

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND WELLSRING, INC.
D/B/A WELLFULLY FOR THE USE OF CITY VISION FUNDS TO CONSTRUCT AN
ADOLESCENT CARE CENTER.**

This Agreement is made and entered into this ___ day of May, 2017, by and between the CITY OF RAPID CITY (the “ City”), a municipal corporation, located at 300 Sixth Street, Rapid City, South Dakota 57701, and WELLSRING, INC., d/b/a WELLFULLY (“Wellfully”), a South Dakota non-profit corporation, located at 1205 East St. James Street, Rapid City 57701.

RECITALS

WHEREAS, the City solicited potential community projects to receive funding from the City’s Vision Account; and

WHEREAS, Wellfully, a 501(c)(3) corporation, submitted a request to have the City’s Vision Account help fund space within a new adolescent care center for a teen development program called Life Above & Beyond (“LAB”); and

WHEREAS, Wellfully estimates the teen development LAB program will serve over 900 youth in the community and the surrounding area every year; and

WHEREAS, the estimated cost of the adolescent care facility is \$5.61 million dollars of which Wellfully requested \$1.125 million from the Vision Account in order to fund construction of the public teen development LAB program space; and

WHEREAS, the City formed a citizen committee to review and make funding recommendations regarding the proposed community projects which sought money from the Vision Account; and

WHEREAS, the citizen committee recommended that Wellfully’s proposed project receive the \$1.125 million which was requested; and

WHEREAS, the City Council reviewed and ratified the citizen committee’s recommendations at its December 5, 2016, meeting; and

WHEREAS, the parties desire to memorialize under what terms and conditions the City funds will be made available to fund Wellfully’s LAB project.

NOW THEREFORE, the parties hereby covenant and agree as follows:

1. The City will expend up to \$1,125,000 out of the City’s Vision Account to help fund construction of a new adolescent care center consistent with Wellfully’s application and supporting materials which were submitted to, and reviewed by, the City. A copy of Wellfully’s application and supporting materials are hereby incorporated into this Agreement. The City’s contribution will be used primarily for construction of the public LAB space and will not be used to reimburse Wellfully for any of the design costs. The new adolescent care center will be

constructed at a lot on Watertown Street (Lot 1R of Eastbrook Subdivision) which was recently purchased by Wellfully. If the cost of completing the adolescent care center or LAB space come in higher than the amount the City has authorized, Wellfully will either need to make changes to the project that bring the cost under this amount or make up the difference in cost out of other funding sources.

2. Wellfully will be solely responsible for designing and constructing the project contemplated in this Agreement. Wellfully has indicated that it has, or will have, sufficient funds available in order to construct this project. Based on Wellfully's ability to pay the initial design and construction costs out of its own funds, the parties have agreed that Wellfully will invoice the City Finance Office for covered work once it has been completed. The City will review the payment invoice and then reimburse Wellfully for those expenditures up to the amount identified in Paragraph 1 of this Agreement. Wellfully agrees to provide to the City with any request for reimbursement sufficient documentation so that the City can insure the payment is for the project, is consistent with the proposal identified in Wellfully's application, and the contractors have already been paid for the invoices being submitted. If the City identifies an issue with a request for reimbursement, the City may withhold approval of such reimbursement until the issues which have been identified are resolved, or may proceed with processing the payment, but withhold any disputed amounts from future payments if the issue is not resolved in a reasonable time period. The City agrees to work diligently with the Wellfully and its contractors to resolve any disputes and the City further agrees that it will not unreasonably withhold any payments or reimbursements to Wellfully.

3. Due to the use of public funds in the construction of this project, Wellfully agrees that the selection of contractors for the construction of the improvements contemplated by this Agreement shall comply with all provisions of South Dakota law regarding the expenditure of public funds. These provisions are contained in Chapters 5-18A through 5-18D of the South Dakota Codified Laws. The City specifically acknowledges that Wellfully may engage a construction manager, a construction manager at risk, or engage in a design-build process consistent with state law. Wellfully agrees to provide the City with any and all documentation necessary to demonstrate to the City's satisfaction that it has complied with this provision.

