

**American Rescue Plan Act
Amended and Restated Contract between Fulton County, Georgia
and Wellspring Living, Inc.**

This **AMENDED AND RESTATED CONTRACT** (“Amended Contract”) is made by and between **Fulton County, Georgia**, a political subdivision of the State of Georgia, having offices at 141 Pryor Street, SE, Atlanta, Georgia 30303 (hereinafter referred to as “Fulton County”) and Wellspring Living, Inc., a nonprofit, tax-exempt 501(c)(3) corporation organized under the laws of the State of Georgia (“Wellspring”), with offices located at 1040 Boulevard Avenue, SE, Suite M, Atlanta, Georgia 30312 (hereinafter collectively referred to as the “Parties”).

WHEREAS, since early 2020, a world-wide emergency has arisen with respect to a novel coronavirus known as SARS-CoV-2 (“COVID-19”), which rapidly spread throughout the world and has continued to have an unprecedented adverse impact on the citizens and communities throughout Fulton County, Georgia, among others; and

WHEREAS, on March 11, 2021, the American Rescue Plan Act of 2021 (“ARPA”) (H.R. 1319, 117th Cong.) (2021) was signed into law, and established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Funds, which together make up the Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”) program; and

WHEREAS, on March 17, 2021, the Fulton County Board of Commissioners adopted Resolution 21-0221 promulgating Fulton County’s acceptance of federal funds available to Fulton County from ARPA; and

WHEREAS, on April 1, 2022, the U.S. Department of the Treasury (“Treasury”) issued its Final Rule regarding the use of ARPA funds with guidelines, rules, and directives to recipients of ARPA funds; and

WHEREAS, in its Final Rule, Treasury advises that the purpose of ARPA is to provide a substantial infusion of resources to assist the pandemic response, including rebuilding a stronger, more equitable economy as the country recovers; and

WHEREAS, in its Final Rule, Treasury has determined that programs or services that address recovery services, job training and support, as well as housing insecurity, lack of affordable housing, or homelessness are enumerated eligible uses for ARPA funds; and

WHEREAS, in its Final Rule, Treasury has also determined that capital expenditures including adaptations to congregate or group living facilities are eligible uses of ARPA funds; and

WHEREAS, COVID-19 has had a devastating impact on victims and survivors of human trafficking as traffickers took advantage of the global crisis, capitalizing on peoples’ loss of income and the increased amount of time both adults and children were spending online; and

WHEREAS, Wellspring’s mission is to transform lives of those at risk or victimized by sexual exploitation; and

WHEREAS, Wellspring provides specialized recovery services on its 8-acre Fulton County campus (the “Campus”) through residential and community-based programs for domestic sex trafficking victims and those at risk; and

WHEREAS, Wellspring’s immersive Campus provides layers of service, including training and technical assistance, residential care, and transitional housing for women and families; and

WHEREAS, Wellspring Living serves over 300 participants each year, a majority of which are from Fulton County; and

WHEREAS, on September 7, 2022, the Fulton County Board of Commissioners passed Resolution No. 22-0645 allocating a portion of the SLFRF Award it received under ARPA in an amount not to exceed \$500,000.00 (Five Hundred Thousand Dollars) for assistance to Wellspring for capital expenditures related to construction to expand Wellspring’s Campus; and

WHEREAS, on May 17, 2023, pursuant to Agenda Item 23-0353, the Fulton County Board of Commissioners approved a contract (the “Original Contract”) between Fulton County and Wellspring Living in the amount of \$500,000.00 in ARPA funds for construction purposes to support Wellspring’s expansion; and

WHEREAS, the Parties executed the Original Contract on May 17, 2023; and

WHEREAS, the Original Contract Term provides that the Original Contract is “effective upon execution through December 31, 2023”; and

WHEREAS, Wellspring has not yet begun construction on the expansion of its Campus; and

WHEREAS, Wellspring desires additional time to begin these capital expenditures and provide the necessary invoices and documentation to the County in order to receive payment; and

WHEREAS, the Parties deem it to be in the best interest of both Parties to enter into this Amended Contract under the terms, obligations and conditions expressed herein.

