

39801Y3 SUBAWARD

BETWEEN

THE NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES

AND

WEST CENTRAL 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 **WEST CENTRAL NEBRASKA AREA AGENCY ON AGING** (hereinafter "Subrecipient").

Catalog of Federal Domestic Assistance (CFDA) Title:	<u>Nutrition Services Incentive Program (NSIP)</u>	Federal Agency:	<u>Administration for Community Living.</u>
Catalog of Federal Domestic Assistance (CFDA) Number (From CFDA.gov):	<u>93.053</u>		
Award Name (from CFDA.gov):	<u>Older Americans Act Section 311 - Nutrition Services Incentive Program</u>	Federal Award Identifier Number (FAIN):	<u>18AAENNSIP</u>
Issue Date:	<u>10/19/2017</u>		
Award Date:	<u>10/01/2017</u>		

DHHS SUBAWARD MANAGER:

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

PURPOSE. The purpose of this subaward is to provide funding to the Subrecipient exclusively to purchase food (not meal preparation and may not be used to pay for other nutrition-related services such as nutrition education or for administrative costs) for meals provided to qualified individuals either in a congregate/group setting or as a home-delivered meal that meets all of the requirements in the Older Americans Act (OAA) of 1965, as amended through P.L. 114-144, enacted April 19, 2016, other applicable Federal statutes and their implementing regulations, program regulations, and terms and conditions of this subaward.

I. PERIOD OF PERFORMANCE AND TERMINATION

A. PERIOD OF PERFORMANCE. This award is in effect from October 1, 2017 the effective date through September 30, 2020, 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 "FRAUD AND MALFEASANCE," "FUNDING AVAILABILITY," and "BREACH OF SUBAWARD." In the event either party terminates this subaward, 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 based on a meal reimbursement of \$0.70 (seventy cents) per eligible meal provided and claimed for reimbursement a total amount, not to exceed \$27,774.00 (twenty-seven thousand, seven hundred seventy-four dollars) for the activities specified herein.

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

The subrecipient shall submit payment requests electronically by the 15th of each month to the attention of:

Courtney Parker
DHHS/MLTC/State Unit on Aging
dhhs.Aging@nebraska.gov

1. Subrecipient shall submit requests for payment to DHHS on a monthly basis.
2. Payment amounts shall be made up to the amount in Section II, Paragraph A, in accordance with the criteria as set forth in this subaward.

- C. PAYMENT REQUESTS.

1. All requests for payments submitted by Subrecipient, whether for reimbursement or otherwise, shall contain sufficient detail to support payment.
2. Subrecipient must be able to provide source documentation or other verification of all claimed costs as requested by to DHHS.

III. STATEMENT OF WORK

- A. The Subrecipient shall:
- a. Provide meals that meet the OAA nutrition requirements of complying with the most recent *Dietary Guidelines for Americans* and having a nutrient content that meets one-third of the Dietary Reference Intakes.
 - b. Provide meals to individuals who meet all service criteria in the OAA and regulations, including but not limited to not being means-tested for participation and being provided the opportunity to voluntarily contribute to the cost of service.
 - c. Report on, and receive payment for, an eligible meal only once.
- B. DHHS shall: Monitor that services are provided in accordance with this Subaward, both programmatically and financially, and, contingent on availability of funding, pay the Subrecipient up to the amount in Section II, Paragraph A.

C. SUBRECIPIENT FISCAL MONITORING REQUIREMENTS.

1. The Subrecipient agrees to do the following:
 - a. Ensure training is provided to program staff related to preparing and reviewing program budgets and maintaining fiscal accountability related to expending state and federal funds.
 - b. Employ or contract with an individual with sufficient knowledge and responsibility to ensure that:
 - Subrecipient has effective internal fiscal controls in compliance with guidance issued by the Comptroller General of the United States or the Committee of Sponsoring Organizations (COSO);
 - Subrecipient's financial statements are prepared in accordance with Generally Accepted Accounting Principles (GAAP);
 - Subrecipient complies with this subaward and all applicable state and federal regulations.
2. The minimum qualifications for this individual are: 1) Bachelor's Degree in Accounting or Finance, and 2) three years of relevant experience. Subrecipient may request DHHS approval, which in DHHS's sole discretion it may grant, for an individual with 1) an Associate's Degree in Accounting, and 2) at least seven years of relevant experience. Additionally, Subrecipient may request DHHS approval, which in DHHS's sole discretion it may grant, for an individual who 1) does not have a degree, and 2) who has at least ten years of relevant experience.
3. The Subrecipient shall immediately notify DHHS, in writing, if it is not in compliance with the above requirements. During any period of noncompliance, DHHS may withhold 10% from all payments due until the noncompliance is corrected.

