

BOARD OF COUNTY COMMISSIONERS SARPY COUNTY, NEBRASKA

RESOLUTION AUTHORIZING CHAIRMAN TO SIGN AGREEMENT
WITH THE NEBRASKA DEPARTMENT OF HUMAN SERVICES (DHHS) AND VISINET

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6) (Reissue 2007), the County has the power to do all acts in relation to the concerns of the county necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. §23-103 (Reissue 2007), the powers of the County as a body are exercised by the County Board; and,

WHEREAS Visinet had contracted with DHHS to provide coordination services for DHHS juveniles. Sarpy County has been providing services to DHHS juveniles under the C.A.R.E. program. Visinet owes Sarpy County for the C.A.R.E. program services provided, but is unable to financially pay for said services.

WHEREAS Visinet and DHHS have terminated their contractual agreement due to Visinet's financial difficulty and due to said early termination DHHS has funding available to pay a portion of the amount owed Sarpy County for C.A.R.E. services provided to DHHS juveniles; and,

WHEREAS DHHS will pay a portion of the amount owed to Sarpy County upon the approval of the attached Agreement. It is in the best interests of the citizens of Sarpy County to approve the attached Agreement; and,

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT the attached Agreement is hereby approved and the Chairman and the County Clerk are hereby authorized to execute the same, which is attached hereto.

BE IT FURTHER RESOLVED that the Chairman of the Board, together with the County Clerk are hereby authorized to sign on behalf of this Board any other related documents, the same being approved by the Board.

DATED this _____ day of _____, 2010

Moved by _____, seconded by _____, that the above

Resolution be adopted. Carried.

YEAS:

NAYS:

ABSENT:

ABSTAIN:

Approved as to form:

County Clerk

Deputy County Attorney

AGREEMENT

THIS AGREEMENT is entered into by and among the Nebraska Department of Health and Human Services (DHHS), Visinet, Inc. (Visinet), and _____ (Subcontractor).

I.

WHEREAS, DHHS and Visinet entered into a Service Delivery and Service Coordination Implementation Contract (Implementation Contract), and a Service Delivery and Service Coordination Contract (Service Contract) (the Contracts), on July 20, 2009, and October 30, 2009, respectively, under which Visinet agreed to provide a variety of services to children and families on behalf of DHHS; and

WHEREAS, Visinet entered into various subcontracts with various subcontractors (Visinet Subcontractors) for the provision of necessary services under the Contracts, including a subcontract with Subcontractor (the Subcontract); and

WHEREAS, the Implementation Contract terminated pursuant to its own terms on March 31, 2010, and the Services Contract was terminated by DHHS effective April 15, 2010; and

WHEREAS, DHHS remains obligated to Visinet for services provided on behalf of DHHS under the Contracts in the amount of \$_____; and

WHEREAS, Visinet remains obligated to Subcontractor for services provided on behalf of DHHS under the Subcontract in the total amount of \$_____; and

WHEREAS, the parties desire to settle, pursuant to the terms and conditions set forth herein, all claims among DHHS, Visinet, and Subcontractor in any way related to the Subcontract;

NOW, THEREFORE, the Parties mutually agree as follows:

II.

A. Consideration.

- i. Upon execution of this Agreement DHHS will pay Subcontractor \$_____, which represents 70% of remaining payment due from Visinet to Subcontractor under the Contractors. A list of all Visinet Subcontractors and the pro rata payment for which they are eligible is attached hereto and incorporated by reference herein.
- ii. DHHS anticipates that payment to Subcontractor will occur no later than ten business days of the execution of this Agreement.

B. Release of Claims.

- i. Conditioned upon receipt of the consideration set forth herein, Subcontractor hereby releases and forever discharges DHHS and Visinet from any and all claims, demands, obligations, losses, causes of action, costs, expenses, attorney fees and liabilities based on the Subcontract.
- ii. Conditioned upon receipt of the consideration set forth herein, Visinet, on behalf of itself and its successors and assigns, hereby releases and forever discharges DHHS and Subcontractor from any and all claims, demands, obligations, losses, causes of action, costs, expenses, attorney fees and liabilities based on the Subcontract.

C. Termination of Agreements. The parties hereto agree and confirm that the Subcontract was previously terminated or is hereby terminated, and is of no further force and effect, and with the exception of any terms, conditions, and obligations which survive termination pursuant to the terms of the agreements, all parties hereby expressly release each other from any continuing rights, duties and/or obligations under the Subcontract and shall make no further claim in connection with the Subcontract.

D. Covenants. The parties covenant and agree that they will not, at any time hereafter, either directly or indirectly, initiate, assign, maintain or prosecute, or in any way knowingly aid or assist in the initiation, maintenance or prosecution of any claim, demand or cause of action at law or otherwise, for damages, loss or injury of any kind arising from,

related to, or in any way connected to any activity with respect to which a release has been given pursuant to this Agreement.

- E. Agreement not an Admission of Liability. The parties hereto agree and acknowledge that this Agreement is a compromise settlement of each party's disputed claims, and that the sums and covenants given in consideration of this Agreement, as well as the execution of this Agreement, shall not be construed to be an admission of liability on the part of any party with respect to the disputed matters set forth above.
- F. Parties to Bear Own Costs and Attorneys' Fees. Each party to this Agreement will bear its own costs, expenses, and claims to interest and attorneys' fees, whether taxable or otherwise, incurred in or arising out of, or in any way connected with the matters which are referenced or covered in the mutual releases referenced above or which were otherwise related to the subject of this Agreement.
- G. Entire Agreement. This Agreement represents and contains the entire agreement and understanding among the parties hereto with respect to the subject matter of this Agreement, and supersedes any and all prior oral and written agreements and understandings. No representation, warranty, condition, understanding or agreement of any kind with respect to the subject matter shall be relied upon by the parties except those contained herein. This Agreement may not be amended or modified except by an agreement signed by the party against whom enforcement of any modification or amendment is sought.
- H. Understanding and Acceptance of Terms. In entering into this Agreement, the parties each acknowledge and represent that the terms of this Agreement have been completely read by them, and that those terms are fully understood and voluntarily accepted by them.
- I. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall be deemed one and the same instrument.
- J. No Assignment. The parties each represent and warrant to one another that they have not sold, assigned, transferred, conveyed or otherwise disposed of any claim or demand covered by this Agreement.
- K. Authority. The parties agree that they and their undersigned representatives have authority to enter into this agreement.

L. Heirs, Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties' respective legal heirs, successors and assigns.

FOR DHHS:

FOR VISINET:

Kerry T. Winterer
Chief Executive Officer
Department of Health and Human Services

John P. Powers, President

DATE: _____

DATE: _____

Todd L. Reckling, Director
Department of Health and Human Services
Division of Children & Family Services

DATE: _____

FOR SUBCONTRACTOR:

Name
Title

DATE: _____