NOW THEREFORE, in consideration of the mutual benefits to both Parties, it is hereby agreed as follows:

ARTICLE I. PURPOSE AND RELATIONSHIP

1. Purpose. This Amended Contract describes the way in which the Parties will use the ARPA funding allotment in responding to the economic and public health impacts of COVID-19 and efforts to contain impacts on the communities, residents, and businesses in Fulton County.

2. Independent Contractor. The relationship of Wellspring to Fulton County is that of an independent contractor and not of an employee/employer. Neither this Amended Contract, nor

any activities described herein, shall be construed as creating a partnership, joint venture, franchise, agency, or other such relationship, and neither Party shall have the right, power, or authority to obligate or bind the other party in any manner whatsoever, without the other party's prior written consent. It is expressly understood that any individual performing services under this Amended Contract on behalf of Wellspring shall not be deemed to be an employee or independent contractor of Fulton County, and such individual shall not be entitled to tax withholding, workers' compensation, unemployment compensation or any employee benefits, statutory or otherwise, from Fulton County. Wellspring agrees that it is solely responsible for the reporting and payment of income, Social Security and other employment taxes due to the proper taxing authorities with respect to such personnel.

3. Indemnification. Wellspring covenants and agrees to indemnify, defend and hold harmless Fulton County, its officers, agents and employees from and against any and all loss or expense that may arise by reason of liability for damage, injury or death, for the invasion of personal and property rights, of every name and nature, and whether casual or continuing trespass or nuisance, and any other claim for damages arising at law and equity alleged to have been caused or sustained in whole or in part by or because of any omission of duty, negligence or wrongful act on the part of Wellspring, its officers, agents, or employees in connection with this Agreement. This provision shall survive the expiration or termination of this Amended Contract.

4. Wellspring. The Parties agree that Fulton County is providing these funds to Wellspring, with Wellspring having the obligation to comply with all applicable requirements where it is deemed a contractor, as defined and described under the Treasury's Final Rule effective April 1, 2022, implementing the SLFRF program, including any federal reporting requirements that may apply and 2 CFR 200.331 (a) and (b).

Wellspring further acknowledges that it has reviewed the terms and conditions of the ARPA funding for this project and will carry out all program activities and expenditures in accordance with those terms and conditions, in the manner provided by law. Wellspring will comply with all applicable federal, state and local laws and regulations governing the receipt or use of the federal funding provided under this Agreement, including but not limited to current and future rules and regulations issued by the United States Treasury or other federal agencies in regard to the requirements of ARPA.

ARTICLE II. AWARD AND SCOPE OF SERVICES

1. Term. This Amended Contract is effective upon execution through December 31, 2024.

2. Award. ARPA funding in an amount not to exceed **\$500,000.00** (the "Award Amount") will be provided by Fulton County to Wellspring to assist with the cost of construction to expand Wellspring's Campus.

3. Eligible Uses. Fulton County will provide funding up to the Award Amount to help fund construction of the expansion of Wellspring's existing Campus. Capital expenditures including construction for adaptations to congregate or group living facilities are eligible uses.

Wellspring shall continue to provide programs and services at its expanded Campus that address recovery, job training and support.

4. Disbursement. Wellspring shall submit monthly invoices to Fulton County verifying eligible construction expenses for work performed during the previous calendar month, in a form acceptable to the County and accompanied by all support documentation requested by the County, for payment and for services that were completed during the preceding month. All invoices submitted to verify eligible construction expenses are subject to review and approval by the Director of Community Development. Such invoices shall be provided to Stanley Wilson, Director, Fulton County Department of Community Development, 137 Peachtree Street, SW, 1st Floor, Atlanta, GA 30303 by the end of the Amended Contract's Term. Copies of all such invoices shall also be provided to Hakeem Oshikoya, Finance Director, Fulton County Department of Finance, 141 Pryor Street, Suite 7001, Atlanta, Georgia 30303 by the end of the Amended Contract Term. The County shall have the right not to pay any invoice or part thereof if not properly supported, or if the costs requested or a part thereof, as determined by the County, are reasonably in excess of the actual stage of completion. The County shall make payments to Wellspring within thirty (30) days after receipt of an approved invoice.

