

RESOLUTION 262-17

**RESOLUTION AUTHORIZING EXECUTION OF AGREEMENT BETWEEN
THE BOROUGH OF CLAYTON BY AND THROUGH THE CLAYTON
POLICE DEPARTMENT AND THE GLOUCESTER COUNTY
PROSECUTOR'S OFFICE**

WHEREAS, the Borough of Clayton by and through the Clayton Police Department has agreed to enter into an Agreement for a Donation of Police Respirators; and

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Clayton, County of Gloucester, and State of New Jersey as follows:

1. That the governing body does hereby approve the attached Agreement between the Borough of Clayton by and through the Clayton Police Department and the Gloucester County Prosecutor's Office.
2. That the Chief of Police be and is hereby authorized to execute said contract on behalf of the Borough of Clayton.

ADOPTED, at a regular meeting of the Mayor and Council of the Borough of Clayton held on December 28, 2017.

BOROUGH OF CLAYTON



THOMAS BIANCO, Mayor

Attest:



CHRISTINE NEWCOMB, Borough Clerk

CERTIFICATION

I, Christine Newcomb, Borough Clerk, of the Borough of Clayton, do hereby certify that the foregoing Resolution was presented and duly adopted by the Borough Council at a meeting of the Borough of Clayton, held on Tuesday, December 28, 2017.

A handwritten signature in cursive script, reading "Christine Newcomb", written in dark ink.

CHRISTINE NEWCOMB, Borough Clerk

POLICE RESPIRATORS DONATION AGREEMENT

THIS POLICE RESPIRATORS DONATION AGREEMENT ("AGREEMENT") is made as of this 1st day of January, 2018 by and between the BOROUGH OF CLAYTON BY AND THROUGH THE CLAYTON POLICE DEPARTMENT ("DONOR") and the GLOUCESTER COUNTY PROSECUTOR'S OFFICE ("DONEE").

WHEREAS, DONOR owns certain used surplus police respirators identified in the attached list which have expired per the equipment manufacturer's instructions; and

WHEREAS, DONEE acknowledges that the equipment has been used by DONOR in DONOR'S day to day police department operations, and that the equipment has been subject to ordinary (and sometimes substantial) wear and tear; and

WHEREAS, as a result of said age, wear and tear, the equipment may have faults, defects and deficiencies that make it less reliable for its intended use than new equipment;

NOW, THEREFORE, in consideration of the mutual covenants contained herein the parties agree as follows:

A. DELIVERY OF RESPIRATORS.

Upon the receipt of fully executed originals of this Agreement, DONOR agrees to deliver to DONEE the expired police respirators identified on the attached list. DONEE agrees to bear all packaging and transportation charges on all equipment donated under this Agreement. Title to and risk of loss of the equipment donated under this Agreement shall pass to DONEE upon release of the equipment to DONEE at DONOR'S facility.

B. DISCLAIMER OF WARRANTY AND LIMITATIONS OF LIABILITY.

DONEE acknowledges and fully understands that DONOR purchased the equipment donated hereunder from a third-party in the past for use in the DONOR'S police department operations, that the DONOR has used said equipment in its police department, and that accordingly said equipment is USED equipment and not of the DONOR'S manufacture. The DONOR makes NO WARRANTY or representation whatsoever, EXPRESS OR IMPLIED, ORAL OR WRITTEN, concerning the equipment donated hereunder, except that DONOR does warrant title to said equipment. Any description of the equipment to be donated hereunder shall not constitute a warranty, but is only for the purpose of identification. This equipment is donated AS IS and WITH ALL FAULTS. DONOR makes NO WARRANTY or representation that the equipment is FIT, SUITABLE, or USEABLE FOR ANY PURPOSE whatsoever, and DONOR specifically DISCLAIMS the IMPLIED WARRANTY OF MERCHANTABILITY and the IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. DONEE acknowledges that DONOR warns DONEE that the equipment may be in a hazardous or defective condition or may become hazardous or defective, and may not be in compliance with applicable federal, state, or local government standards or regulations, including those promulgated by the Occupational Safety and Health Administration (OSHA). DONEE

understands and agrees that no change in this broad warning shall bind DONOR unless change is expressly made in writing by DONOR. DONEE assumes all risk and liability arising out of the handling, transportation, possession, use, or re-sale of the equipment, or any failure of the equipment to comply with any federal, state, or local government standards or regulations. In no event shall DONOR be liable for any damages to DONEE or to any other party arising out of the donation of the equipment hereunder, the handling, transportation, possession, or use of the equipment, the quality, workmanship, material, design, or present, or future state of the equipment, any hazard or defect in the equipment, any failure of the equipment to comply with any federal, state, or local government standards or regulations, any failure of the DONOR to have given any warning or instruction concerning the equipment, or the negligence of DONOR, and DONEE unqualifiedly waives all claims for any such damages against the DONOR. DONEE acknowledges that DONOR has not inspected or tested the equipment before the date of this Agreement, but that DONOR has given DONEE an opportunity to thoroughly inspect and test the equipment.