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 Subrecipient to submit required financial reports on the accrual basis of accounting. If Subrecipient's records are not normally kept on the accrual basis, 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. Subrecipient shall provide DHHS any and all written communications received by 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) 122. 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 Subrecipient, in which case Subrecipient agrees to verify that DHHS has received a copy.

3. 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, 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. ACKNOWLEDGEMENT OF FUNDING.

1. As required by United States Department of Health and Human Services (hereinafter "HHS") appropriations acts, all HHS recipients and DHHS Subrecipients of HHS federal awards must acknowledge federal and DHHS funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with federal and DHHS funds. If the subaward utilizes funds from HHS, Subrecipient is required to state: (1) the percentage and dollar amounts of the total program or project costs financed with federal and DHHS funds; and (2) the percentage and dollar amount of the total costs financed by nongovernmental sources.
2. For all publications that result from work under this subaward not included in (1), above, and for any publications supported by a federal agency other than HHS, Subrecipient shall acknowledge the project was supported by the CFDA, name of award, federal agency and DHHS.

C. **AMENDMENT.** 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.

D. **ANTI-DISCRIMINATION.** The Subrecipient shall comply with all applicable local, state and federal statutes and regulations regarding civil rights and equal opportunity employment, including but not limited to 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.; the Age Discrimination in Employment Act, 29 U.S.C. § 621 and the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. §§ 48-1101 to 48-1125. 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.

E. **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.

- F. **ASSURANCE.** If DHHS, in good faith, has reason to believe that 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 Subrecipient give a written assurance of intent to perform. Failure by 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.
- G. **CLEAN AIR ACT.** If the value of this subaward exceeds \$150,000, Subrecipient shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251 et seq.).
- H. **COMPLIANCE WITH LAW.** The Subrecipient shall comply with all applicable law, including but not limited to all applicable federal, state, county and municipal laws, ordinances, rules, and regulations.
- I. **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.
- J. **CONFLICTS OF INTEREST.** In the performance of this subaward, Subrecipient shall avoid all conflicts of interest and all appearances of conflicts of interest. 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.
- K. **DATA OWNERSHIP AND COPYRIGHT.**
1. Except as otherwise provided in the Federal Notice of Award, DHHS shall own the rights in data resulting from this project or program. As consistent with federal law, 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.
 2. DHHS and any federal granting authority hereby reserve a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the copyrightable material for federal or state government purposes. This provision shall survive termination of this subaward.
- L. **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 state or federal department or agency. The Subrecipient certifies that it is registered with the System of Award Management (SAM) (<https://www.sam.gov>), in good standing, and that the entity will maintain annual certification in accordance with Federal Acquisition Regulations. Failure to comply with this section, including maintaining an active registration and/or good standing with SAM, may result in withholding of payments or immediate termination of the subaward.
- M. **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 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.

N. DRUG-FREE WORKPLACE.

1. If Subrecipient is not an Individual under 41 U.S.C. § 8101 et seq., Subrecipient agrees, in accordance with 41 USC §8101 et seq., to maintain a drug-free workplace by: (1) publishing a drug-free workplace statement; (2) establishing a drug-free awareness program; (3) notifying employees as consistent with 41 U.S.C. § 8103(a)(1)(c) and (d); (4) by taking actions concerning employees who are convicted of violating drug statutes in the workplace; (5) notifying DHHS within 10 days after receiving notice of an employee drug conviction; (6) Imposing sanctions against employees as required by 41 U.S.C. § 8104; and (7) in accordance with 2 CFR §182.230, identify all workplaces under its federal awards.
2. As per 42 U.S.C. § 8103, if Subrecipient is an Individual, Subrecipient agrees not to engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in conducting activity with the subaward.

O. FEDERAL FINANCIAL ASSISTANCE. The Subrecipient shall comply with all applicable provisions of 45 C.F.R. §§ 87.1-87.2. The Subrecipient certifies that it shall not use direct federal financial assistance to engage in inherently religious activities, such as worship, religious instruction, and/or proselytization.

P. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT REPORTING. The Subrecipient shall complete and endorse Subrecipient Information & Audit Requirement Certification, Attachment 1. The Subrecipient certifies the information provided is complete, true, and accurate.

