

Resolution No. RS2020 - 186

A resolution approving a contract by and between Well Child, Inc. (a provider of vaccines) and The Metropolitan Government of Nashville and Davidson County, acting by and through the Metropolitan Board of Health (MPHD), for MPHD to provide emergency backup storage of vaccines in the event of a power failure, equipment failure, or other threat.

WHEREAS, The Metropolitan Government of Nashville and Davidson County, acting by and through the Metropolitan Board of Health, and Well Child, Inc., have entered into a contract for MPHD to provide emergency backup storage of vaccines in the event of a power failure, equipment failure, or other threat; and,

WHEREAS, it is to the benefit of the citizens of The Metropolitan Government of Nashville and Davidson County that this contract be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That the contract between Well Child, Inc. and The Metropolitan Government of Nashville and Davidson County, acting by and through the Metropolitan Board of Health, for MPHD to provide emergency backup storage of vaccines in the event of a power failure, equipment failure, or other threat, a copy of which is attached hereto and incorporated herein, is hereby approved.

Section 2. That this resolution shall take effect from and after its adoption, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

APPROVED AS TO AVAILABILITY
OF FUNDS:



Kevin Crumbo, Director
Department of Finance

INTRODUCED BY:

APPROVED AS TO FORM
AND LEGALITY



Assistant Metropolitan Attorney

Member(s) of Council

Electronic Signature Page

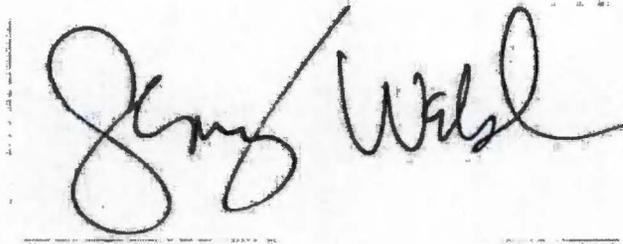
(Attach to Legislation Pursuant to Rule 8 of the Council Rules of Procedure)

Sharon W. Hurt

Sharon Hurt
Council Member, At-Large

Electronic Signature Page

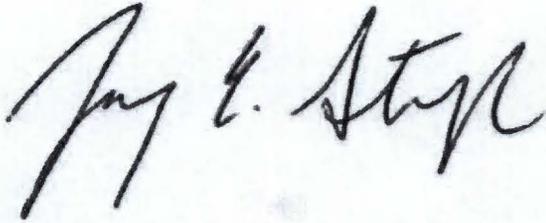
(Attach to Legislation Pursuant to Rule 8 of the Council Rules of Procedure)

A handwritten signature in black ink, appearing to read "Ginny Welsch". The signature is written in a cursive style with a large initial "G" and a long horizontal stroke extending to the right. The signature is positioned above a horizontal line.

Ginny Welsch
Council Member, District 16

Electronic Signature Page

(Attach to Legislation Pursuant to Rule 8 of the Council Rules of Procedure)

A handwritten signature in black ink, appearing to read "Joy L. Styles". The signature is written in a cursive, flowing style.

Joy Styles

Council Member, District 32

**CONTRACT
BETWEEN**

**METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY
ACTING BY AND THROUGH THE METROPOLITAN BOARD OF HEALTH AND WELL CHILD, INC.**

This Agreement is entered into by and between **THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY ACTING BY AND THROUGH THE METROPOLITAN BOARD OF HEALTH**, a municipal corporation of the State of Tennessee ("MPHD"), and **Well Child, Inc. ("Vaccine Provider")**, a school-based healthcare provider in Tennessee with its principal offices located at 650 New York St., Memphis, TN., 38104.

WHEREAS, Vaccine Provider is in possession of vaccines necessary to fulfill its obligations under the Vaccines For Children ("VFC") program; and,

WHEREAS, the VFC vaccines must be preserved in a temperature controlled environment to assure their viability; and,

WHEREAS, MPHD is equipped to provide emergency backup storage in the event of a power failure, equipment failure or other threat to the viability of the vaccines, and,

WHEREAS, providing backup storage to Vaccine Provider for the VFC vaccines is consistent with the mission of MPHD to protect the community from vaccine-preventable illness,

NOW THEREFORE, MPHD and Vaccine Provider agree to the terms, conditions, and responsibilities expressed in this agreement:

I. Definitions

Viability Threat: A loss of power, equipment failure or other circumstance in which Vaccine Provider is unable to maintain the temperature of its vaccine within the allowable temperature range per the protocols of the VFC program.

