SUBAWARD 32312-Y3

BETWEEN

THE NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES

AND

NORTHEAST NEBRASKA AREA AGENCY ON AGING

This subaward is entered into by and between the Nebraska Department of Health and Human Services, **DIVISION OF MEDICAID AND LONG-TERM CARE STATE UNIT ON AGING** (hereinafter "DHHS"), and **NORTHEAST NEBRASKA AREA AGENCY ON AGING** (hereinafter "Subrecipient").

DHHS SUBAWARD MANAGER:

Renee Savidge
DHHS/MLTC/State Unit on Aging
PO Box 95026
Lincoln, Nebraska 68509
DHHS.Aging@nebraska.gov

PURPOSE. The purpose of this subaward is to support older Nebraskans to remain independent in their own homes and communities with supportive services that meet all the requirements of the Older Americans Act and Title 15 Aging Services Regulations.

I. PERIOD OF PERFORMANCE AND TERMINATION

A. TERM. This award is in effect from July 1, 2016 the effective date through June 30, 2017, the completion date.

B. TERMINATION. This subaward may be terminated at any time upon mutual written consent or by either party for any reason upon submission of written notice to the other party at least Thirty (30) days prior to the effective date of termination. DHHS may also terminate this subaward in accord with the provisions designated "FUNDING AVAILABILITY" and "BREACH OF SUBAWARD." In the event either party terminates this subaward, the Subrecipient shall provide to DHHS all work in progress, work completed, and materials provided by DHHS in connection with this subaward immediately.

II. AMOUNT OF SUBAWARD

A. TOTAL SUBAWARD. DHHS shall pay the Subrecipient a total amount, not to exceed $1,011,741.00 (one million, eleven thousand, seven hundred forty-one dollars) in CASA funds for the activities specified herein.

B. PAYMENT STRUCTURE. Payment shall be structured as follows:

1. DHHS agrees to pay the Subrecipient actual, reasonable, and necessary expenses as billed up to the amount in Section II, Paragraph A. The budget is located in Attachment B. Cost reimbursable payments are to be made in general accordance with the categories and criteria as set forth in the agreement and the budget. The Subrecipient shall submit monthly payment requests in accordance with the following billing requirements:

Request for Funds (Form E) and the Monthly Financial Report(s) (Form A) as referenced in Attachment C, shall be submitted on a monthly basis to the attention of:

Courtney Parker
State Unit on Aging
Division of Medicaid & Long-Term Care
Department of Health & Human Services
PO Box 95026
Lincoln, Nebraska 68509-5026
DHHS.Aging@nebraska.gov

C. BUDGET CHANGES. The Subrecipient is permitted to reassign funds from one line item to another line item within the approved budget. If funds are reassigned between line items, prior approval from DHHS is required for cumulative budget transfer requests for allowable costs, allocable to the subaward exceeding five percent (5%) of the current total approved budget. Budget revision requests shall be submitted in writing to DHHS. DHHS will provide written notification of approval or disapproval of the request within thirty (30) days of its receipt.

III. STATEMENT OF WORK

A. The Subrecipient shall:
   1. Proactively carry out, under the leadership and direction of the State agency, a wide range of functions related to advocacy, planning, coordination, inter-agency linkages, information sharing, brokering, monitoring and evaluation, designed to lead to the development or enhancement of comprehensive and coordinated community based systems in, or serving, each community in the planning and service area. These systems shall be designed to assist older persons in leading independent lives in their own homes and communities.
   2. Request reimbursement only for programs that meet the requirements of the Older American's Act, State of Nebraska regulations and statutes, and the approved Agency Area Plan.

See Attachments:

Attachment A State Unit on Aging Taxonomy Definitions
Attachment B Subrecipient's Annual Budget
Attachment C Request for Funds (Form E) and Monthly Financial Report(s) (Form A)

B. DHHS shall: Monitor that services are provided in accordance with this agreement and, contingent on availability of funding, reimburse the Subrecipient up to the amount in Section II, Paragraph A.

IV. GENERAL TERMS AND ASSURANCES

A. ACCESS TO RECORDS AND AUDIT RESPONSIBILITIES.
   1. All Subrecipient books, records, and documents regardless of physical form, including data maintained in computer files or on magnetic, optical or other media, relating to work performed or monies received under this subaward shall be subject to audit at any reasonable time upon the provision of reasonable notice by DHHS. Subrecipient shall maintain all records for three (3) years from the date of final payment, except records that

fall under the provisions of the Health Insurance Portability and Accountability Act (HIPAA) shall be maintained for six (6) full years from the date of final payment. In addition to the foregoing retention periods, all records shall be maintained until all issues related to an audit, litigation or other action are resolved to the satisfaction of DHHS. The Subrecipient shall maintain its accounting records in accordance with generally accepted accounting principles. DHHS reserves and hereby exercises the right to require the Subrecipient to submit required financial reports on the accrual basis of accounting. If the Subrecipient's records are not normally kept on the accrual basis, the Subrecipient is not required to convert its accounting system but shall develop and submit in a timely manner such accrual information through an analysis of the documentation on hand (such as accounts payable).

