



Scott R. Mason  
Executive Director

# New Hampshire Fish and Game Department

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March 23, 2022

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

## REQUESTED ACTION

Authorize the New Hampshire Fish and Game Department (NHFG), to enter into a Memorandum of Agreement (MOA) with the Claude R. Batchelder, Post #72, American Legion (Vendor Code # 299297), Alton, NH for services to display the American and POW/MIA flags at the NHFG Downing's Landing boat access area effective upon Governor and Council approval through April 6, 2027, with the option to extend the agreement for additional 5 year terms upon the agreement of both parties and the approval of the Governor and Council. There is no funding associated with this request.

## EXPLANATION

The NHFG maintains boat launching infrastructure at the Downing's Landing Boat Access Area (BAA) in Alton, NH. It was determined that an American Flag and Prisoner of War / Missing in Action (POW/MIA) Flag display be established and flags flown in commemoration of the Downing family members who served in the military and the family's long-standing marina operation at the site. The NHFG Statewide Public Boat Access Program does not have the personnel to support the daily display according to the requirements of state and federal regulations that protect the integrity and respectful presence of the flags. This MOA describes the Claude R. Batchelder, Post #72, American Legion's responsibilities and authority to maintain the display and fly the flags in accordance with the standards set forth in Title 4, United States Code, Chapter 1.

Respectfully submitted,

Scott R. Mason  
Executive Director

Kathy Ann LaBonte, Chief  
Business Division

**MEMORANDUM OF AGREEMENT  
BETWEEN THE NEW HAMPSHIRE FISH AND GAME DEPARTMENT AND  
THE CLAUDE R. BATCHELDER, POST #72, AMERICAN LEGION REGARDING  
FLAG DISPLAY AT DOWNING'S LANDING**

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**WHEREAS**, the State of New Hampshire (the State) owns certain land known as Downing's Landing located in the Town of Alton, New Hampshire, which land is under the management and control of the New Hampshire Fish and Game Department (NHFG);

**WHEREAS**, NHFG has installed a flag pole at Downing's Landing and desires to display the American flag and the POW/MIA flag (the Flags);

**WHEREAS**, the Claude R. Batchelder, Post #72, American Legion (American Legion) is a New Hampshire nonprofit corporation registered with the New Hampshire Secretary of State; and

**WHEREAS**, NHFG lacks adequate staff and resources to properly and respectfully display the Flags at Downing's Landing, and the American Legion has the necessary resources to assist NHFG in displaying the Flags at Downing's Landing.

**NOW, THEREFORE**, NHFG and the American Legion enter into this Memorandum of Agreement to their mutual benefit.

1. The American Legion agrees to display the American flag and the POW/MIA flag (the Flags) on the Downing's Landing flag pole on a daily basis in conformance with the standards set forth in Title 4, United States Code, Chapter 1.
2. The American Legion agrees to properly and respectfully store the Flags in a clean and dry location when the Flags are not on display at Downing's Landing.
3. The American Legion agrees to perform basic maintenance activities associated with displaying the Flags including, but not limited to, the following:
  - a. painting the flag pole;
  - b. repairing or replacing the hoisting hardware and/or ropes;
  - c. repairing or replacing the Flags; and
  - d. maintaining lighting fixtures, if any, and replacing light bulbs as needed.
4. The American Legion agrees to promptly notify NHFG of any structural issues or defects with the flag pole.
5. NHFG agrees to maintain the flag pole in a structurally sound condition.
6. NHFG agrees to provide the American Legion with access to the flag pole as needed to perform its responsibilities under this Memorandum of Agreement.
7. The American Legion agrees to perform the above services at no cost to NHFG.

Contractor's Initials

Date

*DRW*  
3/12/22

8. The American Legion agrees to indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the American Legion or its members or volunteers, including but not limited to the negligence, reckless or intentional conduct. This covenant in paragraph 8 shall survive the termination of this Agreement.
9. The Memorandum of Agreement shall remain in force and effect for a 5-year term, and shall automatically renew for consecutive five-year terms unless terminated by either party pursuant to Paragraphs 10–11, below.
10. The American Legion may terminate this Agreement upon thirty days advance written notice to NHFG indicating either:
  - a. The American Legion has identified a successor entity to perform the duties and responsibilities set out in this Memorandum of Agreement and the identified entity has agreed to enter into a substantially similar memorandum of agreement with NHFG; or
  - b. Despite the American Legion's best efforts, no successor entity has been identified to perform the duties and responsibilities set out in this Memorandum of Agreement.
11. NHFG may terminate this Agreement at any time upon written notice to the American Legion.
12. Upon termination of this Agreement pursuant to Paragraph 10 or 11, above, NHFG shall have no obligation to continue to maintain the flag pole at Downing's Landing or display the Flags.
13. Upon termination of this Agreement pursuant to Paragraph 10 or 11, above, the American Legion shall transfer control of the Flags to NHFG or a successor entity, as warranted by the circumstances.