Q. 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.

R. 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.

S. 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 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 Subrecipient be paid for a loss of anticipated profit.

T. GRANT CLOSE-OUT. Upon completion or notice of termination of this grant, the following procedures shall apply for close-out of the subaward:

1. The Subrecipient shall not incur new obligations after the termination or completion of the subaward, and shall cancel as many outstanding obligations as possible. DHHS shall give full credit to Subrecipient for the federal share of non-cancelable obligations properly incurred by Subrecipient prior to termination, and costs incurred on, or prior to, the termination or completion date.
2. Subrecipient shall immediately return to DHHS any unobligated balance of cash advanced or shall manage such balance in accordance with DHHS instructions.
3. Within a maximum of 90 days following the date of expiration or completion, Subrecipient shall submit all financial, performance, and related reports required by Subrecipient Reporting Requirements. DHHS reserves the right to extend the due date for any report and may waive, in writing, any report it considers to be unnecessary.
4. DHHS shall make any necessary adjustments upward or downward in the federal share of costs.
5. The Subrecipient shall assist and cooperate in the orderly transition and transfer of subaward activities and operations with the objective of preventing disruption of services.
6. Close-out of this subaward shall not affect the retention period for, or state or federal rights of access to, Subrecipient records, or Subrecipient's responsibilities regarding property or with respect to any program income for which Subrecipient is still accountable under this subaward. If no final audit is conducted prior to close-out, DHHS reserves the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted at a later time.

U. GOVERNING LAW. The award shall be governed in all respects by the laws and statutes of the United States and 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.

V. HOLD HARMLESS.

1. The Subrecipient shall defend, indemnify, hold, and save harmless DHHS 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 DHHS, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of Subrecipient, its employees, consultants, representatives, and agents, except to the extent such Subrecipient's liability is attenuated by any action of DHHS that directly and proximately contributed to the claims.
2. DHHS' 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.

W. HUMAN TRAFFICKING PROVISIONS. Subrecipient shall comply and be subject to the requirements of Section 106(g) of the "Trafficking Victims Protection Act of 2000" (22 USC § 7104). The full text of this requirement is found at <http://www.acf.hhs.gov/grants/award-term-and-condition-for-trafficking-in-persons>

X. INDEPENDENT ENTITY. 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.

Y. 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.

Z. LOBBYING.

- a. Subrecipient certifies that no Federal appropriated funds shall be paid, by or on behalf of Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this award for: (a) the awarding of any Federal agreement; (b) the making of any Federal grant; (c) the entering into of any cooperative agreement; and (d) the extension, continuation, renewal, amendment, or modification of any Federal agreement, grant, loan, or cooperative agreement.
- b. If any funds, other than Federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this subaward, Subrecipient shall complete and submit Federal Standard Form-LLJ, "Disclosure Form to Report Lobbying," in accordance with its instructions.

AA. MANDATORY DISCLOSURES. The Subrecipient must disclose to DHHS, in a timely manner and in writing, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting this subaward in accordance with 2 CFR § 200.113 and 45 CFR § 75.113, as applicable. Failure to make required disclosures can result in any of the remedies described in 2 CFR § 200.338 and 45 CFR § 75.371, as applicable, including suspension or debarment. (See also 2 CFR § 180 et seq. and 31 U.S.C. § 3321).

BB. 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/fill-in/f_w-4na.pdf

CC. 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 Subrecipient's performance, DHHS may create an amendment to the subaward to request that Subrecipient comply with the changed standard at a cost mutually acceptable to the parties.

DD. 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 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 Subrecipient indicates on such attestation form that he or she is a qualified alien, Subrecipient agrees to provide the U.S. Citizenship and Immigration Services documentation required to verify 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 Subrecipient may be disqualified or the subaward terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. § 4-108.

EE. NOTICE OF STATE-DESIGNATED CLUSTER OF PROGRAMS. Pursuant to 2 CFR § 200.331, this provision provides notice that DHHS has designated the Public Health Emergency Preparedness/Hospital Preparedness Program grants (CFDAs 93,069 & 93,889, under 93,074) as a Cluster of programs (see 2 CFR § 200.17). For auditing purposes, and as set forth in 2 CFR § 200.518, a Cluster of programs must be considered as one program for Major program determinations.

FF. PAYMENT OF COSTS AND AUDIT REQUIREMENTS.