5. Scope of Services. Wellspring will utilize the Award Amount for the construction of the expansion of Wellspring's existing Campus so as to continue to provide support for individuals/families at its Campus located in Fulton County for the purpose of the Eligible Use in accordance with the scope of services described in Schedule 1 hereto (the "Scope of Services"). Wellspring shall spend the Award Amount for the purposes described in Scope of Services, unless other direct changes are agreed to in writing in advance by Fulton County. In no event will Fulton County be obligated for providing any funding above the total amount of the Award Amount. Wellspring agrees that no more than ten percent of the Award Amount may be used for administrative purposes. Wellspring agrees that the Award Amount may not be used to pay the salary of an individual. All ARPA funding must be used for an "Eligible Use Category" cost/service for Wellspring's clients.

ARTICLE III. REPORTING

1. Maintenance of Records. Wellspring shall maintain a financial management system and financial records and shall utilize funds received pursuant to this Amended Contract in accordance with all applicable federal and state requirements. Wellspring shall adopt such additional financial management procedures as may from time to time be prescribed by Fulton County if required by applicable laws, regulations or guidelines from its federal and state government funding sources. Wellspring shall maintain detailed, itemized documentation and records of all income received and expenses incurred pursuant to this Amended Contract.

Wellspring must maintain all records, books, papers and other documents related to its performance of the Scope of Services for a period of five years following the termination of this Amended Contract or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Amended Contract. Such records shall include the full name of individuals served with ARPA funding and where applicable the date of birth, gender, race, and ethnicity of individual receiving assistance. Wellspring shall make all records, books, papers and other documents that relate to this Amended Contract available at all reasonable

times for inspection, review and audit by the authorized representatives of Fulton County and the federal government, if so requested.

During the term of this Amended Contract, the Parties shall comply will Federal and State laws and regulations regarding confidentiality of participant records and information.

2. Progress Reports. Wellspring will submit a monthly report of construction progress funded by the ARPA allotment provided by Fulton County within 10 days of the end of each calendar month during the Term of this Amended Contract. The progress report is a performance measurement tool administered to assist with monitoring the program performance and compliance. Fulton County will provide the performance template and due dates to Wellspring, and Wellspring shall submit the reports electronically. Wellspring shall register and maintain an updated profile with SAM.gov. The County reserves the right to request additional project information at any time.

3. Improper Expenditures. Any item of expenditure by Wellspring under the terms of this Amended Contract which is found by auditors, investigators, and other authorized representatives of Fulton County or the federal government to be improper, unallowable, in violation of federal or state law or the terms of this Amended Contract, or involving any fraudulent, deceptive, or misleading representations or activities of Wellspring, shall become Wellspring's liability, to be paid by Wellspring from funds other than those provided by Fulton County under this Amended Contract or any other agreements between Fulton County and Wellspring.

4. Audited Financial Statements. If Wellspring expends \$750,000.00 or more in federal awards during a fiscal year, Wellspring acknowledges that it must comply with federal audit requirements, including the preparation of an audit by an independent certified public accountant. During the term of this Amended Contract, the Parties shall comply with Federal and State laws and regulations regarding confidentiality of participant records and information. If Wellspring expends less than \$750,000.00 in federal awards in any fiscal year, it is exempt from federal audit requirements, but its records must be available for review by Fulton County and the federal government. Wellspring shall provide Fulton County with a copy of Wellspring's most recent audited financial statements, federal Single Audit report, if applicable, and management letter within thirty (30) days after execution of this Amended Contract and thereafter within nine (9) months following the end of Wellspring's most recently ended fiscal year.

5. Survival. This Article shall survive the expiration or termination of this Amended Contract.

ARTICLE IV. COOPERATION IN MONITORING AND EVALUATION.

1. Fulton County Responsibilities. Fulton County shall monitor, evaluate and provide guidance and direction to Wellspring in the conduct of the Scope of Services performed under this Amended Contract. Fulton County has the responsibility to determine whether Wellspring has spent funds in accordance with applicable laws, regulations, including the federal audit requirements and agreements and shall monitor the activities of Wellspring to ensure that Wellspring has met such requirements. Fulton County may require Wellspring to take corrective

action if deficiencies are found. Methods to ensure compliance for federal awards made to Wellspring may include pre-award audits, monitoring during the contract and post-award audits.