Contractor's Initials  
Date

*du*  
3/17/22

14. All notices or communications related to this Memorandum of Agreement shall be provided to the following contacts at NHFG and the American Legion:

To NHFG:

NHFG Statewide Boat Access Coordinator  
NH Fish and Game Department  
11 Hazen Drive  
Concord, NH 03301  
Phone: 603-271-3421

To the American Legion:

American Legion Commander  
American Legion Claude R. Batchelder Post 72  
164 Wolfeboro Hwy  
Alton, NH 03809  
Tele: 603 875-3461

15. All obligations of NHFG hereunder are contingent upon the availability and continued appropriation of funds. NHFG shall not be required to transfer funds from any other account in the event that funds are reduced or unavailable.
16. This Memorandum of Agreement may be amended by an instrument in writing signed by both parties.
17. This Memorandum of Agreement shall be construed in accordance with the laws of the State of New Hampshire.
18. The parties hereto do not intend to benefit any third parties and this Memorandum of Agreement shall not be construed to confer any such benefit.
19. In the event any of the provisions of this Memorandum of Agreement are held to be contrary to any state or federal law, the remaining provisions of this Memorandum of Agreement will remain in full force and effect.
20. 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.

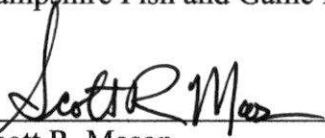
Contractor's Initials

Date

*AMV*  
*3/17/22*

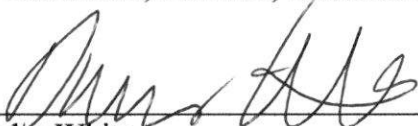
21. Nothing herein shall be construed as a waiver of the State of New Hampshire's sovereign immunity, such immunity being hereby specifically preserved.

New Hampshire Fish and Game Department

By:   
Scott R. Mason  
Executive Director

3-22-22  
(date)

Claude R. Batchelder, Post #72, American Legion

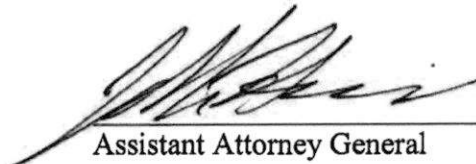
By:   
Douglas White  
Commander

3/17/22  
(date)

MEMORANDUM OF AGREEMENT BETWEEN THE NEW HAMPSHIRE FISH AND  
GAME DEPARTMENT AND THE CLAUDE R. BATCHELDER, POST #72, AMERICAN  
LEGION REGARDING FLAG DISPLAY AT DOWNING'S LANDING

Approval by Attorney General (as to Form, Substance, and Execution):

Date: 3/22/2022

  
Assistant Attorney General

**EXHIBIT A**

**SPECIAL PROVISIONS:**

**"Memorandum of Agreement between the New Hampshire Fish And Game Department and the Claude R. Batchelder, Post #72, American Legion Regarding Flag Display At Downing's Landing"**

All the provisions of this agreement are described in the subject Memorandum of Agreement.

Contractor's Initials

Date

*DR*  
*3/17/22*

**EXHIBIT B**

**SCOPE OF SERVICES**

**"Memorandum of Agreement between the New Hampshire Fish And Game Department and the Claude R. Batchelder, Post #72, American Legion Regarding Flag Display At Downing's Landing"**

The Scope of Services of this agreement are described in the subject Memorandum of Agreement.

Contractor's Initials

Date

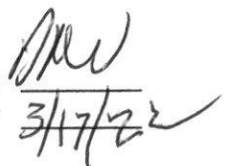
Handwritten initials "MB" and date "3/17/22" with a flourish.



EXHIBIT C

TERMS OF PAYMENT

"Memorandum of Agreement between the New Hampshire Fish And Game Department and the Claude R. Batchelder, Post #72, American Legion Regarding Flag Display At Downing's Landing"

The American Legion agrees to perform the services described in the subject Memorandum of Agreement at no cost to NH Fish and Game Department.

Contractor's Initials

Date

AW  
3/2/27



CLAUDE R. BATCHELDER POST, NO. 72  
ALTON, NEW HAMPSHIRE 03809

**Corporate Resolution – Certification of Vote**

I, Bruce R Cornish, hereby certify that I am duly elected Finance Officer of American Legion Post #72. I hereby certify the following is a true copy of a vote taken at a meeting of the Board of Directors/shareholders, duly called and held on March 15, 2022, at which a quorum of the Directors/shareholders were present and voting.

**VOTED:** That Douglas A White is duly authorized to enter into contracts or agreements on behalf of

American Legion Post #72 with the State of New Hampshire and any of its agencies or departments and further is authorized to execute any documents which may in his/her judgment be desirable or necessary to effect the purpose of this vote.

I hereby certify that said vote has not been amended or repealed and remains in full force and effect as of the date of the contract to which this certificate is attached. This authority remains valid for thirty (30) days from the date of this Corporate Resolution. I further certify that it is understood that the State of New Hampshire will rely on this certificate as evidence that the person(s) listed above currently occupy the position(s) indicated and that they have full authority to bind the corporation. To the extent that there are any limits on the authority of any listed individual to bind the corporation in contracts with the State of New Hampshire, all such limitations are expressly stated herein.

DATED: March 17, 2022

ATTEST:

Bruce R. Cornish  
James W. [Signature]

(Name & Title)

Commander Post 72  
FINANCE OFFICER