2. The Subrecipient shall provide DHHS any and all written communications received by the Subrecipient from an auditor related to Subrecipient's internal control over financial reporting requirements and communication with those charged with governance including those in compliance with or related to Statement of Auditing Standards (SAS) 115 *Communicating Internal Control related Matters Identified in an Audit* and SAS 114 *The Auditor's Communication with Those Charged With Governance.* The Subrecipient agrees to provide DHHS with a copy of all such written communications immediately upon receipt or instruct any auditor it employs to deliver copies of such written communications to DHHS at the same time copies are delivered to the Subrecipient, in which case the Subrecipient agrees to verify that DHHS has received a copy.

3. The subrecipient shall immediately commence follow-up action on findings arising from audits or other forms of review. Follow-up action includes responding to those conducting such examinations with clear, complete views concerning the accuracy and appropriateness of the findings. If the finding is accepted, corrective action, such as repaying disallowed costs, making financial adjustments, or taking other actions should proceed and be completed as rapidly as possible. If the subrecipient disagrees, it should provide an explanation and specific reasons that demonstrate that the finding is not valid.

4. In addition to, and in no way in limitation of any obligation in this subaward, the Subrecipient shall be liable for audit exceptions, and shall return to DHHS all payments made under this subaward for which an exception has been taken or which has been disallowed because of such an exception, upon demand from DHHS.

B. AMENDMENT. Except as provided in the NOTICES section, below, this subaward may be modified only by written amendment executed by both parties. No alteration or variation of the terms and conditions of this subaward shall be valid unless made in writing and signed by the parties.

C. ANTI-DISCRIMINATION. The Subrecipient shall comply with all applicable local, state and federal statutes and regulations regarding civil rights and equal opportunity employment, including Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d et seq.; the Rehabilitation Act of 1973, 29 U.S.C. §§ 794 et seq.; the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq.. Violation of said statutes and regulations will constitute a material breach of this subaward. The Subrecipient shall insert a similar provision into all subawards and subcontracts.

D. ASSIGNMENT. The Subrecipient shall not assign or transfer any interest, rights, or duties under this subaward to any person, firm, or corporation without prior written consent of DHHS. In the absence of such written consent, any assignment or attempt to assign shall constitute a breach of this subaward.

E. ASSURANCE. If DHHS, in good faith, has reason to believe that the Subrecipient does not intend to, is unable to, has refused to, or discontinues performing material obligations under this subaward, DHHS may demand in writing that the Subrecipient give a written assurance of intent to perform. Failure by the Subrecipient to provide written assurance within the number of days specified in the demand may, at DHHS's option, be the basis for terminating this subaward.

F. BREACH OF SUBAWARD. DHHS may immediately terminate this subaward and agreement, in whole or in part, if the Subrecipient fails to perform its obligations under the subaward in a timely and proper manner. DHHS may withhold payments and provide a written notice of default to the Subrecipient, allow the Subrecipient to correct a failure or breach of subaward within a period of thirty (30) days or longer at DHHS's discretion considering the gravity and nature of the default. Said notice shall be delivered by Certified Mail, Return Receipt Requested or in person with proof of delivery. Allowing the Subrecipient time to correct a failure or breach of this subaward does not waive DHHS's right to immediately terminate the subaward for the same or different subaward breach which may occur at a different time. DHHS may, at its discretion, obtain any services required to complete this subaward and hold the Subrecipient liable for any excess cost caused by Subrecipient's default. This provision shall not preclude the pursuit of other remedies for breach of subaward as allowed by law.

G. CONFIDENTIALITY. Any and all confidential or proprietary information gathered in the performance of this subaward, either independently or through DHHS, shall be held in the strictest confidence and shall be released to no one other than DHHS without the prior written authorization of DHHS, provided that contrary subaward provisions set forth herein shall be deemed to be authorized exceptions to this general confidentiality provision. This provision shall survive termination of this subaward.

H. CONFLICTS OF INTEREST. In the performance of this subaward, the Subrecipient shall avoid all conflicts of interest and all appearances of conflicts of interest. The subrecipient shall not acquire an interest either directly or indirectly which will conflict in any manner or degree with performance and shall immediately notify DHHS in writing of any such instances encountered.

I. DATA OWNERSHIP AND COPYRIGHT. DHHS shall own the rights in data resulting from this project or program. The Subrecipient may copyright any of the copyrightable material and may patent any of the patentable products produced in conjunction with the performance required under this subaward without written consent from DHHS. DHHS hereby reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the copyrightable material for state government purposes. This provision shall survive termination of this subaward.