1. All payments made under this subaward must be consistent with 2 CFR § 200 et seq. and any other regulations for the federal funding source, as applicable, including but not limited to 45 CFR § 75 et seq. and 45 CFR § 95 et seq. The Subrecipient shall ensure all costs requested under this subaward are actual, and meet all federal allowability, allocability, and reasonableness requirements for the funds involved, including but not limited to all requirements for allowability under 2 CFR §§ 200.400 through 475 and 45 CFR §§ 75.400 through 477.
2. The Subrecipient shall follow all federal audit requirements, including but not limited to those in 2 CFR § 200 Subpart F (See table below and Attachment 1, Audit Requirement Certification.) Audits must be prepared and issued by an independent certified public accountant licensed to practice. A copy of the annual or audit is to be made electronically

available or sent to: Nebraska Department of Health and Human Services, Financial Services, P.O. Box 95026, Lincoln, NE 68509-5026.

Amount of annual federal expenditure	Audit Type
\$100,000 to \$749,999	Financial Statement Audit
\$750,000 or more in federal expenditures	Single Audit

GG. 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.

HH. 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:

- a. 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 Subrecipient can be made. Download ACH Form: http://www.das.state.ne.us/accounting/nls/address_book_info.htm

II. 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.

JJ. REMEDIES FOR NON-COMPLIANCE. As consistent with applicable law, DHHS may, if Subrecipient fails to comply with federal statutes, regulations, or the terms and conditions of the subaward:

1. Impose any of the specific conditions listed in 45 CFR § 75.207 or 2 CFR § 200.207, as applicable;
2. Temporarily withhold any payments pending the correction of the deficiency by Subrecipient;
3. Disallow all or part of the cost of the activity or action not in compliance;
4. Wholly or partly suspend or terminate this subaward;
5. Recommend suspension or debarment proceedings be initiated by the federal funding agency; and
6. Take any other remedies that may be legally available.

If DHHS imposes items 3, 4, or 6, above, DHHS may withhold future payments or seek repayment to recoup costs paid by DHHS.

For any of the above actions, DHHS may, in its sole discretion and considering the gravity and nature of the noncompliance, allow Subrecipient to correct a failure or breach of subaward within a period of thirty (30) days or longer ("cure period"). If DHHS provides a cure period, it shall provide notice, which shall be delivered by Certified Mail, Return Receipt Requested, or in-person with proof of delivery. Allowing Subrecipient a cure period to correct a failure to

comply does not waive DHHS' right to take other action listed above for the same or different failure to comply that may occur at a different time.

Nothing in this provision shall preclude the pursuit of other remedies as allowed by law.

- KK. 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.
- LL. 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.
- MM. SMOKE FREE. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable Federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. By signing, Subrecipient certifies that Subrecipient will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.
- NN. SUBRECIPIENTS OR SUBCONTRACTORS. The Subrecipient shall not subaward or subcontract any portion of this award without prior written consent of DHHS. In subcontracting or subawarding any portions of this subaward, Subrecipient shall follow 2 CFR § 200.300 through 200.345, and 45 CFR § 75.300 through § 75.345, as applicable. 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.
- OO. SURVIVAL. All provisions hereof that by their nature are to be performed or complied with following the expiration or termination of this subaward, including but not limited to those clauses that specifically state survival, survive the expiration or termination of this subaward.
- PP. 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 Subrecipient remaining.
- QQ. WHISTLEBLOWER PROTECTIONS. The Subrecipient shall comply with the provisions of 41 U.S.C. § 4712, which states an employee of a contractor, subcontractor, grantee, or subrecipient may not be discharged, demoted or otherwise discriminated against as a reprisal

for "whistleblowing." In addition, whistleblower protections cannot be waived by any agreement, policy, form, or condition of employment.

1. The Subrecipient's employees are encouraged to report fraud, waste, and abuse. The Subrecipient shall inform their employees in writing they are subject to federal whistleblower rights and remedies. This notification must be in the predominant native language of the workforce.
2. The Subrecipient shall include this requirement in any agreement made with a subcontractor or subrecipient.

RR. NOTICES. Notices shall be in writing and shall be effective upon mailing. Unless otherwise set forth herein, all Subrecipient reporting under the subaward shall be sent to the DHHS Subaward Manager identified on page 1. Written notices regarding termination of this subaward or breach of 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:

Linda Foreman
West Central Nebraska Area Agency on Aging
115 N Vine Street
North Platte, NE 69101-5305
(308) 635-8195

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