4. Wellfully acknowledges that the City's intent when it solicited community projects seeking funding from the Vision Account was for the projects selected to be constructed in 2017. Wellfully agrees to design and have entered into a contract for construction of the adolescent care center and the LAB space being funded by the City by December 31, 2017. Once a contract for construction has been entered into, Wellfully will have six (6) months to begin actual construction of the project.

5. If Wellfully substantially alters the project from the presentation it made to obtain funding, fails to meet any of the deadlines established in this Agreement, or suspends construction on the project for more than four (4) months once construction has commenced, Wellfully shall be in material breach of this Agreement. If Wellfully is in material breach, the City may unilaterally terminate its remaining obligations under this Agreement. The City shall provide written notice to Wellfully of such breach and Wellfully shall have thirty (30) days to remedy or cure such breach. To the extent that Wellfully has incurred reimbursable expenses

under this Agreement prior to termination by the City, the City will reimburse Wellfully pursuant to the terms of this Agreement.

6. Wellfully acknowledges that the City's commitment to provide \$1,125,000 towards the completion of this project is good and sufficient consideration for the promises it has made herein. Wellfully further acknowledges that absent the promises made herein, the City would not have agreed to provide these funds. The City acknowledges that Wellfully's commitment to construct a facility that exceeds five million dollars in value and includes space for the public development LAB program space constitutes sufficient good and valuable consideration for the promises it has made herein. The City further acknowledges that absent the promises it has made in this Agreement, Wellfully would not have undertaken other financial obligations necessary to fund the project described herein.

7. If any provisions or terms of this Agreement are held to be unconstitutional, invalid, or otherwise unenforceable by any court or tribunal having jurisdiction over the parties the remainder of this Agreement shall remain in full force. Any such determination of invalidity shall not affect any other provision of this Agreement if the remaining sections or provisions can be given effect without the invalid section or provision.

8. This Agreement shall be deemed to be prepared jointly by the parties hereto and neither shall be deemed to be its sole author. In the event of any claim of ambiguity, no provision shall thereby be construed against either party.

9. This Agreement is intended solely for the benefit of the parties hereto and shall not be enforceable by, or create any claim of right or right of action, in favor of any other party. The terms and conditions of this Agreement may be modified only in a written amendment that is duly executed by the parties hereto. Neither party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party. Subject to this restriction, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and legal representatives.

10. Failure of a party to insist upon adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon adherence to that term, or any other term, of this Agreement.

11. The validity, interpretation, construction, and performance of this Agreement shall be governed by the laws of the State of South Dakota. Any action to interpret or enforce this Agreement shall be venued in the Seventh Judicial Circuit in Pennington County, South Dakota.

12. This Agreement constitutes the entire agreement of the parties regarding this matter. No other promises or consideration form a part of this Agreement. All prior discussions and negotiations are merged into this document or have been intentionally omitted.

Dated this ___ day of May, 2017.

CITY OF RAPID CITY

Steve Allender, Mayor

ATTEST:

Pauline Sumption, Finance Officer

THE REST OF THIS PAGE HAS INTENTIONALLY BEEN LEFT BLANK

WELLSPRING, INC. D/B/A WELLFULLY

Dan Maguire, President of the Board

Jessica Olson, Executive Director

State of South Dakota)
 ss.
County of Pennington)

On this the ____ day of _____, 2017 before me, the undersigned officer personally appeared Dan Maguire, who acknowledged himself to be the President of the Wellspring, Inc., Board of Directors, and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public, _____

My Commission Expires:

(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the ____ day of _____, 2017 before me, the undersigned officer personally appeared Jessica Olson, who acknowledged herself to be the Executive Director of Wellspring, Inc., and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public, _____

My Commission Expires:

(SEAL)