II. Responsibilities of the Metro Public Health Department

In the event of a Viability Threat, MPHD will assume the primary responsibility for the receipt and proper storage of the threatened vaccines. Specifically, MPHD will:

- a. Allow Vaccine Provider to store its vaccine in a designated MPHD vaccine storage facility.
- b. Train MPHD staff members who will serve as contact personnel for Vaccine Provider.
- c. Maintain its refrigerator/freezer according to VFC guidelines.
- d. Provide an inventory of vaccine left in MPHD's facility.
- e. Provide a daily report to Vaccine Provider of its data logger results as long as the vaccine is in MPHD custody.

MPHD reserves the unilateral right to refuse to accept vaccine that has not been maintained at the correct temperature or appears otherwise to be damaged.

III. Responsibilities of the Vaccine Provider

In the event of a Viability Threat, Vaccine Provider will:

- a. Transport, in accordance with VFC guidelines, the VFC vaccine to and from a designated MPHD storage facility.
- b. Provide and maintain an agency Primary Contact and Secondary Contact responsible for transport of vaccine.

- c. Communicate its emergency management protocol to MPHD annually.
- d. Be responsible for all reporting requirements related to its vaccine while the vaccine is in MPHD custody.
- e. Pick up vaccine during MPHD's normal business hours.

IV. Terms

1. **Timeframe.** The term of this Agreement will begin on or about November 1, 2019, and will last for five (5) years, unless earlier terminated in accordance with the terms of this Agreement.
2. **Taxes.** Metro shall not be responsible for any taxes related to this Agreement. Furthermore, Vaccine Provider understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to Metro.
3. (a) **Termination-Breach.** Should either party fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the material terms of this Agreement, the non-breaching party shall have the right to terminate the Agreement immediately, subject to the cure provisions of this paragraph. Such termination shall not relieve Vaccine Provider of any liability to Metro for damages sustained by virtue of any breach by Vaccine Provider. Should the non-breaching party determine that the breaching party has failed to fulfill in a timely and proper manner its obligations under this Agreement or any of the material terms of this Agreement, the non-breaching party shall provide the breaching party written notice of all alleged deficiencies in such breaching party's performance and allow the breaching party sixty (60) days to cure said alleged deficiencies.

(b) **Without Cause Termination.** Either party may terminate this Agreement without cause for any reason upon at least thirty (30) days prior notice to the other party.
4. **Compliance with Laws.** Vaccine Provider agrees to comply with any applicable federal, state and local laws and regulations.
5. **Modification of Agreement.** This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.
6. **Partnership/Joint Venture.** Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this paragraph.
7. **Waiver.** No waiver of any provision of this Agreement shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
8. **Employment.** Vaccine Provider shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities.
9. **Non-Discrimination.** It is the policy of the Metropolitan Government not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Vaccine Provider certifies and warrants it will comply with this policy. No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in Metro's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or state constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of Agreements with Metro or in the employment practices of Vaccine Provider. Accordingly, any Vaccine Provider entering into Agreements with Metro shall, upon written request, be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