J. DEBARMENT, SUSPENSION OR DECLARED INELIGIBLE. The Subrecipient certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

K. DOCUMENTS INCORPORATED BY REFERENCE. All references in this subaward to laws, rules, regulations, guidelines, directives, and attachments which set forth standards and procedures to be followed by the Subrecipient in discharging its obligations under this subaward shall be deemed incorporated by reference and made a part of this subaward with the same force and effect as if set forth in full text, herein.

L. DRUG-FREE WORKPLACE. Subrecipient certifies that it maintains a drug-free workplace environment to ensure worker safety and workplace integrity. Subrecipient shall provide a copy of its drug-free workplace policy at any time upon request by DHHS.

M. FORCE MAJEURE. Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under this subaward due to a natural disaster, or other similar event outside the control and not the fault of the affected party ("Force Majeure Event"). A Force Majeure Event shall not constitute a breach of this subaward. The party so affected shall immediately give notice to the other party of the Force Majeure Event. Upon such notice, all obligations of the affected party under this subaward which are reasonably related to the Force Majeure Event shall be suspended, and the affected party shall do everything reasonably necessary to resume performance as soon as possible. Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event and will not suspend performance requirements under this subaward.

N. FRAUD OR MALFEASANCE. DHHS may immediately terminate this subaward for fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the subaward by Subrecipient, its employees, officers, directors, volunteers, shareholders, or subcontractors.

O. FUNDING AVAILABILITY. DHHS may terminate the subaward, in whole or in part, in the event funding is no longer available. Should funds not be appropriated, DHHS may terminate the award with respect to those payments for the fiscal years for which such funds are not appropriated. DHHS shall give the Subrecipient written notice thirty (30) days prior to the effective date of any termination. The Subrecipient shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event, shall the Subrecipient be paid for a loss of anticipated profit.

P. GOVERNING LAW. The award shall be governed in all respects by the laws and statutes of the State of Nebraska. Any legal proceedings against DHHS or the State of Nebraska regarding this award shall be brought in Nebraska administrative or judicial forums as defined by Nebraska State law. The Subrecipient shall comply with all Nebraska statutory and regulatory law.

Q. HOLD HARMLESS.

1. The Subrecipient shall defend, indemnify, hold, and save harmless the State of Nebraska and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the State of Nebraska, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the Subrecipient, its employees, consultants, representatives, and agents, except to the extent such Subrecipient's liability is attenuated by any action of the State of Nebraska which directly and proximately contributed to the claims.

2. DHHS's liability is limited to the extent provided by the Nebraska Tort Claims Act, the Nebraska Contract Claims Act, the Nebraska Miscellaneous Claims Act, and any other applicable provisions of law. DHHS does not assume liability for the action of its Subrecipients.

R. INDEPENDENT ENTITY. The Subrecipient is an Independent Entity and neither it nor any of its employees shall, for any purpose, be deemed employees of DHHS. The Subrecipient shall employ and direct such personnel, as it requires, to perform its obligations under this subaward, exercise full authority over its personnel, and comply with all workers' compensation, employer's liability and other federal, state, county, and municipal laws, ordinances, rules and regulations required of an employer providing services as contemplated by this subaward.

S. REIMBURSEMENT REQUEST. Requests for payments submitted by the Subrecipient shall contain sufficient detail to support payment. Any terms and conditions included in the Subrecipient's request shall be deemed to be solely for the convenience of the parties.

T. INTEGRATION. This written subaward represents the entire agreement between the parties, and any prior or contemporaneous representations, promises, or statements by the parties, that are not incorporated herein, shall not serve to vary or contradict the terms set forth in this subaward.

U. NEBRASKA NONRESIDENT INCOME TAX WITHHOLDING. Subrecipient acknowledges that Nebraska law requires DHHS to withhold Nebraska income tax if payments for personal services are made in excess of six hundred dollars ($600) to any Subrecipient who is not domiciled in Nebraska or has not maintained a permanent place of business or residence in Nebraska for a period of at least six months. This provision applies to: individuals; to a corporation, if 80% or more of the voting stock of the corporation is held by the shareholders who are performing personal services, and to a partnership or limited liability company, if 80% or more of the capital interest or profits interest of the partnership or limited liability company is held by the partners or members who are performing personal services.

