This CONTRACT ("Contract") is agreed to between St. Charles County, Missouri ("County") and General Motors LLC (GM) ("Contractor"), a Delaware Corporation (collectively the "Parties"). The parties agree this Contract will govern the donation by Contractor to County, and the transfer, delivery, receipt, storage, and use by the County of goods donated by GM (the "Donated Goods"). This Contract is effective on July 1, 2020 ("Effective Date"), and unless terminated, expires on September 1, 2020.

The parties agree as follows:

1. **Purpose.** County acknowledges that the Donated Goods have been provided during the COVID-19 pandemic emergency ("Pandemic Emergency") for immediate use. The Donated Goods are intended to be distributed in a manner that would, to the extent possible, allow Contractor to obtain any potentially applicable U.S. federal government immunities from liability under the Public Readiness and Emergency Preparedness Act ("PREP Act"), codified at 42 U.S.C. § 247d-6d.

2. **Donated Goods.** The Donated Goods are non-medical face masks purchased by Contractor and manufactured by Comfort Lab, a Chinese corporation.

3. **Donated Goods Commitment.** Contractor will provide County 105,000 non-medical face masks for distribution ("Available Donated Goods"). County will provide Contractor with specific directions for delivery including amount of Available Donated Goods to be delivered, location to receive the delivery, address for delivery, and contact information for the location receiving the delivery. Contractor has no obligation to provide any specific amount of Donated Goods at any specific time. Contractor will use commercially reasonable efforts to delivery Donated Goods in a timely manner.

4. **Delivery and Receipt.** Using volunteers, Contractor shall deliver Donated Goods to hospitals, physician’s offices, other healthcare and pandemic emergency relief establishments, or social services at such locations as the Contractor and County agree. The Donated Goods will be deemed received at those same agreed locations.

5. **Transfer of Title.** Upon delivery, title in and to Donated Goods and risk of loss or damage shall transfer from Contractor to the County, subject to the terms and conditions of this Agreement. GM will not accept and the County shall not provide to GM anything of value in exchange for Donated Goods.

6. **Liability for Donated Goods.** County understands and agrees that any Donated Goods the County may receive from GM will be received by County in "as-is" condition, with all faults and defects, latent and otherwise. GM makes no warranty, covenant or representation, expressed or implied, or arising by operation of law, regarding Donated Goods, including without limitation, any warranty as to their design, condition, merchantability, or fitness for any particular use or purpose. GM shall not be liable in any event for any direct, actual, special, indirect, incidental or consequential damages or losses of any
kind, nature or description whatsoever, regardless of whether arising from
breach of contract, warranty, tort, strict liability or otherwise, suffered or incurred
by County or a third party as a result of the transfer, receipt, storage,
transportation or use of Donated Goods, even if the other party is advised of the
possibility of such loss or damage or if such loss or damage could have been
reasonably foreseen.

7. **Release on Donated Goods.** County hereby fully releases and discharges GM
from and waives any and all rights, claims, and actions that County may have or
acquire against GM arising out of or in any way associated with Donated Goods,
including, without limitation, the condition, use, or consumption of Donated
Goods.

8. **No Frustration of Purpose.** County agrees to cooperate with the Contractor in
any effort reasonably necessary to allow GM/Contractor to avail itself of any
applicable PREP Act immunities with respect to the Donated Goods. County
also agrees to make reasonable efforts to remove any Donated Goods from
distribution no later than 12 months after PREP Act tort liability immunity expires
if the products are not used during the pandemic emergency period.

9. **Notices.** All notices and other communications required or permitted under this
Contract must be in writing and will be considered given and received: (a) when
verified by written receipt if sent by courier; (b) when actually received if sent by
mail without verification of receipt; or (c) when verified by automated receipt or
electronic logs if sent by facsimile or email.

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<th>If to County:</th>
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<td>TBD</td>
<td>Heidi E. Magyar</td>
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<td>Director</td>
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10. **Contract Administrator.** The Contract Administrator for each party is the only
person authorized to modify any terms of this Contract, and approve and
execute any change under this Contract (each a "**Contract Administrator**"): 

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11. **Independent Contractor.** Contractor, its employees, and agents will not be considered employees of County. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not County, is responsible for the payment of wages, benefits and taxes of Contractor’s employees and any subcontractors. Prior performance does not modify Contractor’s status as an independent contractor.

12. **Assignment.** Upon notice to the other party, either party, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party.

13. **Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.

14. **Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict County or its agencies from acquiring similar, equal, or like Contract Activities from other sources.

15. **Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster, acts of god, or COVID-19-related complications that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance.

16. **Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties’ senior executive and either concludes that
resolution is unlikely or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the County’s right to terminate the Contract.

17. **Website Incorporation.** County is not bound by any content on Contractor’s website unless expressly incorporated directly into this Contract.

18. **Entire Agreement and Order of Precedence.** This Contract is the entire agreement of the parties related to the Contract Activities.

19. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.

20. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.

21. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

22. **Contract Modification.** This Contract may not be amended except by signed agreement between the parties (a “Contract Change Notice”). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.

23. **Contract Execution.** The parties agree this Contract can be executed in counterparts.

For St. Charles County, Missouri

_______________________________
TBD

Dated:
For General Motors LLC

Heidi E. Magyar
Director
Corporate Giving

Dated: