - i. Under the following references, Team members are afforded protection under State of NH workers' compensation laws during the conduct of search operations and qualify under both RSA 281-A:2 VII (a)(5) and (7).
 - ii. Notwithstanding that the V-SAR members qualify for workers' compensation under both subparagraphs (a)(5) and (a)(7) of RSA 281-A:2 VII, any payments for injuries incurred under the scope of subparagraph (a)(5) will be based upon the V-SAR members eligibility for workers' compensation under subparagraph (a)(5), be a charge against the general fund and is the responsibility of NHF&G to process. Such payments include all categories of compensation under RSA 281-A.
- b. Death Benefit, Reference RSA 110-B:37-a. under the following references, there is established a death benefit in the amount of \$100,000 for each activated NHNG member who dies while on state active duty or as the result of injuries incurred on state active duty.
 - i. Notwithstanding that this death benefit shall be paid with the approval of the fiscal committee of the general court, on the warrant of the Governor, out of any money in the treasury not otherwise appropriated, in the event of the death of a NHNG V-SAR Team member while on voluntary state active duty, NHF&G will process and pay the \$100,000.00 death benefit pursuant to RSA 110-B:37-a.

5.0 GENERAL PROVISIONS

5.1 POINTS OF CONTACT (POCs). The following POCs will be used by the Parties to communicate matters concerning this Agreement. Each Party may change its POC upon reasonable notice to the other Party.

- a. DMAVS:
 - i. Erin Zayac, Administrator of Business Operations, 603-225-1361, erin.m.zayac.nfg@army.mil
- b. NHNG
 - i. Colonel Erik Fessenden, Director of Joint Staff, 603-225-1270, erik.a.fessenden.mil@army.mil
- c. NHF&G:
 - i. Colonel Kevin Jordan, Chief of Law Enforcement, 603-271-3127, kevin.jordan@wildlife.nh.gov

5.2 CORRESPONDENCE. All correspondence to be sent and notices to be given pursuant to this Agreement will be addressed, if to the [First Party], to—

- i. NH Department of Military Affairs and Veterans Services, 4 Pembroke Road, Concord, NH 03301

And, if to the [Second Party], to—

- ii. NH Fish and Game Headquarters, 11 Hazen Drive, Concord, NH, 03301

5.3 FUNDS AND MANPOWER. This Agreement neither documents nor provides for the exchange of funds or manpower between the Parties, nor does it make any commitment of funds or resources. No provision in this Agreement will be interpreted to require obligation or payment of funds.

5.4 MODIFICATION OF AGREEMENT. This Agreement may only be modified by the written Agreement of the Parties, duly signed by their authorized representatives. This Agreement will be reviewed no less often than around the anniversary of its effective date in its entirety.

5.5 DISPUTES. Any disputes relating to this Agreement will, subject to any applicable law, Executive order, or DoD issuances, be resolved by consultation between the Parties.

5.6 TERMINATION OF UNDERSTANDING. This Agreement may be terminated in writing at will by either Party.

5.7 TRANSFERABILITY. This Agreement is not transferable except with the written consent of the Parties.

5.8 ENTIRE UNDERSTANDING. It is expressly understood and agreed that this Agreement embodies the entire understanding between the Parties regarding the Agreement's subject matter, thereby superseding all prior understandings of the Parties with respect to such subject matter.

5.9 EFFECTIVE DATE. This Agreement takes effect beginning on the day after the last Party signs.

5.10 EXPIRATION DATE. This Agreement expires 5-years after the effective date.

5.11 CANCELLATION OF PREVIOUS AGREEMENTS. This Agreement cancels and supersedes the previously signed or verbal Agreements between the same Parties for this subject.

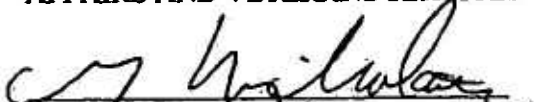
5.12 NO THIRD PARTY BENEFICIARIES. Nothing in this Agreement, express or implied, is intended to give to, or will be construed to confer upon, any person not a party any remedy or claim under or by reason of this Agreement will be for the sole and exclusive benefit of the Parties.

6.0 AUTHORITIES

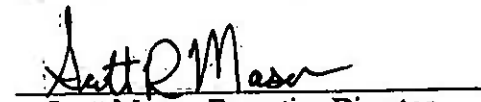
- 6.1 RSA 110:B, The Department of Military Affairs and Veterans Services
- 6.2 RSA 206, Fish and Game Commission
- 6.3 RSA 281, Workers' Compensation
- 6.4 RSA 508, Limitation of Actions

APPROVED: [APPROVAL AUTHORITY SIGNATURES WILL NEVER BE ALONE ON A BLANK PAGE]

FOR THE DEPARTMENT OF MILITARY
AFFAIRS AND VETERANS SERVICES


David J. Mikolaitics, The Adjutant General
10/22/2023
(Date)

FOR THE NEW HAMPSHIRE FISH AND
GAME DEPARTMENT


Scott Mason, Executive Director
6/26/23
(Date)