The parties agree, when applicable, to properly complete the Nebraska Department of Revenue Nebraska Withholding Certificate for Nonresident Individuals Form W-4NA or its successor. The form is available at:
http://www.revenue.ne.gov/tax/current/f_w-4na.pdf or
http://www.revenue.ne.gov/tax/current/fill-in/f_w-4na.pdf

V. NEBRASKA TECHNOLOGY ACCESS STANDARDS. The Subrecipient shall review the Nebraska Technology Access Standards, found at http://www.nitc.nebraska.gov/standards/2-201.html and ensure that products and/or services provided under the subaward comply with the applicable standards. In the event such standards change during the Subrecipient's performance, the State may create an amendment to the subaward to request that Subrecipient comply with the changed standard at a cost mutually acceptable to the parties.

W. NEW EMPLOYEE WORK ELIGIBILITY STATUS. The Subrecipient shall use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

If the Subrecipient is an individual or sole proprietorship, the following applies:

1. The Subrecipient must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at www.das.state.ne.us.

2. If the Subrecipient indicates on such attestation form that he or she is a qualified alien, the Subrecipient agrees to provide the U.S. Citizenship and Immigration Services documentation required to verify the Subrecipient's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

3. The Subrecipient understands and agrees that lawful presence in the United States is required and the Subrecipient may be disqualified or the subaward terminated if such lawful presence cannot be verified as required by NEB. REV. STAT. § 4-108.

X. PUBLICATIONS. Subrecipient shall acknowledge the project was supported by DHHS in all publications that result from work under this subaward.

Y. PROGRAMMATIC CHANGES. The Subrecipient shall request in writing to DHHS for approval of programmatic changes. DHHS shall approve or disapprove in whole or in part in writing within thirty (30) days of receipt of such request.

Z. PROMPT PAYMENT. Payment shall be made in conjunction with the State of Nebraska Prompt Payment Act, NEB. REV. STAT. §§ 81-2401 through 81-2408. Unless otherwise provided herein, payment shall be made by electronic means.

Automated Clearing House (ACH) Enrollment Form Requirements for Payment.
The Subrecipient shall complete and sign the State of Nebraska ACH Enrollment Form and obtain the necessary information and signatures from their financial institution. The completed form must be submitted before payments to the Subrecipient can be made. Download ACH Form:
http://www.das.state.ne.us/accounting/nis/address_book_info.htm

AA. PUBLIC COUNSEL. In the event Subrecipient provides health and human services to individuals on behalf of DHHS under the terms of this award, Subrecipient shall submit to the jurisdiction of the Public Counsel under NEB. REV. STAT. §§ 81-8,240 through 81-8,254 with respect to the provision of services under this subaward. This clause shall not apply to subawards between DHHS and long-term care facilities subject to the jurisdiction of the state long-term care ombudsman pursuant to the Long-Term Care Ombudsman Act.

BB. RESEARCH. The Subrecipient shall not engage in research utilizing the information obtained through the performance of this subaward without the express written consent of DHHS. The term "research" shall mean the investigation, analysis, or review of information, other than aggregate statistical information, which is used for purposes unconnected with this subaward.

CC. SEVERABILITY. If any term or condition of this subaward is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this subaward did not contain the particular provision held to be invalid.

DD. SUBRECIPIENTS OR SUBCONTRACTORS. The Subrecipient shall not subaward or subcontract any portion of this award without prior written consent of DHHS. The Subrecipient shall ensure that all subcontractors and subrecipients comply with all requirements of this subaward and applicable federal, state, county and municipal laws, ordinances, rules and regulations.

EE. TIME IS OF THE ESSENCE. Time is of the essence in this subaward. The acceptance of late performance with or without objection or reservation by DHHS shall not waive any rights of

DHHS nor constitute a waiver of the requirement of timely performance of any obligations on the part of the Subrecipient remaining.

FF. NOTICES. Notices shall be in writing and shall be effective upon mailing by US mail postage prepaid. Written notices required by this subaward shall be sent to the DHHS Subaward Manager identified on page 1, and to the following addresses:

FOR DHHS:

Nebraska Department of Health and
Human Services - Legal Services
Attn: Contracts Attorney
301 Centennial Mall South
Lincoln, NE 68509-5026

FOR SUBRECIPIENT:

Connie Cooper, Director
Northeast Nebraska Area Agency on Aging
119 West Norfolk Avenue
Norfolk, NE 68701-5339
402-370-3454

DHHS may change the DHHS Subaward Manager to be notified under this section via letter to the Subrecipient sent by U.S. Mail, postage prepaid, or via email.

IN WITNESS THEREOF, the parties have duly executed this subaward hereto, and each party acknowledges the receipt of a duly executed copy of this subaward with original signatures, and that the individual signing below has authority to legally bind the party to this subaward.

FOR DHHS:

Cynthia Brammeier

Cynthia Brammeier
Administrator
State Unit on Aging

DATE: 7/13/16

FOR SUBRECIPIENT:

Connie Cooper

Connie Cooper
Director
Northeast Nebraska Area Agency on Aging

DATE: 7/13/16