2. Wellspring Responsibilities. Wellspring shall permit Fulton County to carry out monitoring and evaluation activities, including any performance measurement system required by applicable law, regulation, funding sources guidelines or by the terms and conditions of the applicable Notice of Prime Award, and Wellspring agrees to ensure, to the greatest extent possible, the cooperation of its agents, employees and board members in such monitoring and evaluation efforts. This provision shall survive the expiration or termination of this Amended Contract.

Wellspring shall cooperate fully with any reviews or audits of the activities under this Amended Contract by authorized representatives of Fulton County or the federal government and Wellspring agrees to ensure to the extent possible the cooperation of its agents, employees and board members in any such reviews and audits. This provision shall survive the expiration or termination of this Amended Contract.

ARTICLE V. COMPLIANCE WITH GRANT AGREEMENT AND APPLICABLE LAWS.

1. Compliance with Prime Award and Subaward. Wellspring shall perform all activities funded by this Amended Contract in accordance with this Amended Contract, Schedule 1 and the applicable contract provisions for non-federal entity contracts under federal awards required under Appendix II to the Uniform Guidance.

2. Compliance with Applicable Laws. Wellspring shall perform all activities funded by this Amended Contract in accordance with all applicable federal, state and local laws, including without limitation laws which regulate the use of funds allocated under ARPA. The term “federal, state and local laws” as used in this Amended Contract shall mean all applicable statutes, rules, regulations, executive orders, directives or other laws, including all laws as presently in effect and as may be amended or otherwise altered during the Term, as well as all such laws which may be enacted or otherwise become effective during the Term. The term “federal, state and local laws” shall include, without limitation, any regulation promulgated pursuant to ARPA.

By entering into this Amended Contract, Wellspring represents and warrants that it is not in violation of any, and complies with all, federal laws and regulations applicable to subawardees of federal funds and maintains all required federal, state and local licenses, certifications, permits and accreditations, including the Uniform Guidance found in 2 C.F.R. 200.

ARTICLE VI. INSURANCE

1. For the construction to expand Wellspring’s existing Campus, Wellspring shall obtain at its own expense the insurance required as follows:
 - A. Wellspring shall provide a General Liability Insurance policy with contractual liability coverage to cover all operations pursuant to this agreement. The general liability insurance policy shall be in the minimum amount of \$1,000,000.00 per occurrence and \$1,000,000.00 as the aggregate limit of liability. The policy shall be in effect from the

day on which services commence until final acceptance by Wellspring of all construction of the expansion of Wellspring's existing Campus is completed pursuant to this Agreement and for a period of three (3) years thereafter with the limits noted above. The County shall be named as an additional insured on said policy.

- B. Wellspring shall provide the County with the declaration page or blanket endorsement from the policy to confirm the County's status as an additional insured. A certificate of insurance naming the County as an additional insured shall be sent to the County Attorney, along with the declaration page or endorsement from the policy confirming the County's additional insured status. The Certificate of Insurance shall provide for thirty (30) days written notice to the County prior to the cancellation of said insurance.
- C. Wellspring shall obtain at its own expense Workers Compensation Insurance to cover all operations pursuant to this agreement in an amount of not less than the statutory limits required by Georgia State Law. A Certificate of Insurance stating that Workers Compensation coverage is in effect for the duration of this agreement shall be sent to the County's legal Counsel.

ARTICLE VII. TERMINATION/SUSPENSION

1. Fulton County may terminate this Amended Contract by giving thirty (30) calendar days written notice to Wellspring and such termination shall be effective upon the 30th day. Notice of termination shall be given to the appropriate Party at the address shown in Article VIII of this Amended Contract.

2. Anything contained herein to the contrary notwithstanding, Fulton County may terminate the Amended Contract effective immediately prior to expiration of the Term where Wellspring commits a material breach of the Amended Contract and fails to cure said breach within the time allotted by Fulton County.