10. **Insurance.** Throughout the term of this Agreement, Vaccine Provider shall maintain, in full force and effect, general liability insurance with a limit of at least \$1 million each occurrence/\$3 million aggregate, which insurance may be provided under a program or programs of self-insurance. Such insurance shall name Metro as an additional insured. As an additional insured, Metro agrees to (i) assist in the investigation and settlement of claims pursuant to this Section, (ii) provide prompt written notice to Vaccine Provider of claims made against Metro.
11. **Indemnification and Hold Harmless.** Vaccine Provider shall indemnify and hold harmless Metro, its officers, agents and employees from:
- Any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of Vaccine Provider, its officers, employees and/or agents, including its sub or independent Vaccine Providers, in connection with the performance of the Agreement and,
 - Any claims, damages, penalties, costs and attorney fees arising from any failure of Vaccine Provider, its officers, employees and/or agents, including its sub or independent Vaccine Providers, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
 - Metro will not indemnify, defend or hold harmless in any fashion the Vaccine Provider from any claims arising from any failure, regardless of any language in any attachment or other document that the Vaccine Provider may provide.
 - Vaccine Provider shall pay Metro any expenses incurred by Metro as a result of Vaccine Provider's failure to fulfill any obligation in a professional and timely manner under this Agreement.
12. **Attorney Fees.** Vaccine Provider agrees that, in the event either party deems it necessary to take legal action to enforce any provision of the Agreement, and in the event Metro prevails, Vaccine Provider shall pay all expenses of such action including Metro's attorney fees and costs at all stages of the litigation.
13. **Assignment--Consent Required.** The provisions of this Agreement shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Neither this Agreement nor any of the rights and obligations of Vaccine Provider hereunder shall be assigned or transferred in whole or in part without the prior written consent of Metro. Any such assignment or transfer shall not release Vaccine Provider from its obligations hereunder. NOTICE OF ASSIGNMENT OF ANY RIGHTS TO MONEY DUE TO VACCINE PROVIDER UNDER THIS AGREEMENT MUST BE SENT TO THE ATTENTION OF METRO'S CHIEF ACCOUNTANT, DIVISION OF ACCOUNTS, DEPARTMENT OF FINANCE, 222 THIRD AVENUE NORTH, SUITE 750, NASHVILLE, TENNESSEE 37201.
- ~~14. **Entire Agreement.** This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.~~
15. **Force Majeure.** No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.
16. **Governing Law.** The validity, construction and effect of this Agreement and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that Vaccine Provider may provide.
17. **Venue.** Any action between the parties arising from this Agreement shall be maintained in the courts of Davidson County, Tennessee.

18. **Severability.** Should any provision of this Agreement be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this Agreement.
19. **Conflicts of Interest.** Vaccine Provider warrants that no part of the Agreement shall serve to influence an employee or official of Metro or the State of Tennessee for wages, compensation, or gifts in exchange for acting as an officer, agent, employee, satellite Vaccine Provider, or consultant to the Vaccine Provider in connection with any work contemplated or performed relative to this Agreement.
20. **HIPAA Compliance.** Metro and Vaccine Provider shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
 - a. Vaccine Provider warrants that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Agreement.
 - b. Vaccine Provider warrants that it will cooperate with Metro, including cooperation and coordination with Metro privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of this Agreement so that both parties will be in compliance with HIPAA.
 - c. Metro and Vaccine Provider will sign documents, including but not limited to Business Associate agreements, as required by HIPAA and that are reasonably necessary to keep Metro and Vaccine Provider in compliance with HIPAA. This provision shall not apply if information received by Vaccine Provider from Metro under this Agreement is not "protected health information" as defined by HIPAA, or if HIPAA permits Vaccine Provider and Metro to receive such information without entering into a Business Associate agreement or signing another such document.
21. **Effective Date.** This Agreement shall not be binding upon the parties until it has been signed first by Vaccine Provider and then by the authorized representatives of the Metropolitan Government, approved by Resolution of Council, and filed in the office of the Metropolitan Clerk. When it has been so signed and filed, this Agreement shall be effective as of the date first written above.

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

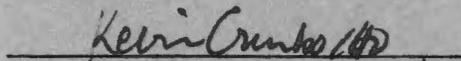
RECOMMENDED:


Sanmi Areola, Interim Director of Health

Approved:


Dr. Alex Jahangir
Chair, Board of Health

APPROVED AS TO AVAILABILITY OF FUNDS:


Kevin Crumbo, Director
Department of Finance

APPROVED AS TO RISK AND INSURANCE:


Director of Insurance

APPROVED AS TO FORM AND LEGALITY:


Metropolitan Attorney

ATTEST:

Metropolitan Clerk

Date: _____

WELL CHILD, INC.

BY:

Polunien
Title: *Medical Director*

Sworn to and subscribed to before me, a Notary Public, this 25th day of November, 2019 by

_____ , the

_____ of Well Child, Inc. and duly authorized to execute this instrument on its behalf.

Yolanda Davis

Notary Public.

My Commission Expires January 31, 2021