C. RELEASE OF DONOR BY DONEE

DONEE, on behalf of itself and its officers, officials, agents, employees, successors and assigns hereby forever RELEASES AND DISCHARGES DONOR AND ITS OFFICERS, OFFICIALS, AGENTS, EMPLOYEES, SUCCESSORS AND ASSIGNS from any and all asserted or potential claims, causes of action (at law or equity), liabilities, damages or losses of any kind, anticipated or unanticipated, known or unknown, which they now have, may in the future have, or could assert arising out of any act or omission whatsoever which arise from, relate to or concern in any manner this Agreement or the surplus equipment donated hereunder. THIS RELEASE IS A GENERAL RELEASE AND THE PARTIES INTEND AND AGREE THAT IT SHALL BE INTERPRETED, CONSTRUED AND ENFORCED AS SUCH.

D. INDEMNIFICATION.

DONEE shall defend, indemnify, and hold the DONOR harmless against any and all claims, demands, or actions (including, without limitation, any and all claims, demands, or actions for death or personal injury or property damage), and any and all costs and expenses arising out of the same, that any third party or third parties (including, without limitation, any employees of the DONEE) may have now or at any time in the future in any way arising out of or in any way connected with, directly or indirectly, patently or latently, DONOR'S donation of the equipment hereunder, the handling, the transportation, possession, or use of the equipment, any resale of this equipment by DONEE, the quality, workmanship, material, design, or present of future state of the equipment, any hazard or defect in the equipment, any failure of the equipment to comply with any federal, state, or local government standards or regulations, any failure of the DONOR to have given any warning or instruction concerning the equipment, or the negligence of the DONOR.

D. MISCELLANEOUS

1. Entire Agreement. This Agreement sets forth all the promises, covenants, agreements, conditions and undertakings between the Parties hereto with respect to the subject

matter hereof, and supersedes all prior or contemporaneous agreements and undertakings, inducements or conditions, express or implied, oral or written, between the Parties hereto.

2. Supplements. The Parties shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may be required to correct any inconsistent or ambiguous term of the Agreement.

3. Non-Waiver. It is understood and agreed that nothing which is contained in this Agreement shall be construed as a waiver on the part of the Parties, or any of them, of any right which is not explicitly waived herein.

4. Amendments. This Agreement may not be amended or modified for any reason without the express prior written consent of the Parties hereto.

5. Severability. In the event that any provision of this Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

6. Successors/Assigns/Employees/Agents. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors, assigns, employees and agents.

7. Notices. Unless otherwise provided in writing, any notices to be given or to be served upon any Party hereto, in connection with this Agreement, must be in writing and may be delivered personally or be certified or registered mail and, if so mailed, shall be deemed to have been given and received forty-eight (48) hours after a registered or certified letter containing such notice, postage prepaid, is deposited in the United States mail, and if given otherwise, shall be deemed to have been given when delivered to and received by the Party to whom it is addressed. Such notice shall be given to the Parties at their following respective addresses or at such other addresses as each Party may hereafter designate to the other Parties in writing:

If to DONOR:

Andrew Davis, Chief of Police
Clayton Police Department
125 North Delsea Drive
Clayton N.J. 08312

If to DONEE:

Charles A. Fiore, Prosecutor
Gloucester County Prosecutor's Office
70 Hunter St.
Woodbury, NJ 08096

8. No Personal Liability. Except to the extent set forth herein, no covenant, condition or agreement contained in this Agreement shall be deemed to be the covenant, condition or agreement of any past, present or future officer, agent or employee of the Parties, and neither the officers, agents or employees of the Parties nor any official executing this Agreement shall be liable personally on this Agreement by reason of the execution hereof by such person or arising out of any transaction or activity relating to this Agreement.

9. Authority to Enter into Agreement. Each of the signatories hereto represents and warrants it has all requisite power and authority to execute and deliver this Agreement.

10. Governing Law. The terms of this Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of New Jersey applicable to agreements made and to be performed entirely within the State of New Jersey, including all matters of enforcement, validity and performance.

11. Counterparts. This Agreement, and any other documents required hereunder, may be executed in counterparts, including by facsimile or electronic form, which together shall be considered an original document.

12. Representation by Counsel. Each party to this Agreement stipulates that it has been represented by and has relied upon the counsel of its choice in the negotiations for the preparation of this Agreement, and that each has read this Agreement and has had its contents and effect fully explained by such counsel and is fully aware of and understands all of its terms and the legal consequences thereof, or has had the opportunity to do so. It is acknowledged that the parties to this Agreement have mutually participated in the preparation of this Agreement, and it is agreed that no provision in this Agreement shall be construed against any party by virtue of the activities of that party or its attorneys.

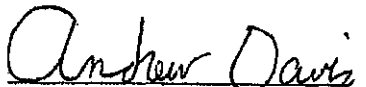
13. Further Assurances. In addition to the obligations expressly required to be performed hereunder, each of the parties to this Agreement agrees to cooperate with each other and to perform such other acts and to execute, acknowledge and deliver such other instruments, documents and materials as the other party may reasonably request and as shall be necessary in order to fulfill the spirit and intent of this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have caused this Agreement to be duly signed, sealed and executed by their respective proper officials as of the day and year first written above.


Borough of Clayton (Donor)

Gloucester County Prosecutor's Office

By:


Andrew Davis, Chief of Police
Glassboro Police Department

By:


12/21/17

LIST OF DONATED EQUIPMENT

11- Millennium Respirators Model# 10000002J50 (No Serial Number Available).

10- Deluxe Universal Gas Mask Bags

1- Case of expired CBRN Canisters

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Borough of Clayton (Donor)

Gloucester County Prosecutor's Office

By:


Andrew Davis, Chief of Police
CLAYTON Police Department

By: _____