3. Upon expiration of the term of this Amended Contract or termination of the Amended Contract, the Parties shall agree upon any outstanding present and future obligations and performance commitments to one another, and shall arrange for a proper accounting and work plan for any and all such obligations. Upon termination or expiration of the term of this Amended Contract, any remaining, unused portion of the Award Amount shall be returned to Fulton County.

4. Suspension

The County may by written notice to the Wellspring, suspend the use of County funds where it is determined that any portion of work in which County funds are utilized is not progressing on schedule, being performed competently or to industry standards, or activities at the Project site are posing a danger to the safety of the community or the workers or volunteers. Upon receipt of a suspension notice, the Wellspring must:

- 1) Immediately take correct measures and provide proof to the County that the activity giving rise to the suspension has ceased or has been corrected;

- 2) Place no further orders or subcontracts for material, services or facilities with respect to the suspended services, other than to the extent required in the notice; and
- 3) Take any other reasonable steps to minimize costs associated with the suspension.

Notice to Resume: Upon receipt of a notice to resume suspended services, the Wellspring will immediately resume performance under this Agreement as required in the notice.

ARTICLE VIII. NOTICES

1. For purposes of this Amended Contract, any notices required to be sent to the Parties shall be hand delivered or mailed to the addresses provided below:

To Fulton County:

Fulton County Community Development Department
137 Peachtree Street
Atlanta, Georgia 30303

Copy to:

Office of the County Manager
141 Pryor Street, Suite 10062
Atlanta, Georgia 30303

Office of the County Attorney
141 Pryor Street, Suite 4038
Atlanta, Georgia 30303

To Wellspring:

See Notice Address in Schedule 1.

ARTICLE VIII. GENERAL PROVISIONS

1. If any part of this Amended Contract is found to be invalid or unenforceable, or is otherwise stricken, the rest of this Amended Contract shall remain in full force and effect.

2. This Amended Contract constitutes the entire agreement between the Parties. It supersedes any prior oral understandings between them with respect to the matters addressed herein.

3. This Amended Contract may be modified only by written agreement of the Parties, with such modification being subject to approval by the governing bodies of the Parties.

4. Waiver of any term or condition of this Amended Contract shall be effective in writing and shall not be construed as a waiver of any subsequent breach or waiver of the same term or condition, or a waiver of any subsequent breach or waiver of the same term or condition, or a

waiver of any other term or condition of this Amended Contract. Nothing herein shall constitute or be considered a limitation upon or waiver of the Parties' rights under applicable law.

5. This Amended Contract shall inure to the benefits of and be binding upon the Parties hereto, their successors and assigns. This Amended Contract is not intended to create any rights interest, or benefits in third parties.

6. This Amended Contract shall be governed by the laws of the State of Georgia.

7. This Amended Contract may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original without the production of any other counterpart. Any signature delivered via facsimile or other electronic means shall be deemed an original signature hereto.

8. This Amended Contract is not intended to and shall not be construed to give any Third Party any interest or rights (including, without limitation, any Third-Party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby, except as otherwise expressly provided for in this Amended Contract.

(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals this the _____ day of _____, 2023.

FULTON COUNTY, GEORGIA

Approved:

Robert L. Pitts, Chairman
Fulton County Board of Commissioners

Attest:

Tonya R. Grier
Clerk to the Commission

Approved as to Content:

Stanley Wilson
Director
Department of Community Development

Approved as to Form:

Office of the County Attorney

WELLSPRING LIVING, INC.:

Approved:

By: _____
Name: Mary Frances Bowley
Title: Chief Executive Officer

Schedule I

Name of Wellspring: Wellspring Living, Inc.

Wellspring's UEI: J1C9RY31NMX5

Notice Address: 1040 Boulevard Avenue, SE, Suite M, Atlanta, Georgia 30312

Award Amount: \$500,000.00

Eligible Use Category: Capital expenditures (construction costs) for adaptations to congregate or group living facilities on Wellspring's existing Campus.

Description of Scope of Work: Wellspring shall utilize the Award Amount to help fund the construction of the expansion of Wellspring's existing Campus where it provides programs and services that address recovery, job training and support through residential and community-based programs for domestic sex trafficking victims and those at risk.