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Lori A. Shibinette
Commissioner

STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF THE COMMISSIONER

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May 29, 2020

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

INFORMATIONAL ITEM

Pursuant to RSA 4:45, RSA 21-P:43, and Executive Order 2020-04, as extended by Executive Orders 2020-05, 2020-08, and 2020-09, Governor Sununu has authorized the Department of Health and Human Services, Office of the Commissioner, to accept a generous gift of 1,000 face shields from the Boeing Company and **RETROACTIVELY** enter into a Donation Agreement effective retroactive to May 12, 2020, upon the Governor's Approval. The estimated fair market value of this gift is \$17,500.

EXPLANATION

This gift addresses a critical need and allows the Emergency Services Unit to provide much-needed Personal Protective Equipment (PPE) for the protection of health care workers in the COVID 19 response efforts.

In accordance with NH RSA 21-P:43 and RSA 4:45, I, the Governor is authorized to accept, in the name of the State, gifts made to the state or for the benefit of its inhabitants subject to the terms under which the gift is made.

Respectfully submitted,

Lori A. Shibinette
Commissioner

Donation Agreement

This Donation Agreement ("Donation Agreement" or "Agreement") is entered into by the New Hampshire Department of Health and Human Services ("DHHS") and the Boeing Company ("Boeing") (collectively, "the Parties"), through their authorized representatives.

RECITALS

A. In December 2019, a novel coronavirus known as SARS-CoV-2 ("the virus") was first detected in Wuhan, Hubei Province, People's Republic of China, causing outbreaks of the coronavirus disease COVID-19 that has now spread globally. The U.S. Secretary of Health and Human Services declared a public health emergency on January 31, 2020, under section 319 of the Public Health Service Act (42 U.S.C. 247d), in response to COVID-19. On March 11, 2020, the World Health Organization announced that the COVID-19 outbreak can be characterized as a pandemic, as the rates of infection continue to rise in many locations around the world and across the United States.

B. On March 13, 2020, the Governor of New Hampshire declared a state of emergency in response to the COVID-19 pandemic pursuant to part II, article 41 of the New Hampshire Constitution and New Hampshire Revised Statutes Annotated (RSA) 4:45. The Governor ordered that "state agencies shall enter into contracts to arrange for the procurement of materials, goods, and services needed to assist in preparing for, containing, responding to, mitigating the effects of, and recovering from the spread of COVID-19."

C. As the New Hampshire state agency charged with the health, safety and well-being of the citizens of New Hampshire, DHHS has legal responsibility and authority for the public health response to the COVID-19 pandemic in New Hampshire.

D. The Parties recognize the importance of greater access to protective equipment in containing COVID-19. To this end, Boeing seeks to donate, and DHHS will accept, 1,000 face shields (the "Donation") for distribution as part of DHHS's public health and medical response to the state of emergency declared in New Hampshire and in the United States as a result of the COVID-19 pandemic.

E. The Parties agree as follows:

TERMS AND CONDITIONS

1. Subject to the terms and conditions of this Donation Agreement, Boeing agrees to donate 1,000 face shields to DHHS for distribution as part of DHHS's public health and medical response to the state of emergency declared in New Hampshire and in the United States as a result of the COVID-19 pandemic.

2. The Parties agree that they intend for the Donation to be covered under the Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19 ("COVID-19 PREP Act Declaration"). The Parties further

agree that under the COVID-19 PREP Act Declaration: Boeing, as the manufacturer and distributor of the face shields, is a Covered Person; DHHS is an Authority Having Jurisdiction; the donated Boeing face shields are Covered Countermeasures; and Boeing's manufacture and donation of face shields to DHHS is a Recommended Activity and is authorized in accordance with the public health and medical response of DHHS to prescribe, administer, deliver, distribute, or dispense the Covered Countermeasures following the national and state declarations of an emergency.

3. **Compliance with All Laws:** The Parties shall comply with all applicable laws, including regulations, in connection with the Donation.

4. **No Inducement:** Each Party represents and warrants that the Donation is not provided as an inducement or reward for the purchase, use, endorsement or recommendation of, or testimonial for, any product or service, and that the Donation is not contingent on the purchase of any product or service by DHHS.

5. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Donation Agreement.

6. Neither Party shall have the right to enter into any agreements or take action on behalf of the other Party, nor shall it represent to any person that it has any such right or authority. Nothing in this Donation Agreement shall be construed as establishing a partnership or joint venture relationship between the Parties.

7. Each Party and signatory to this Donation Agreement represents that it freely and voluntarily enters into this Donation Agreement without any degree of duress or compulsion.

8. This Donation Agreement is governed by the laws of the State of New Hampshire. Any dispute that arises under or is related to this Donation Agreement that cannot be settled by mutual agreement of the Parties may be decided by a court of competent jurisdiction. For purposes of construing this Donation Agreement, this Donation Agreement shall be deemed to have been drafted by all Parties to this Donation Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

9. This Donation Agreement constitutes the complete agreement between the Parties and supersedes and terminates all prior and contemporaneous agreements and understandings between the Parties related to the subject matter hereof. If any provision of this Donation Agreement is judicially or administratively determined to be unenforceable, the provision will be reformed to most nearly approximate the Parties' original intent, but otherwise this Donation Agreement will continue in full force and effect. No amendment to, or waiver of right under, this Donation Agreement is effective unless in writing signed by authorized representatives of the Parties. Any waiver or failure to enforce any provision of this Donation Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

10. The undersigned represent and warrant that they are fully authorized to execute this Donation Agreement on behalf of the persons and entities indicated below.

11. This Donation Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Donation Agreement.

12. Neither Party may assign or transfer this Donation Agreement or any rights or obligations hereunder without the prior written consent of the other Party. Consent shall not be unreasonably withheld. Any purported assignment or transfer of this Donation Agreement by either Party in violation of Section 12 shall be null and void and of no legal effect. This Donation Agreement is binding on both Parties' successors, permitted transferees, heirs, and permitted assigns.

13. Neither Party may delegate any of its obligations under this Donation Agreement to a contractor or subcontractor without prior written consent of the other Party, which shall not be unreasonably withheld.

14. The Parties will use best efforts to consult each other before implying endorsement of the other party in written promotion materials, press releases, advertising, or any other public announcement in connection with this Agreement, unless required by law.

15. **WAIVER AND RELEASE. BOEING MAKES NO WARRANTY, EXPRESS OR IMPLIED (INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF WORKMANSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE), WITH RESPECT TO THE FACE SHIELDS AND DHHS HEREBY WAIVES AND RELEASES BOEING FROM ALL CLAIMS OF ANY NATURE ARISING OUT OF SUCH FACE SHIELDS WHETHER IN TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE) OR CONTRACT, OR FOR LOSS OF USE, REVENUE OR PROFIT, OR FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.**

16. This Donation Agreement is effective on the date of signature of the last signatory to the Donation Agreement. Facsimiles of signatures or digital signatures shall constitute acceptable, binding signatures for purposes of this Donation Agreement.

[SIGNATURE PAGE FOLLOWS]

NEW HAMPSHIRE DEPARTMENT OF HEALTH AND HUMAN SERVICES

DATED: 5.12.20

BY: 

Lori A. Shibinette, Commissioner
NH Department of Health and Human Services

BOEING

DATED: 5/8/2020

BY: Andrew Haug Digitally signed by Andrew Haug
Date: 2020.05.08 13:30:14 -0700

Andrew Haug
Procurement Agent
The Boeing Company